



STATUTORY INSTRUMENTS.

S.I. No. 168 of 2007

GARDA SÍOCHÁNA (CONFIDENTIAL REPORTING OF
CORRUPTION OR MALPRACTICE) REGULATIONS 2007

(Prn. A7/0831)

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I, MICHAEL MCDOWELL, Minister for Justice, Equality and Law Reform, having consulted the Commissioner of the Garda Síochána, the Garda Síochána Ombudsman Commission and the Garda Síochána Inspectorate and with the approval of the Government, hereby, in exercise of the powers conferred on me by section 124 of the Garda Síochána Act 2005 (No. 20 of 2005), make the following regulations:

Preliminary

1. These regulations may be cited as the Garda Síochána (Confidential Reporting of Corruption or Malpractice) Regulations 2007.
2. These regulations come into operation on 30th April 2007.

Definitions

3. In these regulations—

“Act” means the Garda Síochána Act 2005;

“charter” means a charter established under Regulation 4;

“civilian” means a member of the civilian staff of the Garda Síochána;

“Commissioner” means—

(a) the Commissioner of the Garda Síochána, or

(b) a deputy commissioner, or an assistant commissioner, authorised by the Minister under section 32 of the Act to perform the functions of the Commissioner;

“confidential recipient” means a person appointed under Regulation 6 to receive confidential reports;

“confidential report” means a report made in accordance with Regulation 5;

“confidential reporter” means a member or civilian who makes a confidential report;

“member” means—

(a) a member of the Garda Síochána, or

*Notice of the making of this Statutory Instrument was published in
“Iris Oifigiúil” of 27th April, 2007.*

- (b) a member of the Police Service of Northern Ireland appointed to a rank in the Garda Síochána under section 52 or 53 of the Act.

Establishment of charter

4. (1) The Commissioner shall, after consulting the Garda Síochána Ombudsman Commission and Garda Síochána Inspectorate and with the approval of the Minister, establish a charter containing the guidelines and mechanisms, provided in Regulations 5 to 9 of these regulations, to enable members or civilians to report in confidence allegations of corruption or malpractice within the Garda Síochána.

(2) The Commissioner may include in the charter supplementary, incidental or consequential provisions, including provisions relating to procedures for facilitating the confidential reporting of such allegations, for the purpose of enabling the charter to have full effect.

(3) Nothing in these regulations prevents the Commissioner from making provision otherwise than in the charter in relation to non-confidential allegations of any such corruption or malpractice.

Confidential report

5. (1) A member or civilian who has reasonable grounds for believing that a member of the Garda Síochána or civilian is engaged, has been engaged or is about to engage in corruption or malpractice may report in confidence to a confidential recipient any information that he or she has concerning the corruption or malpractice.

(2) A confidential report must be made in good faith for the purpose of exposing the alleged corruption or malpractice.

(3) The confidential reporter shall disclose to the confidential recipient any document, record or information in his or her possession or control which relates to the alleged corruption or malpractice.

(4) Information disclosed under paragraph (3) shall be in such form as the confidential recipient may require.

(5) When making a confidential report, the confidential reporter shall indicate that it is being made under the charter.

(6) Confidential reports may not be made anonymously.

Confidential recipients

6. (1) The Minister shall, after consultation with the Commissioner, the Ombudsman Commission, the Garda Síochána Inspectorate, the Garda Síochána representative associations and the trade unions or staff associations recognised as representing civilians, appoint a person or persons as a confidential recipient or recipients.

(2) A person so appointed shall be a judge, former judge, barrister or solicitor or a serving or former senior civil or public servant.

(3) Such a person shall be appointed for a period of 3 years and may be reappointed.

(4) Any such appointment is subject to such terms and conditions as the Minister may determine with the consent of the Minister for Finance.

(5) A confidential recipient may be assisted in the performance of his or her functions by members of his or her staff who are civil servants.

(6) Such members may receive confidential reports and, at the direction of the confidential recipient, pass them to other persons or bodies in accordance with these regulations.

(7) In doing so, they shall take all practicable steps to ensure that the identity of the confidential reporter concerned is not disclosed except as provided in these regulations.

(8) The Commissioner may, after consulting the Ombudsman Commission, the Garda Síochána Inspectorate, the Garda Síochána representative associations and the said trade unions or staff associations, appoint a member or civilian, or members or civilians, as a confidential recipient or recipients.

Transmission of confidential reports

7. (1) Subject to paragraph (2), a confidential recipient shall as soon as practicable transmit each confidential report to the Commissioner.

(2) Where a confidential report contains an allegation of corruption or malpractice on the part of the Commissioner, the confidential recipient shall transmit the report to the Minister.

(3) Where a confidential report contains an allegation of corruption or malpractice on the part of a deputy commissioner or an assistant commissioner, the confidential recipient shall notify the Minister that the report has been transmitted to the Commissioner.

Investigation of confidential reports

8. (1) On receipt of a confidential report, the Commissioner shall—

(a) examine the report and, unless he or she has reason to believe that the allegation contained in it was not made in good faith or is false, frivolous or vexatious, investigate the allegation or cause it to be investigated, and

(b) take any other action that is necessary as a result of the investigation.

(2) On receipt of such a report, the Minister, unless he or she has reason to believe that the allegation contained in it was not made in good faith or is false, frivolous or vexatious, shall cause the allegation to be investigated or take such other action as he or she considers appropriate in the circumstances.

(3) In examining or investigating a confidential report or notifying the Ombudsman Commission or the Garda Síochána Inspectorate of a report or taking any other action in relation to it, the Minister or Commissioner, as the case may be, and any person acting on his or her behalf shall take all practicable steps to ensure that the identity of the confidential reporter is not disclosed.

Protection of confidential reporter's identity

9. (1) A confidential recipient may disclose the identity of a confidential reporter to the Minister or Garda Commissioner only if each one of the following provisions is complied with:

- (a) the Minister or Commissioner, as the case may be—
 - (i) must believe that knowledge of the identity of the confidential reporter is essential for the proper examination of the confidential report or investigation of the alleged corruption or malpractice concerned, and
 - (ii) must inform the confidential recipient of his or her reasons for that belief;
- (b) the confidential recipient must be satisfied that the Minister or Commissioner, before informing the recipient under subparagraph (a)(ii), has taken all practicable steps to advance the examination or investigation of the allegation;
- (c) the confidential recipient must have informed the confidential reporter of the situation and considered the reporter's views regarding disclosure of his or her identity;
- (d) the confidential recipient must further be satisfied that, having regard to all the circumstances, the disclosure is essential for the proper examination of the confidential report or investigation of the allegation.

(2) The identity of a confidential reporter may be disclosed by the Minister or Commissioner to an officer of the Minister, a member or civilian, only where the Minister or Commissioner believes that disclosure is essential for the proper examination of the confidential report or investigation of the corruption or malpractice concerned.

(3) Any officer of the Minister or member or civilian to whom the identity of a confidential reporter has been disclosed under paragraph (2) may not disclose the identity to any other person without the written authorisation of the Minister or Commissioner, as the case may be.

(4) The Minister or Commissioner may give such an authorisation only where he or she believes that it is essential for the proper examination of the confidential report or investigation of the alleged corruption or malpractice.

(5) Unless otherwise authorised under this regulation, a confidential recipient, the Minister, an officer of the Minister, a member, or a civilian, to whom the identity of a confidential reporter has been disclosed may disclose the identity only with the written consent of the confidential reporter or under an order of a court.

Notification of confidential reports to Ombudsman Commission

10. (1) The Commissioner shall, as soon as practicable and in accordance with arrangements agreed with the Ombudsman Commission—

- (a) notify the chairperson of the Commission of each confidential report received by him or her and of the action that he or she proposes to take or is taking in relation to it, and
- (b) give the chairperson any further information (except the identity of the confidential reporter) that he or she may request in relation to the matter.

(2) In considering a confidential report or taking any action in relation to it, the Ombudsman Commission and any person acting in its behalf shall take all practicable steps to ensure that the identity of the confidential reporter is not disclosed.

Notification of certain confidential reports to Garda Síochána Inspectorate

11. (1) Subject to the consent of the confidential reporter, the Commissioner shall notify the Chief Inspector of the Garda Síochána Inspectorate of such confidential reports as are provided for in arrangements agreed between the Commissioner and the Chief Inspector in that behalf.

(2) In considering a confidential report or taking any action in relation to it, the Chief Inspector and any person acting on his or her behalf shall take all practicable steps to ensure that the identity of the confidential reporter is not disclosed.

Feedback

12. The charter shall provide for mechanisms by which information regarding actions taken on the basis of a confidential report may be made available to a confidential recipient for communication to a confidential reporter.

Dissemination of charter

13. The Commissioner shall ensure that the charter is brought to the attention of every member and civilian.

Disciplinary action

14. (1) A member or civilian who in good faith reports an allegation of corruption or malpractice within the Garda Síochána shall not be subjected to disciplinary action for so doing.

(2) Any harassment or intimidation of such a person shall be dealt with in accordance with the law and the relevant disciplinary regulations or disciplinary code.

(3) Making a false allegation of corruption or malpractice otherwise than in good faith shall be dealt with in accordance with the law and such regulations or code.

Annual report

15. (1) Not later than 4 months after the end of each year the Commissioner shall report in writing to the Minister in relation to any confidential reports made during that year and the action taken in relation to them.

(2) In so reporting, the Commissioner shall take all practicable steps to ensure that the identities of the confidential reporters are not disclosed.

The Government hereby approve of the foregoing regulations.



GIVEN under the Official Seal of the Government,
24 April 2007

BERTIE AHERN.
Taoiseach.



GIVEN under my Official Seal,
24 April 2007

MICHAEL MCDOWELL
Minister for Justice, Equality and Law Reform.

EXPLANATORY NOTE

(This note is not part of the Instrument and does not purport to be a legal interpretation).

These Regulations provide for the establishment of a charter containing guidelines and mechanisms to provide for the confidential reporting of allegations of corruption or malpractice within the Garda Síochána.

BAILE ÁTHA CLIATH
ARNA FHOILSIÚ AG OIFIG AN tSOLÁTHAIR
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