

Standards In Public Office Commission
6 Earlsfort Terrace
Dublin 2

By email

2 November 2020

Dear Sir/Madam,

I am writing to request an investigation by the Standards in Public Office Commission into breaches of the 'Code of Conduct for Office Holders' and the 'Code of Conduct for Members of Dáil Éireann and Seanad Éireann' by the Tánaiste, Leo Varadkar.

Relevant provisions and legislation

Section 1.5 of that 'Code of Conduct', entitled "Highest ethical standards to be applied at all times" states:

"Office holders in particular should ... respect confidences entrusted to them in the course of their official duties"

The 'Code of Conduct for Office Holders' also states:

*"Office holders must also have regard as appropriate to
- the Code of Conduct for Members of Dáil Éireann and Seanad Éireann"*

In turn, the 'Code of Conduct for Members of Dáil Éireann and Seanad Éireann' states at point 10:

"Members must not use official information which is not in the public domain, or information obtained in confidence in the course of their official duties, for personal gain or the personal gain of others."

Although it is not the responsibility of the SIPO to investigate breaches of the Criminal Justice (Corruption Offences) Act 2018, it may be relevant for its investigation to note that there appears to be a breach of Section 7(2) of that Act, which states:

"An Irish official who uses confidential information obtained in the course of his or her office, employment, position or business for the purpose of corruptly obtaining a gift, consideration or advantage for himself or herself or for any other person shall be guilty of an offence."

The Tánaiste's breaches and his justification

There is clear evidence that Leo Varadkar breached these provisions of the relevant Codes of Conduct when as Taoiseach in April 2019, he gave a confidential document concerning the contract negotiations between the government and the Irish Medical Organisation to his friend and political supporter, Dr. Maitiú Ó'Tuathail. The document was entitled 'Terms of Agreement between the Department of Health, the HSE and the IMO regarding GP Contractual Reform and Service Development.' Dr. Ó'Tuathail was then President of the rival National Association of General Practitioners.

This leaking was first reported in 'Village Magazine' on Saturday 31 October. A copy of the relevant article, as published at <https://villagemagazineireland2020.medium.com/> is attached as Appendix A.

The Tánaiste responded with a lengthy press statement in the afternoon of Saturday 31 October, a copy of which is attached as Appendix B. In that statement, he accepted that

"The then Taoiseach did provide a copy of the Agreement to Dr. Ó Tuathail on a date between 11th and 16th April 2019."

The justification he gave for doing so was the following:

"By definition, given that it had been extensively negotiated between Government and the IMO, many people outside Government in the IMO were already well aware of its content, and the essential details of the Agreement had been described in press releases which were reported upon in the national media.

"The provision of a copy the Agreement to Dr. Ó Tuathail, in his capacity as President of the NAGP occurred in circumstances where the legitimate objective of this action was to encourage acceptance of the Agreement amongst the General Practitioner community."

His defence can be summarised as firstly, arguing that the document to Dr. Ó'Tuathail "did not breach any confidence" because the essential details of the Agreement had already been publicised and secondly, arguing that it cannot be a breach of the Code of Conduct for members of the Dáil or S. 7(2) of the Criminal Justice (Corruption Offences) Act 2018 because there was no "personal gain" for Mr. Ó'Tuathail and no advantage gained by Mr. Varadkar.

However, neither part of this argumentation stands up to any degree of scrutiny.

Was it a breach of confidence?

The suggestion that giving the document to Maitiú Ó'Tuathail "did not breach any confidence" as is stated in the Tánaiste's statement is manifestly inaccurate. Regardless of the press statements and press events that were held, the document itself was not in the public domain.

This is confirmed by the following:

- a) The document itself was marked 'Confidential'. If the document was in the public domain, why would the NAGP be interested in having the document? Why would the then Taoiseach take the trouble of sending it to his friend?
- b) The messages contained in the 'Village Magazine' article from the 'NAGP inner sanctum' group, the veracity of which have not been questioned by any of the people involved, which clearly suggest the recipients of the leaked document didn't consider it to be in the public domain. 'Andy Jordan' (presumably Andrew Jordan, then Chairperson of the NAGP) messaged: *"We owe it to Maitiú that this remains very confidential."*
- c) The statement in the Dáil on 16 April 2019 by Stephen Donnelly TD, then Fianna Fáil Health spokesperson: *"The outline of the deal was agreed two weeks ago. The GPs have not seen it, the public have not seen it, and we have not seen it.... We have been denied access to any of the detail."* (Appendix C)
- d) The fact that on 17 April 2019, after the leak of the document to Maitiú Ó'Tuathail, Andrew Jordan tweeted: "Great announcement but GPs getting really perplexed- no sign of the CONTRACT DOCUMENT - 2 weeks in." (Appendix D)
- e) The final agreement wasn't published until one month later, on 17 May 2019 on the Department of Health website. (Appendix E).

Therefore the document was clearly a confidential document and giving it to Dr. Ó'Tuathail was a breach of confidence.

Was there 'advantage' conferred?

The Tánaiste has attempted to suggest that as he did not receive an "advantage for himself", there cannot be a breach of S. 7(2) of the Criminal Justice (Corruption Offences) Act 2018. That is an inaccurate reading of the relevant section which clearly states that the advantage can be "for any other person". In this case that person is Maitiú Ó'Tuathail, a political supporter of the Tánaiste, who publicly supported his campaign for the leadership of Fine Gael.

In relation to the Code of Conduct for Members of Dáil Éireann, the Taoiseach's statement says:

“There is no credible suggestion that the provision of the Agreement by the Taoiseach to the President of the NAGP was for “personal gain”.”

However, that is inaccurate. In this case, there were two potential ‘persons’ upon whom a potential advantage or “personal gain” was conferred as a result of Leo Varadkar’s leaking of the document.

In the first case, Maitiú Ó’Tuathail undoubtedly was the recipient of a “personal gain” in the form of a boost for his reputation within the NAGP leadership as the man who could access important confidential documents.

The second ‘person’ to gain an advantage was the organisation of the NAGP, which was a rival organisation to the Irish Medical Organisation. They received a potential benefit as a result of having access to this confidential document. In the group chat, they discussed using it to “steal their [the IMO’s] thunder”.

Conclusion

The material published by the ‘Village Magazine’ and confirmed by the Tánaiste’s statement speaks to a culture of insiders helping insiders, with confidential information provided to an individual as a result of his friendship with, and political support for, Mr. Varadkar.

I urge the Standards In Public Office commission to initiate an investigation into this matter as soon as possible. You can contact me on 01 6183071.

Yours sincerely,



Paul Murphy TD