

**THE HIGH COURT**

**[2014 No. 7727P]**

**BETWEEN**

**FRANCIS McGUINNESS**

**PLAINTIFF**

**and**

**THE COMMISSIONER OF AN GARDA SÍOCHÁNA,**

**IRELAND and THE ATTORNEY GENERAL**

**DEFENDANTS**

**RULING of Mr. Justice David Keane delivered on the 28th of October 2016**

**Introduction**

1. On the 7th October last, I gave judgment in the present application, in which the plaintiff seeks an order compelling the Garda Commissioner to furnish him with a copy of the sworn information grounding the successful application that was made to the District Court on the 21st August 2014 for a warrant to search the plaintiff's premises at Hillcrest, Cloghran, County Dublin.

2. In opposition to that application, the State defendants assert a claim of privilege against the inspection of that document, either in whole or in significant part, as covered by informant privilege or the public interest privilege associated with the investigation of crime, or both.

3. Having considered the evidence in, and the legal submissions of the parties on, the application, and bearing in mind the obligation of the Court to decide which interest should prevail where a conflict arises between the public interest in, on the one hand, the production of evidence and, on the other, the investigation of crime and the protection of informants, I determined to examine the text of the sworn information at issue in order to identify and weigh the competing interests in compelling or withholding its production.

4. I have now done so.

**Conclusions**

5. I am satisfied that the document concerned is material to an ongoing criminal investigation, namely the investigation described in my earlier judgment.

6. I am further satisfied that there is a risk that the range and detail of the information contained in the document at issue could result in the identification of a confidential informant or informants.

7. Accordingly, I am satisfied that both public interest privilege and informant privilege are properly invoked.

8. I have considered the question of the possible redaction of the document to disclose so much of it as does not give rise to the risk that an informant or informants may be identified thereby, but I have decided against redaction for two reasons. First, it seems to me that the entire document is covered by the dictum of Denham C.J. in *McLaughlin v Aviva Insurance (Europe) plc* [2012] 1 ILRM 487 at 492 that 'in general, documents material to an ongoing criminal investigation by An Garda Síochána should not be required to be disclosed in civil proceedings.'

9. Second, it seems to me that, even if it were appropriate instead to disclose some part of a document material to an ongoing criminal investigation for the purpose of the present proceedings, the practical difficulties in attempting to calibrate the redaction of the document so as to disclose some meaningful part of it without inadvertently undermining or destroying the privilege are simply too great. In that regard, it must be remembered that this Court – unlike, in certain circumstances, a court of trial – has only limited information available to it that might enable it to assess risk in context. Further, it cannot be forgotten that the risk invoked in this case is not merely the potential compromise of an ongoing criminal investigation but also a potential risk to the life of an informant (or informants) and, hence, cannot be lightly weighed.

**Decision**

10. For the reasons I have stated, I must refuse the plaintiff's application.