

Mr John McGuinness TD
Chairman
Committee of Public Accounts
Dáil Éireann

11 November 2014

By email

Dear Sir,

Further to articles published in the Irish Times on 8 November 2014 including "Official who made tax evasion claims investigated Ansbacher accounts" and "Tax evasion at heart of allegations by whistleblower" by Martin Wall and Fiach Kelly, I write to draw your attention to our concerns about the apparent leak of the civil servant's identity by someone entrusted with those details. I also write with a view to reminding members of the Public Accounts Committee and Dáil Éireann of their duties under the Act and have copied the Acting Clerk of Dáil Éireann, the Acting Parliamentary Legal Adviser and the Chair of the Dáil Committee on Members' Interests to this end.

It was reported in the second above-named article that members of PAC "received a copy of what may well be a 'protected disclosure' for the purposes of the Protected Disclosure Act 2014" and we note that the PAC met with the civil servant in private. As you will be aware, section 16 of the Act prohibits the recipient of a protected disclosure from revealing any information that might identify the person who made the protected disclosure. A breach of section 16 is actionable. Section 13 also provides an action of tort where harm is suffered as a result of a protected disclosure having been made.

In these circumstances, the members (and any other person to whom the dossier was referred in the performance of their duties) were under a legal obligation not to disclose the identity of the official who handed the dossier to them. It would appear, however, that a member, staff member of Dáil Éireann, or an associate thereof leaked the civil servant's name and position to the Irish Times, along with the dossier. We presume that this was done without prior notice to the civil servant and without his consent.

If this is the case, then there has been an apparent breach of section 16 of the Act and we would not consider that any of the exceptions set out in section 16(2) of the Act justified the disclosure of the official's identity. In addition, disclosure of the whistleblower's identity may also have breached the fair notice provisions of data protection legislation.

As well as the legal issues arising, we consider it important to point out the potential consequences for reporting persons whose confidence is betrayed. During the course of providing support to witnesses and whistleblowers through our Speak Up helpline, we have observed a number of ways in which they may be 'got at'. One of the most common tactics used by employers or investigators is to release the name of those making confidential reports to third parties without prior authorisation. This is done for a number of reasons, including to divert

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attention away from the subject of an investigation by focussing on the person behind the report; to undermine the credibility of a source (especially where some details of their report turn out to be untrue); or to alert colleagues to a threat in their midst – leading to vicarious reprisal.

We have no reason to know what the consequences will be for this individual. However, the mere fact that someone has made a confidential report to a member of the Oireachtas, only to find his name on the front page of a national newspaper two days later, could have a chilling effect on others who might consider reporting to a member of the Oireachtas in future.

We have written to the Editor of the Irish Times in similar terms.

Yours faithfully,



John Devitt
Chief Executive

Cc: Mr Thomas Pringle TD, Chair, Select Committee on Members' Interests of Dáil Éireann
Mr Peter Finnegan, Acting Clerk of Dáil Éireann
Ms Ramona Quinn, Acting Parliamentary Legal Advisor
Ms Bríd Dunne, Clerk, Committee on Members' Interests