

TRIBUNAL OF INQUIRY INTO PROTECTED DISCLOSURES MADE UNDER
THE PROTECTED DISCLOSURES ACT 2014 AND CERTAIN OTHER
MATTERS FOLLOWING RESOLUTIONS PASSED BY DÁIL ÉIREANN AND
SEANAD ÉIREANN ON 16 FEBRUARY 2017

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1921, ON 17 FEBRUARY 2017

SOLE MEMBER: MR. JUSTICE PETER CHARLETON, JUDGE OF THE
SUPREME COURT

HELD IN DUBLIN CASTLE
ON TUESDAY, 30TH JANUARY 2018 - DAY 51

51

Gwen Malone Stenography
Services certify the
following to be a
verbatim transcript of
their stenographic notes
in the above-named
action.

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1 THE HEARING RESUMED ON TUESDAY, 30TH JANUARY 2018

2 AS FOLLOWS:

3
4 MS. LEADER: The first witness this morning, sir, is
5 Christopher Quattrociochi. 10:00

6
7 MR. CHRISTOPHER QUATTROCIOCCHI, HAVING BEEN SWORN, WAS
8 DIRECTLY EXAMINED BY MS. LEADER:

9 MS. LEADER: Mr. Quattrociochi's statement is at page
10 3353 of the materials in volume 6. 10:01

11 1 Q. Mr. Quattrociochi, I understand you were the
12 Minister's private secretary from July 2013 to June
13 2016?

14 A. Yes.

15 2 Q. And that's the Minister for Justice and Equality we are 10:01
16 talking about, Ms. Fitzgerald?

17 A. Yes, and Minister Alan Shatter before her.

18 3 Q. Before that. Could you explain to the Tribunal what
19 that position entailed, please?

20 A. Essentially the role of the private secretary is as a 10:01
21 link between the Minister and the Department. You are
22 there to ensure that any information the Minister needs
23 to see that comes directly to you can get to her. You
24 are also there to oversee the running of the office of
25 the Minister and to deal with any Oireachtas issues 10:01
26 that arise, such as scheduling, legislation and interim
27 PQs and answers -- answered.

28 4 Q. I just want to look at Ms. Fitzgerald's description of
29 your role which appears at page 3367 of the materials.

1 It should come up on the screen in front of you as
2 well. If you scroll down, please.

3 A. I see it there, yes.

4 5 Q. She says that you provide support to the Minister in
5 respect of parliamentary obligations, liaise with the 10:02
6 office of the Chief whip in respect of the order of
7 business and the Oireachtas commitments of the
8 Taoiseach, to ensure that the Minister is provided with
9 draft speeches in sufficient time for delivery in the
10 Dáil and Seanad, to support the Minister providing all 10:02
11 necessary briefing and documentation prior to
12 Government meetings, to liaise with the Government
13 secretariat in respect of the Government agenda and
14 priority issues, to act as the point of contact between
15 the Minister and all divisions of her Department, to 10:03
16 maintain and manage the Minister's diary by obtaining
17 and considering advice in respect of all invitations to
18 the Minister and arranging protocol and draft speeches
19 for each function she attends, to ensure effective
20 management of the Minister's private office and to 10:03
21 provide a support service to the Minister's advisers.
22 Do you say that is a fairly --

23 A. That is accurate, yes.

24 6 Q. That is an accurate description. So I suppose, I don't
25 know if you would agree with me or not, but would you 10:03
26 say in very broad terms your role insofar as you could
27 do this is to keep the Minister right in discharging
28 her functions in the Department?

29 A. Exactly. And to ensure that the flow of information

1 continues from the Department to the Minister and vice
2 versa.

3 7 Q. Okay. Now, if I could bring you to the email system
4 that was in operation while you were the Minister's
5 private secretary, and if you could explain how you 10:03
6 liaised using email with the Minister and between the
7 officials in the Department of Justice, please?

8 A. So in 2015, the time of this email, that was prior to
9 when we had an electronic submissions database, so an
10 email would have come directly to me from an official 10:04
11 with information to the Minister. I would always
12 forward these emails to the Minister and her advisers.
13 I would then print off the email and ensure there was a
14 hard copy given to her as soon as possible as well.

15 8 Q. Now, did you send every email to the Minister or did 10:04
16 you yourself look through the emails and decide which
17 one was worthy of the Minister's attention?

18 A. Any email that was sent for the Minister's attention
19 would have been sent directly to her.

20 9 Q. So that was an automatic procedure, you say? 10:04
21 A. Yes.

22 10 Q. And in relation to the printing off of emails was every
23 email printed off that was sent to you for the
24 Minister's attention or was there any filleting
25 procedure employed? 10:04
26 A. No, if an email was sent for the attention of the
27 Minister it would have been printed as well as emailed
28 to her directly.

29 11 Q. And in bringing it to the Minister's attention was

1 there a face-to-face meeting with the Minister
2 generally in respect of emails between you and the
3 Minister?

4 A. I wouldn't call it a face-to-face meeting specifically
5 about the email. 10:05

6 12 Q. Emails generally?

7 A. Emails generally. I would maintain trays of different
8 information that she needs. So, for example, I would
9 have a tray with representations she would need to
10 sign, a tray of submissions she would need to look at, 10:05
11 an information tray with emails for information and
12 then I would have an urgent tray which is generally
13 information she needs on the day or as soon as
14 possible. The way it would work is, I would ensure at
15 the end of each day if I hadn't had time to show her 10:05
16 personally the urgent information, she would bring it
17 with her when she was leaving and all the other trays I
18 would prioritise depending on the information there or
19 when she needed to see it. I wouldn't specifically sit
20 down with her to go through this information. 10:05

21 Sometimes she would bring a pile of files, for want of
22 a better phrase, with her when she was leaving. And I
23 would ensure that she saw everything when she needed to
24 see it.

25 13 Q. Okay. So if I go to the email of the 15th May, it's at 10:06
26 page 745 of the materials. And you will see
27 Mr. Flahive sent you an email at 16:57, which was a
28 Friday evening, you were the first addressee, and then
29 it went on to the Secretary General's office, to

1 Mr. O'Leary, and to Mr. Power. And it's a request of
2 you:

3
4 "Chris, could you pass this on to the Minister for
5 information, please." 10:06

6
7 I won't go through the whole of the email, the Tribunal
8 is familiar with it at this stage. So do you have any
9 memory of receiving that email in May 2015?

10 A. I don't have specific recollection, no. The only 10:06
11 memory I have is the records show what I did with it
12 once I received it.

13 14 Q. Okay. And if you could explain to the Tribunal,
14 please, what the sentence "Chris, could you pass this
15 on to the Minister for information please?" means to 10:07
16 you when you receive an email from somebody like
17 Mr. Flahive.

18 A. That is just an information note for the Minister,
19 there was no action required.

20 15 Q. So what do you do, considering you have no particular 10:07
21 memory of this particular email? Once you see that
22 email, what is your reaction to it?

23 A. So the standard procedure for an email like this would
24 be to acknowledge the officials, which I did in a later
25 email, I would forward this email to the Minister and 10:07
26 her advisers, and, as I said, I would then print off
27 the email and put it in the relevant tray for her to
28 see at a later date.

29 16 Q. Okay. So if we turn to page 746 of the materials, we

1 see an email - sorry, if we just scroll up a bit,
2 Mr. Kavanagh - from you at 17:04, and it's addressed to
3 Mr. Lavelle, and then Justice, Marion Mannion, the
4 Minister Fitzgerald, is that correct?

5 A. Yes, it's to the Minister and her two advisers. 10:08

6 17 Q. Okay. So in relation to the two advisers, if you could
7 just explain to the Tribunal what role they discharge
8 and why you sent it to the two advisers?

9 A. Well, the role of her two advisers was to advise her
10 politically and on policy and on any related matter she 10:08
11 wished to receive advice on. The reason I would
12 forward all emails to her two advisers was in case she
13 didn't get a chance to do it herself, and she wanted to
14 speak to them at short notice about certain issues,
15 they would have had sight of it before this time. 10:08

16 18 Q. Okay. So is the Tribunal to take anything from the
17 fact that you sent it to the Minister and her two
18 advisers? Did it assume any particular priority in
19 your mind or urgency or --

20 A. No, that was standard practice for all emails for the 10:09
21 attention of the Minister, they would be sent to her
22 advisers as well.

23 19 Q. Okay. And insofar as I see it's sent from your phone,
24 do you think you were in the office at that stage or --

25 A. I don't -- as I said, I don't recall. Chances are at 10:09
26 5:00 on a Friday evening I wasn't. But having said
27 that, it wouldn't be unusual to be in the office at
28 5:00 on a Friday. I could have been walking from a
29 meeting back to the office, which I would regularly do

1 and check my emails as I was walking. But as I said, I
2 don't have specific recollection.

3 CHAIRMAN: So Ms. Leader, can I just clarify? I
4 presume what we are talking about is a Blackberry
5 system or something like that. 10:09

6 A. An iPhone.

7 CHAIRMAN: Yeah. well, it would have been a Blackberry
8 in the old days I suppose before --

9 A. Before my time, Judge.

10 CHAIRMAN: So the Minister would carry one, you would 10:10
11 carry one.

12 A. The Minister would have a phone and an iPad as well. I
13 would have an iPhone and iPad.

14 CHAIRMAN: Yes. So you get all your emails as you go
15 along, and it's behind the Department's firewall I 10:10
16 presume.

17 A. Yes. It's set up by a specific app that the Department
18 uses.

19 CHAIRMAN: which was the big selling point of
20 Blackberry, in the old days. 10:10

21 20 Q. MS. LEADER: I suppose at that stage you must have been
22 somewhat familiar with the O'Higgins Commission and
23 Sergeant McCabe?

24 A. I knew about it. I wouldn't claim to have any in-depth
25 knowledge of it. My role as the private secretary 10:10
26 wouldn't be to get involved in issues. It was more of
27 an oversight role to know what was going on in the
28 Department and ensure the Minister received her
29 information.

1 21 Q. Well, if your role was to know what was going on in the
2 Department, we have heard from a series of witnesses
3 here, and I think the overall subtext of their evidence
4 was: Policing matters were occupying a lot of time and
5 were gathering attention in the media at that time and 10:11
6 Sergeant McCabe was probably one of the most well-known
7 whistleblowers at that time, so would that in any way
8 have meant the email was in any way sensitive or urgent
9 or should get to the Minister's desk?

10 A. I wouldn't say the email was any more sensitive than 10:11
11 any other email I received, but yes, given as you said
12 Sergeant McCabe was a high profile figure and there had
13 been a number of issues in previous years, yes, once
14 you saw Sergeant McCabe's name you would ensure the
15 Minister would see the email as soon as possible. 10:11

16 22 Q. And in relation to the heading of the email, if you see
17 it there "Confidential Commission of Investigation"
18 that perhaps -- was that the first email you had in
19 relation to the workings of the O'Higgins Commission?

20 A. I don't have any specific -- I don't know, to tell you 10:12
21 the truth.

22 23 Q. All right. So you sent it on to the Minister and her
23 two advisers at 17:04 and then we see at page 747 of
24 the materials your reply to Mr. Flahive at 17:05.

25 A. Yes. 10:12

26 24 Q. And you cc that to the Secretary General's office as
27 well and to Mr. Power, and what you say to him is:
28
29 "Michael, I will flag this to the Minister, Chris."

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A. Yes.
25 Q. Now, was that a step over and above what you would do with an email that was sent to you for the Minister's attention --

10:12

A. No.
26 Q. -- you have already sent it to the Minister and her advisers?

A. No. I mean, the order of the emails is not relevant to procedures. I would always acknowledge an email I received from an official for the attention of the Minister. And that is just reassurance to the official that the email has been received by me and there is no more for him to do to ensure the Minister sees it.

10:12

27 Q. Okay. Did you speak to Mr. Flahive about the email?

10:13

A. I don't recall speaking to him about it. And it wouldn't be standard practice for me to speak to an official about an email, unless he had contacted me with any specific information or further information, which in this case I would feel is highly unlikely.

10:13

28 Q. Now, that seems to end your dealings with that email on the 15th of May. Did you speak to the Minister at all about the matter?

A. Again, I don't have any recollection of speaking to the Minister specifically about this.

10:13

29 Q. Yes. Well, we know that the Minister attended an official event the next day where the Acting Secretary General of the Department was and also where the Garda Commissioner was. Presumably, you would be familiar

1 with the Minister's diary or her calendar?

2 A. I would have been at the time, yes.

3 30 Q. That is your job?

4 A. Yes.

5 31 Q. So insofar as you receive an email in or around close 10:14
6 of business on Friday evening, okay, and you are aware
7 of the contents of the email, is that correct?

8 A. I am.

9 32 Q. Yes. And you also, I think, agree that it's fairly
10 sensitive just first of all on its -- what the subject 10:14
11 of the email is, it's "Re: Confidential Commission of
12 Investigation"?

13 A. Yes.

14 33 Q. Am I correct in that?

15 A. Yes. 10:14

16 34 Q. We are all in agreement that it's a fairly sensitive
17 topic. And also in relation to the matter, it involves
18 the Department at a very high level --

19 A. Yes.

20 35 Q. -- isn't that correct? 10:14

21 A. Yes.

22 36 Q. Because Mr. Flahive, on its face, is sending you the
23 email?

24 A. Yes.

25 37 Q. Who was involved in the setting up of the Commission, 10:15
26 and also in another stream of Garda matters in the
27 Independent Review Mechanism?

28 A. Yes.

29 38 Q. And it also involves the Commissioner?

1 A. Yes.

2 39 Q. Yes. And now it's involving the Minister, because this
3 is being brought to the Minister's attention?

4 A. Yes.

5 40 Q. Yes. And you knew, must have known that the Minister 10:15
6 was to meet the Garda Commissioner the next day and
7 also the Secretary General of the Department, who dealt
8 with obviously policing matters in amongst other
9 things?

10 A. Yes. 10:15

11 41 Q. So do you not think in those circumstances it would be,
12 considering it's your job to provide the link between
13 important matters going on in the Department and the
14 Minister, do you not think it might be likely that you
15 would have spoken to the Minister in relation to the 10:15
16 matter prior to her actually meeting with the Garda
17 Commissioner?

18 A. I wouldn't say it's likely. It's possible. The fact
19 that Mr. Flahive had sent the email, the Secretary
20 General had received it, as had Ken O'Leary, all of 10:16
21 these people would be in regular contact with the
22 Minister.

23 42 Q. Yes.

24 A. So I wouldn't say it was likely I spoke to her. Having
25 said that, as I said, I don't have any recollection of 10:16
26 specifically speaking to her or not speaking to her
27 about it.

28 43 Q. But surely, as you summarised your role, it's to keep
29 the Minister right and to act as a point of contact

1 between the Minister and all divisions of her
2 Department, so again, I'm suggesting to you,
3 considering what your job was, the information you were
4 getting, the information being circulated at a very
5 high level within the Department, that you would have 10:16
6 had some sort of a discussion, even if it is only to
7 keep the Minister right, in advance of the Minister
8 meeting the Garda Commissioner and the Secretary
9 General the next day, albeit at an official basis?

10 A. Well, as I said, it's possible. And I think to bear in 10:16
11 mind, you have mentioned a couple of things about it
12 being circulated at a high level, generally anything
13 that comes to the private secretary for Minister's
14 attention is always at a high level. So that wouldn't
15 stand out to me as anything specific or a red flag, for 10:17
16 want of a better phrase. As I said, it's possible I
17 spoke to her, I don't have any specific recollection.
18 There could have been a lot of other things going on
19 that day, I could have been speaking to her about other
20 matters. I wouldn't say I specifically contacted the 10:17
21 Minister that day about this email, as it was just an
22 information note at the time as well. There was no
23 action required from her.

24 44 Q. But you are not ruling out the possibility that you did
25 speak to the Minister? 10:17

26 A. As I said I don't recall, so I can't rule it in or out.

27 45 Q. All right. Okay. So that's the Friday evening. Were
28 you attending with the Minister at the official
29 function the next day?

1 A. I wasn't.

2 46 Q. No. All right. Now, if we go on to the 18th May, we
3 see Mr. Griffin, and this is at page 748 of the
4 materials, emailing Mr. Flahive in relation to the
5 matter. Did you know anything about that email? 10:18

6 A. I didn't, no.

7 47 Q. No. Okay. And then the matter seems to have arisen
8 again on the 25th May, and if we could look at page 749
9 of the materials. We see an email from you to
10 Mr. Flahive on the 25th May 2015, which I think was the 10:18
11 Monday week following the receipt of the email, at
12 12:21. And it's cc'ed to Mr. O'Leary and to Mr. Power
13 and the Secretary General's office, again with the same
14 heading, and you say:

15 10:18

16 "Michael, the Minister has noted the below.
17 Regards, Chris Quattrociochi."

18 A. Yes, this again is standard practice; if an information
19 note is sent me up to me for the Minister's attention
20 whenever she comes back to me to let me know she has 10:19
21 read a note, an email, I will always let the officials
22 know and if there is any further comment that I would
23 also let them know that. The fact it's copied to Ken
24 O'Leary and Martin Power, Sec Gen Office, would have
25 just been that I replied to all on the original email 10:19
26 that was received from Michael.

27 48 Q. All right. Now, how did the Minister noting that email
28 take place?

29 A. The fact that I have no email record of her replying to

1 me, I -- again I don't recall it but I would -- given
2 the standard practice of the office, I would have --
3 excuse me, I would have printed out the email and given
4 it to her at some stage after the 15th May. And
5 generally, when she notes something she will initial 10:19
6 it, give it back to me and then I will inform the
7 officials.

8 49 Q. Do you have a hard copy of the email with the
9 Minister's initials?

10 A. No. We wouldn't keep hard copies of information notes 10:20
11 that she's seen. Generally my email back to the
12 relevant officials would be the record that the
13 Minister has seen it.

14 50 Q. Have you checked the relevant files to see if the hard
15 copy -- 10:20

16 A. There are no files. We wouldn't have kept information
17 notes like this like.

18 51 Q. Have you satisfied yourself?

19 A. A hundred percent, yes, yes.

20 52 Q. Now, that email is obviously sent on the 25th May 2015. 10:20
21 When did she note the email of the 15th May?

22 A. I would have gotten it back from her on the same day.

23 53 Q. Yes.

24 A. So an email, or any sort of information notes that she
25 has noted or any files that she gives back to me I 10:20
26 would always revert to officials on the same day with
27 her notes. I can't say when she would have noted it.
28 But I would have given it to her sometime between the
29 15th May and the 25th May, and she would have given it

1 back to me then on 25th May.

2 54 Q. Okay. So am I correct in saying, you would have given
3 the email to the Minister in hard copy?

4 A. Yes.

5 55 Q. You are certain of that? 10:21

6 A. A hundred percent.

7 56 Q. Yes. Sometime between 15th May and 25th May?

8 A. Well, realistically it was probably sometime between
9 the 18th, given that the initial email came in at 5:00
10 on Friday evening. And chances are, as I sent the 10:21
11 original email from my iPhone if I was out of the
12 office I wouldn't have been printing this off until the
13 following week, which was the 18th. So realistically,
14 between the 18th and 25th she would have received a
15 hard copy. 10:21

16 57 Q. Do you remember any conversation you had with the
17 Minister in relation --

18 A. I don't, no.

19 58 Q. -- in relation to that email? So I don't want to be
20 inaccurate about this in any way, do you think the 10:21
21 Minister had the email for some time perhaps before the
22 25th May 2015?

23 A. I would -- again, I am only speculating, I would
24 imagine she had it from the 18th.

25 59 Q. Yes. 10:22

26 A. And the fact that she gave it back to me on the 25th
27 doesn't necessarily say she only read it that day. She
28 could have read it on the 18th, noted it, and it could
29 have been sitting with her files that she intended to

1 give back to me at some stage.

2 60 Q. Okay. And do you think the noting of the email was a
3 face-to-face meeting with the Minister or you
4 looking --

5 A. Not necessarily, no. Chances are, because generally on 10:22
6 a Monday, she would have given me all files that she
7 had outstanding from the previous week, and I would go
8 through them then and let officials know what they
9 needed to know. So chances are, at twenty past twelve
10 on a Monday it was unlikely it was a face-to-face 10:22
11 meeting.

12 61 Q. I think we have the Minister's diary for the week of
13 the 18th May to the 24th May, and it's at page 3391 of
14 the materials. I don't know if you just go through it
15 and maybe that might jog your memory as to when you 10:23
16 gave or received the email from the Minister?

17 A. If you scroll back up to Monday the 18th, yeah, the
18 first item in her diary there is "press briefing on
19 police authority 51", 51 means 51 St. Stephen's Green
20 which would have been -- well, at the time, sorry, our 10:23
21 building would have been 94, so I probably would have
22 seen the Minister that morning at some stage. If I
23 wouldn't have seen the Minister I would have seen her
24 Garda escorts who would come and collect files from me
25 occasionally if she needed to see them. So there is a 10:23
26 strong, strong possibility she had that from the 18th.

27 62 Q. That is your best, looking at her diary?

28 A. Yeah, based on procedures and based on the norm, the
29 way I would normally conduct business, it's more than

1 likely she had it from the 18th.

2 63 Q. All right. And if we just go to the 25th May, which is
3 at page 3392 of the materials, and I appreciate we are
4 going through this in huge detail --

5 A. That is okay. 10:24

6 64 Q. -- but you sent your email back to Mr. Flahive saying
7 "The Minister has noted the below" at 12:21. So I
8 don't know if you can help me in any way as to when it
9 was communicated to you that the --

10 A. Well, as you can see there from Monday's diary, all of 10:24
11 those events would have been taking place in Leinster
12 House. So generally on a Monday if the Dáil wouldn't
13 have been sitting I would base myself in the
14 Department, but on this Monday just looking at what was
15 happening, I would have based myself in Leinster House. 10:24
16 And the fact that I sent an email back to Michael at
17 twenty past twelve means I probably had the files from
18 been her Cabinet meeting on construction 2020.

19 65 Q. Yes.

20 A. So I probably had the files from approximately 10:00 10:24
21 that morning.

22 66 Q. Okay. And I don't know if you are able to assist the
23 Tribunal in any way further as to dealings you had with
24 that email and the Minister?

25 A. I don't have any other recollection, only from what I 10:25
26 can see on the electronic records.

27 67 Q. All right. Now, you were copied into an email then of
28 the 4th July 2015, and that's at page 2012 of the
29 materials. And you will see that email in front of

1 you. It's been referred to extensively, so I won't --
2 you are familiar with it?

3 A. I am familiar with it, yes, yes.

4 68 Q. Yes. So here, we have Mr. O'Leary telling the Minister
5 that the Garda Commissioner has received a press query 10:25
6 in relation to the goings on at the O'Higgins
7 Commission or the proceedings at the O'Higgins
8 Commission?

9 A. Yes.

10 69 Q. So did that in any way bring back to you, I suppose 10:25
11 this is the second email that the Tribunal has in
12 relation to communications between the Garda
13 Commissioner and the Department/Minister in relation to
14 the O'Higgins Commission, so this -- and it's related
15 to the email of the 15th May. 10:26

16 A. This email was sent, I think it was a Saturday evening
17 if I am right in saying.

18 70 Q. Yes, 20:05, yes.

19 A. Yes. Emails on press matters wouldn't have been dealt
20 with by me, it would have been dealt with by the press 10:26
21 officers and members of the press office. And I don't
22 believe I did anything at all with that email. It
23 wouldn't have been up to me to ensure the Minister saw
24 it. So it was copied to me just as an information note
25 more than anything, in case the Minister mentioned 10:26
26 anything about it the following week, which again was
27 standard practice for officials; even if they were
28 mailing the Minister directly they would copy the
29 private secretary in case of any follow-ups. But no, I

1 wouldn't have any dealings with this email and I think
2 the records show as well I didn't do anything at all
3 with it.

4 71 Q. I think the Minister was to be on a radio programme
5 that Sunday, is that correct?

10:27

6 A. Yes.

7 72 Q. Okay. So this email, as I understand it, was sent to
8 her so she would be prepared if the topic came up on
9 that radio programme?

10 A. Yes.

10:27

11 73 Q. Yes. So was there any sense that she would be reminded
12 in any way that she was actually told about the problem
13 when it came up at the O'Higgins Commission on the 15th
14 May?

15 A. I have no idea, it wouldn't be up to the private
16 secretary to advise the Minister on any issues. As I
17 said, for want of a better phrase, the private
18 secretary is a postbox to ensure the information gets
19 to the Minister. So if it's a case that she was or
20 wasn't advised about any issue it wouldn't be up to the
21 private secretary to advise her. He would be only the
22 person that would make sure she got the message from
23 the relevant official.

10:27

10:27

24 74 Q. Yes. So I suppose what I am really asking you is: Did
25 it in any way alert the Minister on a second occasion
26 that something was now potentially becoming a problem
27 on a political level?

10:28

28 MR. MCCANN: Chairman, isn't that really a question for
29 the Minister? Patrick McCann, here to your left,

1 Chairman. Isn't that really a question for the
2 Minister? I am wondering is it really a question for
3 this witness. That is my concern, Chairman.
4 CHAIRMAN: Well, I think I would like to know the
5 answer to the question, but I do take your point, that 10:28
6 obviously Mr. Quattrociochi can't answer for the
7 Minister. I would like to see where it fits in, it
8 could be helpful or unhelpful.

9 A. My experience with the officials in the Department,
10 especially Ken and Michael who have been dealing with 10:28
11 Garda matters for a long, long time now, they are very
12 experienced, they are very efficient and if they had
13 felt it relevant that the Minister be reminded about
14 something they would have reminded her in however
15 format they may have done it, by email, phone call, 10:28
16 text message, however they would have done it, because
17 as I said, my experience with them is they are
18 generally on the ball.

19 75 Q. MS. LEADER: Yes. So you were trusting the judgement
20 calls to be made by other people -- 10:29

21 A. Yes.

22 76 Q. -- is that fair?

23 A. Exactly, yes.

24 77 Q. Yes. Now, if we could turn to May 2016. You were
25 still Minister Fitzgerald's private secretary, and I 10:29
26 don't know if you remember the post O'Higgins
27 publication and what happened thereafter?

28 A. I have a vague recollections of it, yes. I was in the
29 final days of being a private secretary. I finished up

1 in June 2016.

2 78 Q. Yes.

3 A. So it might have been around the time there was a
4 hand-over between me and my successor.

5 79 Q. If I could just turn to page 4305 of the materials, 10:29
6 which should come up on the screen in front of you.
7 And you will see, this is an email which is forwarded
8 by Mr. O'Leary to the Garda Commissioner, and you will
9 see that Mr. O'Leary, in turn, has sent an email to
10 Minister Fitzgerald, which would appear to refer to you 10:30
11 in the body of the email. So if we just scroll down.
12 So this is Mr. O'Leary emailing Minister Fitzgerald on
13 15/5, this is after the O'Higgins Report has been
14 published, and would seem to be in advance of the
15 Minister answering questions in the Dáil. And what it 10:30
16 says is:

17

18 "Tánaiste

19 Chris mentioned you were looking for a note on the
20 story in the Sunday Independent about tapes introduced 10:31
21 in evidence at the O'Higgins Commission of Inquiry
22 disproving the evidence of other Gardaí."

23

24 You see that reference there?

25 A. I do, yes. 10:31

26 80 Q. Now, it would appear from that, that there was some
27 discussion in the Department about the O'Higgins
28 Commission and what had happened within the Commission.
29 Do you see that there?

1 A. I do, yes.

2 81 Q. And I am taking it, the reference to Chris is you, that
3 is fair?

4 A. Yes, yes, it would be me, yes.

5 82 Q. So do you remember what discussion took place post 10:31
6 O'Higgins publication but before the Minister discussed
7 the matter in the Dáil, or answered questions about it?

8 A. I don't have any recollection. But again, just going
9 by standard procedures or a normal day in the office,
10 that could have been, I could have been meeting the 10:31
11 Minister at the door of the Department, she could have
12 been going to a meeting and she might have just
13 mentioned something to me, maybe ask Ken for a note on
14 something like that. It could have been a text
15 message, it could have been over the phone. That is 10:31
16 standard as to what may happen on a daily basis in the
17 Department. And I would imagine, and again I am only
18 speculating, this was only based on the story in the
19 Sunday Independent and on nothing else.

20 83 Q. Yes. But I suppose really, albeit a year later, the 10:32
21 Minister clearly had been told about what had been
22 happening in the O'Higgins Commission in May 2015?

23 A. Yes.

24 84 Q. That's correct. You had made sure she had got that
25 information and you had made sure she had noted it? 10:32

26 A. Yes.

27 85 Q. And also, there was a fairly close in time press query
28 about the matter?

29 A. Yes.

1 86 Q. In circumstances where she herself was about to appear
2 on a media -- a radio programme?
3 A. Yes.

4 87 Q. Isn't that correct? And here we have the Minister
5 looking for a note on a story in the Sunday Independent 10:32
6 about tapes introduced at the O'Higgins Commission of
7 Inquiry disproving the evidence of other Gardaí. So
8 was there any linking of the matters which had been
9 brought to her attention in May 2015 when the matter
10 arose again post O'Higgins publication? 10:33
11 A. Again, I would have to defer to my colleagues, Michael
12 Flahive and Ken O'Leary, and others in the policing
13 division who would be the ones that would make this
14 link if it was necessary to make it. As I said, the
15 private secretary wouldn't have in-depth knowledge and 10:33
16 there's a lot more going on that the private secretary
17 might not be aware of. So it wouldn't be practical for
18 me to be making links.

19 88 Q. And we will just see at page 4308, you would seem to
20 have been copied into an email which was a note for the 10:33
21 Tánaiste for Leaders' Questions on the O'Higgins Report
22 immediately following on that, from Mr. Forsyth?

23 A. Yes.

24 89 Q. Do you have any particular memory of that?
25 A. I don't. I don't. 10:34

26 90 Q. Is that a usual thing for Mr. Forsyth to --
27 A. I wouldn't say it was usual for Patrick Forsyth to deal
28 with Leaders' Questions notes. Again it was an
29 extraordinary time with lots of issues happening, so

1 everyone had their shoulders to the wheel and taking on
2 roles that weren't their own. So it wouldn't be
3 unusual in the sense that Patrick would copy me on
4 something, but in terms of dealing with Leaders'
5 Questions notes, that would be rare enough. 10:34

6 91 Q. Now the Minister had two meetings with the Garda
7 Commissioner in May 2016?

8 A. I am familiar with reading the relevant documentation,
9 I don't have specific recollection.

10 92 Q. Yes. So as it seems to me, it would appear the first 10:34
11 of those meetings was on the 16th May 2016.

12 A. I think that is what the records show, yes.

13 93 Q. Yes. And if we see there at page 4802 of the
14 materials, there is an email from you to various
15 Department of Justice officials re meeting with 10:35
16 Commissioner?

17 A. Yes.

18 94 Q. And we see:
19
20 "The Tánaiste will be meeting the Garda Commissioner 10:35
21 today at 5:30pm. Items to be discussed are as follows:
22 O'Higgins Report, gangland, industrial relations."
23
24 And then you ask:
25
26 "Grateful if you could send me briefing and let me know 10:35
27 who will attend."
28 A. Yes.

29 95 Q. Do you attend at those meetings?

1 A. I don't.

2 96 Q. Okay. But you get a briefing to -- maybe if you could
3 explain your function in relation to those meetings?

4 A. Yeah. An email like that, it's a standard email to
5 officials when the Minister is meeting anyone. That is 10:35
6 a rough agenda that we would have given, and then I
7 would also seek a briefing note for all meetings for
8 the Minister. I would also like a list of officials to
9 attend. I am not sure where this meeting was. If it
10 was in Leinster House for example, I would have to 10:36
11 ensure that the officials were cleared by the security
12 before they could come in, which was the reason I'd
13 need the officials' names, plus the Minister would like
14 to know who is attending, plus it's courtesy to let the
15 Commissioner know which officials would attend as well. 10:36

16 97 Q. Yes. If we just turn over to the briefing, it's at
17 page 4803 of the materials, you see:

18

19 "Briefing for the Minister's meeting of 16th May 2016
20 with the Commissioner. Report of the O'Higgins 10:36
21 Commission of Investigation."

22

23 And what it sets out there is:

24

25 "1. Terms of reference of the Commission of 10:36
26 Investigation, note on the establishment of the
27 Commission, statement by Minister on the publication of
28 the report, questions and answers re publication,
29 Michael Clifford's press articles and related briefing

1 and implementation of the report."

2

3 You see that there?

4 A. I do.

5 98 Q. Now, it would appear, for one way or another, that the 10:37
6 information which was transmitted to the Minister on
7 the 15th May 2015 has been, if I can, wiped from
8 history in relation to this particular briefing, you
9 understand?

10 A. I understand, yes. 10:37

11 99 Q. And that is in circumstances where that briefing, I
12 think anybody would agree, it's a comprehensive
13 briefing to the Minister on all matters relating to the
14 O'Higgins Commission?

15 A. Yes. 10:37

16 100 Q. And I don't know if you can explain in any way to the
17 Tribunal why that information, which was expressed to
18 be confidential in the email of the 15th May, why it
19 wasn't set out in that meeting?

20 A. I can't. The relevant division would be responsible 10:38
21 for preparing a brief for the Minister. And as I said,
22 I would be the postbox to ensure the Minister got her
23 brief. I wouldn't question what was in the brief or
24 what wasn't in the brief.

25 101 Q. Okay. In relation to that meeting, there wouldn't 10:38
26 appear to be any minutes of the meeting kept, is that
27 usual or unusual?

28 A. Again, I wouldn't attend the meetings, so it wouldn't
29 be the responsibility of me to keep the minutes of a

1 meeting.

2 102 Q. Well, we see, say, for instance, in a meeting on the
3 19th May, which was a few days later, 2016, there are
4 notes of that meeting at 4825 of the materials. Of the
5 19th, sorry, I may have gotten that wrong. You see 10:38
6 that meeting. Were you aware of that meeting? Did you
7 in any help to set it up?

8 A. Again, I don't have specific recollection of setting it
9 up. And I don't think there is any emails that show
10 that I did. So no, I don't have any memory of it. 10:39

11 103 Q. For instance, there does appear to be a note of that
12 meeting, so what I am asking you: As the Minister's
13 private secretary, is it normal that meetings are
14 minuted or notes taken of them, even brief ones?

15 A. As the private secretary, I can't say because I don't 10:39
16 attend the meetings and generally speaking from
17 experience in other divisions within the Department
18 minutes are for the officials' information only and
19 they wouldn't be generally forwarded to the Minister,
20 unless he or she specifically requested them. So I 10:39
21 can't say if it's normal or not for minutes to be kept,
22 as the private secretary anyway.

23 104 Q. Are you surprised that there are no minutes of the
24 first meeting between the Minister --

25 A. Yes. Well, again, speaking personally, I don't think I 10:39
26 would ever attend a meeting with a Minister without
27 keeping minutes.

28 105 Q. And that meeting would perhaps be a well prepared for
29 meeting because there was a briefing note prepared, a

1 fairly detailed briefing note?

2 A. Yes. Which would be starred practice for any meeting
3 the Minister would attend.

4 106 Q. Finally, I would like to ask you a few questions about
5 Minister Fitzgerald's email addresses. 10:40

6 A. Yes.

7 107 Q. I think she has three Justice email addresses, is that
8 correct?

9 A. I don't know. I would presume it's three addresses
10 that would link to the same account. 10:40

11 108 Q. Link to the same. So, one is FX Fitzgerald?

12 A. Yes.

13 109 Q. The other is info --

14 A. No, no. Sorry, the FX Fitzgerald would be her personal
15 email address, set up on a Justice account. Only she 10:40
16 would have access to that. Then there is
17 info@justice.ie and minister@justice.ie, is the other
18 two, which link into the same inbox. This would be our
19 general inbox for members of the public to get in touch
20 with the Department about any issue. She wouldn't have 10:40
21 specific access to that unless she looked for it. That
22 is maintained on a database within the Department and
23 we have a specific correspondence office that would
24 look after these emails and ensure that they were sent
25 to the relevant divisions. 10:41

26 110 Q. So the FX Fitzgerald ones, that's the email address you
27 have to access to and you use?

28 A. I wouldn't have access to that. The Minister would
29 have. But that's the one I would send the emails

1 directly to the Minister, yes.

2 111 Q. All right. Now, we know the Commissioner sent certain
3 emails to Minister Fitzgerald's Oireachtas account?

4 A. Yes.

5 112 Q. And she, in turn, forwarded them to an address 10:41
6 noelawaters@justice. Do you have access to the
7 Oireachtas account email address?

8 A. No. That was maintained by her constituency staff.

9 113 Q. Okay. And is it normal that you would get emails from
10 that account forwarded to you? 10:41

11 A. Occasionally.

12 114 Q. Does it happen from time to time?

13 A. I occasionally get emails from the constituency staff
14 with relevant queries if they asked me to check up on
15 something in the Department. I would also occasionally 10:41
16 get emails from the Minister from that account, again
17 generally if she wanted me to check up on something.
18 It would very rarely be, if ever, a standard email
19 where she would actually write something that would
20 come from her Justice account. Generally from the 10:42
21 Oireachtas she would forward something that had been
22 sent into the Oireachtas account.

23 CHAIRMAN: Sorry, Ms. Leader, what is the Oireachtas
24 account? what is that? Obviously I don't want you to
25 say the email out loud, but is that a different one to 10:42
26 the three we have talked about?

27 A. The Oireachtas account would be --

28 MS. LEADER: It's 4216 of the materials.

29 CHAIRMAN: Yes, yes. So, that is a fourth one, if you

1 like. No, that is fine. Sorry for interrupting. Just
2 carry on. But generally the Oireachtas email account
3 is kind of constituency business.

4 A. It's set up for every member of the Oireachtas, they
5 would have it as standard.

10:42

6 CHAIRMAN: Yes.

7 115 Q. MS. LEADER: I think it's the one where members of the
8 public would send emails to Minister Fitzgerald?

9 A. Exactly, yeah. Or her constituency, people in her
10 constituency if they wanted to contact her would
11 generally send emails to the Oireachtas account as
12 well, as opposed to the Department account.

10:42

13 116 Q. And insofar as emails would be forwarded from that
14 account to Justice, is it to you normally or to other
15 people?

10:43

16 A. Well, there is -- we have staff assigned in the
17 Department to deal with constituency issues, but
18 occasionally they would send them to me if they wanted
19 me to get personally get involved with them and it
20 might be a case they might be looking to get something
21 dealt with urgently.

10:43

22 117 Q. Okay. So the emails from the Garda Commissioner to the
23 Minister's Oireachtas account, would you expect those
24 to be sent on to you in the normal course?

25 A. Not necessarily. It's not something I recall ever
26 happening; the Minister forwarding an email from the
27 Garda Commissioner to me.

10:43

28 118 Q. Okay. So it would stand out, if that happened, you
29 would remember it, do you think?

1 A. I would imagine so, yes. Or I would have a record of
2 it anyway.

3 119 Q. In relation to various other email addresses that the
4 Minister has, do you have any dealings with those?

5 A. No. No, just the Justice one and occasionally the 10:44
6 Oireachtas one.

7 120 Q. Okay.

8 CHAIRMAN: Ms. Leader, just sorry before you finish --
9 sorry, was there something else?

10 MS. LEADER: I don't think so, I will just check. 10:44
11 CHAIRMAN: Yes, do, please.

12 121 Q. MS. LEADER: Just in relation to making statements to
13 the Tribunal in relation to the O'Higgins Commission,
14 when the Tribunal was set up, did you recall dealing
15 with these matters? 10:44

16 A. I remember I attended a couple of consultations. As I
17 understood, I was to be a witness in the O'Higgins
18 Commission, but in the end I was never called. I am
19 not too sure why.

20 122 Q. And in relation to this Tribunal and one of our terms 10:44
21 of reference, as you are no doubt aware, is looking
22 into the strategy in the O'Higgins Commission, you
23 obviously got an email in relation to what was
24 happening in the O'Higgins Commission, from
25 Mr. Flahive? 10:45

26 A. Yes.

27 123 Q. 15th May?

28 A. Yes.

29 124 Q. Yes. And you got a follow-up email -- well, not a

1 follow-up email, a separate email dealing with the same
2 thing in July 2015, and thereafter there was a
3 political controversy in May 2016 in relation to the
4 matter?

5 A. Yes. 10:45

6 125 Q. So did it ever occur to you that you should be making a
7 statement to the Tribunal in relation to your knowledge
8 of matters?

9 A. I can't say it did.

10 10:45

11 THE WITNESS WAS THEN QUESTIONED BY THE CHAIRMAN

12 126 Q. CHAIRMAN: Before we go on, there is something I wanted
13 to ask you about vis-à-vis technical emails and the
14 question you asked, Ms. Leader, about "noelawaters". I
15 take it the way you send things around is this, two 10:45
16 ways: There's groups and there's individuals?

17 A. Yes.

18 127 Q. CHAIRMAN: But inside in Justice I presume you don't
19 actually type out, let's say, kenoleary@justice.ie?

20 A. No. And on our internal emails, if I typed in, say, 10:46
21 K-O-L Ken O'Leary might come up. Whatever way the IT
22 system works it will pick them up.

23 128 Q. CHAIRMAN: It does, yes. I mean, if I wanted to, say,
24 email a judge, all I have to do is put in Finlay and
25 the entire name will come up and the email address will 10:46
26 come up correctly, I presume you have the same system.

27 A. Very similar, yes.

28 129 Q. CHAIRMAN: Right. And then there are some things where
29 you have a group on the email?

1 A. Yeah.

2 130 Q. CHAIRMAN: So then you would type in, for instance,
3 let's say the code name for the group is "picnic" --

4 A. Yes.

5 131 Q. CHAIRMAN: -- you type in "picnic" and all ten people 10:46
6 on that group will get the email, they will all come up
7 on the email, on the "to" box.

8 A. Yeah, on the record of a sent email they will all be
9 there, as far as I know.

10 132 Q. CHAIRMAN: Yes. And then what happens if, let's 10:47
11 suppose -- well, if it's an unknown person then in the
12 Department --

13 A. It wouldn't come up.

14 133 Q. CHAIRMAN: It just doesn't come up at all.

15 A. No. You would have to specifically type out an email. 10:47

16 134 Q. CHAIRMAN: What would happen would be, you would, let
17 us say, type in "Charleton" without the "e", it will
18 simply let you type in "Charlton" and it won't then
19 flash to the correct email address, isn't that right?

20 A. Exactly. You would have to type out the full email 10:47
21 address and I presume if it was the wrong email address
22 you would get a delivery failure.

23 135 Q. CHAIRMAN: I wanted to go on to that. But if you type
24 in "Charleton" which is a name that's known to the
25 system, the whole email address will come up. 10:47

26 A. Yes.

27 136 Q. CHAIRMAN: So, where does this, as Ms. Leader asked
28 you, "noelawaters" come from? Where does that come
29 from?

1 A. I don't know, I have no idea.

2 137 Q. CHAIRMAN: Have you ever --

3 A. Eh, no --

4 138 Q. CHAIRMAN: I am just asking for your insight.

5 A. Yeah. Well, the standard practice in the Department is 10:47
6 an email address will be first initial, middle initial,
7 surname, @justice.ie. Now I know Noel Waters' is
8 nwaters@justice.ie, unless his middle name is beginning
9 with A, maybe that is where that came from.

10 139 Q. CHAIRMAN: No. He says it's not. 10:48

11 A. Well then, I have no idea.

12 140 Q. CHAIRMAN: So, you know when his email comes up it's
13 nwaters@justice.ie?

14 A. I just know that from --

15 141 Q. CHAIRMAN: From looking at it hundreds of times. 10:48

16 A. Exactly, yeah. Exactly. If you are sending an email
17 from your phone or iPad, if you sent an email to that
18 person before generally it's saved as well.

19 142 Q. CHAIRMAN: And if you put in "nawaters", what happens?

20 A. I don't know. But I presume nothing would populate. 10:48
21 You would have to type out the full email address.

22 143 Q. CHAIRMAN: But if you put in the full address --

23 A. Yeah.

24 144 Q. CHAIRMAN: -- the system will take it, that is it,
25 isn't it? 10:48

26 A. Yeah.

27 145 Q. CHAIRMAN: Whether it's right or wrong.

28 A. Yes.

29 146 Q. CHAIRMAN: You should get back, you know, those

1 persistent things that you might get about hundred of
2 them saying "email not sent", "reason code 15" or
3 something like that.

4 A. Exactly, yes.

5 147 Q. CHAIRMAN: Did that ever happen in relation to anyone 10:48
6 that you were regularly communicating with, or the
7 people we have been talking about here?

8 A. Em, I don't, I don't recall. It's unlikely, as I said,
9 that -- these are people I would send regular emails
10 to, so if there was an issue with an email address in 10:49
11 the early days I would have corrected that and ensured
12 it was going to the right address.

13 148 Q. CHAIRMAN: Just the last thing arising out of what
14 Ms. Leader asked you: Some companies have a system
15 whereby once you put "@", let us say, take an example, 10:49
16 "flagrecords.co.uk" you could put "infodogsbody" a
17 correct name, an incorrect name, but they will all go
18 to the one account and none of them will bounce back.
19 Does Justice have such a system?

20 A. I am not too sure, to be honest. I am not sure about 10:49
21 the IT side of things.

22 CHAIRMAN: Okay. If necessary we can go into it.
23 Thank you.

24 MS. LEADER: If you would answer any questions.

25 MR. MCDOWELL: No questions. 10:50
26 MR. DIGNAM: No questions, Judge.
27
28
29

1 THE WITNESS WAS EXAMINED BY MR. MCCANN:

2 149 Q. MR. MCCANN: Just again, as to context,
3 Mr. Quattrociochi, would you just tell the Tribunal
4 what was happening in the week on which the 15th May
5 was the Friday, what was happening in the Minister's 10:50
6 diary that week, or can you recall?

7 A. Well, I don't have specific recollection of the diary
8 but I mean, to be helpful to the Tribunal I have put
9 together a few statistics that may give a bit of
10 context to the role and the volume of information that 10:50
11 comes in.

12 CHAIRMAN: So you were expecting this question.

13 A. Yes.

14 CHAIRMAN: All right. There is nothing wrong with it.
15 It is perfectly proper. Yes. 10:50

16 MR. MCCANN: Got to do some homework.

17 CHAIRMAN: It's good to have homework.

18 A. So in that week of the 15th of May, from the Monday to
19 the Friday, which is the 11th May to 15th, in my own
20 personal inbox I received 540 emails. Of these 540 10:50
21 emails, I sent 48 directly to the Minister and/or her
22 advisers. And again, just to give context to the
23 volume of work that goes across the Department: In
24 2015 we had 153 memos submitted to the Government
25 agenda; in 2016 we had approximately 750 submissions 10:51
26 sent up for the Minister's attention as well. And this
27 goes hand-in-hand with the general day-to-day
28 Oireachtas business, which again, for example, we had
29 three-and-a-half thousand PQs, we average that

1 annually. And I think in 2015, this was the week of
2 the 15th May, which was the week before the Marriage
3 Referendum, which would have been high on the
4 Minister's priority that week as well, so that is
5 something to bear in mind. And just finally, again in 10:51
6 2015 it was a very busy year for the Department
7 legislation-wise, where we had, approximately 17% of
8 all bills enacted that year were from the Department of
9 Justice and they range across a huge range in the
10 Department, such as the Terrorist Offences Act, 10:51
11 Burglaries Act, Courts Bill, Children and Family
12 Relationship Bill and the Police Authority Act. So
13 again, that is just to give a little bit of context as
14 to the volume and range of issues that we deal with on
15 a daily basis. 10:52

16 150 Q. MR. MCCANN: And then the question you haven't
17 discussed, just Tribunal counsel put it to you that
18 here was an email dealing with Sergeant McCabe on the
19 15th May 2015, and there was another email in July
20 2015, and you were invited to -- you were asked did you 10:52
21 not immediately, immediately or at all link these
22 important matters in your own mind? How realistic do
23 you think was that linkage -- that suggested linkage,
24 that you would have got an email in May, an email in
25 July with the same topic and would have linked them 10:52
26 together; how realistic is that?

27 A. Well, I mean, it's important to bear in mind that over
28 the course of the previous few years there had been a
29 number of issues relating to Sergeant McCabe, and the

1 O'Higgins Commission, amongst other issues. So, as I
2 said, it wasn't up to me to link these things, it's up
3 to the relevant officials to put the links together if
4 it was necessary.

5 151 Q. Thank you very much, Mr. Quattrociochi. 10:53

6 CHAIRMAN: Thank you. Do you want to give me an
7 information sheet on the basis of the statistics you
8 have?

9 A. I can put something together for you if it helps.

10 CHAIRMAN: Yes. If you wouldn't mind. You can do it 10:53
11 through Mr. McCann. Thank you. I will add it to my
12 bundle.

13 A. No problem. Thank you.

14 CHAIRMAN: Thank you.

15 10:53

16 THE WITNESS THEN WITHDREW

17

18 MR. MARRINAN: The next witness sir, is Inspector
19 Michael McNamara. His statement is at page 3647 of the
20 Tribunal material. 10:53

21

22 INSPECTOR MICHAEL MCNAMARA, HAVING BEEN SWORN, WAS
23 DIRECTLY EXAMINED BY MR. MARRINAN:

24 152 Q. MR. MARRINAN: Inspector McNamara, if you wouldn't mind 10:53
25 just giving a brief resumé to the Chairman of your
26 career in An Garda Síochána to date, please?

27 A. I joined An Garda Síochána in 17th October 1994. I
28 served in a number of stations at the rank of garda.
29 Started off in Bray, I moved to Blackrock in Dublin, I

1 went from there to Lucan, and in 2002 I went to
2 Kingscourt, served there for two years and I did seven
3 or eight months then in Ballyjamesduff when I
4 transferred back to Crime Policy and Administration,
5 the legal section in December 2004. In January 2006, I 10:54
6 was promoted to the rank of sergeant and I was
7 sergeant -- taking over as sergeant in charge of legal
8 section. In 2007 I was called to the Bar and 2013 I
9 was promoted to the rank of inspector and transferred
10 to the conciliation and arbitration section in Human 10:55
11 Resource Management. And in July 2014 I transferred
12 back to Crime Policy and Administration.

13 153 Q. Now, I think during the relevant period of time you
14 held the rank of inspector attached to Crime Policy and
15 Administration, is that right? 10:55

16 A. That's correct.

17 154 Q. And I think you were tasked in your role from that, I
18 think that section at the time was headed by Chief
19 Superintendent Fergus Healy?

20 A. That's correct. 10:55

21 155 Q. I think we have heard from Chief Superintendent Fergus
22 Healy and he was appointed by the Garda Commissioner to
23 act as liaison officer to the Tribunal, replacing Chief
24 Superintendent Seán Ward, isn't that correct?

25 A. That's correct, yes. 10:55

26 156 Q. And I think that as a result of that, you were tasked
27 to assist Chief Superintendent Healy in his role as
28 liaison officer?

29 A. Yes, that's correct.

1 157 Q. Now, I think that your role involved managing the
2 entire disclosure process, isn't that so?

3 A. Yes.

4 158 Q. When were you appointed to act in that role?

5 A. It was, I think it was around the end of April, 10:56
6 probably the 30th of April or the 1st of May.

7 159 Q. Yes. And the Tribunal was -- or the Commission of
8 Investigation was to commence its hearings on the 14th
9 May, is that right?

10 A. That's correct, yes. 10:56

11 160 Q. You pointed out in your statement to the Tribunal that
12 the material gathered for the purposes of the
13 Commission in the first instance comprised of over 95
14 boxes of material, is that right?

15 A. That's correct. That is what we have archived. 10:56

16 161 Q. So it was quite a considerable task.

17 A. Yes, indeed. It was a huge task. Like, we were the
18 third liaison office that were appointed. We actually
19 didn't know what we were getting ourselves into. I
20 think to describe the scene, it was pretty chaotic when 10:57
21 we actually took over. And I think it was around 8th
22 of May that we got a call from the State solicitor's
23 office informing us about the material that had been
24 delivered there for discovery and that it was being
25 returned to us because it wasn't in a fit state. And 10:57
26 we had been getting some material in, in the interim
27 but those ten or twelve boxes were returned to us to
28 get some shape on it. And that was -- that material
29 was solely relevant in the context of Module 1, 1A.

1 162 Q. So if I could just bring you to some of the duties that
2 you had, I will come to the notes that you took, which
3 are very comprehensive and you have described to the
4 Tribunal, and I will come to those in a moment.

5 A. Okay.

10:58

6 163 Q. But I think that your role was to deal with the
7 discovery and the disclosure aspects of the matter, and
8 you also accompanied Chief Superintendent Healy to a
9 number of consultations with the Commissioner's legal
10 team and various witnesses who the Commissioner was
11 appearing -- representing at the Tribunal -- at the
12 Commission, isn't that right?

10:58

13 A. That's correct.

14 164 Q. I think that during those consultations, you took
15 detailed handwritten notes of the meetings in your
16 diaries, and the particular task that required to be
17 followed up arising out of those consultations, isn't
18 that right?

10:58

19 A. That's correct.

20 165 Q. I think you didn't have a speaking role and you didn't
21 contribute to any of the meetings or any of the
22 consultations, isn't that right?

10:58

23 A. That is correct.

24 166 Q. You were there solely as a notetaker and you had
25 absolutely no contribution to make other than noting
26 what occurred during the relevant
27 consultations/meetings, isn't that so?

10:59

28 A. Primarily to take notes of actions that needed to be
29 followed up following those meetings, that was

1 primarily what my role was.

2 167 Q. Now, your notes appear at page 67 of the Tribunal
3 material, that is Volume 1.

4 A. 1A?

5 168 Q. Yes, 1A. 10:59

6 A. What page, did you say?

7 169 Q. Page 67. And they go to page 110 of the Tribunal
8 material.

9 A. Yes.

10 170 Q. And we can see that the first note that you have 10:59
11 provided, I think this was the first occasion when
12 there was a hand-over to you from Chief Superintendent
13 Ward and it's dated the 30th April 2015, and it's the
14 meeting between Chief Superintendent Healy and Chief
15 Superintendent Seán Ward, that you attended, is that 11:00
16 right?

17 A. That's right.

18 171 Q. And I am not going to go through any of this with you,
19 you have made a detailed note in terms of matters that
20 had to be addressed, outstanding matters in relation to 11:00
21 disclosure, and there is a note that before the hearing
22 commences there was a requirement that counsel should
23 examine some of the material, isn't that right?

24 A. That's correct.

25 172 Q. You then, in the following page, outline your dealings, 11:00
26 through to the 1st May, 4th May, 5th May, 7th May, and
27 8th May?

28 A. Yes.

29 173 Q. And all your notes concern matters, administrative

1 matters relevant to the disclosure of material to the
2 Commission, isn't that right?

3 A. That's right.

4 174 Q. Then, at page 70 of the Tribunal material, this is an
5 entry in relation to work that you were doing between 11:01
6 8:00am and 9:30pm, that was really your working day;
7 you were working from very early in the morning to very
8 late at night, isn't that right, throughout this period
9 of time?

10 A. That's correct. Well, my diary notes record my actions 11:01
11 taken during the day. The relevant material that I
12 have marked as irrelevant would have related to
13 external matters other than dealing with the O'Higgins
14 Commission.

15 175 Q. Yes. Now, in relation to this, at page 70, just one 11:02
16 matter I have highlighted there, there was a
17 confidential report, I think it's 110, allegation of
18 assault against Assistant Commissioner Byrne, 16th
19 September 2011. And then, that was material that was
20 to be sent to the Commission, is that right? 11:02

21 A. This relates to the 8th May, isn't that correct?

22 176 Q. Yes.

23 A. No. What that was, that's the date on which we went
24 down to the Chief State Solicitor's Office. We got the
25 phone call from Ms. Ryan. 11:02

26 177 Q. Yes?

27 A. And to get a handle as to what material we were looking
28 at, that is just a note that I took in my book, in my
29 diary as to what files were contained in the various

1 boxes. That is all it is. Nothing more than that.

2 178 Q. And then you detail, again going over to page 71, we
3 see there an entry 11th May of 2015 at 2:00pm.

4 A. Yes.

5 179 Q. And this relates to a meeting at the Chief State 11:03
6 Solicitor's Office. We see that Ken Ruane was in
7 attendance. This has already been opened to other
8 witnesses and has been partly relied on as an
9 aide-memoire to other witnesses, so I'm not going to go
10 through it all. 11:03

11 A. Okay.

12 180 Q. But just in relation to that meeting, if we could deal
13 with one aspect of it, it's at page 73. You see there
14 at the top:

15 11:03

16 "Chief superintendent CP&A representing."

17

18 what does that mean?

19 A. I think that may have referred to Chief Superintendent
20 Healy, who would have been attending at the Commission 11:04
21 hearings.

22 181 Q. And it says:

23

24 "Need to get files, Lorraine Browne."

25 11:04

26 We know that that was in relation to the Kingscourt
27 incident that was to be dealt with in Module 1. And
28 then we see "McCabe" is underlined, and then:
29

1 "Full dossier of all legal actions, alleged causes of
2 actions accrued."
3
4 what was that dealing with?
5 A. well, I think that related to litigation files. 11:04
6 182 Q. Yes. And then we see the name of another whistleblower
7 there?
8 A. Yes.
9 183 Q. And then it says:
10
11 "Need the same to see if there is some collusion."
12
13 Is that right?
14 A. Yes, that is what I have --
15 184 Q. So this was a matter that was discussed at that 11:05
16 consultation, is that right?
17 A. well, I think it was a question that was raised, that
18 is what it may relate to.
19 185 Q. Yes. And then we see just below that:
20
21 "Counsel may not get an adjournment." 11:05
22
23 Was there an anticipation that there was a need for an
24 adjournment at that time?
25 A. well, I think it was the fact that counsel were coming 11:05
26 into this as well with only a few days' notice and
27 there was also mention of a possible JR in respect of a
28 different matter. And I think it would have been in
29 the interests or hoped it would have been in the

1 interests certainly from the Garda side if an
2 adjournment was possible.

3 186 Q. Then if we just go to a meeting of the 12th May, we
4 see:

5 11:06

6 "Commission of Investigation. Meeting Colm Smyth..
7 Mr. MacNamee and Mr. Byrne. Annmarie Ryan."

8
9 And it has:

10 11:06

11 "C Clancy. Probation to be extended."

12
13 And then we go down:

14
15 "Consultation." 11:06

16
17 Is that Noel Cunningham, Superintendent Noel
18 Cunningham?

19 A. Yes, it would be.

20 187 Q. And then we have a reference to Maurice McCabe 11:06
21 "supervising sergeant", and then "Rita R McA". Oh no,
22 that is Sergeant Rita McArdle, is that right?

23 A. Regina.

24 188 Q. Sorry, Regina McArdle.

25 A. Yes. 11:07

26 189 Q. And then we have:

27

28 "Regina McArdle unredacted statements. Why her and
29 M McCabe contacted Lorraine Browne."

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And then:

"Letter of demand from Sergeant McCabe for file of superintendent to DPP in 2008, report."

11:07

Can you help with us that?

A. I understand these notes have already been opened, and Superintendent Cunningham had claimed privilege, but I am okay to -- to go on?

11:07

190 Q. It reads:

"Letter of demand from Sergeant McCabe for file of superintendent to DPP in 2008 - report."

11:08

Is this information coming from Superintendent Cunningham?

A. Yes, that is what I would have recorded, yeah.

191 Q. Are you sure that that is a correct reference to the file? Is this an accurate note of what was said by Superintendent Cunningham?

11:08

A. Well, that's what I have recorded on that particular occasion.

192 Q. And then:

"He is alleging he got no support."

11:08

Is that a reference to Sergeant McCabe?

A. I would have thought so, yes.

1 193 Q. "Meeting in Mullingar" and then: "Sergeant Yvonne
2 Martin present. He said reason making complaints to
3 Superintendent Clancy was to force his hand to get a
4 copy of the file."
5
6 And then it has "Sergeant Yvonne Martin" and then
7 another name there "Delvin?" That is your note of
8 that --
9 A. It is. 11:08

10 194 Q. -- consultation. 11:09
11 CHAIRMAN: Is that the 12th, Mr. Murrinan?
12 MR. MARRINAN: That is the 12th May.
13 CHAIRMAN: So that is the Tuesday.
14 MR. MARRINAN: Yes. It's this consultation that
15 Superintendent Cunningham has waived his privilege 11:09
16 over, his right to claim privilege.
17 195 Q. You then go on and deal, over the following pages, with
18 your dealings at various consultations. You have
19 redacted material where there has been a claim of
20 privilege, isn't that right? 11:09
21 A. That's correct. Perhaps if I could --
22 196 Q. And you were present on the 15th May at the Commission
23 of Investigation, isn't that right?
24 A. No. I never attended the Commission. And perhaps just
25 in relation to the 13th, I noted from the transcript, 11:10
26 there's a reference in my notes there to "meetings
27 organising and supervising", that a question was put to
28 Mr. Smyth on Thursday last --
29 197 Q. Yes?

1 A. -- which indicating that that may have referred to the
2 consultation meeting. That isn't a consultation
3 meeting. That is just meetings that I was arranging
4 internally myself. Just in case anything flowed from
5 that, that is what that refers to, that note. 11:10

6 198 Q. All right. So your entry at page 74, if we could just
7 look at that, for the 15th May of 2015:
8 "8:15am-5:15pm, Commission of Investigation". You
9 didn't actually attend --

10 A. No, that is just -- 11:10

11 199 Q. -- at the hearings?

12 A. That is just a note in relation to work that I would
13 have been doing in relation to the Commission.

14 200 Q. I see. And then you go through and I am not going to
15 open any of this material, you've provided your 11:11
16 handwritten notes of your diary.

17 A. Yes.

18 201 Q. And you have very helpfully typed out all the material
19 for the assistance of the Tribunal, and it's evident
20 from reading that that you were working more or less 11:11
21 full-time on the Commission, up until it finished and
22 concluded its business, and your notes go to page 110
23 of the Tribunal material. So I am not going to open
24 that. Is there any matter that you think you ought to
25 draw our attention to that you think may be relevant? 11:11

26 A. No, nothing else.

27 202 Q. Now, I think that you were also asked to prepare a file
28 for the Commissioner at the end of the business of the
29 Tribunal -- of the Commission of Investigation, is that

1 right?

2 A. Yes, in May 2016.

3 203 Q. Yes. And again, you have provided this to the
4 Tribunal, and this is at page 4101. What did this
5 concern? 11:12

6 A. Well, it was Chief Superintendent Healy asked me to put
7 together relevant documents in relation to the
8 Commissioner's instructions and that would have
9 referred to the relevant transcripts, a letter that was
10 prepared over the weekend of the 15th and 16th of May 11:12
11 2015, counsel's advices, or the letter seeking the
12 instructions.

13 204 Q. Yes. And it seems to be principally concerned with
14 that aspect of it, the instructions that were given to
15 counsel, isn't that right? 11:13

16 A. That's right.

17 205 Q. And also the Mullingar meeting and the tape-recording,
18 isn't that right?

19 A. That's right, they were included in that.

20 206 Q. And if we could just have this up on the screen, it's 11:13
21 at page 4101, on the screen.

22 A. Sorry, which booklet is that in?

23 207 Q. It's in, sorry, book 8.

24 A. Okay.

25 208 Q. Yes. The material starts at page 4101, and it concerns 11:14
26 matters such as the chronology relating to the
27 O'Higgins Commission. Had you prepared the chronology?

28 A. I would have been involved in preparing it, I would
29 have.

1 209 Q. That is at page 4106. And then --

2 A. Sorry, the file that I disclosed contained a number of
3 draft documents, that document there was only a draft,
4 that chronology there --

5 210 Q. Yes. 11:14

6 A. -- which I had disclosed to the Disclosures Tribunal
7 coordination office.

8 211 Q. Right. Okay. There is also a chronology of
9 occurrences during the proceedings, at 4119. You then
10 included transcripts from day 2, from day 3, from day 11:15
11 29 and various pages have been isolated as being the
12 relevant pages. On day 2, page 165 to 219 of the
13 O'Higgins Commission, the hearing of the 15th May 2015;
14 pages 6 to 28, which is in transcript 3, that is the
15 18th May; and then transcript of day 29, which is at 11:15
16 pages 5 to 11, concerning the hearing on the 4th
17 November of 2015. You also included the letter that
18 had been sent by Eileen Creedon of the Chief State
19 solicitor's office to the O'Higgins Commission dated
20 18th May of 2015. Again we have, all this material has 11:16
21 already been opened so I am not opening any of it. You
22 also included a letter from Superintendent Cunningham
23 to Chief Superintendent Monaghan -- that is Chief
24 Superintendent Monaghan, sorry, updated and marked
25 received on 12th September 2008. This is at page 4219. 11:16
26 You also included some handwritten notes from the 19th
27 May 2015, at 4136 -- 4133, I beg your pardon. If we
28 could just have those on the screen for a moment.

29 A. Yes.

1 212 Q. Do you recall what these related to?
2 A. I think these related to Superintendent Cunningham's
3 handwritten notes from the meeting in Mullingar in
4 August 2008.

5 213 Q. Yes. They are dated the 19th May here, of 2015, but 11:17
6 that is the date on which they were received, is that
7 right?
8 A. That is what I understand, yes.

9 214 Q. Hmm?
10 A. That is what I understand. I think sorry, you see 11:17
11 "AR/CSSO" that may indicate it was received by the CSSO
12 on that date.

13 215 Q. Then you have included a letter from Sergeant Maurice
14 McCabe to Superintendent Clancy, the 25th February 2008
15 at page 4136. And then "Other correspondence to the 11:17
16 Commission". And then there is a there is a letter
17 from Superintendent Clancy to Sergeant Maurice McCabe
18 dated 7th of February 2008, and that is at page 4140.
19 And then a letter from the solicitor to the Commission
20 to Chief Superintendent Healy. The letter from 11:18
21 Sergeant McCabe to Superintendent Clancy, which is
22 dated 25th February 2008, that is at page 4142. A
23 letter from Superintendent Clancy to Chief
24 Superintendent Monaghan, dated 27th February 2008, and
25 that is at page 4145. And then a letter from Chief 11:18
26 Superintendent Rooney to Assistant Commissioner
27 Northern Region dated 29th February 2008 at page 4146.
28 A. Yes.

29 216 Q. And then a letter from the Assistant Commissioner Byrne

1 to Chief Superintendent Monaghan dated 3rd March 2008.
2 That is at page 4147. And again, a letter from Chief
3 Superintendent Rooney to the Assistant Commissioner
4 Northern Region dated 27th March 2008, at page 4148.

5 A. Yes. 11:19

6 217 Q. And then a letter from the Assistant Commissioner Derek
7 Byrne to chief superintendent, you don't note who that
8 is actually to, dated 12th April 2008, that is at page
9 4149. And again, a letter from Chief Superintendent
10 Rooney to Assistant Commissioner Northern Region, dated 11:19
11 18th April 2008?

12 A. Yes.

13 218 Q. That is at page 4152. And a letter from Chief
14 Superintendent Rooney again to the Assistant
15 Commissioner, but this time to the Assistant 11:20
16 Commissioner HRM dated 13th May 2008. That is at page
17 4154. A letter from Chief Superintendent Rooney to
18 superintendent Bailieboro dated 15th May 2008, at 4155.
19 And then a transcript of a meeting in Mullingar on 27th
20 August 2008, that is at page 4156. That is a 11:20
21 transcript that was --

22 A. There was an actual transcript included there.

23 219 Q. Yes. And then an email from Mr. McNamara to Chief
24 Superintendent Healy dated 24th May of 2016, which we
25 just might have a look at. That is at page 4159. And 11:21
26 that is an email sent on 24th May 2016 from Mr. Michael
27 McNamara to Chief Superintendent Fergus Healy, and it
28 says:
29

1 "Chief
2 The attached is the entire transcript of the end of
3 Module 1 on day 5 up to 11:14am. This transcript deals
4 solely with the matter at issue as regards complaint
5 "against" versus "to" Superintendent Clancy. The key 11:21
6 pages are as follows..."
7
8 And then he outlines the key pages as being 34, 41, 49,
9 50, 51. So that was all -- and you also included an
10 extract of the transcript from day 5, Module 1, pages 11:22
11 1460 and 1520, isn't that right? And that included all
12 the material that was thought to be relevant concerning
13 the issue that arose in relation to the Commissioner's
14 instructions to counsel at the O'Higgins Commission,
15 isn't that right? 11:22
16 A. Yes. But I think that email there was the 24th May,
17 that may have followed afterwards, that was on the
18 file.
19 220 Q. After?
20 A. Yes. 11:22
21 221 Q. But nevertheless it's included in your report.
22 A. It's on the file, yes.
23 222 Q. Now just in general terms, what were the instructions
24 from the Commissioner in terms of proceeding with this
25 matter at the O'Higgins Commission? What instructions 11:23
26 did you have?
27 A. Well, my understanding of what the instructions were,
28 and I have had no consultation with the Commissioner
29 herself but from what my understanding was the truth

1 was first and foremost that had to be got out. There
2 had been a number of complaints of corruption,
3 malpractice, cover-up, perversion of the course of
4 justice against a number of senior officers and other
5 members of the organisation and they had been lingering 11:23
6 on a for a number of years and the bottom line was that
7 the truth had to be outed here. And what that required
8 was to test the credibility of the evidence in respect
9 of those allegations and if they didn't stack up, to
10 test the motivation behind why those complaints were 11:23
11 made in the first place.

12 223 Q. And as far as you were concerned, who had advised you
13 that that was to be the attitude adopted at the
14 Commission?

15 A. Well, I would have known from my attending the various 11:24
16 consultations. Go back to the first, the 11th and
17 12th, counsel's initial thoughts were, and you have
18 seen the Brief Proven Facts document which was in the
19 core booklet, the questions that kept emerging at every
20 meeting with the various witnesses: What was the 11:24
21 reason behind these complaints? These were serious
22 allegations. They were exercising counsel very much.

23 224 Q. Well then, in terms of, in terms of testing credibility
24 and motivation, if necessary, was that a strategy that
25 developed as the Commission of Investigation got up and 11:24
26 running, or was it something that you had formal
27 instructions on from when you first came to the matter
28 at the end of April?

29 A. No. There was certainly no formal instructions at that

1 stage, and certainly on the 12th there was no formal
2 instructions -- on the 12th, sorry, there was no formal
3 instruction. The 13th, I don't believe I attended that
4 meeting. That was the consultations with Chief
5 Superintendent Rooney, Karl Heller and I think there 11:25
6 may have been somebody else, I can't remember. But I
7 know at a later stage my understanding of the
8 instructions were that it was the credibility of the
9 evidence, it was never about Sergeant McCabe as a
10 person, it was about the credibility of the evidence in 11:25
11 respect of those allegations, the serious allegations.

12 225 Q. Did you become aware of what had transpired at the
13 Commission on the 15th May and the row?

14 A. I was aware, following -- I suppose following that
15 weekend, I did become aware that there had been a legal 11:26
16 debate or legal argument. After that, I wasn't aware
17 of a whole lot because I was -- we were moving on with
18 the other modules, but certainly it was something that
19 was exercising counsel very much. Because when it came
20 to Module 2, it was Chief Superintendent Clancy who was 11:26
21 a witness in that and the questions were being asked
22 again in relation to where was all of this coming from.

23 226 Q. Well, just come back to the question that I asked you
24 in relation to your knowledge of what happened on the
25 15th May. Did Chief Superintendent Healy advise you 11:26
26 that there had been a row at the Commission?

27 A. No, not -- not at that stage. I don't believe I was
28 advised that there was a row. I would have become
29 aware of it at other consultations that a legal

1 difficulty had arisen.

2 227 Q. Were you aware of the fact that an issue had arisen in
3 relation to the Commissioner's instructions to
4 counsel --

5 A. Not at that point. 11:27

6 228 Q. -- on 15th of May?

7 A. No, not at that point.

8 229 Q. When did you first become aware of that?

9 A. Possibly -- possibly towards the end of June, maybe.
10 Some of those consultations -- 11:27

11 230 Q. Before the end of June?

12 A. Yes.

13 231 Q. Not until then.

14 A. No, not until then.

15 232 Q. So you weren't aware of the fact that the Commissioner 11:27
16 had personally given her instructions to Chief
17 Superintendent Healy?

18 A. No.

19 233 Q. All right. Thank you very much.

20 A. Thank you. 11:27

21

22 THE WITNESS WAS CROSS-EXAMINED BY MR. MCDOWELL:

23 234 Q. MR. MCDOWELL: Could I ask you to go to page 104?

24 A. Of the first book, is it?

25 235 Q. Of the first book. These are your notes of a 11:28
26 consultation which took place from quarter past seven
27 in the morning until -- it can't be all day, that must
28 be wrong?

29 A. No, that was my day's duty. That is when I started.

1 It certainly wasn't a consultation.

2 236 Q. So, in any event, maybe sometime on Tuesday, 3rd
3 November 2015, is that right?

4 A. 3rd November, that's correct, yes, it would have been
5 late in the evening, it could have been seven or 11:29
6 eight o'clock.

7 237 Q. The timing is -- your duty on that day, it's nothing to
8 do with anything else?

9 A. I started at 7:15am and I concluded my day at 11:00pm.

10 238 Q. You say: 11:29
11
12 "Consultation, NB, HQ directive 105/08 N Callinan."
13
14 what does that refer to?

15 A. That HQ directive relates to the confidential charter, 11:29
16 the malpractice and corruption charter and the
17 regulations underpinning it.

18 239 Q. And was that to do with confidential complaints, is
19 that right?

20 A. The fact that Martin Callinan, "M Callinan" is beside 11:29
21 it, it may have related to the corruption allegations
22 that was made under that charter. I am not so sure,
23 but that is what it may relate to.

24 240 Q. I see. So in any event:
25
26 "Counsel motivation bad faith." 11:30
27
28 I presume "COUN" is counsel, is it?
29 A. Yes.

1 241 Q. And then it has:
2
3 "Mala fides introduced by judge. It was posed as a
4 problem by judge. And never a problem until D case.
5 Initially view was question his motivation and not on 11:30
6 issue of mala fides. CS --"
7
8 And I take it that is Mr. Smyth.
9 A. Yes.
10 242 Q. "-- but not now. Number of withdrawals. His evidence 11:30
11 in this case is bad faith."
12
13 Did you write that down?
14 A. I wrote that down.
15 243 Q. And then, can you just indicate to the Chairman what 11:30
16 that series of notes denotes? What do you think that
17 you were noting at that point?
18 A. Okay. Well, at that stage, the State solicitor had the
19 transcripts with her and there was a reference, the
20 discussion was around the reference to mala fides in 11:31
21 the transcript, and it was in preparation for
22 particular types of questions that could have been
23 posed by yourself the following day to former
24 Commissioner at the Commission of Investigation.
25 244 Q. Was it the case that the Commissioner had the 11:31
26 transcripts of the relevant portions of the Commission
27 of Investigation with her?
28 A. No, I didn't say that. I said the Chief State
29 solicitor had.

1 245 Q. The Chief State Solicitor had them. Were they
2 discussed there with the Commissioner?

3 A. Yes. Well, the relevant parts were referred to.

4 246 Q. And I just want to -- you said:

5

11:31

6 "Never a problem. It was posed as a question by
7 judge."

8

9 Next bullet-point:

10

11:31

11 "Never a problem until D case."

12

13 And then:

14

15 "Initially view was question his motivation and not on 11:31
16 issue of mala fides. CS --"

17

18 I presume that is:

19

20 "-- not now, number of withdrawals. His in evidence 11:32
21 this case is bad faith."

22

23 Were you recording that Mr. Smyth was saying that
24 initially his instructions were not to query -- were to
25 query his motivation, but not to make any allegation of 11:32
26 bad faith, is that right?

27 A. No. What I was recording there were possible questions
28 that could have been put to the Commissioner the
29 following day in her evidence.

1 247 Q. Oh, I see.
2 A. A perception that this may have been the case.
3 248 Q. And then:
4
5 "CS --" 11:32
6
7 Colm Smyth, I presume that is. But I presume that is:
8
9 "-- not now, number of withdrawals. His evidence in
10 this case is bad faith. Advice is what is written is 11:32
11 written. Commissioner has tried to keep a balance.
12 only talking about it now after."
13
14 Can you just recall for the Chairman the discussion you
15 think that that records? 11:33
16 A. Again, going back to, these were the types of possible
17 questions that could have been put to Commissioner
18 O'Sullivan at the time. And then you move on then to
19 "Commissioner has to keep a balance", the discussion
20 was around the -- the instructions were in relation to 11:33
21 challenging the credibility and motivation.
22 249 Q. Could I bring you back there, Inspector McNamara.
23 A. Yes.
24 250 Q. "CS but not now, number of withdrawals." How is that
25 to fit into questions to be asked or that could be put 11:33
26 to the Commissioner?
27 A. Again, go back to the fact there had been a number of
28 withdrawals and I think that was in the transcript of
29 the O'Higgins Commission, if I'm correct on that, and

1 that the question could be posed to the Commissioner
2 that, essentially that the case, Commissioner's case
3 was that it's now bad faith.

4 251 Q. Sorry?

5 A. That the -- that it's now bad faith. 11:34

6 252 Q. I see. And who was to put this to the Commissioner or
7 was this what the Commissioner was to respond if he
8 was -- if she was asked about it?

9 A. No, this is the question that you would have been
10 putting. It was perceived that this was a question 11:34
11 that you could have been putting to the Commissioner.

12 253 Q. I see. Now, I am following you. So I was to put to
13 the Commissioner that my client's evidence was in bad
14 faith, is that what you thought?

15 A. No. That you were -- it was perceived that it is a 11:34
16 question that may have come from you in terms of
17 Sergeant McCabe's evidence, and in terms of the
18 instructions in relation to the evidence.

19 254 Q. "Advice is, what is written is written."
20 11:34

21 Was that a question supposed to come from me?

22 A. I actually don't know what that meant.

23 255 Q. "Commissioner has tried to keep a balance."
24

25 That is presumably not supposed to come by way of 11:35
26 question.

27 A. Well, that is following on from the discussion that the
28 Commissioner was -- in terms of all the allegations and
29 her instructions, that her position was that she had to

1 keep a balance between these allegations that were made
2 against senior officers and Sergeant McCabe's welfare.
3 256 Q. Well, can we bring you back up "CS - but no not now -
4 number of withdrawals", was that supposed to be a
5 question? 11:35
6 A. No, I don't think so. I think that is in the context
7 of where this was going in terms of Mr. Smyth's pursuit
8 at the Commission. As I understand it, there was a
9 reference to that in the Commission of Investigation
10 transcripts. 11:36
11 257 Q. You see, on one view of it, it could mean initially,
12 the view was question his motivation and not an issue
13 of bad faith, but Mr. Smyth said but not now by reason
14 of the fact there had been a number of withdrawals, and
15 that he had pointed out "his evidence in this case is 11:36
16 bad faith" and "advice is, what is written is written"
17 referring to Sergeant McCabe's allegations.
18
19 "Commissioner has tried to keep a balance and he is
20 only talking about it now after." 11:37
21
22 what did the "he is only talking about it now after"
23 -- that was hardly a question?
24 A. I am not so sure about that, "only talking about it
25 after". But my clear understanding from that, that 11:37
26 part of the discussion, was, it related to possible
27 questions that could have been put to the former
28 Commissioner at the Commission the following day.
29 258 Q. And you have seen the reference in Superintendent

1 Healy's note "would Commissioner consider withdrawing?"

2 A. Yes, I have seen that.

3 259 Q. What was that?

4 A. Again, that was another question -- as I understood it,

5 another question that could have been posed; would the 11:37

6 Commissioner consider withdrawing her position?

7 260 Q. I see. And I am just asking you again, just one last

8 time: "His evidence in this case is bad faith." Are

9 you saying that was a question that you imagined was

10 going to be put to the Commissioner? 11:38

11 A. Yes. Possible question that could have been put to the

12 former Commissioner.

13 261 Q. I take it "his evidence" is, what, Sergeant McCabe's?

14 A. Yes.

15 262 Q. So it was going to be put to the Commissioner by 11:38

16 counsel for Sergeant McCabe that his evidence was bad

17 faith?

18 A. Well, that would have been the instructions, that is

19 what I understood it to be.

20 263 Q. You see, I have got to suggest to you that doesn't 11:38

21 stack up at all.

22 A. Well, as I said, my understanding at that meeting was

23 there was a discussion around a number of various

24 questions, possible questions that could have been put

25 to the Commissioner at that stage, the following day. 11:39

26 CHAIRMAN: So is the question: Are you saying,

27 Commissioner, that Sergeant McCabe's evidence in this

28 case has been given in bad faith? Is that what you are

29 saying?

1 A. No. That her instructions, that she was instructing
2 that his evidence was bad faith.
3 CHAIRMAN: In other words, instructing counsel to
4 challenge him on the basis that his evidence was given
5 in bad faith as opposed to given perhaps incorrectly -- 11:39
6 A. Yes.
7 CHAIRMAN: But genuine --
8 A. That is it, correct.
9 264 Q. MR. MCDOWELL: That is what you think it means?
10 A. Yes. 11:39
11 265 Q. I see. Could I just bring you back to page 74 again,
12 Mr. Marrinan brought you through.
13 A. Pardon, 74?
14 266 Q. 74, yes. And maybe if we go back to 73. And this
15 refers, there is a box there beginning the 12th May 11:40
16 2015, and halfway down the box, there is:
17
18 "Consultation, Superintendent NC had recommended."
19
20 Do we know what that means? 11:40
21 A. I think that may have related to the probationer guard.
22 I don't know whether it related to the particular guard
23 in that case or whether it was relating to another
24 guard, I'm not so sure.
25 CHAIRMAN: There was some question in one of the 11:40
26 modules about a garda being kept on probation longer
27 than is normal. Was that --
28 A. Yeah. It was something to do with a probationer guard
29 being kept on, but there is some reference to another

1 probationer guard. But I am not so sure which
2 particular guard.

3 CHAIRMAN: As opposed to being told we don't need your
4 services any more?

5 A. Yes. 11:41

6 267 Q. MR. McDOWELL: Was that the first module? Are we
7 talking about the same module?

8 A. As I say, I am not so sure which probationer guard
9 we're talking about here, but it related to retention
10 of a particular probationer guard. 11:41

11 268 Q. I think that was the Cafolla module, Judge, just from
12 memory. The next is:

13

14 "PG2 M McCabe supervising sergeant."

15 A. Yes. 11:41

16 269 Q. What was that a reference to?

17 A. I think that was relating to a meeting, I think a
18 previous meeting that had taken place whereby Sergeant
19 McCabe was present, Regina McArdle was present, she was
20 the training sergeant, and supervising sergeant may 11:41
21 have been present, I am not so sure, and the
22 probationer garda was also present.

23 270 Q. I see. And then there is:

24

25 "26/2/07 R MCA --" 11:42

26

27 That is Regina McArdle.

28

29 "-- own notes."

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Then the next bit is:

"Regina McArdle unredacted statement, NB, why her and M
McCabe contacted L Browne."

11:42

That was a reference to the fact that the issue as to
how there was contact between Sergeant McCabe and
Lorraine Browne was arising at that stage, is that
right?

11:42

A. Yes, that's right.

271 Q. And then the next item is:

"Letter of demand from Sergeant McCabe for file of
superintendent to DPP in 2008 report."

11:42

And then the next line is:

"He is alleging he got no support."

11:42

Can you recall what that was?

A. I think that is in relation to Sergeant McCabe.

272 Q. Yes. And then the next bullet-point is:

"Meeting in Mullingar. Sergeant Yvonne Martin present.
He said reason making complaints to Superintendent
Clancy was to force his hand to get a copy of file."

11:43

who did you record as saying that or who do you think

1 said that?

2 A. My understanding, that's from Superintendent
3 Cunningham.

4 273 Q. Yes. "To force his hand to get a copy of the file."
5 A. Yes, that is what I have recorded. 11:43

6 274 Q. I see. And then there is a reference to Sergeant
7 Martin, who, as we know, has nothing to do with all of
8 this, we have to emphasise that all the time, at
9 Delvin, is that the Garda station she may have been at?

10 A. Yes, I think we were trying to figure out what station 11:43
11 she was at.

12 275 Q. I see. Now, as I understand what you have said to
13 Mr. Marrinan, you had no knowledge that there was a
14 legal argument before Mr. Justice O'Higgins on Friday,
15 15th May, until sometime later, is that right? 11:44

16 A. That's right, yes.

17 276 Q. Perhaps in June?

18 A. Perhaps in June.

19 277 Q. I see.

20 A. Maybe July. I don't know. I am not so sure when I 11:44
21 became aware of it, but it was certainly well after it
22 anyway.

23 278 Q. And you weren't aware that on the following Monday,
24 Monday 18th, you weren't aware of the delivery of any
25 letter or anything like that? 11:44

26 A. No, I was completely oblivious to that. I was consumed
27 in the discovery process because we were under serious
28 pressure.

29 279 Q. So you put your head down and got on with discovery --

1 A. Well, I had to, because the letters were coming and
2 they were coming fast.

3 280 Q. Yes. The lash was on your back in relation to
4 discovery.

5 A. It certainly was. 11:44

6 281 Q. I can follow that. And you are saying that -- were you
7 aware that Sergeant McCabe had, for instance, resigned
8 his position as sergeant in charge of the traffic unit
9 in Mullingar on Monday, 18th May 2015?

10 A. No, no. 11:45

11 282 Q. So none of that came on your radar screen?

12 A. No.

13 283 Q. And when you say you learned about it in June, could
14 this have been on the 24th June or after the 24th June
15 when the matter came up again before the Commission? 11:45

16 A. I don't recall exactly when I became aware of it.

17 284 Q. Thanks very much, inspector.

18

19 THE WITNESS WAS EXAMINED BY MR. DIGNAM:

20 285 Q. MR. DIGNAM: Just very briefly, Inspector McNamara, in 11:45
21 relation to the document at 4133, if I could ask you to
22 have a look at that.

23 A. Sorry, is it the second book?

24 286 Q. Volume 8, book 8. It will be on the screen, in any 11:46
25 event, Mr. McNamara. I don't want to ask you about the
26 details of the document, but in response to the
27 question that Mr. Marrinan asked you, he asked when it
28 had been received, and you both referred to the
29 handwritten note at the top.

1 A. Yes.

2 287 Q. I think you indicated, and I just want to clarify this,
3 that your understanding of that is that that is the
4 date on which it was received by Ms. Ryan, the
5 solicitor in the Chief State Solicitor's Office? 11:47

6 A. That's correct, that's correct.

7 288 Q. And you are not suggesting that it was only received by
8 the Garda authorities, for want of a better word, on
9 that date?

10 A. No, I actually don't know when it was received by the 11:47
11 Garda authorities.

12 289 Q. No. And if I could just then refer you to the
13 document -- the preceding document on 4129. And again,
14 you probably aren't familiar with the contents of these
15 or the details of these documents, Inspector McNamara, 11:47
16 this is a report from Superintendent Cunningham
17 following his meeting with Sergeant McCabe in August
18 2008.

19 A. Yes.

20 290 Q. And if I just ask you to turn to the third page of 11:47
21 that, which is page 4131 of the booklet, and you will
22 see there halfway down the page there is a paragraph:
23
24 "Notes of interview were taken down in writing by
25 Superintendent Cunningham and are attached." 11:47
26
27 Do you understand that to refer to the handwritten
28 notes which are on page 4133?

29 A. Yes, I would have understood that to be the position,

1 yes.

2 291 Q. Finally, Inspector McNamara, in relation to your
3 handwritten notes and the typed version, which
4 Mr. Marrinan has directed you towards, from pages 67 to
5 110, and in particular where they are notes of 11:48
6 meetings, I think can I fairly describe them as
7 shorthand notes, I think you indicated that you were
8 there as a notetaker but primarily to take note of what
9 actions needed to be taken on foot of discussions at
10 the meetings, is that correct? 11:48

11 A. That's correct.

12 292 Q. And they are shorthand?

13 A. They are shorthand, they are not agreed minutes by
14 anybody, they are notes I would have taken myself.

15 293 Q. Yes. And do I understand your evidence correctly, 11:48
16 Inspector McNamara, that the note on page 104, which is
17 your shorthand bullet-points about the meeting on 3rd
18 November, 2015, it's at page 104, do I understand your
19 evidence correctly that there was a discussion about
20 what questions might be asked of the Commissioner when 11:49
21 she attended to give evidence on the 4th November about
22 her instructions --

23 A. Correct.

24 294 Q. -- to counsel, and that these are shorthand
25 bullet-point notes of the types of things that are 11:49
26 being said in the course of that discussion, but you
27 don't have a specific recollection of precisely what
28 was said, is that a fair summary?

29 A. I don't. I don't.

1 295 Q. And in relation to that then, Inspector McNamara, to
2 the extent that you do have a recollection, was it your
3 view or is it your memory that the Commissioner's
4 position as stated at that meeting was that she had
5 challenged or authorised a challenge or an exploration 11:49
6 of Sergeant McCabe's motivation but not to suggest or
7 accuse him of acting out of mala fides?

8 A. Absolutely. That was the position and that was made
9 absolutely clear.

10 296 Q. And did you have the impression that that remained her 11:50
11 position at the meeting of the 3rd of November?

12 A. Absolutely. Certainly there was no indication that
13 there was going to be a withdrawal, she was firm on her
14 stance.

15 297 Q. Thank you. 11:50

16
17 CHAIRMAN: Is there anything else?

18 MR. MARRINAN: Nothing else. Thank you very much,
19 inspector.

20 11:50

21 THE WITNESS THEN WITHDREW

22
23 MR. MCGUINNESS: Chairman, the next witness is
24 Ms. Bernadette Phelan.

25
26
27
28
29

1 MS. BERNADETTE PHELAN, HAVING BEEN SWORN, WAS DIRECTLY
2 EXAMINED BY MR. MCGUINNESS:

3 298 Q. MR. MCGUINNESS: Ms. Phelan, I think you work in the
4 Department of Justice, is that correct?

5 A. That's correct, yes. 11:51

6 299 Q. And I think you are currently an assistant principal
7 officer working in the corporate secretariat office in
8 the Department of Justice and Equality?

9 A. That's correct.

10 300 Q. And what does that office do? 11:51

11 A. I suppose the corporate secretariat is kind of a
12 support office to the Secretary General and the
13 Minister and Minister of State. So that involves
14 making sure that the Minister is supported in, or the
15 Secretary General, in all of the work that they do in 11:51
16 relation to the Department.

17 301 Q. Okay. So it services the engine room of the Department
18 in a sense?

19 A. You could say that, yes, that's correct.

20 302 Q. And how big a staff is there there? 11:52

21 A. I think at the moment there would be approximately 20,
22 more than 20 people in all, in total.

23 303 Q. And as I understand your statement, which is at page
24 3471 of our papers, you initially came into the office
25 in 2013, is that right? 11:52

26 A. That's correct, that was the Secretary General's
27 office.

28 304 Q. The Secretary General's office, yes. And you, as I
29 understand it then, stayed in the Secretary General's

1 office from July 2013 until your promotion --

2 A. That's correct.

3 305 Q. -- in April 2015?

4 A. That's correct, yes.

5 306 Q. Okay. And your promotion took you to the position that 11:52
6 you currently hold, assistant principal officer in the
7 corporate secretariat office?

8 A. Yes.

9 307 Q. So you were in and around the Secretary General's
10 office from 2013 onwards? 11:53

11 A. Yes.

12 308 Q. And what function had you got there at that point in
13 time?

14 A. I suppose when I arrived into the Secretary General's
15 office initially, my role was -- would be to do any 11:53
16 work that the Secretary General wanted me to undertake
17 in terms of research for different things or liaising
18 with different divisions in relation to particular
19 queries he might have in -- I also would have
20 substituted for the private secretary at the time if 11:53
21 the private secretary was out of the office.

22 309 Q. Okay. And so you would be close to the work and
23 expected to know what the Secretary General was doing
24 and be able to support him --

25 A. That's correct. 11:53

26 310 Q. -- as necessary?

27 A. As necessary, yes.

28 311 Q. Including as directly as replacing his private
29 secretary?

1 A. That's right, yeah.

2 312 Q. And what are your duties then as assistant principal
3 officer, from April 2015, how did they differ?

4 A. I suppose my primary responsibility as an AP in the
5 corporate secretariat is to act as a secretary to the 11:54
6 management board in the Department. So that would
7 involve taking minutes of the meetings, organising the
8 meetings, pulling together the papers with divisions
9 across the Department, and assisting the Secretary
10 General in terms of making sure that the meetings are 11:54
11 run on a weekly basis.

12 313 Q. Okay. So in general, a meeting with the Secretary
13 General and the Minister would you expect that to be
14 minuted?

15 A. Em, approximately once a month there is a management 11:54
16 board meeting with the Minister, and that is kind of a
17 formal meeting to give the Minister an update on what
18 is going on across the Department.. and it's my
19 responsibility to minute those meetings.

20 314 Q. Yes. Obviously, they would primarily relate to the, as 11:54
21 it were, internal running of the Department or is that
22 too general a description?

23 A. They could relate to any kind of current or -- current
24 issues across the board, be that in relation to
25 equality issues or in respect of legislation, or it 11:55
26 could relate to financial updates in relation to all of
27 the, you know, standard --

28 315 Q. Business of the Department?

29 A. -- business of the Department, yes.

1 316 Q. Okay. But a meeting between the Minister and the
2 Commissioner and the general, Secretary General, would
3 you expect that to be minuted?
4 A. Generally, a high-level meeting, say, for example,
5 between a Minister and the Commissioner, would be 11:55
6 attended by maybe quite high or senior officials in the
7 Department, and you know, it may be the case that those
8 meetings, you know, a note would have been taken of
9 those meetings. However, it's my experience that
10 mightn't necessarily occur. 11:55

11 317 Q. Yes. Okay. Well, we will come to that in a minute.
12 But, I mean, you have experience of a lot of the
13 administrative work of the offices relating to PQs
14 management, circulation and submission of memorandum to
15 Government, correspondence and liaison matters? 11:56

16 A. That's correct.

17 318 Q. And I think am I correct in saying that at this point
18 in time, in April -- from April 2015, the principal
19 officer to whom you worked was Mr. Sunderland?
20 A. That's correct. 11:56

21 319 Q. And he was -- he had the dual positions of Head of
22 Communications and Head of the Corporate Secretariat at
23 the departmental level?
24 A. That's correct.

25 320 Q. And just for clarity, who was occupying the position 11:56
26 of, as it were, junior minister at that time in '15?
27 A. Junior minister would have been Minister O'Riordan, I
28 believe.

29 321 Q. Yes. All right. Now, could I ask that we look at a

1 document 3447, which is in Volume 6. This is -- if you
2 go down to the bottom of the page. You may not have
3 seen this for some time --

4 A. Sorry, could you just -- the name -- or the number of
5 the page again?

11:57

6 322 Q. 3447. And this is an email from Maurice McCabe, as it
7 states at the bottom there, to the Minister, dated 1st
8 October 2014. It says:

9

10 "Dear Minister Fitzgerald,

11:57

11

12 My name is Maurice McCabe. You will be aware of
13 reported issues in An Garda Síochána. I attach below
14 an email I have sent to my authorities. Work is
15 unbearable at present. I wonder could you have time to
16 meet me to discuss." 11:57

17

18 And he attached an email he had previously sent to the
19 Commissioner, which referenced a meeting with her on
20 6th August. And so this email comes into the 11:58
21 Department, if we go back to the bottom of 3447, it
22 comes into info@justice.ie. It seems to end up on the
23 previous witness's desk -- or the second previous
24 witness's desk, the secretary, and he circulates this,
25 it would appear, to a number of people, including you, 11:58
26 at the top of the circulation list there, if we just go
27 up to the very top. It says:

28

29 "Re Sergeant McCabe."

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It goes to Denis Griffin, who is in the Secretary General's office, isn't that right?

A. That's correct, yes.

323 Q. Paula J -- Christopher Quattrociochi, Bernadette Monks [sic], and it appears to go to you -- sorry, does that go to you? 11:58

A. Yes, it's Paula Monks and Bernadette Phelan.

324 Q. It's slightly off line there.

A. Hmm. 11:59

325 Q. But do you recall receiving that?

A. I don't particularly recall receiving it at the time.

326 Q. Yes. Why would you -- might you be receiving that at the time?

A. The private secretary would, given the nature of what is in that email, would have wished to flag that to the Secretary General, I would imagine. 11:59

327 Q. Yes. It's just that obviously it's enclosing an email from Sergeant McCabe to the Commissioner in which he is looking for a meeting, and then it's forwarding, you know, an email directly to the Minister then on the same day, and then it goes to the private secretary and then it goes to you. What purpose might it have in going to you? 11:59

A. I suppose it would have been sent to me to keep me informed about the correspondence that would have come into the -- it was through info mail. 12:00

328 Q. Yes.

A. So I would have gotten an email like that, I suppose,

1 if -- to flag it to the Secretary General if the
2 private secretary wasn't in the office on any
3 particular day.

4 329 Q. Yes. I mean, you weren't on the Secretary General's
5 group at that stage, is that right?

12:00

6 A. I think that the 1/10/2014 may have been prior to the
7 creation of that Secretary General group.

8 330 Q. Okay. If we go to 3445, at the top of the page we see
9 the secretary there. He is saying:

10

12:00

11 "Folks, see below email that is issued to Maurice
12 McCabe. I would be grateful if you would let me know
13 if you are available for a meeting at 10 a.m. next
14 Monday in 94."

15

12:01

16 I presume that is St. Stephen's Green.

17

18 And that goes to quite a wide circulation list. It's
19 Mr. Flahive, Mr. O'Leary, Mr. Lavelle, Ms. Mannion, who
20 is -- both of whom are special advisers, Niamh
21 Connolly, Denis Griffin, Paula Monks, Bernadette
22 Phelan, Oonagh McPhillips, Noel Waters.

12:01

23

24 Now, just to go down to the reply that did issue. If
25 we just go down the page, it says:

12:01

26

27 "Dear Sergeant McCabe,

28

29 Please see below email from Frances Fitzgerald."

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And then on the next page at 3446 is the Minister's reply, and it says:

"I refer to your email of 1st October 2014 seeking a meeting to discuss your workplace concerns.

12:02

I would be glad to facilitate a meeting with you to discuss your workplace concerns first-hand, particularly given the public interest involved. I would like to suggest a meeting at 10 a.m. on Monday 13th October at the Department of Justice and Equality, 94 St. Stephen's Green if this would be convenient for you."

12:02

And then it just refers to another matter. But do you recall seeing that reply that issued to Sergeant McCabe?

12:02

A. Em, I don't recall seeing that reply at the time, but if it's -- my recollection is, I think I may have been a notetaker at that meeting.

12:02

331 Q. Okay.

A. If that was the meeting with the then-Tánaiste -- or the then-Minister and the Secretary General.

332 Q. Yes, yes. The meeting did take place, and I was just anxious to confirm you did attend that. And did you take a note of that?

12:02

A. I did.

333 Q. Okay. And just, it's relevant to other matters, but

1 this correspondence from and to Sergeant McCabe, where
2 would that be stored? would it be stored on a paper
3 file or an electronic file?

4 A. Both.

5 334 Q. Both. And are those files -- was that file kept in the 12:03
6 Minister's correspondence file or in a number of files,
7 perhaps?

8 A. It would be primarily kept in the division, which would
9 be the Policing Division in the Department. However,
10 it would also be logged on what we call, it's a 12:03
11 tracking -- correspondence tracking database, so it
12 would be logged in probably two places.

13 335 Q. Yes. I note at the top of the -- if we go back to
14 3445, to the top, there seems to be a reference to the
15 Garda policing group, Garda PO, is that right? 12:03

16 A. Garda PO, yes.

17 336 Q. So this would be filed then in a number of places and
18 retained electronically, as you have said?

19 A. Well, I can't be certain in terms of what was -- how
20 the correspondence was saved or stored in that 12:04
21 division, but I would expect that it would be on a file
22 in the division, in the relevant Policing Division.

23 337 Q. Yes. Do you recall seeing any other correspondence
24 that came in from Sergeant McCabe in early 2015?

25 A. From the -- I believe there may have been some 12:04
26 correspondence in terms of emails back and forth to the
27 Minister, but I can't be certain in terms of -- I would
28 have to check my records.

29 338 Q. Yes. Well, could I ask you perhaps to look at 3440.

1 This appears, at the top, to be I think from
2 Mr. Power -- sorry, perhaps from Mr. Flahive to
3 Mr. Power, but it's forwarding a message from the
4 private secretary. And that message itself says it's
5 to Michael Flahive, Kevin D. Clarke and Sec. Gen. 12:05
6 office. Would you have been included on that then at
7 that time?

8 A. I would have, yes.

9 339 Q. And it's a letter concerning the Protected Disclosure
10 Act, publication in the 'Garda Review' and the Irish 12:05
11 Independent. And enclosed with that was, at the bottom
12 of the page, an email from -- again, it's from Sergeant
13 McCabe, at the bottom of page 3440 we can see that, at
14 the bottom of 3440. It goes into info@justice, and it
15 seems to get to the private secretary. And just to 12:06
16 look at the next page, it's about his protected
17 disclosure. It's a complaint, if one goes to 3442,
18 about the articles, some articles that have been
19 written. Does that help you in your recall as to
20 whether you might have seen that at the time? 12:06

21 A. I don't recall receiving that, this email, but if I was
22 in the Sec. Gen. office group, then I would have
23 received it.

24 340 Q. Okay. All right. It appears that the Minister wrote
25 back out and corresponded with the Commissioner. Do 12:06
26 you have any recollection of seeing any of those pieces
27 of correspondence?

28 A. I'm afraid not.

29 341 Q. Okay. Well, just turning then to your own statement at

1 3471. You have seen this email of the 15th April?
2 A. That's correct, yes.
3 342 Q. And it's attached to your statement at 3475.
4 A. Mm-hmm.
5 343 Q. And perhaps we'd just look at that. Now, it goes to 12:07
6 the -- from Mr. Flahive to the private secretary, it's
7 cc'ed to the Sec. Gen. office. And as I understand
8 both the private secretary's evidence and the
9 composition of the group, the group would include
10 perhaps up to eight people, is that right? 12:08
11 A. The Sec. Gen. office group?
12 344 Q. Yes.
13 A. I would say four.
14 345 Q. Four. Okay. Well, he certainly forwarded it on to
15 Ms. Mannion and Mr. Lavelle. But would the group 12:08
16 include Mr. Sunderland, Ms. Fiona O'Sullivan, Mr. Denis
17 Griffin, yourself and Paula Monks?
18 A. The Sec. Gen. office group at the time would have
19 consisted of myself, Denis Griffin, Dale Sunderland and
20 Paula Monks, not Fiona O'Sullivan or not William 12:08
21 Lavelle or Marion Mannion.
22 346 Q. Okay. All right. So if they get it, it's, as it were,
23 an added bonus forwarded on from the private secretary
24 because they are the Minister's special advisers?
25 A. To say it's a bonus -- 12:08
26 347 Q. Well, it goes outside the group to these two other
27 people?
28 A. Well, the private secretary would have flagged it to
29 the advisers. He would have flagged anything that he

1 was bringing to the attention of the Minister, to the
2 advisers.

3 348 Q. Okay.

4 A. So, you know, officials might not necessarily have --
5 the officials' main point of contact with the Minister 12:09
6 would have been the private secretary.

7 349 Q. Yes. Anyway, it goes to the Sec. Gen. group and to the
8 four you have indicated, and obviously it's sent on to
9 the Minister. It's from Mr. Flahive. It includes
10 Mr. O'Leary, Mr. Power. And would it have gone to 12:09
11 anyone else, to your knowledge?

12 A. Em, from the sender or from the people who received it?

13 350 Q. Well, would you have any knowledge of that in the
14 corporate secretariat, as the assistant principal
15 officer? 12:09

16 A. The only records that I have in terms of what had
17 happened to this email is that Michael Flahive had sent
18 it to Chris, the Sec. Gen. office, Ken O'Leary and
19 Martin Power, and that Chris had flagged it to the
20 Minister and the other people who were copied on that 12:10
21 email.

22 351 Q. Yes. Well, did you read the email?

23 A. I don't recall reading the email. What I can say is,
24 that was on a Friday afternoon at 5 o'clock, and at the
25 time I would have been acting in my role as the 12:10
26 secretary to the management board, so I know I would
27 have been preoccupied with making sure that the papers
28 were together and that they were issued to the
29 management board members on a Friday evening.

1 352 Q. Yes. But obviously it's coming from Mr. Flahive as
2 senior -- he is an assistant secretary obviously, but
3 it's going to Mr. O'Leary, who is -- they are being
4 copied to Mr. O'Leary as the Deputy Secretary General,
5 and you know it's been flagged for the Minister. But 12:10
6 it would appear from it, and can I take it that you did
7 read it at the time?

8 A. Em, I generally would try to read all of my emails.

9 353 Q. Yes.

10 A. So I can't imagine why I would not have read the 12:11
11 email --

12 354 Q. Yes.

13 A. -- at some stage, perhaps not on the Friday evening,
14 but I would imagine I would have read the email at some
15 stage. 12:11

16 355 Q. Yes. Well, would you agree that, obviously from the
17 face of it, the assistant secretary is wishing to
18 advise the Minister, and it's sent on to the Minister,
19 of a row that had broken out at the Commission, the
20 approach of the Garda Commissioner and questioning the 12:11
21 motivation of Sergeant McCabe?

22 A. That's correct, yes.

23 356 Q. Okay.

24 A. Yes.

25 357 Q. Now, where would that be filed? 12:11

26 A. Em, in the central offices, in the Secretary General or
27 the Minister's office? I don't believe it would be
28 filed --

29 358 Q. Pardon?

1 A. I don't believe it would be filed.

2 359 Q. Well, it's just the previous correspondence that I have
3 asked you to look at, you have described how that would
4 be filed. And why would this not be filed in the same
5 way? 12:12

6 A. There is a possibility it may have been filed in the
7 division. Generally, the Secretary General and the
8 Minister's office don't keep files as such. The
9 divisions keep files on particular issues or cases, or
10 whatever the case may be, but I suppose the Minister's 12:12
11 and Sec. Gen.'s office don't keep files in the
12 strictest -- in the, you know, sense of what a file is.

13 360 Q. Okay. It's just that nine or ten people appear to have
14 got this and it doesn't appear to have emerged to the
15 Tribunal from any file, and nobody volunteered a 12:12
16 statement about this, either the contents of it or the
17 receipt of it, until after it became public otherwise.

18 MR. MCCANN: Chairman, on behalf -- I am not
19 representing this witness because I haven't -- she
20 hasn't been given representation. But on behalf of the 12:13
21 Department --

22 CHAIRMAN: Well, she didn't ask for it either.

23 MR. MCCANN: I am not certain about that. I would have
24 to check the correspondence.

25 CHAIRMAN: Right. I am sorry, I am being flippant. 12:13
26 Certainly no one has anything against you, Ms. Phelan,
27 you can be absolutely certain about that.

28 MR. MCCANN: If there is a concern about discovery, it
29 should be addressed to the Department. It should be

1 addressed formally in correspondence if there is a
2 concern and the Department will deal with it.

3 MR. MCGUINNESS: I am only dealing with factual issues
4 with this witness.

5 CHAIRMAN: I think that's correct, Mr. McCann. I think 12:13
6 this is an inquiry in relation to the file, which, as
7 you know, is very important, and so I think we will
8 inquire into the file.

9 361 Q. MR. MCGUINNESS: Well, that is what I am wondering.
10 Can you help us, as corporate assistant APO, would this 12:13
11 be filed or was it filed?

12 A. I don't have any information as to whether this piece
13 of correspondence was filed or it wasn't filed.

14 362 Q. Okay. And when the Tribunal was established, did you
15 recall receiving this email? 12:14

16 A. I don't.

17 363 Q. Okay. Did you discuss it with anyone at the time of
18 its receipt?

19 A. I don't believe I did, no.

20 364 Q. Would it be your business to discuss it with the 12:14
21 Minister or any of the more senior sort of policy
22 officials?

23 A. It wouldn't really, no, it wouldn't be something that I
24 would do.

25 365 Q. Okay. And do you recall anyone asking you for your 12:14
26 recollection of anything in relation to Sergeant McCabe
27 in connection with the Tribunal's requirements?

28 A. No.

29 366 Q. No. We have had reference to a meeting of the Minister

1 and the Commissioner on the 16th May 2016. Were you at
2 that meeting?

3 A. I was not, no.

4 367 Q. Okay. Did you prepare any documents for the meeting in
5 any fashion? 12:15

6 A. I don't believe I did, no.

7 368 Q. All right. And a meeting such as that where an
8 extensive briefing note had been prepared for the
9 Minister, would you expect there to be minutes of the
10 meeting? 12:15

11 A. Em, there may -- as I say, you know, some high level
12 meetings would have had minutes, not all of them.

13 MR. MCGUINNESS: Okay. Thank you, Ms. Phelan.

14 CHAIRMAN: Did you have any questions, Mr. McDowell?

15 MR. MCDOWELL: No questions, Judge. 12:15

16 CHAIRMAN: Or from the Garda counsel?

17 MR. DIGNAM: No.

18 CHAIRMAN: No. Thanks, Ms. Phelan. Mr. McCann, did
19 you have any questions?

20 MR. MCCANN: No. 12:16

21 MR. MCDOWELL: Chairman, it's not for this witness, but
22 the Tribunal will appreciate that obviously some papers
23 have gone missing, to which Mr. McGuinness is making
24 reference, but I -- I have no knowledge of what is in
25 those papers or why this is considered significant. I 12:16
26 am just making that point.

27 CHAIRMAN: Yes. Well, I think it was just to make sure
28 that the filing system was reliable, Mr. McDowell. And
29 now that we have inquired into the file, we are wiser

1 about the file.

2 MR. MCDOWELL: well, the point I am making is that, in
3 not asking any questions, I have no angle on this at
4 all, one way or the other.

5 CHAIRMAN: No. I don't think there is. I think it's 12:16
6 important to show that the Tribunal has looked into
7 what is on the ground and what may be there. I mean,
8 this is only the tip of the iceberg, there is a lot
9 more we have looked into than that, and this is
10 material which seemed to us to be significant in terms 12:17
11 of the functioning of the Department, which is --

12 MR. MCDOWELL: I fully agree. But I am just saying
13 that I hope that by not asking any questions, I'm not
14 showing indifference to the matter.

15 CHAIRMAN: Oh, no, I don't believe it's indifferent. 12:17
16 But the Tribunal is required to investigate contacts
17 between members of An Garda Síochána and it says media
18 and broadcasting personnel, members of the Government,
19 Tusla, the Health Service Executive, any other State
20 entities and any other relevant person that the 12:17
21 Tribunal may deem necessary to carry out its work
22 relevant to (a), (b), (c), (d), (e) and (f), which, of
23 course, (e) is this. So I think it's important to
24 actually cover this base, and it just probably is
25 covered, Mr. McGuinness. 12:17

26 MR. MCGUINNESS: Yes. And I think I should just
27 correct Mr. McDowell. I don't think I ever used the
28 phrase "missing documents".

29 MR. MCDOWELL: "Disappeared" is what he said.

1 MR. MCCANN: I think that's what Ms. Leader said.

2 MR. MCDOWELL: Ms. Leader said documents had
3 disappeared. That is all I am saying.

4 MR. MCCANN: Off the face of the earth.

5 MR. MCGUINNESS: As the Chairman knows, we got 77
6 additional documents, which I referred to on 22nd
7 January, which was a fortnight after Mr. Waters had
8 come and gone, obviously. And we will be hearing
9 further evidence, I'm sure.

12:18

10 CHAIRMAN: Well, so far, I'm not suspecting that
11 documents have been sent off the face of the earth into
12 outer space by the Department of Justice. So I think
13 we have covered this base. And thank you very much,
14 Ms. Phelan.

12:18

15

12:18

16 THE WITNESS THEN WITHDREW

17

18 CHAIRMAN: Mr. McGuinness, would now be an appropriate
19 time to break, do you think?

20 MR. MCGUINNESS: Yes, Chairman.

12:18

21 CHAIRMAN: Seeing as it's nearly half twelve. And we
22 will come back at half past one, if that is possible,
23 because there is a sound test that I need to carry out,
24 if I could just have a brief word with counsel in
25 relation to something. Thank you. So we will break
26 until half past one.

12:18

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28 THE HEARING ADJOURNED FOR LUNCH.

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1 THE HEARING RESUMED AS FOLLOWS AFTER LUNCH:

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3 MS. LEADER: Sir, the next witness is Mr. Denis
4 Griffin. His statement is at page 3491, volume 6, of
5 the materials. 13:33

6
7 MR. DENIS GRIFFIN, HAVING BEEN SWORN, WAS DIRECTLY
8 EXAMINED BY MS. LEADER:

9
10 CHAIRMAN: I don't see his solicitor. 13:33

11 MR. MCCANN: We were locked out, Judge.

12 CHAIRMAN: That's a shame.

13 MR. MCCANN: I'm sure it wasn't intentional.

14 CHAIRMAN: I wouldn't bet!

15 369 Q. MS. LEADER: Mr. Griffin, I understand you're a higher 13:34
16 executive officer in the Department of Justice and
17 Equality?

18 A. Yes, that's correct.

19 370 Q. I think from October 2014 you served as private 13:34
20 secretary to Mr. Noel Waters, who at that time was
21 Acting Secretary General of the Department of Justice
22 and Equality?

23 A. That's correct.

24 371 Q. Could you tell the Tribunal what your job was as 13:34
25 private secretary to the Acting Secretary General?

26 A. It's principally to provide administrative support.
27 There would be a variety of tasks - diary management,
28 management of correspondence coming into the office,
29 office management. I think they would be the principal

1 duties.

2 372 Q. Now, I think as well as your own email address, you
3 were part of a group email, is that correct?

4 A. Yes, that's correct.

5 373 Q. In 2014. And if you would explain to the Tribunal, 13:35
6 please, about that group email address and why it was
7 set up. I think it's called Secretary General Office?
8 A. Office, yeah. I think it was principally set up in the
9 event that I wasn't there, that emails were dealt with
10 rather than -- if they were particularly urgent, you 13:35
11 know, they would be dealt with and they wouldn't have
12 to wait until my return to the office. It was also to
13 keep the more senior members of the group informed of
14 what was going on. That was the assistant principal
15 and the principal officer. 13:35

16 374 Q. So do I take it that it was your primary responsibility
17 to communicate emails to the Secretary General?

18 A. Yes.

19 375 Q. And in your absence that responsibility fell to another
20 member of the Sec. General office? 13:36

21 A. Yes, that's correct.

22 376 Q. Now, on the 15th May 2015 Mr. Flahive sent an email to
23 Christopher Quattrociochi and also to the Sec. General
24 group, is that correct?

25 A. Yeah, that's correct. 13:36

26 377 Q. And you, as a member of the Sec. General group,
27 received that email?

28 A. That's correct.

29 378 Q. Now, that email appears at page 745 of the materials,

1 if it could be brought up in front of you. Do you
2 remember getting that email?

3 A. No, I don't actually receiving it.

4 379 Q. Okay. You say in your statement that your "duties
5 principally comprised of providing administrative 13:37
6 support to the Secretary General and included bringing
7 important emails which I received to Mr. Waters'
8 attention."

9 A. That's correct.

10 380 Q. So who decided when an email was important or not? 13:37

11 A. I did, effectively. If they same into the Sec. Gen.
12 office group, I would decide which emails were shown to
13 him, which ones weren't. The volume was quite high, so
14 you could be getting up 60 to 70 emails a day, some of
15 them solely for the office, but some of them people 13:37
16 copying on material. You'd have to decide which was
17 relevant to bring to his attention and which wasn't.

18 381 Q. So you provided some sort of a filtering service?

19 A. Yes.

20 382 Q. And what criteria did you apply to emails in general as 13:37
21 to what should be brought to the Secretary General's
22 attention and what should not?

23 A. Well, obviously you'd read the emails to see the
24 seriousness of what was in them.

25 383 Q. Yes. 13:38

26 A. If they obviously looked serious, then they certainly
27 would be. Also, from what official sent them. If they
28 were relatively high level, like Michael Flahive, you
29 would obviously bring that sort of email to his

1 attention.

2 384 Q. All right. So two criteria applied: who sent the
3 email and the contents of the email?

4 A. Yes. Principally, yeah. Also, if it was sent directly
5 to us, you know, and we were asked to bring it to his 13:38
6 attention, we would, but if they were copied to us, it
7 would be slightly different.

8 385 Q. Well, this email would appear to have been copied to
9 you?

10 A. That's correct. 13:38

11 386 Q. And it was Mr. Quattrociochi was asked to pass this on
12 to the Minister for information?

13 A. Yes.

14 387 Q. Yes. So there was no direct request to pass it on to
15 Mr. Waters for his information? 13:38

16 A. No.

17 388 Q. No. So you made a judgement call with regard to
18 sending it on to Mr. Waters?

19 A. Yes, that's correct.

20 389 Q. And can you now recreate why you thought this email was 13:38
21 worthy of bringing it to Mr. Waters' attention?

22 A. Well, I mean, principally, anything involving Sergeant
23 McCabe at that point would have been brought to his
24 attention.

25 390 Q. Okay. So that, in itself, was -- 13:39

26 A. Yeah, without even going through the entire contents.

27 391 Q. Yes.

28 A. Yes.

29 392 Q. Okay. And you think that's why you brought it to

1 Mr. Waters' attention?

2 A. Principally, yes.

3 393 Q. All right. Now, we know Mr. Waters wasn't in his
4 primary office that day, he was in the -- I think it
5 was the immigration service? 13:39

6 A. Yeah, that's located in a different building.

7 394 Q. A different -- and would you ever be in that building?

8 A. No, I've never been there.

9 395 Q. Okay. So is it possible that you maybe phoned
10 Mr. Waters about it, or anything like that? 13:39

11 A. I can't ever recall talking to him down in those
12 offices. He was wearing two hats at that time: he was
13 Acting Secretary General and director of the
14 immigration service, so generally he would spend about
15 half a day a week or maybe every ten days down in the 13:40
16 Burgh Quay office, effectively to keep the immigration
17 service ticking over. And if there were any issues
18 arising, emails like that, I would email them on if
19 they were very urgent. If I didn't think they were
20 very urgent, I would hold them and show them to him the 13:40
21 following day when he was back in the office.

22 396 Q. If we can go to page 748 of the materials, and you'll
23 see there it's an email from you to Mr. Flahive --

24 A. Yes.

25 397 Q. -- sent on the 18th May 2015, past half past five? 13:40

26 A. Yes. Sorry, there is one email you missed before that.

27 398 Q. Yes. Which is?

28 A. I emailed it to Noel Waters that evening.

29 399 Q. Yes. So we'll just go to that.

1 A. Yeah. I emailed it on the 15th at 17:16.

2 400 Q. 17:16. Okay. Page 3495 of the materials. So you
3 simply forwarded it?

4 A. I forwarded it on. As you pointed out, that was a
5 Friday. 13:41

6 401 Q. Yes.

7 A. I suppose, looking back, it would have been -- it
8 wasn't the only email I emailed on to him in and around
9 that time. There was another unrelated email I sent to
10 him. I suppose the issue is, if something had 13:41
11 happened, if the Minister had rang him --

12 402 Q. Yes.

13 A. -- and he didn't know anything about it, certainly --
14 it would be a concern of his and he's previously
15 pointed that out. He'd like to be made aware of 13:42
16 serious issues that arise. So hanging on to that until
17 the Monday would have been not really on --

18 403 Q. Okay.

19 A. -- in terms of advising him of it.

20 404 Q. All right. So, in your mind, it was something that had 13:42
21 to be notified to Mr. Waters and notified immediately
22 to him?

23 A. Yes.

24 405 Q. And in your mind, as I understand it, the reason for
25 the immediate concern was, you were afraid that the 13:42
26 Minister would contact him about it?

27 A. Yes.

28 406 Q. And him not know?

29 A. Yes. I mean, obviously the email had been sent on to

1 Chris, who was --

2 407 Q. The Minister?

3 A. Yes, sorry, Chris to bring it to the Minister's
4 information. I would have been concerned that perhaps
5 there might have been -- the Minister, after receiving 13:42
6 it, would have telephoned the secretary and asked him
7 about it and he wouldn't have known anything about it.

8 408 Q. Would that be something you'd expect to happen, that
9 the Minister --

10 A. Yes. 13:42

11 409 Q. -- would seek to speak to the --

12 A. It does occur, yes, and it has occurred.

13 410 Q. Yes. Okay. Did you hear anything over the weekend
14 about that email?

15 A. No, I don't recall anything. 13:43

16 411 Q. Okay. Did you at any time have cause to be with
17 Mr. Waters and the Minister where this email was
18 discussed?

19 A. No. I've never attended a meeting with the Minister.

20 412 Q. You've never? 13:43

21 A. No.

22 413 Q. Okay. Did you discuss it with Mr. Waters either on
23 Friday or over the weekend?

24 A. Certainly not over the weekend. The Friday, there's a
25 possibility he may have -- he would often telephone in 13:43
26 late in the day, usually maybe 5:30, 5:45, I may have
27 mentioned to him that I sent on a couple of emails, but
28 I really can't recall that. But he would often do
29 that; not all of the time, but he would do it some of

1 the time.

2 414 Q. All right. So would that be in the manner of checking
3 into the office before the weekend?

4 A. Yes, precisely, yes.

5 415 Q. Okay. If he was checking into the office before the 13:43
6 weekend, and you say this was an important email
7 insofar as anything with Sergeant McCabe's name on
8 it --

9 A. Yes.

10 416 Q. -- would be forwarded to the Secretary General -- 13:44

11 A. Yes.

12 417 Q. -- and it is a matter which could come up in a
13 discussion with the Minister, do you think you spoke to
14 him about it?

15 A. I'm not sure I would have rang him directly about it. 13:44

16 418 Q. Yes.

17 A. But if he had rang in, I would have certainly --
18 because he would normally ask is there anything
19 occurring, anything going on in the office. I
20 certainly would have alerted him to that email. And 13:44
21 certainly, just looking back through my email thread,
22 another couple of emails I'd sent on to him on separate
23 unrelated matters.

24 419 Q. All right. So if we go to the Monday email then - it's
25 page 748 in my documents - and this is one sent after 13:44
26 half past five on Monday, you sent it to Mr. Flahive.
27 If we just scroll up, sorry. Yes, it's the original
28 email of the 15th?

29 A. Yeah.

1 420 Q. And you say:

2

3

"Michael, Noted by Acting Secretary General."

4

5

who is Mr. Waters, is that correct?

13:45

6

A. That's correct.

7

421 Q. "Denis."

8

9

In relation to that, if you could explain why you

10

emailed Mr. Flahive back as there was no direct request

13:45

11

from him to notify Mr. Waters?

12

A. Well, we do it as a matter of practice since 2014. If

13

he has seen an email, and even if it's not addressed,

14

we would automatically send back an email saying that

15

he has noted it, basically to create a record.

13:45

16

422 Q. To create a record?

17

A. Effectively, yes.

18

423 Q. All right. Now, you've explained in your statement to
19 the Tribunal that:

20

13:45

21

"The normal practice during this period was that such

22

emails --"

23

24

Those being important emails, as I understand it.

25

13:45

26

-- were printed by me and shown to the Acting

27

Secretary General at the earliest opportunity."

28

A. That's correct.

29

424 Q. Okay. So you've emailed it to him on Friday. And if

1 you could explain on Monday what you -- first of all,
2 do you have any memory of printing off this email?

3 A. No, I don't. None whatsoever. Normally what would
4 happen, and even if he hadn't been in, there's
5 generally a build-up of correspondence, submissions, 13:46
6 emails, letters in, and I normally would go through
7 with him, twice a day, correspondence that had come in
8 and he would note them or decide to take action on
9 them, or letters to be signed, he would sign the
10 letters or submissions he would make, see them and 13:46
11 they'd be moved on.

12 425 Q. Okay. Did he -- so when you wrote down here "Noted by
13 Acting Secretary General", that's a civil service
14 phrase, I think, is it?

15 A. It is. It's effectively that he's seen it. 13:46

16 426 Q. Yes.

17 A. I mean, there would be some instances where you would
18 show him emails, there would be comments or queries
19 going back to officials, you know, "please discuss", or
20 "please set up a meeting", or, you know, that kind of 13:47
21 thing. But if it's just "Noted by Acting Secretary
22 General", there weren't any comments, that would
23 generally be -- although I don't recall this specific
24 email.

25 427 Q. Insofar as we know Mr. Waters spoke to the Commissioner 13:47
26 about the same topic as was contained in the email, was
27 that ever mentioned to you?

28 MR. MCCANN: Sorry, we don't know that.

29 MS. LEADER: Sorry, I beg your pardon, that's correct.

1 428 Q. At the same time as this was going on in the O'Higgins
2 Commission, we know Mr. Waters took a telephone call
3 from the Commissioner which lasted in or around 14
4 minutes. Was that ever mentioned to you?

5 A. Not that I recall, no. He wouldn't -- he'd only 13:47
6 normally make me aware of phone calls from the
7 Commissioner's office if he wanted something done on
8 foot of it. A lot of cases would be arranging a
9 meeting or following up on correspondence that we had
10 sent to them or they had sent to us. But normally, 13:48
11 it'd only be if he wanted you to do something on foot
12 of it.

13 429 Q. Okay. So can you remember, and I appreciate this is
14 going back to May 2015, did he ever say to you that
15 Monday, I want something done as a result of a 13:48
16 telephone conversation with the Commissioner?

17 A. No. If he had wanted something -- no. I don't recall
18 at all. Normally, if he wanted something done on foot
19 of it, it would have been in the comments going back to
20 Michael Flahive -- 13:48

21 430 Q. Yes.

22 A. -- in general. That's -- because I was quite
23 deliberate about creating records around that time and
24 onwards in relation to emails that came in as
25 particularly important ones. But no, I don't recall 13:48
26 being asked to do anything on foot of it.

27 431 Q. All right. If we could have 2012 of the materials
28 brought up in front of you, Mr. Griffin. You will see
29 that that is an email from Mr. O'Leary to the Minister

1 and a number of other people, including Mr. Waters?

2 A. Mm-hmm.

3 432 Q. Yes. So do you have any memory of that email or have
4 you seen it before other than in connection with this
5 Tribunal? 13:49

6 A. No. I've seen it recently, but not -- it wasn't copied
7 to us, I think.

8 433 Q. No. It's the email --

9 A. Yeah.

10 434 Q. -- notifying the Minister of a press query the Garda 13:49
11 Commissioner got?

12 A. No. The press side was quite different in terms of, it
13 was handled by -- we've our own separate press office,
14 so I wouldn't really get involved in anything to do
15 with press side. There's officials on our floor who 13:49
16 would deal with those related issues. So I'd normally,
17 unless somebody asked me to deal -- to do something
18 specifically, I wouldn't get involved in anything to do
19 with press, press queries or press replies.

20 435 Q. Now, I just want to ask you a few questions about 13:50
21 Mr. Waters' email address just generally.

22 A. Yes.

23 436 Q. We see that Mr. Waters' email address seems to be
24 noelawaters@justice?

25 A. Yes, that is an internal email system. I can 13:50
26 understand why there is some confusion about it. But
27 what that there is, they're all internal emails, that's
28 one internal email to another.

29 437 Q. Yes.

1 A. And all the people copied on it are internal. So it's
2 noela.waters, and it probably doesn't come up here, but
3 it comes up with a /justice, but they're all internal,
4 so if you type "Noel Waters" it kind of predicts it.

5 438 Q. Yes. 13:50

6 A. Yes. But only internally.

7 439 Q. All right. So if page 4221 could be brought up in
8 front of you, you may be able to help us. You see
9 that's an email from Minister Fitzgerald's Oireachtas
10 email address to nawaters@justice.ie? 13:51

11 A. Yes. Firstly, just francesfitzgerald@oireachtas is an
12 external email, which -- as opposed to FX Fitzgerald,
13 which is an internal email.

14 440 Q. Yes.

15 A. NA Waters, as far as I know, doesn't exist. 13:51

16 441 Q. All right.

17 A. Because it was -- recently, I was shown, I was asked
18 had that email gone into his account, and when I saw
19 the email address I'd never seen it before, NA Waters,
20 which is an attempt at an external email. Again, I 13:51
21 don't work in IT division, but I had never seen that
22 email address before.

23 442 Q. All right. And did you check Mr. Waters' inbox?

24 A. Recently?

25 443 Q. Recently? 13:51

26 A. Yes.

27 444 Q. In an effort to locate --

28 A. Yes.

29 445 Q. -- the emails which preceded this one?

1 A. Yes. And I couldn't find it.

2 446 Q. All right.

3 A. It either didn't arrive or had been deleted, but it

4 wasn't there.

5 447 Q. That was in the past few weeks, is that correct? 13:52

6 A. Yeah, that was about three weeks ago.

7 MS. LEADER: Thanks very much. If you would answer any

8 questions anybody else might have for you.

9

10 MR. DENIS GRIFFIN WAS CROSS-EXAMINED BY MR. MCDOWELL: 13:52

11

12 448 Q. MR. MCDOWELL: Just out of total curiosity, would that

13 have bounced back or would it have been kept in the

14 Justice system but not allocated?

15 A. I've heard it's bounced back, but again, that's 13:52

16 something I heard in the last couple of weeks.

17 449 Q. I see.

18 A. But --

19 450 Q. No, because a number of weeks ago, I think, I rather

20 naively said surely it would bounce back, and the 13:52

21 Chairman said that some systems can actually receive in

22 something --

23 A. Yes.

24 451 Q. -- and just hold on to them. Which do you think

25 Justice is of those two categories? 13:53

26 A. I would have thought they would have bounced back, to

27 be quite frank. But I don't work in the IT section

28 so...

29 MR. MCDOWELL: Thanks very much. I can't put it any

1 further.

2 CHAIRMAN: And I think -- I suspect the thing that I
3 mentioned, Mr. McDowell, about flag records at .co.uk,
4 that that is a pretty rare system that is used for kind
5 of very small companies. I suspect that but I don't 13:53
6 know that. But I know it does exist and some companies
7 have it, but as to what Justice has, I literally
8 haven't a clue.

9 MR. MCDOWELL: It's just when I make errors, which is
10 quite often, in multiple emails, I'm told, I get an 13:53
11 email daemon telling me that that one of my addressees
12 doesn't exist or it's wrongly addressed.

13 CHAIRMAN: Yes. No, we all get those. Do you get
14 those in Justice too?

15 A. No, I don't recall them. 13:54

16 CHAIRMAN: Is that because you never make a mistake?

17 A. No.

18 MR. MCCANN: I think Mr. Power may be able to help us
19 tomorrow, Chairman.

20 CHAIRMAN: Yes. All right. Is there no further 13:54
21 questions?

22 MR. DIGNAM: No questions.

23

24 MR. DENIS GRIFFIN WAS QUESTIONED BY THE CHAIRMAN:

25 13:54

26 452 Q. CHAIRMAN: Could I just ask one thing.

27 A. Sure.

28 453 Q. CHAIRMAN: Mr. Griffin, do you actually create files
29 now in the Department of Justice as such, or are they

1 all electronic files that are created?

2 A. No, as far as I'm aware, filing really falls to line
3 divisions, you know, so there would be a Policing
4 Division, a Garda Division, so they would still operate
5 off the old hard-copy files. 13:54

6 454 Q. CHAIRMAN: Would there be such a thing, for instance,
7 as the Maurice McCabe file or the file on the
8 Disclosures Tribunal or the file on the O'Higgins
9 Commission?

10 A. I imagine there would be, yes, in the line division, 13:54
11 which would be, in this instance, Policing Division.

12 455 Q. CHAIRMAN: Well, would they be on line or would they be
13 a physical file --

14 A. A physical file.

15 456 Q. CHAIRMAN: -- you'd put in a filing cabinet? 13:55

16 A. Physical file. There is also document libraries where
17 they would create documents, but, I mean, they're not a
18 catch-all, I don't think, you know. So principally
19 they would be a hard copy file.

20 457 Q. CHAIRMAN: And who is the compliance officer from the 13:55
21 point of view of archiving for the National Archives?

22 A. For the National Archives it would be the Freedom of
23 Information officer in the Department. She covers a
24 number of areas. Aisling Brennan is her name.

25 458 Q. CHAIRMAN: And that's identifying things that are 13:55
26 important so that obviously the archives wouldn't get
27 everything, because most of it is just a bit of this
28 and that, every single day?

29 A. Yeah, no, no. Well, certainly, I mean, I have seen --

1 I've seen where, every year, they do -- they send a
2 request to all line divisions to identify files within,
3 you know, the 30-year rule, I think it is.

4 459 Q. CHAIRMAN: But they're not looking back 30 years, I
5 presume. I mean, things have to be done and 13:55
6 archived --

7 A. Yeah.

8 460 Q. CHAIRMAN: -- pending transfer to the National Archives
9 on a year-by-year basis?

10 A. Yes. 13:56

11 461 Q. CHAIRMAN: Not when a request is made 30 years later?

12 A. Ah, yeah. I just don't know enough about that, to be
13 honest with you.

14 462 Q. CHAIRMAN: Yes. well, is there a compliance officer
15 for National Archives' purposes? 13:56

16 A. Well, she's a liaison officer. I'm not sure it is a
17 compliance officer.

18 463 Q. CHAIRMAN: There should be one, though?

19 A. Possibly, yes.

20 464 Q. CHAIRMAN: well, I think so. It's supposed to happen. 13:56
21 And vis-à-vis then sorting out what emails, for
22 instance, might be important, again for archiving
23 purposes, I mean I know my email account officially
24 goes back to 2006, so I've got everything, I don't
25 delete anything, but, I mean, if you want to find, you 13:56
26 know, what emails are important or not important or
27 what needs - archiving is just an example of it, what
28 needs to be archived, how do you do that?

29 A. In the Department, emails are a problem.

1 465 Q. CHAIRMAN: Yes.
2 A. They're not really compatible with some of the systems
3 that we have, you know, in terms of you are relying on
4 senior officials to print them off and put them on to a
5 hard copy file. 13:57
6 466 Q. CHAIRMAN: But, I mean, the paper there is not exactly
7 very durable?
8 A. Yeah.
9 467 Q. CHAIRMAN: The stuff that you use in a printer?
10 A. Yeah. 13:57
11 468 Q. CHAIRMAN: But, I mean, secondly, it's identifying
12 issues or series of issues that will turn out to be of
13 importance and worth reading --
14 A. Yeah.
15 469 Q. CHAIRMAN: -- into the future. Is that done? I mean, 13:57
16 is there --
17 A. Not that I am aware of, I have to say.
18 470 Q. CHAIRMAN: So is it kind of a question of, you know, if
19 you put into your computer and you say, okay, just take
20 an example, I got an email from a friend and his name 13:57
21 is Sheehan and he lives in Philadelphia, but that is a
22 totally fictional example.
23 A. Okay.
24 471 Q. CHAIRMAN: So you put that in under the search into
25 your email archive, which could contain hundreds of 13:57
26 thousands of emails.
27 A. Yeah.
28 472 Q. CHAIRMAN: And then they bring up -- that brings up,
29 after maybe twenty minutes or half an hour, all the

1 emails from that person.

2 A. Mm.

3 473 Q. CHAIRMAN: Do you have such a system in Justice? 13:58

4 A. No, certainly not, that I'm aware of.

5 474 Q. CHAIRMAN: Yes. And is there any sense in which, you 13:58

6 know, there is a command on emails where you can send

7 email to file, do you have such an ability in Justice?

8 A. Yeah, well we import some emails into the document

9 libraries, certainly some of them. But an organised

10 system, I'm not aware of that now. 13:58

11 475 Q. CHAIRMAN: So it has to be actually copied from the

12 email and then basically put into an existing file or

13 open a new file --

14 A. Yes.

15 476 Q. CHAIRMAN: -- in relation to a matter? 13:58

16 A. Yeah, it's categorised and that sort of thing.

17 477 Q. CHAIRMAN: Yes. And you would have to give it a title

18 as well as it went in, wouldn't you?

19 A. Yes, yes. That's what happened emails. They have

20 brought in a e-submission system, which is -- you know, 13:58

21 they are starting to move on, which everything is

22 categorised electronically now in terms of, if you got

23 a submission on any issue, so you can do a search on a

24 submission, but not on emails, as far as I'm aware.

25 478 Q. CHAIRMAN: But you would have to populate the relevant 13:58

26 fields to get the information, retrieve it say a year

27 later, when you have forgotten about it, wouldn't you?

28 And if you don't do that, then it's lost, isn't it?

29 A. Well, it's possible that people move on, and that

1 you'd have to know which -- you know, is it in a
2 certain area.

3 479 Q. CHAIRMAN: Yes. And I take it you're using word as a
4 processing system?

5 A. We are, at the moment. We're transferring over to a 13:59
6 new system. But at the moment it is word.

7 480 Q. CHAIRMAN: Yes. Well, word is, I understand, the most
8 compatible for archiving purposes, certainly.

9 A. Yes.

10 481 Q. CHAIRMAN: It's most -- compatible with most systems 13:59
11 and most widely used. Is it for reasons of cost that
12 you're moving over?

13 A. I don't know. I think we've -- I just don't know, to
14 be honest with you. Our IT division are doing it.
15 They've been rolling it out for the last six months. 13:59
16 So we're one of the last areas to be moved on to it, do
17 you know.

18 482 Q. CHAIRMAN: And do you have discussions administratively
19 in relation to the storage and retrieval of documents?
20 Now, I don't mean necessarily on the basis of the 13:59
21 30-year, perhaps soon to be 25-year, rule, but on the
22 basis of finding what is relevant to a particular issue
23 as opposed to having to do one of the email searches,
24 unfortunately we're all too familiar with, whereby
25 hundreds of thousands or millions of emails have to be 14:00
26 searched on the basis of key words?

27 A. Yeah.

28 483 Q. CHAIRMAN: In other words, a system, if you like, of
29 filing in relation to important topics, as emails are

1 exchanged they're transferred into --

2 A. Yes.

3 484 Q. CHAIRMAN: -- let us say, a word file for the purpose
4 of storage with the correct fields populated?

5 A. Is there discussions? I'm not aware of any, to be 14:00
6 quite frank.

7 CHAIRMAN: Thank you very much.

8 A. Thanks very much.

9

10 THE WITNESS THEN WITHDREW 14:00

11

12 MR. MARRINAN: Sir, the next witness is william
13 Lavelle, please. His statement is to be found at page
14 3462.

15 14:00

16 MR. WILLIAM LAVELLE, HAVING BEEN SWORN, WAS DIRECTLY
17 EXAMINED BY MR. MARRINAN:

18

19 485 Q. MR. MARRINAN: Mr. Lavelle, I think that you were
20 employed as special adviser to Minister Frances 14:01
21 Fitzgerald from June 2011 until May of 2016, is that
22 right?

23 A. That is correct.

24 486 Q. I think initially for the first period of time she was
25 the Minister in the Department of Children and Youth 14:01
26 Affairs, isn't that right?

27 A. Yes.

28 487 Q. And from May 2014 until May 2016 you were with her in
29 her capacity as Minister for Justice and Equality?

1 A. Yes.

2 488 Q. Now, could you just tell us what is a special adviser
3 and what qualifications you have to be a special
4 adviser?

5 A. I believe the role is very varied. In my case, I would 14:02
6 have worked with the Minister in providing the
7 Minister -- or inputting on speeches, speech writing,
8 providing briefing notes, political briefing notes for
9 the Minister in relation to upcoming meetings and
10 events, parliamentary business, Government affairs. In 14:02
11 addition, I would have, over my five years as her
12 adviser, had sole responsibility for overseeing all
13 parliamentary questions answered in her name, from both
14 departments; been responsible for overseeing and
15 approving a large number of the representations that 14:02
16 would have issued in her name, as well as, I suppose,
17 acting as a liaison between the Minister and civil
18 servants on certain matters, particularly those that
19 fell under the Programme for Government.

20 489 Q. There was a Marion Mannion as well. Was she also a 14:02
21 special adviser to the Minister?

22 A. Yes. So for the five years I was an adviser, for the
23 first four years I would have worked part-time and
24 there would have been another adviser working part-time
25 with me, but Ms. Mannion was full-time for the five 14:03
26 years. And for the last year of my employment from May
27 2015 to May 2016, I was full-time, so myself and
28 Ms. Mannion would have been both the advisers at that
29 stage.

1 490 Q. So as of May of 2015 --
2 A. Yes.

3 491 Q. -- the Minister had two special advisers who were
4 working full-time, is that right?
5 A. Two full-time special advisers. 14:03

6 492 Q. And would you have daily meetings with the Minister?
7 A. Not necessarily. On some days the Minister would be
8 travelling down the country or out of the country and
9 some days she would have potentially based herself in
10 her constituency office. Normally, Tuesday to Thursday 14:03
11 she would be working between the Department and
12 Leinster House, and, yes, on those days I would see the
13 Minister normally on a daily basis.

14 493 Q. And would you see her jointly with Ms. Mannion or would
15 you see her alone? 14:04
16 A. Both. The Minister would regularly have meetings with
17 both of us and she would meet with us individually. In
18 some cases it might be that she would just stop by for
19 a moment or two to ask us a question or check in on
20 something. So, yeah, we worked in -- you know, I 14:04
21 suppose very closely on days when we were in Leinster
22 House. But I wouldn't on other days -- Ms. Mannion
23 would have done most of the travelling with the
24 Minister, so she would attend a lot of the external
25 meetings and events with the Minister. 14:04

26 494 Q. Yes.
27 A. So on certain days I wouldn't see the Minister at all.

28 495 Q. Yes. So there are -- there seems to be two areas that
29 you're dealing with; you're dealing with advising the

1 Minister in relation to her interaction with Dáil
2 Éireann --

3 A. Mm-hmm.

4 496 Q. -- and other politicians in her role as Minister for
5 Justice and Equality, is that right? 14:05

6 A. That would be part of the role, yes.

7 497 Q. And then, second of all, you're dealing with her
8 interaction with her own Department officials, is that
9 right?

10 A. Yes. 14:05

11 498 Q. Yes. So I suppose in that position of giving advice to
12 the Minister, yourself and Ms. Mannion should have been
13 up to date in relation to topical issues that were
14 arising?

15 A. Yes, we would be, on a daily basis, copied on a very 14:05
16 large number of emails, and I suppose on the basis
17 being that the Minister at any stage could be -- issues
18 could arise, she could be asked about events. It was
19 to try to keep on top of topical issues. As I said, if
20 you were accompanying the Minister to an event where 14:05
21 the media might be present or if you were accompanying
22 the Minister to do an interview, obviously the onus was
23 on you to ensure that you were up to speed with all of
24 these issues. Hence, we would have been kept briefed
25 and kept forwarded on information in all of these 14:06
26 matters.

27 499 Q. But you're not dealing just simply with PR; you're
28 dealing with the substantive issues as they arise, is
29 that right?

1 A. Yes, yes.

2 500 Q. And you're not just advising in relation to public
3 relations matter, but it's much more than that, you're
4 actually advising in relation to policy matters and
5 considerations that may or may not arise? 14:06

6 A. Yes.

7 501 Q. So, as far as Sergeant McCabe is concerned, as of May
8 of 2015, obviously he was the subject matter of quite a
9 considerable controversy, isn't that so?

10 A. Yes. 14:06

11 502 Q. And the spotlight had been on him certainly since
12 reference was made by former Commissioner, Commissioner
13 Martin Callinan, at the Public Accounts Committee in
14 January of 2014, and the remarks that he made in
15 relation to Sergeant McCabe, isn't that right? 14:07

16 A. That's correct, yeah.

17 503 Q. So we know that through 2014 and then in relation to
18 former Commissioner Martin Callinan retired, we know
19 that Minister Shatter resigned, isn't that right, May
20 of 2014? 14:07

21 A. Yes, '14.

22 504 Q. And you came into the role as advising the Minister at
23 that juncture in relation to matters concerning the
24 Department of Justice and Equality, isn't that right?

25 A. Yes. 14:07

26 505 Q. And one of those matters, of necessity, would be how
27 she would deal with Sergeant Maurice McCabe, isn't that
28 right?

29 A. Yes.

1 506 Q. And it may well be at the top of the agenda, as it
2 were, and the list of to-do things, isn't that right?
3 A. It was a very large list of to-do things at the time,
4 but, yes, it was very important.

5 507 Q. So, you know, that would have continued through, and I 14:08
6 think that there was correspondence between Sergeant
7 McCabe and the Minister in 2014, into 2015, isn't that
8 right?
9 A. I was not aware of that until I've seen that earlier
10 today. 14:08

11 508 Q. There was a meeting with Minister Fitzgerald, were you
12 aware of that?
13 A. I was aware that the Minister had met with Sergeant
14 McCabe, solely on the basis I had seen them in the
15 corridor, but I was not present at that meeting. 14:08

16 509 Q. Is there any particular reason why you might have been
17 kept out of the loop in relation to that meeting?
18 A. No, I wouldn't have normally been attending all
19 meetings. As I say, there was two advisers. Normally
20 Ms. Mannion would have attended much more meetings than 14:09
21 I would have. Just the division of work. So, no,
22 absolutely not abnormal that I wouldn't be in all
23 meetings or aware of the meetings.

24 510 Q. Well, I suppose, Mr. Lavelle, one might expect, since
25 the issue of Sergeant McCabe loomed fairly large in 14:09
26 relation to media attention, in terms of the attention
27 that was given, being given to it by the Department, I
28 think that the Minister had written to the Garda
29 Commissioner and asked for a report in relation to how

1 the Commissioner was dealing with issues in relation to
2 Sergeant McCabe, and that was in 2015, one might have
3 expected that you would have been aware of what was
4 happening so you could advise the Minister?

5 A. As I say, there was a lot of various items, work 14:09
6 strands, taking place within the Department, and issues
7 dealing with Sergeant McCabe would not necessarily have
8 fallen on my desk. Maybe my colleagues may have been
9 more involved in those discussions, but I would have
10 been involved in a large number of other legislative 14:10
11 and policy issues which fell under the Minister's
12 purview.

13 511 Q. And, for instance, if you became aware of the fact that
14 Sergeant McCabe had met with the Minister and that
15 Ms. Mannion had been present, it might have been quite 14:10
16 natural for you to speak to Ms. Mannion and say how did
17 that meeting go?

18 A. Em, I can't -- I know the Minister met with Sergeant
19 McCabe. I don't know who attended the meeting. And
20 because there were matters which the Minister was 14:10
21 dealing with which were always sensitive matters, it
22 was quite often, as well, that the advisers were not
23 involved in some of the meetings, simply on the basis
24 that there would be -- they would seem to be
25 ministerial meetings without any political advisers 14:10
26 present. So, no, you wouldn't necessarily be asking
27 about meetings which you were not party to. The
28 Minister would have had a lot of meetings on security
29 issues and other issues, and, you know, it was not part

1 of the culture, working there, that you would be
2 wanting to know what was happening in every meeting.
3 If it was part of your work programme, then yes.

4 512 Q. Well, is your evidence that you had no discussions at
5 any time with Minister Fitzgerald between May of 2014 14:11
6 and May of 2016 in relation to Sergeant Maurice McCabe?

7 A. The only discussions which I can recall, which would
8 relate to this, would have come about immediately when
9 we came into office in May, when the Minister came into
10 office in May 2014, on foot of the Guerin Report, a 14:11

11 decision was taken to establish a commission of
12 investigation. I would have been involved at that
13 stage in terms of probably writing speeches, responses,
14 press releases, in relation to the position being taken
15 by Government in the establishment of the Commission of 14:11

16 Investigation. But after that, my only -- the only
17 recollection I could have of having any engagement in
18 relation to any matter relating to Sergeant McCabe is
19 where parliamentary questions may have been raised by
20 members of the Dáil in relation to how the Government 14:12

21 was responding to the issue of whistleblowers, and
22 Maurice McCabe in particular, and we would always have
23 answered in relation to the Government's programme of
24 action in establishing the Commission of Investigation.
25 But other than that, I've no recollection of any 14:12
26 specific meetings regarding -- or discussions regarding
27 Sergeant McCabe.

28 513 Q. Well, parliamentary questions were being asked with
29 great frequency --

1 A. Yes.

2 514 Q. -- in relation to Sergeant Maurice McCabe, isn't that
3 right?

4 A. Yes.

5 515 Q. So you must have kept yourself or sought to keep 14:12
6 yourself up-to-date in relation to those issues, if you
7 were being asked to draft speeches for the Minister to
8 answer the questions that were being asked?

9 A. Well, the position was that the Government had
10 established a Commission of Investigation. That was 14:13
11 the appropriate course of action in relation to the
12 allegations that had been brought forward. We refer to
13 that. What was happening at the Commission of
14 Investigation, which was statutorily independent, was
15 not a matter we, you know, sought to seek any knowledge 14:13
16 of. It would not be a matter again for the Minister
17 until she'd received the report from the Commission of
18 Investigation. So we were not having discussions at
19 any stage in relation to what was going on between the
20 period of the establishment of the Commission and its 14:13
21 report, which happened actually after I had left.

22 516 Q. Well, even adopting that stance would demand that you
23 would have a discussion and agreement between yourself
24 and the Minister and Ms. Mannion, that that would be
25 the stance that would be adopted -- 14:13

26 A. I don't think --

27 517 Q. -- is that right?

28 A. I don't think a discussion was required. I mean, it
29 was a very clear understanding that there were certain

1 matters which fell before independent statutory bodies,
2 be they the courts, the DPP, the Commission, Garda
3 investigations, where the Minister had no role or
4 involvement. So, regularly, the Minister would receive
5 representations in relation to matters that, for 14:14
6 example, could be before the courts or could be before
7 the Commission, we may be asked questions on these
8 matters, and in all cases we did not -- you just did
9 not go there because it would have been inappropriate
10 to do so. So, as I say, the Government had established 14:14
11 a Commission of Investigation. While that Commission
12 of Investigation was ongoing, I can't recall any
13 discussions regarding what was happening at the
14 Commission, because it would have been inappropriate
15 for us to have those discussions. I can't remember 14:14
16 anyone raising it with us internally.

17 518 Q. Well, Mr. Lavelle, is it your evidence, and I don't
18 want to be putting words in your mouth, that from May
19 of 2014, when Minister Fitzgerald took over as Minister
20 for Justice, that you didn't discuss Sergeant McCabe 14:15
21 with the Minister at any time between then and May of
22 2016?

23 A. Em, as I said, I think, earlier, my only recollection
24 of where this could have arisen is in relation to how
25 we were answering questions that would have come in, 14:15
26 parliamentary questions or otherwise, and the reference
27 always would have been to the fact that the Government
28 had established a Commission of Investigation and we
29 were awaiting its report. And on that basis, I

1 can't -- you know, other than that, I can't recall any
2 further discussions.

3 519 Q. No further discussion?

4 A. No.

5 520 Q. And any discussion at all with the other special 14:15
6 adviser to the Minister --

7 A. No.

8 521 Q. -- Ms. Mannion?

9 A. No.

10 522 Q. So as far as you're concerned and as far as you can 14:15
11 glean, because we haven't got a statement from
12 Ms. Mannion, but as far as you can glean, there were no
13 discussions about Maurice McCabe between the Minister
14 and her special advisers?

15 A. Well, not between the Minister and myself. I can only 14:16
16 speak for myself, yeah.

17 523 Q. But you can speak for yourself in this regard, that
18 there were no discussions between yourself and
19 Ms. Mannion concerning --

20 A. I have no recollection of any discussions with 14:16
21 Ms. Mannion on the matter.

22 524 Q. I mean, there were other issues, not just the
23 Commission of Investigation, but there were other
24 issues that concerned the Department in relation to
25 Sergeant McCabe, there were workplace issues and the 14:16
26 support that was being given to him as a whistleblower,
27 those weren't within the terms of reference of the
28 O'Higgins Commission of Investigation, you realise
29 that?

1 A. I believe there were issues, but I was not involved in
2 any discussions on those issues.

3 525 Q. Well, there were issues that came into the Department
4 referred by Mr. Barrett and the Attorney General's
5 office, to Mr. Flahive?

14:17

6 A. Mm-hmm.

7 526 Q. And which were shared with Ken Ruane, who is head of
8 legal services for An Garda Síochána, and these matters
9 were being canvassed and discussed. There was an issue
10 in relation to Mr. Kieran Mulvey, who was to act as an
11 adviser and was given terms of reference, and the
12 Department were consulted in relation to that. That
13 was in April 2015. Were you not aware of any of those
14 matters?

14:17

15 A. I was aware that there was ongoing other issues with
16 Sergeant McCabe, but I wasn't aware of the nature of
17 those issues and I wouldn't have been involved in any
18 discussions on those issues. A lot of those issues
19 would have been dealt with at official level and
20 officials would have dealt directly with the Minister
21 on that. My colleague, Ms. Mannion, may have been
22 involved. But, no, my evidence is I was not involved
23 in discussions on those matters.

14:17

24 527 Q. You see, when we come to deal with the email, and if we
25 could have page 3357 up on the screen, this is from
26 Mr. Quattrociocchi, who sent an email on the 15th May;
27 you're familiar with this, isn't that right?

14:18

28 A. Yes.

29 528 Q. And we see there that it is copied to yourself, to

1 Ms. Mannion and to the Minister, isn't that right?

2 A. Yes.

3 529 Q. And to only the Minister and her special advisers,
4 isn't that right?

5 A. Em, yes, because I believe the other officials were 14:19
6 copied on the previous email.

7 530 Q. Yes. But in terms of this particular one that I'm
8 showing you --

9 A. Yes.

10 531 Q. -- is copied to the Minister and her two special 14:19
11 advisers, and it's marked as being confidential and the
12 Commission of Investigation. You received this email,
13 did you?

14 A. Yes.

15 532 Q. And did you read it? 14:19

16 A. I have a vague recollection of reading it, yes.

17 533 Q. Well, can we take it that you did read it?

18 A. Yes.

19 534 Q. From beginning to end? And it's about Sergeant McCabe,
20 isn't it? 14:19

21 A. It is.

22 535 Q. So this was the -- was this the first time that you'd
23 seen an email concerning Sergeant McCabe?

24 A. It was the first time, yes, and it's the first time I
25 had seen an email in relation to something before the 14:20
26 Commission.

27 536 Q. And it refers to the Independent Review Mechanism. You
28 didn't know anything about that, did you?

29 A. I was aware that there was an Independent Review

1 Mechanism in place, but I was not privy to any of the
2 files in relation to Sergeant McCabe.

3 537 Q. Was this the first time then that you were aware of a
4 serious criminal complaint that had been made against
5 Sergeant McCabe? 14:20

6 A. Yes.

7 538 Q. Did it surprise you when you read it?

8 A. Em, I think my attitude when I read it, first of all,
9 surprised to having received the email, because I felt
10 it was inappropriate we were being advised of something 14:20
11 before the Commission, and just to say, obviously the
12 email was for information and I had indicated that the
13 Minister had no function in that, so it was not an
14 email that required any action or any follow-up action
15 on my part. 14:20

16 539 Q. I know that that is your response.

17 A. Yes.

18 540 Q. But the question that I asked you was, that when you
19 read the email, were you surprised to find out, reading
20 the email, that a serious criminal complaint had been 14:21
21 made against Sergeant McCabe in the past?

22 A. Yes, because I wasn't aware of any allegations.

23 541 Q. Were you surprised that it was included in the
24 Independent Review Mechanism?

25 A. Em, as I say, I wasn't aware what had gone into the 14:21
26 Independent Review Mechanism or not, so I'm not sure if
27 I was surprised or not. But it's the first time I
28 heard of an allegation, so I was surprised to hear of
29 allegations.

1 542 Q. Well, presumably you were. I mean, Sergeant McCabe's
2 name was all over the media, we've already gone through
3 his background in terms of since the PAC, and here you
4 are, you're getting an email and it refers to a serious
5 complaint that criminal investigation in relation to 14:22
6 Sergeant McCabe, and here he was, as far as you were
7 concerned he was a whistleblower and was being taken
8 seriously, was being publicly supported by the Garda
9 Commissioner. Were you not a bit taken aback to find
10 out that, in fact, he had been the subject matter of a 14:22
11 serious criminal investigation?

12 A. As I say, I was surprised to have got the email and
13 that I felt I probably should not have got an email in
14 relation to a matter before the Commission. In
15 relation to what it said, you know, it was in relation 14:22
16 to allegations made at the Commission. Yeah, I was
17 possibly surprised about the nature of the allegations,
18 but ultimately it was a matter before a commission,
19 before the Judge, and, as I say, we had no role in
20 making, ourselves, a judgment in relation to this. 14:22
21 That was a matter for the Commission.

22 543 Q. Well, you see, it doesn't stop you from talking to
23 Ms. Mannion about it, it doesn't stop you from talking
24 to the Minister about it, sure it doesn't?

25 A. Well, as I say, the understanding at the time was that 14:23
26 we do not intervene in matters which are before a
27 statutory independent body such as the Commission.
28 This was an email which was marked for information. It
29 contained a notification that there was no function for

1 the Minister, and, as I said, it was related to a
2 matter that we should not have been intervening in. So
3 it would not have been appropriate for me to be going,
4 raising it. Nobody else raised the email with me and
5 there was no discussion on the email.

14:23

6 544 Q. Well, look, you're sent the email in the first
7 instance, so somebody has considered it necessary to
8 send you the email and notify you of this development,
9 isn't that right?

10 A. Yeah, the information was sent to the Minister for
11 information and copied to the advisers.

14:23

12 545 Q. Well, why did you bother reading it at all?

13 A. Well, I will read all the emails I would have received
14 on the basis the Minister may raise it, but on this
15 occasion the Minister did not raise it. I mean, it is
16 quite possible, particularly on an email on a Friday
17 evening, the Minister may contact you over the weekend
18 and say, I'm getting questions about something or I
19 want to know about something. So you would read all
20 your emails. But as I say, in this case there was no
21 further discussion on it, and I'm not surprised at
22 that, given the nature of it, given it was for
23 information only, given that there was no function for
24 the Minister in it, and it was in relation to a matter
25 which the Minister should not have been intervening in
26 any case.

14:24

14:24

14:24

27 546 Q. Well, you know, there's no suggestion that you should
28 intervene in relation to the matter, but one might
29 expect, Mr. Lavelle, that if an email came in in

1 relation to Sergeant McCabe, who was known to you and
2 the background was known to you, indicating that a
3 serious criminal complaint had been made against him,
4 that this was in some way being introduced to the
5 Commission, that his motivation was being called into 14:25
6 question, that it may have raised curiosity, to put it
7 mildly, in your own mind at the time, but your evidence
8 is that you don't recall reading this?

9 A. No, I do recall reading it, but I don't recall having
10 any further discussions on it. 14:25

11 547 Q. Well, you know, I mean, if you had read it, wouldn't
12 the most natural thing in the world be to talk to your
13 colleague, Ms. Mannion, about it?

14 A. There was no purpose to discuss this other than to
15 engage in some sort of gossip, which we just didn't do. 14:25
16 As I say, it was a note for information. It was clear
17 the Minister had no function. It was an issue in which
18 the Minister should not have been intervening. There
19 was no reason for us to follow up, we had a lot of
20 other stuff going on at the time, and for us to engage 14:25
21 in discussion on it would have been no more than tittle
22 tattle or gossip and, to be honest, that is not
23 something we engaged in.

24 548 Q. But even if an issue had arisen in relation to
25 questions being asked, either in the Dáil or in the 14:26
26 Department, about it, I mean, you were being notified
27 by a Department official so presumably somebody may
28 have drawn the attention or discussed the matter with
29 the Minister the following Monday or Tuesday?

1 A. I'm not aware of any further discussion. I'm still
2 unsure as to why the email was ever sent. As I say,
3 there was no function for the Minister in it. I would
4 have felt it inappropriate that the Minister was being
5 briefed on what was happening at a commission; you 14:26
6 know, evidence was being heard in private, the Minister
7 was not a party to it. You know, I didn't see any
8 reason for follow-up and I'm not aware of there being
9 any follow-up discussions.

10 549 Q. Very well. So the matter wasn't discussed by you with 14:26
11 the Minister or with Ms. Mannion, and Ms. Mannion
12 didn't raise the matter with you?

13 A. The matter was not discussed with myself, I did not
14 discuss it with the Minister or anyone else, and I'm
15 not aware of any other discussions that took place 14:27
16 between -- involving the Minister and Ms. Mannion on
17 the matter.

18 550 Q. Okay. The next, again, page 3484, if that could be
19 brought up on the screen, please. This is an email of
20 the 4th July of 2015. Do you recall seeing this email? 14:27

21 A. No, I don't recall seeing this email at the time. I've
22 only seen it more recently when it was provided to me
23 by the Tribunal.

24 551 Q. Again, it's from Mr. O'Leary to the Minister and it's
25 copied to yourself, isn't that right, amongst other 14:27
26 people?

27 A. Yes.

28 552 Q. It reads:
29

1 "The Garda Commissioner phoned me to let me know that
2 they had received queries from Colm Ó Mongáin about
3 Sergeant McCabe. They were asked was it the case that
4 Sergeant McCabe was looking to be taken out of the
5 traffic unit in Mullingar and was it the Garda
6 Commissioner who had instructed counsel to adopt an
7 aggressive stance towards Sergeant McCabe at the
8 O'Higgins Commission. The Gardaí are not commenting."
9

14:28

10 Did you link this in with the earlier email that you
11 had received on the 15th May, the same year?

14:28

12 A. I don't have a recollection of receiving this email or
13 acting on this email at the time.

14 553 Q. If you could then go down further:

15
16 "If these matters are raised with you, you could say
17 both the Garda Commissioner and myself have made it
18 clear that Sergeant McCabe is a valued member of the
19 force."
20

14:28

21 So this is effectively advice from Mr. O'Leary to the
22 Minister as to how she could respond in the
23 circumstances. Do you not think that that ought to
24 have been brought to your attention as her special
25 adviser?

14:29

26 A. Officials in the Department, and indeed particularly
27 Mr. O'Leary, were very good at keeping the Minister --
28 or providing the Minister with lines on various matters
29 that arose that they feel she might at some stage be

14:29

1 asked about. They'd done this on their own volition,
2 and it was always, I suppose, welcome, in relation to a
3 broad range of matters. So this is just another
4 example of Mr. O'Leary having been advised that the
5 journalist had contacted An Garda Síochána on a matter, 14:30
6 on a query, providing the Minister with lines in case
7 we got similar inquiry -- similar inquiries. Often,
8 these emails would just -- we'd note them and obviously
9 if -- note the recommendation and advice, and, if
10 queries arose, they could be -- the email could be 14:30
11 referred to. So this, as I say, was standard for us to
12 be regularly receiving emails from officials with
13 advice on possible questions and queries, particularly
14 where they knew queries -- questions were being asked
15 by journalists. 14:30

16 MR. MARRINAN: Thank you very much. Would you answer
17 any questions. Thank you.

18
19 MR. WILLIAM LAVELLE WAS CROSS-EXAMINED BY MR. MCDOWELL:

20 14:30
21 554 Q. MR. MCDOWELL: Just briefly. That last email that
22 Mr. Marrinan was asking you about, you say you have no
23 recollection of receiving it, but it was clearly aimed
24 at giving the Minister something to say if she was
25 door-stepped on the subject, is that right? 14:31

26 A. Yes, that would have been the purpose of it.

27 555 Q. And if she were door-stepped on the subject, that's the
28 kind of territory that you and Ms. Mannion would be
29 concerned with in case it went wrong, isn't that right?

1 A. Yes. But there would have been a large number of
2 issues and we probably would have received a large --
3 at any one time, a large number of emails on such
4 similar matters.

5 556 Q. But there's two possibilities: either that you got it 14:31
6 and never even read it, or that you got it, read it and
7 said that's not my department. Which is the Tribunal
8 to take?

9 A. At the weekend -- at weekends, if the Minister was
10 doing media, she'd normally be accompanied by 14:32
11 Ms. Mannion. So on such a case, if I can't recall the
12 email it's probably because I was not working on any --
13 or working that weekend, or working at any events where
14 I'd have to be up to speed with all the issues.

15 557 Q. But this was your Minister going on the 'This Week' 14:32
16 programme; it's a high-profile event, it's not a
17 doorstep?

18 A. No.

19 558 Q. And whether you were on or off that weekend, surely you
20 would have been interested in an email that was sent to 14:32
21 you and I take it was available to you on your iPad or
22 your phone, or whatever it was?

23 A. It would have been available to me. I never went out
24 to RTÉ with the Minister for any of those weekend media
25 outings. It was normally Ms. Mannion. So -- 14:32

26 559 Q. You see, I've got to suggest to you that it's precisely
27 in relation to outings on 'This Week' and the like that
28 the special advisers come into their own and the
29 confidential political adviser to the Minister, and it

1 is their business, I have to suggest to you, to prep
2 the Minister and make sure she has a good performance
3 on such a programme?

4 A. As I say, I have no recollection of prepping the
5 Minister for the performance on this weekend. As I 14:33
6 say, I would normally not do the weekend media, so I
7 may not -- you know, wouldn't necessarily be involved
8 in prepping the Minister. She may ring me from time to
9 time in relation to some other policy matter that I may
10 be more expert on. But, no, I have no recollection of 14:33
11 prepping the Minister for any media outing in relation
12 to -- anything in relation to any issue in relation to
13 Sergeant McCabe.

14 560 Q. I see. And you said that, in relation to the earlier
15 email, that it would have been purely gossip if you had 14:34
16 bothered discussing it with the Minister or with
17 Ms. Mannion, is that right?

18 A. Well, I said if -- I think it was put to me did I
19 discuss it with Ms. Mannion, and I said no, if there
20 was no follow-up necessary, then I wouldn't have been 14:34
21 discussing it, and to do so -- I mean, I think the word
22 that was put to me was out of curiosity, you know, but
23 we didn't have time to be discussing stuff that was
24 just curious to us, and I would, yeah, equate that to
25 gossiping. But we wouldn't -- as I say, we weren't 14:34
26 involved in that. This is an email which was for
27 information only. It was very clear that there was no
28 function for the Minister. It was a matter in which
29 the Minister should not have been intervening. So, on

1 that basis, you know, there was no reason for us to be
2 having any functional discussion on the matter, and to
3 do otherwise have been, as I say, been only out of
4 curiosity, as it was put to me.

5 561 Q. And you went further to say that, in your view, it was 14:35
6 inappropriate for the Minister to be informed of this,
7 is that right?

8 A. Well, I felt uncomfortable, because we were not to be
9 involved -- you know, we were -- the Minister had no
10 role. Commissions of investigation, statutorily, are 14:35
11 independent of the minister. Evidence, unlike this
12 Tribunal, which is public, were dealt with in private.
13 And I must say I did feel uncomfortable that we were
14 now being briefed in relation to what was happening at
15 a Commission of Investigation when the Minister had no 14:35
16 role, and I felt it uncomfortable, and I'm still -- as
17 I think I said, it was the first and probably the only
18 time I received an email or any briefing in relation to
19 a matter happening before -- or a matter being
20 discussed before the Commission, and, you know, I felt 14:35
21 uncomfortable and I do think it was possibly
22 inappropriate.

23 562 Q. Well, clearly, then, I take it the Tribunal is to take
24 it from that that it made quite an impact on you if you
25 felt uncomfortable reading it and wondering why, 14:36
26 whether it was appropriate or inappropriate, is that
27 right?

28 A. I can recall -- unlike the other email, I do recall
29 receiving this one, and when I saw it, I said, yeah, I

1 remember that, and I think it was on the basis that it
2 was odd, we hadn't received emails like this before.
3 As I say, there was no follow-up required. We did not
4 receive and I can't recall receiving any other email
5 like this, so I can't recall any further discussion on 14:36
6 it.

7 563 Q. You see, I mean, the Attorney General's office had
8 contacted your Department to impart this information
9 for the benefit, so that the Minister -- so the
10 Department and the Minister would know about it, and 14:37
11 you're suggesting that, somehow, that was
12 inappropriate?

13 A. Well, the Minister had no function. The Minister
14 operated on the basis that she stayed clear of any
15 matter that was before an independent statutory body, 14:37
16 be it the courts, the DPP, the Commission. The
17 Minister would never have intervened. So I'm not
18 exactly sure why we were being briefed on a matter that
19 was before the Commission. My advice to the Minister
20 is, now having established the Commission, you must 14:37
21 allow it to do its work and there is no further role
22 for the Minister until such time as she receives the
23 final or an interim report from the Commission.

24 564 Q. Well, does it follow that this was information or
25 knowledge which you would prefer not to have been 14:37
26 informed of?

27 A. I'm still -- it's not a case of whether I'd wanted to
28 be informed or not; I just felt there was no reason for
29 us to be informed, in the sense -- in that there was no

1 follow-up. And, yeah, I probably -- well, you asked
2 the question. Yeah, I probably would have preferred if
3 they had kept us completely --

4 565 Q. In the dark?

5 A. Well, not in the dark. But respected, I suppose, that 14:38
6 the Minister needed to also act independently of all of
7 these matters.

8 566 Q. Sorry, I interrupted you there. I didn't mean to be
9 flippant. You would have preferred what? If they had
10 not sent that email? 14:38

11 A. Well, I think the Minister recognised the independence
12 of the Commission, and I'm not sure why the Minister
13 was being brought into a matter on which she had no
14 function. I just don't understand why we received the
15 email. 14:38

16 567 Q. Does it follow from all of that that you were wholly
17 unaware that there had been contact between the
18 Commissioner and Mr. O'Leary on this subject?

19 A. Yes, I wasn't aware of any of that.

20 568 Q. And I can feel the eyes of Mr. McCann behind me. And 14:39
21 that it may have been the case that the Commissioner
22 was also speaking to Mr. Waters about it on the
23 afternoon when it happened?

24 A. I've no knowledge of any of those matters, until they
25 arose here. 14:39

26 569 Q. Well, what we do know is that somebody in the Attorney
27 General's office thought it was appropriate to inform
28 your Department of this development for the information
29 of the Minister, and you're saying that, in your

1 judgment, it was preferable that that communication
2 never took place, is that right?

3 A. What I'm saying is, the Minister, having established
4 the Commission of Investigation, having been very clear
5 in all of her responses that the appropriate thing to 14:40
6 do was to establish the Commission, that the Commission
7 was independent, that our view was we respected that.
8 We at no stage sought to intervene in the Tribunal.
9 I'm not aware of any effort that was made at any stage
10 from the Minister or her advisers to try to get 14:40
11 information on what was going on. So for us to be
12 given information as to what was going on was slightly
13 odd and I would have said, you know, maybe unwelcome,
14 but we respected the independence of the Commission
15 fully and there was no role for the Minister until such 14:40
16 time as she would get a report from the Commission. We
17 were respecting its independence and allowing it to do
18 its work.

19 570 Q. I know that you probably didn't study carefully the
20 Commissions of Investigation Act, but the prohibition 14:40
21 on disclosure applies to evidence before a commission
22 or the contents of a document produced by a witness to
23 the commission. It doesn't, I have to suggest to you,
24 cover a question as broad as what line of approach
25 you're taking to a commission? 14:41

26 A. Well, I think our -- the approach we took is, we --
27 once having established the Commission of
28 Investigation, there was no attempt at any stage to
29 intervene, and indeed I can't recall any attempt to try

1 to, you know, gather information on it. We were,
2 having done it, having set it up, we were allowing it
3 to do its work. That was the approach being taken by
4 the Minister and that was the approach that we were
5 referring to. In every single response, parliamentary 14:41
6 question, reply, speech, that was our position. There
7 was no effort or attempt to intervene in the
8 Commission. So, as I say, this is the only email I've
9 seen in relation to anything before the Commission, and
10 it was slightly odd in its uniqueness. 14:42

11 MR. MCDOWELL: Thank you.

12 MR. DIGNAM: No questions, Chairman.

13
14 MR. WILLIAM LAVELLE WAS EXAMINED BY MR. MCCANN:

15 14:42
16 571 Q. MR. MCCANN: Mr. Lavelle, perhaps you could just -- I
17 mean, understandably, the Tribunal has to look at the
18 matters in its terms of reference, and only those
19 matters in its terms of reference, and therefore we're
20 only picking out emails that are relevant to the terms 14:42
21 of reference, but would you just assist the Tribunal in
22 putting these emails in May 2015 and in July 2015 into
23 context in terms of the volume of emails and the volume
24 of paperwork that may have crossed the Minister's desk,
25 please. 14:42

26 A. On any given day -- well, I can't speak on behalf of
27 what the Minister gets directly, but, as an adviser,
28 you would be copied on dozens of emails every day that
29 would be sent to the Minister - an awful lot of them

1 for information, an awful lot of them in relation to
2 submissions to the Minister where action is required.
3 Every evening, the private secretary would provide the
4 Minister with a pile, which could be -- could be a foot
5 or two tall in relation to the submissions and 14:43
6 documentations that she would bring home, and that
7 would happen on a daily basis. And I know that, often,
8 the Minister -- it would take the Minister a few days
9 to get through them all. Obviously, certain stuff
10 would be marked as "urgent" and they would be, you 14:43
11 know, dealt with as urgently. But the amount of
12 documentation which flowed, flowed from the Department
13 to the Minister, was massive, and, as advisers, we were
14 only copied on part of it. We wouldn't have been
15 copied on issues that were security-sensitive or 14:43
16 personnel issues. But there was a vast amount of
17 documentation. And in relation to the -- I just saw a
18 flash earlier on the screen of the diary for that week.
19 I mean, this was the week leading up to the marriage
20 equality referendum where the Minister was the 14:44
21 sponsoring Minister for I think a very, very
22 significant political event, public event. She was
23 very busy that week leading up to that marriage
24 equality referendum. Well, actually, I was amazed,
25 looking at the diary in relation to and remembering the 14:44
26 other events that were happening that week. On the
27 following Monday, we had a launch of the Police
28 Authority. There was a major round-table with victims'
29 groups in relation to the victims' rights legislation

1 we were working on. They were issues I would have been
2 working on as well in relation to the establishment of
3 the Policing Authority, the victims' rights
4 legislation. So they were the day-to-day stuff
5 happening on top of a referendum, on top of all of the 14:44
6 vast bulk of the correspondence that she would have
7 received in any case.

8 572 Q. Can you just help the Chairman, when you said the word
9 "submissions", that probably means something different
10 to lawyers. 14:44

11 A. Yes.

12 573 Q. What does the term "submissions" encompass, please?

13 A. A vast range of -- it could be a section of the
14 Department providing a memo to the Minister, a
15 submission to the Minister, asking for approval on an 14:45
16 approach in relation to drafting of legislation. It
17 could be a submission from a statutory agency under the
18 Department looking for sign-off in relation to an
19 annual plan. It could be recommendations to the
20 Minister in relation to approach to be taken on EU 14:45
21 legislation, on appointments. And when I say
22 "appointments", it could be appointments to State
23 boards, it could be appointments of peace
24 commissioners. And then the Minister, as an
25 office-holder in her own right, would have to sign 14:45
26 warrants in relation to various matters, many of which
27 would be security-related, and all of those, what we
28 call submissions, would go to the Minister.

29 574 Q. And perhaps I have this wrong, but is a submission

1 something that requires action on the part of --

2 A. Yeah.

3 575 Q. Action, be it an approval or a signature on the part of
4 the Minister or --

5 A. Yeah. Normally, something that is being submitted to 14:46
6 the Minister is requiring some sort of approval or
7 signature. And that is then separate, of course, to
8 large amounts of correspondence she'd be sent for just,
9 are you happy for this issue? And then a large number
10 of briefing notes, which would happen on a daily basis. 14:46

11 576 Q. And where into all that mix of things do
12 for-information-only notes sit, do you think?

13 A. Well, an information note would not -- an information
14 note, unless it was somehow marked urgent, would not be
15 top of the pile. And a note that clearly said the 14:46
16 Minister had no function, again would not be top of the
17 pile.

18 MR. MCCANN: Thank you very much.

19 MR. MARRINAN: Sorry sir, just two matters arising.

20 14:46

21 MR. WILLIAM LAVELLE WAS RE-EXAMINED BY MR. MARRINAN:

22

23 577 Q. MR. MARRINAN: In terms of the Department and the
24 Minister being swamped with emails, that doesn't really
25 arise here because this isn't an email, the one on the 14:47
26 15th May, that had you forgotten about or just simply
27 passed over your desk; this is one that you described
28 to Mr. McDowell as standing out because of its
29 uniqueness?

1 A. Mm-hmm.

2 578 Q. Is the term that you used, isn't that right?

3 A. Yes, it was unique.

4 579 Q. That actually made you feel uncomfortable, is the term
5 that you used, isn't that right? 14:47

6 A. He --

7 580 Q. That is the term that you used.

8 MR. MCCANN: If he could be allowed to answer the
9 question.

10 A. Sorry, yes. 14:47

11 581 Q. MR. MARRINAN: So, I mean, far from being just another
12 email that was one of many that would have been
13 received by yourself or the Minister in this period of
14 time, this was an email that actually stood out?

15 A. Yes, but it was also an email that was for information 14:48
16 only for which there was no function of the Minister
17 and, therefore, no follow-up. So irrespective of my
18 personal view on the email, there was no follow-up
19 necessitated by it.

20 582 Q. And in actual fact, you thought that it wasn't 14:48
21 appropriate that the email were sent to you at all?

22 A. I felt it was inappropriate that we be discussing
23 matters before the Commission.

24 583 Q. Yes.

25 A. Yeah. 14:48

26 584 Q. And therefore, it was an email that it wasn't
27 appropriate, on your view, at that time to send to the
28 Minister at all?

29 A. I did not raise it with the Minister because there was

1 no function for the Minister on it.

2 585 Q. well, you see, if you had formed that view, first of
3 all, that this was a unique email that you felt
4 uncomfortable with at the time, that you didn't
5 consider that it was appropriate that the email had 14:48
6 been sent to yourself or to the Minister, this calls
7 for your special advice, and you would have advised the
8 Minister in the first instance, don't read the email if
9 you've received it, and, if she had read it, you'd be
10 advising her don't take any action, isn't that right? 14:49

11 A. If the Minister had come to me suggesting any action on
12 foot of the email, I would have advised her no action.
13 However, I did not raise the matter with the Minister,
14 the Minister did not raise the matter with me. All I
15 can assume is that if the Minister had read it, that 14:49
16 she would come to the same conclusion, that there was
17 no follow-up.

18 586 Q. But why wouldn't you have been proactive in relation to
19 the matter?

20 A. Because -- 14:49

21 587 Q. If you had taken a view on the email and you knew that
22 the Minister had received the email, you knew that,
23 didn't you?

24 A. well, I'd seen the Minister had been copied on it. I
25 had taken a view that there was no follow-up, so my 14:49
26 proactive view was there was no follow-up required on
27 this email and, on that basis, there was no, as I say,
28 follow-up required.

29 588 Q. But why didn't -- you're there to advise the Minister.

1 why didn't you advise the Minister, don't follow up on
2 that because it's not a matter for you?

3 A. Because, as I say, we receive a large number of emails
4 every day which are for information only. You know, it
5 would not be an effective use of my time to be advising 14:50
6 the Minister in relation to those large number of
7 emails, there is no follow-up required, particularly
8 when the email itself said this is for information,
9 there's no function for the Minister. It was very
10 clear from the email there was no follow-up required, 14:50
11 and that was a view I concurred with.

12 589 Q. Was there any other email during that period of time
13 that was sent within the Department from a Department
14 official, coming through Mr. Quattrociochi but sent by
15 Mr. Flahive effectively to the Minister? Was there any 14:50
16 other one during that week that you felt uncomfortable
17 with?

18 A. Well, I've left the Department since 2016, I don't have
19 access to my emails, so I'm not sure what other emails
20 I would have received that week. 14:51

21 590 Q. Do you recall any other email that you felt
22 uncomfortable with?

23 A. This the only email I recall receiving about a matter
24 before a commission. So I don't recall any other email
25 before the Commission or any other -- so yeah. 14:51

26 591 Q. No, the question I asked you, was there any other email
27 that you felt uncomfortable with?

28 A. I can't recall receiving -- I'm just trying to think
29 now. I can't recall receiving any other email or

1 correspondence in relation to a similar matter that's
2 before a statutory, be that the courts or DPP or any --
3 I don't -- I can't recall of any email of this nature.
4 592 Q. All right. Do you recall any other email internally
5 within the Department from Mr. Flahive to the Minister 14:51
6 that you felt uncomfortable with?
7 A. Not that I can recall.
8 593 Q. Thank you very much.
9
10 THE WITNESS THEN WITHDREW 14:52
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12
13 MR. MCGUINNESS: The next witness, Chairman, is
14 Mr. Dale Sunderland.
15 CHAIRMAN: I tend to wonder, this has been explored 14:52
16 extensively, do we really need to go through the same
17 territory again? Mr. McDowell, do you need to hear
18 from Mr. Sunderland.
19 MR. MCDOWELL: Certainly, Chairman, I'm happy that this
20 witness be taken as read or led. 14:52
21 CHAIRMAN: Yes, we could take the witness as being led
22 then, could we?
23
24 MR. DALE SUNDERLAND, HAVING BEEN SWORN, WAS DIRECTLY
25 EXAMINED BY MR. MCGUINNESS AS FOLLOWS: 14:52
26 MR. MCGUINNESS: Mr. Sunderland's statement is at page
27 3479.
28 594 Q. I think, Mr. Sunderland, you're no longer working in
29 the Department of Justice and Equality, is that

1 correct?

2 A. Yeah. I'm currently a Deputy Commissioner with the
3 Office of the Data Protection Commissioner. However,
4 we are under the aegis of the Department, so
5 technically I'm still a member of staff in the 14:53
6 Department of Justice, but in terms of carrying out my
7 day-to-day functions it's an entirely independent role
8 as a statutory regulator.

9 595 Q. Yes. I think you were promoted to principal officer
10 and assigned the role of Head of Communications in 14:53
11 January of 2015?

12 A. That's correct, yes.

13 596 Q. And I think you were also then assigned the role in
14 addition to that, in April 2015, of the role of Head of
15 Corporate Secretariat? 14:53

16 A. That's correct, yes.

17 597 Q. I'm not going to ask you about file keeping or any of
18 that, but you got this email as part of the Sec Gen
19 group, isn't that right?

20 A. That's correct. In the context of my role as Head of 14:54
21 Corporate Secretariat - and you've heard already
22 evidence today from a number of my members of staff - I
23 was included in that group email address. I suppose to
24 give you context, Chairman, the purpose of my role was
25 to ensure that the information flows were working 14:54
26 effectively between the Department officials, the
27 Minister and the Secretary General's office. So I was
28 much more concerned, given the history, and the recent
29 history, of the Department and some of the

1 controversial issues that the Department dealt with to
2 ensure that those information flows were functioning
3 correctly. So in the context of this email, being
4 copied on it would have given me assurance that the
5 Minister was being briefed by a senior official on a
6 matter.

14:54

7 598 Q. And did you see anything improper being conveyed in
8 this email or anything that the Minister ought not to
9 have been told about?

10 A. In the context of my role and I suppose the ongoing
11 relentless barrage of other issues that were coming in,
12 approximately 150 emails a day into my email account, I
13 was concerned that the Minister was being briefed. So,
14 it wasn't my role to specifically interrogate or
15 analyse the content of the email, particularly in the
16 context where I had very little other contextual
17 knowledge about the matters and certainly where the
18 recommendation was that no further action was required
19 on the part of the Minister. However, that's the level
20 of engagement I imagine I would have had with that
21 email when I read it.

14:55

14:55

14:55

22 599 Q. Do you remember reading it?

23 A. I don't specifically have a memory of reading it, but
24 I'm quite sure I did read it because I always made it
25 my business to read all my emails.

14:55

26 600 Q. Yes.

27 A. I can't say when exactly I would have read that email,
28 but it would have been within -- probably within -- if
29 not in the afternoon when I got it, within the next few

1 days.

2 601 Q. And looking at it now, and as you have looked at it and
3 you've attached it to your statement, do you see
4 anything improper in it in Mr. Flahive conveying the
5 information to the Secretary General and to the 14:56
6 Minister?

7 A. I would say again in the context of my role, it wasn't
8 my place to make that. The position here was senior
9 officials were advising the Minister. To look at it
10 now would, I suppose, be looking at it in hindsight. 14:56

11 602 Q. That is what I am asking you.

12 A. I don't believe -- if very senior officials in the
13 Department made the decision that they needed to inform
14 the Minister on an information basis of a matter that
15 was happening, and if it was their judgment that that 14:56
16 was appropriate to do so in the context of my role and
17 in the context of looking at it now, that was perfectly
18 acceptable.

19 603 Q. But you were Head of Communications at the time, Head
20 of Corporate Secretariat? 14:56

21 A. Yes.

22 604 Q. You were keen to ensure that communications was going
23 properly and presumably you would be concerned if there
24 was anything improper being either sent to the
25 Secretary General or the Minister, is that right? 14:56

26 A. I wouldn't have categorised my role as that, no. I was
27 much more focused on the structural, the systemic
28 issues to ensure that the Minister was actually being
29 kept briefed. So to my mind the fact that she was

1 being briefed was an assurance to me that information
2 flows were working correctly. It wouldn't have been my
3 role, as I've said, to look that the from any other
4 angle. But just to have that assurance that it was
5 happening. And as I say, that was in the context of 14:57
6 the many other issues that I was dealing with on a
7 daily basis.

8 605 Q. Did you discuss the contents of the email with anyone?

9 A. I didn't. And no, I didn't.

10 606 Q. At any stage? 14:57

11 A. No. No. I don't believe I ever discussed it with
12 anybody.

13 607 Q. Now you were copied on the email which arose from the
14 RTÉ query in July 2015. Do you recall getting that
15 email? 14:57

16 A. I don't have a specific memory of getting it. It was
17 on a weekend. Again, as I say, it was my practice to
18 read my emails as soon as I could. It was likely the
19 following -- earlier the following week when I read it.
20 The practice was at the time that the Press Officer 14:58
21 reported to me as Head of Communications. I think a
22 previous witness has explained to the Tribunal how that
23 works. There was an on-duty Department Press Officer
24 who would have been on hand to deal with any matters
25 that arose. This email was again informing the 14:58
26 Minister of a query that had arisen with the Garda
27 Press Office and advising her of it. It was copied to
28 her special advisers who normally would have been the
29 people who would liaise directly with the Minister on

1 any press matters that may have arisen. So again, from
2 my purposes it was to give me an assurance that
3 information flows were functioning, that the Minister
4 -- and I was satisfied the Minister was advised, her
5 special advisers were advised of the matter, and if 14:58
6 anything arose from that it would have been dealt
7 directly by them in their own right or potentially
8 through some administrative support by the on-duty
9 Press Officer.

10 608 Q. And being concerned with information flows, obviously 14:59
11 Mr. Flahive sent the original email of the 15th May,
12 there are ten recipients of it, and there are a number
13 of recipients of this other email, would you be
14 concerned about an information flow that didn't get to
15 the Tribunal in terms of did you recall this when the 14:59
16 Tribunal was established?

17 A. I didn't. I had left the -- since May 2016 I have been
18 in a different role outside of the Department. It
19 didn't strike me -- it wasn't until those emails were
20 actually published and put into the public domain that 14:59
21 I actually realised that I was copied on them. The
22 position, from my perspective in the role I held, was
23 the responsibility for file management lay with the
24 applicable line division. I suppose it's important
25 context to make, that many matters were culminating at 14:59
26 the top of the Department, the Secretary General and
27 the Minister, and therefore the best practice was for
28 the line divisions to ensure that all matters that
29 needed to be kept on file or appropriately recorded,

1 that responsibility lay with them.

2 609 Q. And as Head of Corporate Secretariat and Information at
3 the time, would you be concerned if there was no record
4 made of a conversation between the Deputy Secretary
5 General and the Commissioner about this issue in May 15:00
6 '15?

7 A. Em, again I suppose just to be clear, my focus was much
8 more on systems and processes and, for example, we were
9 focusing on try to introduce a new e-submissions
10 programme, better correspondence tracking, I wasn't at 15:00
11 that time looking specifically at how conversations
12 were recorded. That wasn't really a matter that I had
13 on my radar. Or, I was much more focused on those
14 systemic structural issues, arising from the previous
15 controversies, the Tolan report -- and they were my 15:01
16 priority, and that is what I was focusing my energy and
17 attentions on.

18 610 Q. Okay. Is there any data protection training provided
19 to special advisers at the time?

20 A. I'm not aware of any specific training. But all 15:01
21 special advisers should be very well aware of their
22 responsibilities in holding that position.

23 611 Q. Yes. Were you ever informed by anyone that there was
24 any trouble with the email of the 15th May that we've
25 looked at? 15:01

26 A. No. I have no other recollection or awareness of that
27 email, except from having received it. As I say I have
28 very little contextual -- no other contextual knowledge
29 really other than the matters set out in the email.

1 612 Q. Thank you.

2

3 MR. MCDOWELL: No questions.

4 MR. MCCANN: No questions.

5 MR. DIGNAM: No questions.

15:01

6 A. Thank you.

7

8 THE WITNESS THEN WITHDREW

9

10

15:01

11 MR. MCGUINNESS: Chairman, that concludes the witnesses
12 that were scheduled for today. The next witnesses are
13 scheduled for tomorrow.

14 CHAIRMAN: Right.

15 MR. MCDOWELL: Judge, just before, I don't want to
16 delay you, there's one thing I do think you probably
17 would like me to ask you, and that is: You may
18 recall --

15:02

19 CHAIRMAN: I hope this is nice, Mr. McDowell.

20 MR. MCDOWELL: That's a change perhaps. You may recall
21 that you indicated that at the end of this
22 submission -- sorry, this module you'd require
23 submissions from the parties. And it looks, from
24 today, that we're on schedule now with our witnesses,
25 or close to it, and that we will be on schedule and I
26 would just like some -- sorry? And I just would like
27 some guidance as to when, what day you would expect us
28 to make submissions to you and in what form, because we
29 will need a couple of days to do it.

15:02

1 CHAIRMAN: Well, there's the weekend, Mr. McDowell.
2 MR. MCDOWELL: Yes. I appreciate there's the weekend.
3 CHAIRMAN: Everyone else here is apparently working at
4 the weekend.
5 MR. MCDOWELL: What I am really asking though, Judge, 15:03
6 is whether I have to work the weekend and be ready on
7 Monday or whether I'm going to get Tuesday.
8 CHAIRMAN: Let's be half reasonable about it, even if
9 we can't be reasonable. Mr. McGuinness, when do you
10 think we're going to finish? 15:03
11 MR. MCGUINNESS: I suppose I should just point out for
12 completeness, that the evidence of Mr. Dunne has
13 been -- was postponed from I think the first day of the
14 Tribunal.
15 CHAIRMAN: Yes. 15:03
16 MR. MCGUINNESS: And he won't be available until I
17 think perhaps the end of next week, but we have to
18 finalise that. So that's just one point of
19 information.
20 CHAIRMAN: Oh right. There is that. 15:03
21 MR. MCDOWELL: Chairman, I have homework to do
22 obviously on this and on the Tusla thing.
23 CHAIRMAN: I know that.
24 MR. MCDOWELL: I do want to have an idea of what is
25 expected of me. 15:03
26 CHAIRMAN: I appreciate that. So, we can't call
27 Mr. Dunne until when? And are we calling Mr. Barrett
28 the same day?
29 MR. MCGUINNESS: No, no. We're calling Mr. Barrett on

1 Thursday morning.

2 CHAIRMAN: Yes. Tomorrow is wednesday.

3 MR. MCGUINNESS: Tomorrow is wednesday. I'm not sure
4 whether there may or may not be any possible
5 consideration of any recall of any other witnesses. 15:04

6 CHAIRMAN: It doesn't look likely at this stage,
7 Mr. McGuinness, does it?

8 MR. MCGUINNESS: It doesn't look likely. We will
9 confirm the position with Mr. Dunne, if we can, by the
10 morning. 15:04

11 CHAIRMAN: Yes, when he can be here. Look, I think
12 provisionally this: At least break for a day.

13 MR. MCDOWELL: Yes.

14 CHAIRMAN: And if there is a weekend included in it,
15 there is a weekend. But it doesn't look likely because 15:04
16 Mr. Dunne is coming wednesday or Thursday next week.

17 MR. MCDOWELL: All I'm really asking, Chairman, is: Do
18 I have to sort of roll up my sleeves for the weekend?

19 CHAIRMAN: No, you don't. No. What is really actually
20 important is that I should know the position that the 15:04
21 parties are adopting on things.

22 MR. MCDOWELL: Yes.

23 CHAIRMAN: I mean, what is important, what position are
24 the parties adopting on things.

25 MR. MCDOWELL: Yes. 15:04

26 CHAIRMAN: That is what is actually really important.
27 I have heard all the evidence.

28 MR. MCDOWELL: Yes.

29 CHAIRMAN: I know in the Special Criminal Court the

1 prosecution don't make submissions in closing, but this
2 is not quite the same thing obviously.

3 MR. MCDOWELL: No.

4 CHAIRMAN: As to the form, well, I mean, ideally all I
5 really to know is, are people saying the following: 15:05
6 For instance, the special advisers have nothing to do
7 with the matter and acted perfectly properly.

8 MR. MCDOWELL: Yes.

9 CHAIRMAN: If that is -- and if someone is saying
10 something different to say that well then, I think they 15:05
11 need to tell me why.

12 MR. MCDOWELL: what you're indicating is that you want
13 a clear indication of what points are being made and
14 what points are not being made.

15 CHAIRMAN: well, it would really help very much -- 15:05
16 MR. MCDOWELL: Yes.

17 CHAIRMAN: -- you know, because otherwise, where am I?
18 I am floundering around.

19 MR. MCDOWELL: I appreciate that.

20 CHAIRMAN: I can get the drift, appreciating this is an 15:05
21 inquiry.

22 MR. MCDOWELL: I think I understand enough for the time
23 being, Judge.

24 CHAIRMAN: And vis-à-vis written submissions,
25 Mr. McDowell, you'll appreciate we're now at 5,000 15:06
26 documents.

27 MR. MCDOWELL: well then, I will do it orally, I'm
28 quite happy to do that.

29 CHAIRMAN: Yes. well, if you want to have a speaking

1 note or if you want to have notes like the following
2 points are important -- I'm not just saying that to you
3 I'm saying that everybody.
4 MR. MCDOWELL: I might do speaking notes, orally,
5 Judge. 15:06
6 CHAIRMAN: That's fine. But I take it in better if I
7 heard it.
8 MR. MCDOWELL: Yes.
9 CHAIRMAN: And then we will have at least 24 hours.
10 MR. MEEHAN: And just, sir, for total clarity, that 24 15:06
11 hours will commence after the conclusion of Mr. Dunne's
12 evidence at the earliest? There will be no submissions
13 expected before that?
14 CHAIRMAN: well, I feel now I'm being pinned down.
15 MR. MEEHAN: No, that is not my intention. It's to 15:06
16 avoid Mr. McCann pinning me down, is all I'm worried
17 about
18 CHAIRMAN: well, if that is all you have to worry
19 about. All right. That's it. And then, there was a
20 public notice put up which did say that if anyone 15:06
21 wanted to call anybody else in relation to the Tulsa
22 part of things that they should tell us by a particular
23 date. Nobody did. There's no correspondence on that
24 to say that we need to call anything extra on anything.
25 I'm taking that there's no information here that anyone 15:07
26 wants to recall anybody or call anybody extra on
27 things. I mean, we have to come to a stop at some
28 stage.
29 MR. MCGUINNESS: Chairman, we just have to confirm

1 whether all relevant materials have been circulated
2 that might be relevant to that issue and we will check
3 on that.

4 CHAIRMAN: Yes. Well, there was some small things that
5 we got in afterwards that didn't seem to me to be 15:07
6 significant. Now, if people want to make them
7 significant, I mean that's different. But if it was,
8 for instance, any of the parties who sent those things
9 in we should have heard from them up to this date, in
10 fact two weeks ago was the cut-off date. If they want 15:07
11 to ignore the notices, well that is their problem. And
12 then once we finish this, what I would like people
13 perhaps to tell me is how long you want to be and it's
14 not rigid, but I just want to get an indication so that
15 we know we're going to finish it within the day. I 15:08
16 imagine with a thing like this we will definitely
17 finish it within the day and then I can go away for a
18 time. And then we have to get -- we have most of the
19 papers ready for the next thing, but there is going to
20 be a break of two weeks to get them to people, to get 15:08
21 them to have a chance to do it and then we hope to get
22 stuck in straightaway. That's the plan. Like all
23 plans there may be flaws.

24 MR. McDOWELL: Chairman, I just had this nightmare that
25 it was this weekend I was expected to produce 15:08
26 everything and that is all.

27 CHAIRMAN: No, but even if it was, Mr. McDowell --

28 MR. McDOWELL: I would do it.

29 CHAIRMAN: But it isn't. No, but even if it was,

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Mr. McDowell, I mean -- well, it's not going to require very much.

MR. MCDOWELL: Thank you, Chairman.

CHAIRMAN: So, immediately after those submissions finish, then the next day we will hear any submissions that there are on the Tusla module. All right. So thank you. 15:09

THE HEARING THEN ADJOURNED UNTIL WEDNESDAY, 31ST
JANUARY 2018 AT 10:00AM

15:09

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