

An Garda Síochána

Oifig Saorála Faisnéise
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

Bí linn/Join us  

Láithreán Gréasain/Website: www.garda.ie

Riomh-phoist:/Email: foi@garda.ie

Re: Freedom of Information Request FOI-000211-2017 Request Partially Granted

Dear

I refer to your request dated 10th May 2017 and received on 12th May 2017 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:

‘Under the Freedom of Information Act 2014, I would like to formally request records held by the FOI body relating to the provision of Garden Maintenance Service Contract at Waterford Garda Stations, Lot 1, Lot 2 and Lot 3 2017.

Regarding the tenders, could you please supply the following details:

- Who was the contract awarded to?*
- What was the winning price?*
- What were the other prices submitted by all other Tenderers?*
- The names of the other companies who submitted Tenders?’*

I wish to inform you that I have decided to partially grant your request on 7th June 2017.

The purpose of this letter is to explain my decision.

1. Findings, particulars and reasons for decision

Your request was forwarded to the Procurement Section of An Garda Síochána on receipt of same and a number of records have been identified.

An Garda Síochána awarded a contract to Ned Mullins Landscaping after a public procurement competition. This competition was conducted locally in respect of the provision of garden maintenance services at Waterford Garda Division. In undertaking the procurement process, An Garda Síochána was seeking to ensure the most economical and environmentally friendly garden maintenance service was in place with the Waterford Garda Division.

Parts 2, 3 & 4 of your request is seeking the following information:

- *What was the winning price?*
- *What were the other prices submitted by all other Tenderers?*
- *The names of the other companies who submitted Tenders?'*

I am refusing parts 2 & 3 of your request under section 36(1)(b) & (c) of the Freedom of Information Act 2014 which states:

I am satisfied that the release of a successful or unsuccessful tenderer's fee structure could prejudice the competitive position of the tenderer and is deemed commercially-sensitive, in accordance with the provisions of section 36 of the FOI Act.

The pricing structure with regard to the services provided to An Garda Síochána is not known to competitors or the public in general and if the records were made available to you it is reasonable to expect that it would prejudice the successful or unsuccessful tenderer to compete in other contracts or negotiations for similar services in the future. In addition, I am of the view that the release of the fees could reasonably be expected to result in a material financial loss to the successful or unsuccessful tenderer, as it could prejudice their competitive position in the conduct of their business. The advertising of these fees and trade-craft documents, such as the research methodology, into the public domain could also reasonably be expected to assist competitors, by giving them competitive advantage when competing for similar contracts in the future. Furthermore, current customers may become aware of a difference in fees being applied which could, in turn, prejudice any current or future negotiations with these customers.

With regard to your request I draw your attention to a recent Office of Information Commissioner decision titled: *Mr X and University College Cork (UCC) (FOI Act 2014) case number: 150444*. This particular case is relevant as the competitive position of a commercial entity was considered under section 36(1)(b) of the FOI Act.

The relevant section and subsections of the FOI Act pertaining to this part of your request are shown below.

Commercially sensitive information

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

- (a) *trade secrets of a person other than the requester concerned,*
- (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.*

Therefore, I am also refusing the parts 2 and 3 of your request, as outlined above, under the provisions of section 36(1)(a), 36(1)(b) & 36(1)(c) as they contain commercially-sensitive information.

I am conscious of the fact that records disclosed under the provisions of the FOI Act are considered a release to the world at large and not just the individual requesting the information.

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 by An Garda Síochána without prejudicing future financial endeavours by

external service-providers outweighs the public interest which would be served were the records released to you.

Taking this into consideration, I also wish to advise that I am unable to release the names of the companies who responded to An Garda Síochána's request for tender as sought by you in Part 4 of your request. This information could reasonably be expected to impair or prejudice the ability of the companies to successfully tender for future business. Inferences could be drawn from the fact that these companies were unsuccessful in previous tender applications for An Garda Síochána. However I can inform you that a total of 4 companies tendered for the contract

2. Right of Appeal

In the event that you are not happy with this decision you may seek an Internal Review by writing to the address below and quoting reference number **FOI-0000211-2017**.

*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: IE86B0F190001710026896
BIC: BOFIIIE2D

You must ensure that your FOI reference number (FOI-0000211-2017) is included in the payment details.

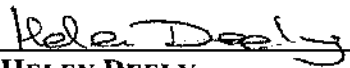
You should submit your request for an Internal Review within 4 weeks from the date of this notification. The review will involve a complete reconsideration of the matter by a more senior member of An Garda Síochána and the decision will be communicated to you within 3 weeks. The making of a late appeal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

 SUPERINTENDENT.

HELEN DEELY.

FREEDOM OF INFORMATION OFFICER.

 **JUNE 2017**