



**Report by the Commission (in accordance
with Section 103, Garda Síochána Act, 2005)
following the death of Mr. Derek O'Toole on
March 4th 2007 and subsequent complaints
and investigation under Section 98, Garda
Síochána Act, 2005**

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1. On January 17th 2008 the Commission directed a Senior Investigation Officer to investigate the alleged leaking of official material by a garda or gardaí, intended to besmirch or undermine the reputation of the late Mr. Derek O'Toole.
2. This followed the lodging of complaints and inquiries on November 22nd 2007 with the Commission by the parents of the late Mr. Derek O'Toole and by Senator Joanna Tuffy (now T.D.)
3. The Commission has received the investigations report in regard to the above matters and, in accordance with the recommendation of the Senior Investigation Officer, has directed that the investigation be closed in compliance with Section 101(7) of the Garda Síochána Act 2005.
4. In the first instance, the Commission wishes to extend its sympathy to the family of the late Mr. Derek O'Toole. The Commission is conscious that in this instance, the burden of bereavement has been greatly added to by the communication and publication of false information concerning the character of the deceased, as well as other attendant publicity and speculation.
5. The present investigation report is concerned solely with the communication and publication of such false information.

6. The Commission is satisfied that its present investigation has been proportionate, thorough and as complete as possible in the circumstances.
7. Following the appointment of a Senior Investigation Officer to take charge of the case, an investigation strategy was agreed with the Director of Investigations. The following areas of investigation were agreed:
 - Family Liaison
 - Formulation of a PULSE enquiry strategy.
 - Enquiries with the Garda Press Office.
 - A review of Media publications.
 - Notices to Garda members.
 - Newspaper editor and journalist enquiries.
8. The Commission considered a number of other aspects of the incident that caused the death of Mr. Derek O'Toole and the handling of that incident by the gardaí. Some of these matters had been publicised in the news media and some were also the subject of complaints by Mr. and Mrs O'Toole and Senator Tuffy.
9. The Commission is satisfied that these other matters complained of did not constitute allegations of any conduct by gardaí that might be an offence or a breach of discipline. Accordingly, these complaints were determined not to be admissible.
10. The Commission is persuaded, having considered the Senior Investigation Officer's report, that the most probable source of the false information was a member or members of the Garda Síochána. It notes a witness statement by the newspaper reporter who first published the information, that the false publication concerning the character and alleged and untrue criminal record of Mr. Derek O'Toole, was based on information supplied to him by a member or members of the Garda Síochána.

11. The Commission is satisfied from the investigation that the false information published in regard to Mr. Derek O'Toole's character and alleged criminal record was not communicated by the Garda Press Office or by any other authorised Garda source.
12. The Commission regrets that its investigation has been unable to identify any garda or gardaí who supplied this false information.
13. The newspaper reporter referred to at 10 (above) has invoked the guidelines of the National Union of Journalists in declining to reveal the identity of his sources to Garda Síochána Ombudsman Commission (GSOC) investigators. The Commission notes this position. Nonetheless, without such identification, the possibilities of a successful investigation were very greatly diminished.
14. Consideration was given to the possible use of Section 64 (2) Criminal Justice (Terrorist Offences) Act, 2005. Inquiries under this Act might have enabled GSOC investigators to establish evidence of telephone communications by relevant parties over the time period in question.
15. However, as the misconduct alleged in the admissible complaint would amount to a disciplinary breach, rather than to a criminal offence specified in the Act, this legislation was not employed in this instance.
16. The Commission notes that the Senior Investigation Officer's investigation has shown that in the period of 54 hours after the incident that caused the death of Mr. Derek O'Toole, a total of 187 persons checked the PULSE Garda computer system in regard to the deceased. One garda also checked the system in regard to another member of the deceased's family.

17. The Commission has been advised that regular checking of PULSE in regard to current incidents, by gardaí on duty or about to go on duty, is regarded within the force as desirable and as good policing practice. Nonetheless, the Commission is sceptical as to whether the volume of inquiries made in this instance reflects in every case nothing more than legitimate and zealous police work
18. The garda who checked details of another member of the deceased's family was interviewed by GSOC officers. The member stated that he/she had no specific recollection of making this check but acknowledged that the check had been made in the member's name. The member denied knowing the newspaper reporter referred to at 10 (above) and also denied passing any information to this reporter.
19. There is no evidential link between this PULSE check (referred to at 18 above) and the publication of false information concerning Mr. Derek O'Toole. The Commission believes that the facts disclosed merit comment.
20. The Garda Síochána Code (Section 32.2) states that when a member is logged on to a system employing his or her 'UserId' and password that member is responsible for all electronic transactions during that period.
21. The Commission has been given to understand however that PULSE is sometimes accessed by gardaí employing the UserId and password of a previous user who has not logged off.
22. If an electronic information system is accessed by persons using other individuals' authorisation, there can be no accurate audit-trail of usage. This is particularly unacceptable in a law-enforcement environment and carries the potential for significant abuse.

23. The Commission will not speculate on the motivation that might cause a garda or gardaí to convey false information to the news media in the circumstances that are disclosed here. It considers any such practice to be reprehensible, unacceptable and in clear breach of a garda's duty.
24. The Commission recommends to the Commissioner of the Garda Síochána that supervisory ranks should regularly monitor the use of PULSE to ensure that members adhere to their legal and disciplinary obligations in regard to its proper use.
25. The Commission also recommends that suitable measures be put in place by the Garda authorities to ensure that audit-trails of the usage of PULSE and any other official information systems can always be accurate and verifiable.

