

An Garda Síochána

Oifig Saorála Fáisnéise,
An Garda Síochána, Teach áth Luimnigh,
Lárionad Gnó Udáras Forbartha Tionscail,
Baile Sheáin , An Uaimh,
Contae na Mí.
C15 DR90



Freedom of Information Office,
An Garda Síochána, Athlumney House,
IDA Business Park,
Johnstown, Navan,
Co Meath.
C15 DR90

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Láithreán Gréasain/Website:

www.garda.ie

Bí linn/Join us  

Ríomh-phoist:/Email: foi@garda.ie

Re: Freedom of Information Request FOI-000225-2020 Request Part-Granted

Dear

I refer to your request, dated and received on 3rd July, 2020 which you have made under the Freedom of Information Act 2014 (FOI Act) for records held by An Garda Síochána.

Part 1(n) of Schedule 1 of the FOI Act states that An Garda Síochána is listed as a partially included agency "*insofar as it relates to administrative records relating to human resources, or finance or procurement matters*". Therefore, only administrative records that relate to human resources, finance or procurement shall be considered.

Your request sought:

- *Audit of Human Resources Allocation and Management at Divisional and District Level*
- *Audit of Absence and Attendance Management*
- *Audit of Public Holiday Allowance Payments at Christmas/New Year 2018/19*
- *Audit of Payroll Overpayments*

I wish to inform you that I have decided to part-grant your request on the 30th July 2020.

The purpose of this letter is to explain that decision.

1. Findings, particulars and reasons for decision

Upon receipt of your request, a search was conducted in Garda Internal Audit Section (GIAS) and a number of records have been identified in this regard. The audits contain information

relating to human resources, finance and procurement matters. However, in addition to this type of information, the audits also make reference to operational policing matters.

The first audit sought by you relates to:

- *Audit of Human Resources Allocation and Management at Divisional and District Level*

I wish to advise you that I am granting the release of this audit, a copy of which is attached herewith.

The second audit sought by you relates to:

- *Audit of Absence and Attendance Management*

I am to advise you that I am part-granting the release of this audit and I herewith attach same. A schedule of records is also attached. This outlines the reasons for these redactions.

Part 1(n) of Schedule 1

Section 6(2)(a) of the FOI Act provides that an entity specified in Schedule 1, Part 1 of the Act shall, subject to the provisions of that Part, be a public body for the purposes of the FOI Act. Schedule 1, Part 1 contains details of bodies that are partially included for the purposes of the FOI Act and also details of the certain specified records that are excluded. If the records sought come within the description of the exclusions of Part 1, then the FOI Act does not apply and no right of access exists.

Part 1(n) of Schedule 1 of the FOI Act provides that An Garda Síochána is not a public body for the purposes of the FOI Act other than in relation to administrative records relating to human resources, or finance or procurement matters.

The term “administrative records” is understood to mean records relating to the processes of running and managing a business or organisation. As a result, the FOI Act excludes operational policing business as opposed to the defined administrative processes of An Garda Síochána.

The operational elements of this audit are considered out of the scope of the FOI Act insofar as the Garda organisation is concerned and are therefore not provided in accordance with Part 1(n) of Schedule 1 of the FOI Act. This information has been redacted accordingly.

In addition, I am refusing the release of a part of this record on the basis that the information contained therein is commercially sensitive to a supplier of services to An Garda Síochána and do so pursuant to Section 36(1)(b) of the Act wherein:

Commercially sensitive information

36. (1) Subject to subsection (2), a head shall refuse to grant an FOI request if the record concerned contains—

- (b) *financial, commercial, scientific or technical or other information whose disclosure could reasonably be expected to result in a material financial loss or gain to the person to whom the information relates, or could prejudice the competitive position of that person in the conduct of his or her profession or business or otherwise in his or her occupation, or*

- (c) *information whose disclosure could prejudice the conduct or outcome of contractual or other negotiations of the person to whom the information relates.*

I am satisfied that the release of the daily rate charged by a supplier could prejudice the competitive position of the supplier by making the cost per unit publically known and could also prejudice the conduct of future contractual negotiations. This information therefore is commercially sensitive in accordance with the provisions of section 36 of the FOI Act.

I am cognisant of the fact that the release of information under the Act is, in essence, a release to the public at large. The pricing structure of a supplier with regard to the services provided to An Garda Síochána is not known to competitors or the public in general. If this record was made available to you it is reasonable to expect that it would prejudice the ability of the supplier to compete in other contracts or negotiations in the future.

I am of the view that the release of a suppliers pricing structure could reasonably be expected to result in a material financial loss by the supplier as it could prejudice their competitive position in the conduct of their business. The placing of these pricing structures into the public domain could also reasonably be expected to give a competitive advantage to other companies seeking similar contracts with public bodies.

Public Interest Test

There is a Public Interest Test associated with Section 36 of the FOI Act whereby my decision must be made having fully considered the public interest relevant to this request.

I have considered the public interest issues which arise in this case and have taken account of the following factors in favour of release:

- Ensuring openness and transparency of organisational functions to the greatest possible extent.
- The public interest in members of the public exercising their rights under the FOI Act.
- That there is more than just a transitory interest by the public in this information being released.
- The right to commercial confidentiality is outweighed by the needs of the public regarding the expenditure of public funds by a public body.

In considering the public interest factors which favour withholding the records I have taken account of the following:

- Allowing a public body to hold commercial information without undue access by members of the public.
- The best course of action which is in the public interest with regard to these records.
- That An Garda Síochána can conduct its business with external contractors in a confidential manner.
- That there is a reasonable and implied expectation by contractors that financial information pertaining to services provided will be held in a confidential manner.
- That there is no overriding public interest that outweighs the right to privacy by an individual or in this case the financial activities of a service provider.

Having balanced the public interest factors both for and against the release, I decided that the public interest in preserving the information and the reasonable expectation that information can be maintained in a confidential manner by An Garda Síochána in the context of its financial dealings with external organisations outweighs the public interest which would be served were the records released to you.

The third audit sought by you relates to:

- *Audit of Public Holiday Allowance Payments at Christmas/New Year 2018/19*

I am to advise you that I am part-granting the release of this audit and I herewith attach same. A schedule of records is also attached. This outlines the reasons for these redactions.

Part 1(n) of Schedule 1

As previously advised, Section 6(2)(a) of the FOI Act provides that an entity specified in Schedule 1, Part 1 of the Act shall, subject to the provisions of that Part, be a public body for the purposes of the FOI Act. Schedule 1, Part 1 contains details of bodies that are partially included for the purposes of the FOI Act and also details of the certain specified records that are excluded. If the records sought come within the description of the exclusions of Part 1, then the FOI Act does not apply and no right of access exists. Therefore, I am withholding certain operational information as I deem it to be out of the scope of the FOI Act insofar as the Garda organisation is concerned.

Section 42 - Restriction of Act

Secondly, certain information contained in *Audit of Public Holiday Allowance Payments at Christmas/New Year 2018/19* is being refused under section 42(2)(b)(i-vi) of the FOI Act which states:

42. *This Act does not apply to—*

(b) a record held or created by the Garda Síochána that relates to any of the following:

- (i) the Emergency Response Unit;*
- (iii) the Special Detective Unit (SDU);*
- (iv) the witness protection programme sponsored by it;*
- (v) the Security and Intelligence Section;*
- (vi) the management and use of covert intelligence operations;*

In accordance with the requirements of Section 42 of the Act. I am refusing this part of your request.

Section 32 – Law enforcement and public safety

In addition to the above, Sections 32(1)(a)(iii), (ix) and (x) (Law enforcement and public safety) are also applicable to certain records contained in this audit. The functions of An Garda Síochána are, in the main, directed towards the prevention, detection and investigation of criminal activities and as such the information contained within the audit report will refer to internal operational systems in place to carry out those functions. It is not in the public interest to impair or prejudice Garda functions by releasing information under the FOI Act which could reasonably be expected to put at risk the public safety, the security of Garda premises and the property held within them, and the security of communications systems utilized by An Garda Síochána.

I am of the opinion that it is reasonable to expect that the general publication of information relating to Garda operational activities could be detrimental to operations, individuals and the public interest. It is not the purpose of the FOI Act to prejudice the ability of An Garda Síochána to carry out its functions.

As a result of these genuine and reasonable concerns the release of certain records will be excluded under Section 32 of the FOI Act which states:

Section 32 – Law enforcement and public safety

32. (1) A head may refuse to grant an FOI request if access to the record concerned could, in the opinion of the head, reasonably be expected to—

(a) prejudice or impair –

- (ii) lawful methods, systems, plans or procedures for ensuring the safety of the public and the safety or security of persons and property,**
- (ix) the security of a building or other structure or a vehicle, ship, boat or aircraft, or**
- (x) the security of any system of communications, whether internal or external, of An Garda Síochána**

Harm Test

Section 32 requires a Harm Test to be carried out as part of the decision making process. The risk of harm being thrust upon a member of An Garda Síochána should not be underestimated. The risk of evidence being tampered with, and criminal damage to buildings, premises and systems of An Garda Síochána is increased through the publication of detailed information contained within the Audit. I am of the opinion that it is both reasonable and responsible to have these details withheld from the public for the protection of members of An Garda Síochána in the execution of their operational duties.

The fourth audit sought by you relates to:

- *Audit of Payroll Overpayments*

I am to advise you that I am part-granting the release of this audit and I herewith attach same. A schedule of records is also attached. This outlines the reasons for these redactions.

Part 1(n) of Schedule 1

As previously advised, Section 6(2)(a) of the FOI Act provides that an entity specified in Schedule 1, Part 1 of the Act shall, subject to the provisions of that Part, be a public body for the purposes of the FOI Act. Schedule 1, Part 1 contains details of bodies that are partially included for the purposes of the FOI Act and also details of the certain specified records that are excluded. If the records sought come within the description of the exclusions of Part 1, then the FOI Act does not apply and no right of access exists.

A number of the pages within this audit contains information regarding the National Support Services Office (NSSO) and this information is considered out of the scope of the FOI Act insofar as it applies to An Garda Síochána and are therefore not provided in accordance with Part 1(n) of Schedule 1 of the FOI Act.

In this regard, I have applied redactions to some of the information contained herein as I deem it to be outside the scope of the FOI Act insofar as An Garda Síochána is concerned.

Section 31 - Parliamentary, Court and certain other matters

Secondly, a number of records that contain legal opinion and advice from the Head of Legal Services have been withheld as per section 31(1)(a) of the FOI Act. Records whereby a record, the primary focus of which is the provision of legal opinion by a qualified legal professional can be excluded from the provisions of the FOI Act.

Section 31(1) of the Act states that:

- (1) A head shall refuse to grant an FOI request if the record concerned—*
(a) would be exempt from production in proceedings in a court on the ground of legal professional privilege,

Legal Professional privilege includes documents created for the dominant purpose of seeking and/or giving legal advice to/from a qualified legal professional and extends to notes of legal advice contained within other records.

Section 31(1)(a) is a mandatory exemption which protects records that would be exempt from production in proceedings in a court on the ground of legal professional privilege.

The records contained in the attached Schedule of Records refer to advices provided by the Head of Legal Services. The Legal Services Section provides advice on numerous matters concerning An Garda Síochána such as discipline, litigation, new legislation and policies and all advices provided are considered in the context of legal privilege.

I am refusing these records under Section 31 of the FOI Act as I consider them to be subject to legal privilege and therefore not releasable.

Section 37 – Personal Information

In addition, I am refusing further parts of the record as it is my opinion that the information therein contains personal information relating to third parties. This decision is made in accordance with section 37(1) of the FOI Act.

Section 37 of the FOI Act states;

- (1) Subject to this section, a head shall refuse to grant an FOI request if, in the opinion of the head, access to the record concerned would involve the disclosure of personal information (including personal information relating to a deceased individual)."*

In applying section 37(1) of the FOI Act a Public Interest Test must be applied to ensure the actions taken are done so in the best interest of the public.

Public Interest Test

As per section 37 of the FOI Act I have considered the public interest issues which arise in this case and have taken account of the following factors in favour of release:

- Ensuring openness and transparency of Organisational functions to the greatest possible extent,
- The right to privacy is outweighed by the needs of the public.
- The public interest in members of the public exercising their rights under the FOI Act,

In considering the public interest factors which favour withholding the records I have taken account of the following:

- Allowing a public body to hold personal information without undue access,
- The public interest is not best served by releasing these records,
- That the Organisation can conduct its business in a confidential manner,
- That there is a reasonable and implied expectation by employees that sensitive personal information will remain confidential.

A Public Interest Test was carried out when considering the release of the personal information. Having balanced the factors both for and against the release, I decided that the public interest in preserving the personal information of Garda members and the reasonable expectation that information can be maintained in a confidential manner by An Garda Síochána outweighs the public interest which would be served were the records released to you.

2. Right of Appeal

In the event that you are not happy with this decision you may seek an Internal Review of the matter by writing to the address below and quoting reference number **FOI-000225-2020**.

Freedom of Information Office, An Garda Síochána, Athlumney House, IDA Business Park, Johnstown, Navan, Co. Meath C15 DR90

Please note that a fee applies. This fee has been set at €30 (€10 for a Medical Card holder). Payment should be made by way of bank draft, money order, postal order or personal cheque, and made payable to Accountant, Garda Finance Directorate, Garda Headquarters, Phoenix Park, Dublin 8.

Payment can be made by electronic means, using the following details:

Account Name: Garda Síochána Finance Section Public Bank Account

Account Number: 10026896

Sort Code: 900017

IBAN: IE86BOFI90001710026896

BIC: BOFIE2D

You must ensure that your FOI reference number (FOI-000225-2020) is included in the payment details.

You should submit your request for an Internal Review within 4 weeks from the date of this notification. The review will involve a complete reconsideration of the matter by a more senior member of An Garda Síochána and the decision will be communicated to you within 3 weeks. The making of a late appeal may be permitted in appropriate circumstances.

Please be advised that An Garda Síochána replies under Freedom of Information may be released in to the public domain via our website at www.garda.ie.

Personal details in respect of your request have, where applicable, been removed to protect confidentiality.

Should you have any questions or concerns regarding the above, please contact me by telephone at (046) 9036350.

Yours sincerely,



ASSISTANT PRINCIPAL OFFICER

PAUL BASSETT

FREEDOM OF INFORMATION OFFICER

30th **JULY 2020**