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6th May, 2014

Mr. Martin Fraser
Secretary-General
Department of An Taoiseach
Government Buildings
Dublin 2

Re.: **Review of action taken in relation to allegations made
by Sergeant Maurice McCabe**

Your Ref.:

Dear Mr. Fraser,

I enclose my report to An Taoiseach, Enda Kenny TD, in relation to the above matter, following the completion of the review specified in the terms of reference enclosed with your letter of 27 February last. As requested, please find three paper copies and a memory stick with an electronic copy enclosed.

The report has not been furnished within the time period mentioned in paragraph 8 of the terms of reference and I regret that. I hope, however, that, having regard to the volume of material involved and the time it took for various parties to assemble it, the delay will not be considered unreasonable.

I am happy to report that the various parties who provided documentation cooperated fully with the review, and their cooperation is noted in the report.

Unfortunately, I have not received any documentation from the Garda Síochána Ombudsman Commission and I have therefore had to complete the review without reference to any such material, save insofar as copies of it were available on the files of other agencies. That is somewhat unsatisfactory, although it has not impeded the review in relation to other agencies. GSOC has indicated, through its solicitors, that it is willing to furnish documentation and that it has "voluminous" documentation available, but it was unwilling to release it without certain safeguards being put in place. While that is not unreasonable, no indication of these difficulties was given to me until the process of drafting the final report was well underway, and notwithstanding repeated requests to GSOC to furnish relevant documentation. In those circumstances, I had no opportunity to review such documentation with the care required and I have proceeded to finalise my report accordingly.

I am conscious that, although there is no specific reference to publication in the terms of reference, it has been stated publicly by An Taoiseach that it is his intention to lay the report before the Dáil. There are persons who feature in the report who may have concerns about being identified for a variety of reasons. Accordingly, I have adopted a policy of anonymizing individuals

insofar as reasonably necessary and possible, in accordance with the approach set out in Chapter 3 (paras. 3.6 – 3.9).

Some of the matters to which the review relates are the subject of ongoing proceedings involving the State, including the specific subjects considered in Chapters 6, 13 and 14 and, more generally, a broad range of matters in relation to Sergeant McCabe. Two issues arise as a result. The first is the question of privilege and the second is the *sub judice* rule

1. None of the agencies from which I sought documents asserted a claim of privilege, but that does not mean that there has been any waiver of privilege for all purposes.
2. I have endeavoured to avoid straying into comment on matters that are *sub judice*, but I am conscious that, to some extent, it may have been impossible to do that, in particular in relation to chapter 6.

May I respectfully suggest that the question of privilege and the *sub judice* rule require consideration, in conjunction with the agencies involved in the proceedings, in advance of any publication of the report?

Naturally, if I can be of any further assistance in relation to the report, please don't hesitate to let me know. Thank you for your instructions.

With kind regards,

Yours sincerely,


SEAN GUERIN