

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

Teileafón/Tel: (046) 9036350

Láithreán Gréasain/Website:

www.garda.ie

Bí linn/Join us  

Ríomh-phoist:/Email: foi@garda.ie

Re: Freedom of Information Request FOI-000229-2020 Request Part-Granted

Dear

I refer to your request, dated and received on 6th 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:

I wish to apply under the Freedom of Information Act 2014 for the following recent audit reports/reviews:

- 1/ Review Audit of Office of the Director of Communications*
- 2/ Report to the Commissioner in relation to Financial controls in 2018*
- 3/ Audit of payment overpayments (joint audit with NSSO)*
- 4/ Audit of banking in Finance directorate*
- 5/ Review audit Garda College financial controls*

I wish to inform you that I have decided to part-grant your request on the 31st July 2020.

The purpose of this letter is to explain that decision.

1. Findings, particulars and reasons for decision

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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:

- *Review Audit of Office of the Director of Communications*

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 the 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.

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/staff 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.

The second audit sought by you relates to:

- *Report to the Commissioner in relation to Financial controls in 2018*

I am to advise you that I am refusing the release of this audit. I am doing so in accordance Section 15(1)(d) of the Act:

Refusal on administrative grounds to grant FOI requests

15(1) A head to whom an FOI request is made may refuse to grant the request where
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(d) the information is already in the public domain.

I can advise that this information was subject of a previous Freedom of Information request (FOI-00319-2019). An Garda Síochána publishes all decisions made on requests for non-personal information, including the full decision letter, on its website. The relevant decision and released records are available at the following link: <https://www.garda.ie/en/information-centre/freedom-of-information/decision-log/decision-letter-foi-000319-2019.pdf>

The third audit sought by you relates to:

- *Audit of payment overpayments (joint audit with NSSO)*

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 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 polices 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 part of the record as it is my opinion that the information therein contains personal informations 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/staff 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.

The fourth audit sought by you relates to:

- *Audit of banking in Finance directorate*

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 contain information, including operational matters, outside 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.

The fifth audit sought by you relates to:

- *Review audit Garda College financial controls*

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 contain information, including operational matters, outside 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.

Section 36 – Commercially Sensitive Information

Secondly, I am refusing the release of parts of this record on the basis that the information contained therein is commercially sensitive to suppliers 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 fees paid to these suppliers could prejudice the competitive position of suppliers and could prejudice future contractual negotiations by making the cost per unit publically known. 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 have 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.

Section 37 – Personal Information

In addition, I am refusing further part 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/staff 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-000229-2020**.

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: BOFIIIE2D

You must ensure that your FOI reference number (FOI-000229-2020) 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

JS **JULY 2020**