



**Interception of Postal Packets and Telecommunications Messages
(Regulation) Act 1993, Section 8(1) as substituted by the
Communications (Retention of Data) Act 2011, Section 11**

Report to the Taoiseach

Statement pursuant to Section 8(7) of the Act

This is to certify that no matter has been excluded from the attached report, dated 23 June 2020, in pursuance of subsection 8(8) of the Interception of Postal Packets and Telecommunications Messages (Regulation) Act 1993.

A handwritten signature in black ink, which appears to read "Andrew Murray".

Assistant Secretary General
to the Government

1 July 2020

**Report of the Designated Judge Made Pursuant to Section 8(2) of the
Interception of Postal Packets and Telecommunications Messages (Regulation)
Act, 1993 and Section 12(1)(c) of the Communications (Retention of Data) Act,**

2011

1. I am the designated judge for the purposes of the above Acts, and this report is furnished in the exercise of my statutory duties of keeping the operation of the legalisation under review and ascertaining whether its provisions are being complied with. I report to An Taoiseach, pursuant to s. 8(2) of the Interception of Postal Packets and Telecommunications Messages (Regulation) Act, 1993 (*“the 1993 Act”*), as amended by the Communications (Retention of Data) Act, 2011 (*“the 2011 Act”*). I refer to my report from last year, dated 24th June, 2019 (note: in the report of 24th June, 2019, there is a typographical error in that the date I attended the locations listed was 21st June, 2019 not 2018 as stated).

2. On 19th June, 2020, I attended at the following locations: -

- (i) Garda Headquarters, Phoenix Park, Dublin 8;
- (ii) Permanent Defence Forces, McKee Barracks, Blackhorse Avenue, Dublin 7; and
- (iii) The Department of Justice and Equality, 51 St. Stephen’s Green, Dublin 2.

3. The Garda Síochána Ombudsman Commission (by letter dated 16th June, 2020), the Revenue Commissioners (by letter dated 16th June, 2020) and the Competition and Consumer Protection Commission (by letter dated 17th June, 2020) informed me that they had not availed of the provisions of either the 1993 Act or the 2011 Act in the past year.

4. At each location, I met with the officers and personnel responsible for availing of and operating the provisions of the 1993 Act and the 2011 Act. I interviewed the officers and personnel involved to ascertain the various steps, procedures and safeguards involved prior to making applications under the said Acts. Each of the organisations referred to at para. 2 above have internal procedures which must be followed prior to making an application under the said Acts. I am satisfied that the officers and personnel involved are fully conversant with and have due regard to, the privacy and other rights of those whose communications (including postal communications) are being intercepted.

5. Any documentation and records which I requested to inspect were furnished to me and any questions or issues which I raised were answered to my satisfaction. I wish to record that all the officers and personnel whom I met were entirely cooperative with me in the exercise of my functions.

6. I am satisfied that the relevant officers and personnel responsible for the exercise of the powers under the 1993 Act and the 2011 Act understand the nature and purpose of the functions which they are entrusted with and that the powers under the said Acts are exercised proportionately and responsibly.

7. On enquiry, there does not appear to have been any significant variation in the use of these powers in the last twelve months.

8. Section 8(4) of the 1993 Act provides that if I consider it to be desirable, I may communicate with the Taoiseach or the Minister for Justice and Equality on any matter concerning interceptions. Under s. 12(1)(c) of the 2011 Act, in my report I may include such matters as I consider appropriate. There are two matters of importance which I wish to comment on: -

- (i) There is an ongoing issue concerning the legality of s. 6(1)(a) of the 2011 Act, which provides for the disclosure of data by a service provider required for "*the prevention, detection, investigation or prosecution of a serious offence*". The matter has been referred to the European Court of Justice by the Supreme Court. As matters stand, this important provision is not being relied upon, which is to the detriment of criminal investigations; and
- (ii) There is a very serious concern that the 1993 Act is now out of date and that new legislation is urgently required to be enacted to provide for the many technological advances that have taken place in the last 27 years. At the time of the passing of the 1993 Act, the internet was in its infancy. Devices which enable the transfer of data in encrypted form are now universally available. New legislation to provide for the interception of such encrypted data for the purposes of criminal investigation or in the interests of the security of the State has to be given priority. Such legislation will have to provide the necessary safeguards for those involved. If such legislation is not enacted, it can be envisaged that the 1993 Act will become obsolete, thus hampering criminal investigations and compromising the security of the State.

The above issues should be addressed as a matter of urgency.

Mr. Justice Charles Meenan

23rd June, 2020