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DEPARTMENT OF JUSTICE and
EQUALITY
51 St. Stephen's Green
Dublin 2
Facsimilair/Fax: (01) 661 5461

Mr. T.J. McIntyre

Our Ref: 156/303/2014

Dear Mr. McIntyre,

I refer to your request under the Freedom of Information Act 1997, as amended for access to:

....all briefing material provided to the new Minister for Justice on taking office. This will include in particular any briefing material relating to interception of communications and data retention”

A copy of the Minister’s brief has been published on the Department’s website, www.justice.ie. A decision was made below in respect of your request for “*briefing material relating to interception of communications and data retention*”.

Decision

The decision maker has decided to part grant your request for briefing material prepared for the incoming Minister relating to interception of communications subject to redactions pursuant to Sections 21(1)(b), Section 23(1)(a)(iii) and (aa).

By way of explanation, Section 21(1)(b) provides that a request for access to a record may be refused if access to the record concerned could reasonably be expected to have a significant, adverse effect on the performance by the body holding the record of any of its functions relating to management.

Section 23(1)(a)(iii) and (aa) provide that a request for access to a record may be refused if access to the record concerned could reasonably be expected to prejudice or impair lawful methods, systems, plans or procedures for ensuring the safety of the public and the safety or security of persons and property, or endanger the life or safety of any person. The decision maker notes that the deletions made do not impair understanding of the records in question.

Rights of Appeal

If you are dissatisfied with the above decision you may seek an internal review of same by writing to me within 20 working days of the date of this notification, referring to this decision in your letter. The making of a late appeal may be permitted in appropriate circumstances. The appeal will involve a

complete reconsideration of the matter by a more senior member of the staff of this body and the decision will be communicated to you within 15 working days.

Please note that on making an appeal in relation to non personal records under the FOI Act, 1997 to this Department, a fee of € 75 must accompany your application. A reduced fee of € 25 applies if you are covered by a medical card, in which case you should supply details of the medical card registration number and issuing health board together with your consent to the verification of these details with the relevant health board. An appeal request cannot be accepted until the above fee is received. Payment should be made by Bank Draft, Money Order, Postal Order or Cheque made payable to the Department of Justice and Equality.

Yours sincerely,



Aisling Brennan
Freedom of Information Officer
11 August 2014

Schedule of Records - FOI Request Reference: 156/303/2014

Division: Crime 3

Rec. No	Brief Description	Date of record	File Ref	No. of pages	Decision: Grant/ Part Grant/ Refuse	Basis of Refusal: Section of Act
1	Note for the information of the Minister (A) Lawful interception of Postal and Telecommunications Messages: Authorisation procedures. (B) Authorisation of Certain Interceptions (Transfer of Departmental Administration and Ministerial Functions Order) 2012	May 2014	Document library	5	Part Grant	21(1)(b), 23(1)(a)(iii) and 23(1)(aa)

SECRET

Note for the Information of the Minister

- A. Lawful Interception of Postal and Telecommunications Messages: Authorisation Procedures
- B. Authorisation of Certain Interceptions (Transfer of Departmental Administration and Ministerial Functions Order) 2012

A. Lawful Interception of Post and Telecommunications Authorisation Procedures

The lawful interception of telecommunications and post is governed by the Interception of Postal Packets and Telecommunications Messages (Regulation) Act 1993.

Sections 4 and 5 of the 1993 Act provide that only the Minister for Justice and Equality may grant 'authorisations' to intercept and then only for the purposes of:

Section 4: the investigation of serious crime (i.e. crime punishable by a sentence of five years imprisonment or more); or,

Section 5: in the interests of the security of the State.

Applications for Authorisations

Both the Garda Commissioner and the Chief of Staff of the Defence Forces are entitled to make applications for authorisations to intercept. The Garda Commissioner may make applications under Section 4 or Section 5.

However, the Chief of Staff may make applications only under Section 5. Furthermore, an application from the Chief Of Staff must be submitted in the first instance to the Minister for Defence who shall forward it to the Minister for Justice and Equality accompanied by a recommendation in writing supporting the application.

SECRET

Role of Nominated Officer

Applications made to the Minister for Justice and Equality are handled exclusively [REDACTED]

All applications for interception authorisations are required to be initially examined by either 'the Nominated Officer' or 'the Acting Nominated Officer'. One of these officers is required to make a submission to the Minister stating his opinion as to whether or not the conditions justifying interception are met in each case.

Interception Authorisations - Warrants

The Minister may, where she considers that all conditions stand fulfilled, grant the application by authorising the interception.

This is usually done by the Minister signing and dating a 'warrant' authorising interception by the relevant communications service provider.

Conditions

In relation to applications from the Chief of Staff, the conditions that are to be fulfilled are provided for in Section 5 of the 1993 Act. These are;

- (a) that there are reasonable grounds for believing that particular activities that are endangering or likely to endanger the security of the State are being carried on or are proposed to be carried on,
- (b) that investigations are being carried out by or on behalf of the person applying for the authorisation concerned to ascertain whether activities of the kind aforesaid are in fact being carried on or proposed to be carried on and, if so, by whom and their nature and extent,
- (c) that investigations not involving interception have failed, or are likely to fail, to produce, or to produce sufficiently quickly, information that would show whether the activities are being carried on or proposed to be carried on and, if so, by whom and their nature and extent,

SECRET

- (d) that there is a reasonable prospect that the interception of postal packets sent to a particular postal address or of telecommunications messages sent to or from a particular telecommunications address would be of material assistance (by itself or in conjunction with other information) in providing information such as aforesaid, and
- (e) that the importance of obtaining the information concerned is, having regard to all the circumstances and notwithstanding the importance of preserving the privacy of postal packets and telecommunications messages, sufficient to justify the interception

Oral Authorisations

In cases where there is exceptional urgency to instituting the interception and the Minister is not available to sign a warrant, the Minister may grant an 'oral authorisation' to the Nominated Officer or Acting Nominated Officer. Where an oral authorisation is granted, it must be confirmed by the Minister signing a warrant as soon as may be thereafter.

Renewal of Warrants

Warrants remain in force for a maximum period of three months, although they may be renewed at the end of that period. However, renewal is not automatic; the conditions justifying the original authorisation must continue to exist. [REDACTED]

Cancellation of Warrants

Warrants may be cancelled at any time at the request of the Chief of Staff when, for example, the interception has served its purpose or failed to produce the desired information. The cancellation of warrants does not require Ministerial input and is performed by either the Nominated Officer or the Acting Nominated Officer.

Non-Disclosure of Interception Authorisations

In the 1993 Act there is a statutory requirement (S. 12) to limit to the minimum necessary the disclosure of the fact that an authorisation has been granted,

SECRET

with '*necessary*' here meaning necessary for the purpose of the prevention or detection of serious crime or in the interests of the security of the State.

This statutory requirement prohibits any public statement by any party confirming or denying the existence of an interception in any particular case or, indeed, the number of interceptions granted in any period of time.

Judicial Oversight

The 1993 Act provides for two oversight mechanisms as to the operation of the Act's provisions.

A 'Complaints Referee', currently Judge Carroll Moran of the Circuit Court, has the power to investigate complaints made by members of the public who believe their communications have been intercepted. The Referee may investigate whether there has been a contravention of the 1993 Act's provisions. If a complaint is upheld, the Complaints Referee will quash the interception, report the matter to the Taoiseach and recommend a compensation payment. [REDACTED]

A 'Designated Judge', currently Mr. Justice Iarfhlaith O'Neill of the High Court, provides a more general oversight function of keeping the Act under review and making annual reports to the Taoiseach on whether the Act is being complied with generally. The reports of the Designated Judge are laid before the Houses of the Oireachtas.

Mr Justice O'Neill is due to retire in June 2014. Preparations for the nomination and appointment of a successor have commenced.

B. Authorisation of Certain Interceptions (Transfer of Departmental Administration and Ministerial Functions Order) 2012

Following his appointment as both Minister for Justice and Equality and Minister for Defence, the statutory functions of recommending the Chief of Staff's Defence Forces applications for interceptions and that of deciding

SECRET

whether or not to issue such an authorisation stood to be performed by the same Minister of the Government.

The 'Designated Judge' (designated under Section 8 of the 1993 Act to keep the operation of the Act under review), in his Report to the Taoiseach in December 2011 commented that while there was technical compliance with the legislation as things stood, the particular situation appeared anomalous. Advice from the Attorney General indicated that a transfer of functions order under the Ministers and Secretaries (Amendment) Act 1939 would remove this apparent anomaly.

In light of these comments the Government decided to transfer the function of the Minister for Justice and Equality under Section 2 of the Interception of Postal Packets and Telecommunications Messages (Regulation) Act 1993 to the Minister for Communications, Energy and Natural Resources in respect of applications for interceptions from the Chief of Staff of the Defence Forces and the Government made the Order on the 13th March 2012.

In light of the fact that the Minister for Justice and Equality no longer also holds the position of Minister for Defence arrangements are being made, to seek a decision of the Government revoking the order.

[REDACTED]

May 2014

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Mr TJ McIntyre

Our Ref: 156/303/2014

Dear Mr. McIntyre,

I wish to refer further to your email of 13 August, 2014. I can confirm that there was no briefing material on data retention prepared for the Minister.

Yours sincerely,

Handwritten signature of Aisling Brennan in blue ink.

Aisling Brennan
Freedom of Information Officer
21 August 2014