

# 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

Bí linn/Join us  

Láithreán Gréasain/Website:  
[www.garda.ie](http://www.garda.ie)

Ríomh-phoist/Email: [foi@garda.ie](mailto:foi@garda.ie)

## Re: Freedom of Information Request FOI-000216-2017 Request Refused

*Dear*

I refer to your request, dated 15<sup>th</sup> May 2017 and received on the 16<sup>th</sup> May 2017, which you have made under the Freedom of Information Act 2014 (FOI Act) for records held by An Garda Síochána. I also refer to my additional correspondence of 12<sup>th</sup> June with regard to this request.

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 seek records of correspondence between the legal affairs department of An Garda Síochána and the office of the Commissioner from July 1st 2015 to July 31st 2015?*

I wish to inform you that I have decided to refuse your request on the 30<sup>th</sup> June 2017.

The purpose of this letter is to explain my decision.

### **1. Findings, particulars and reasons for decision to deny access**

The records requested by you were sought from the Office of the Garda Commissioner, the Legal Services section and the Office of Deputy Commissioner Governance and Strategy.

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The search included the “Record System” (the electronic correspondence register). A number of records have been located and the information contained within those records has been reviewed in accordance with the provisions of the FOI Act. The records located are provided in the attached Schedule of Records.

The sections of the FOI Act which can apply to deny access to documents are known as exemption provisions. I am refusing to release certain parts of your records under section 31 of the FOI Act on the basis that the records are subject to legal privilege and cannot be released under the provisions of the FOI Act as follows.

### **Section 31 - Parliamentary, Court and certain other matters**

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 the primary focus of the record is the provision of legal opinion by a qualified legal professional can be excluded from the provisions of the FOI Act under section 31 as shown below.

#### ***Parliamentary, court and certain other matters***

**31. (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,**

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.

Legal Professional privilege enables a client to maintain the confidentiality of two types of communication:

- (a) confidential communications made between the client and his/her professional legal adviser for the purpose of obtaining and /or giving legal advice (advice privilege):  
and
- (b) confidential communications made between the client and a professional legal advisor or the professional legal advisor and a third party or between a client and a third party, the dominant purpose of which is the preparation for contemplated/pending litigation (litigation privilege).

The records contained in the attached Schedule of Records refer to advices provided by the Head of Legal Services on various matters during the period of 1<sup>st</sup> July to 31<sup>st</sup> July 2015. The records also contain advices on matters that preceded the 1<sup>st</sup> July 2015 date but required further advice during the period defined in this FOI request. 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 the majority of records located in response to this FOI Request under section 31 of the FOI Act as I consider them to be subject to legal privilege and therefore not releasable.



## Schedule 1, Part 1(n) - Out of Scope

The FOI Act restricted the type of records accessible from An Garda Síochána to “*administrative records*”. The FOI Act further limited the access to Garda records to the three areas of Human Resources, Finance or Procurement. These restrictions are set out in Part 1(n) of Schedule 1 of the FOI Act.

I have also decided that a number of records located do not meet the criteria of an administrative record or fall within the scope of the FOI Act insofar as An Garda Síochána is concerned.

Previously, and of relevance to your request, the Office of Information Commissioner (OIC) has discussed the term ‘administration’ within the meaning of the FOI Act. While the term is not defined in the FOI Act the OIC has taken the view that *general administration* refers to the management of an office or Organisation such as records relating to personnel, pay matters, recruitment, accounts, Information Technology, accommodation and internal organisation office procedures. Records which do not relate to such matters are not contained in the administrative function of an organisation. Hence the contents of the certain correspondence is not considered an administrative function. (OIC Case number 160055: Mr. X and the Office of the Attorney General, refers.)

Having considered your request and reviewed the records I am of the view that certain records requested are outside the scope of the FOI Act insofar as An Garda Síochána is concerned and therefore I am refusing your request.

There is no provision contained within the FOI Act for consideration of the public interest in deciding whether the records fall within Schedule 1, Part 1(n). Therefore I am not obliged to consider the public interest in this matter when making a decision to refuse or grant the requested records.

## 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 **F01-000216-2017**.

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:** BOFIE2D

**You must ensure that your FOI reference number 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](http://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**

**4<sup>TH</sup> JULY 2017**

**Schedule A Requester Name: Sarah Bardon File Re: FOI-000216-2017**

Page No	Description of document	Deletions	Relevant Section of FOI Acts	Reason for decision	Person(s) Consulted	Objections Yes/No	Decision Maker's decision
Page 1-17	Correspondence from Office of the Commissioner to Legal Affairs 31/7/2015	All	Section 31 (1)(a)	Legal privilege	Nil	Nil	Refused
Page 18-31	Correspondence from Legal Affairs to Office of Deputy Commissioner SCM 31/7/15	All	Section 31 (1)(a)	Legal privilege	Nil	Nil	Refused
Page 32-44	Correspondence from Legal Affairs to Deputy Commissioner SCM 31/7/15	All	Section 31 (1)(a)	Legal privilege	Nil	Nil	Refused
Page 45-68	Correspondence from Office of the Commissioner to Legal Affairs	All	Section 31 (1)(a)	Legal privilege	Nil	Nil	Refused
Pages 69 to 80	Correspondence from Legal Affairs to Office of Commissioner	All	Section 31 (1)(a)	Legal privilege	Nil	Nil	Refused
Page 81-98	Correspondence from Legal Affairs to Office of the Commissioner 7/7/15	All	Section 31 (1)(a)	Legal privilege	Nil	Nil	Refused
Page 99-123	Corr. from Legal Affairs to Office of the Commissioners re: O'Higgins Commission 7/7/15	All	Section 31 (1)(a)	Legal privilege	Nil	Nil	Refused
Page 124-126	Correspondence from Legal Affairs to Office of the Commissioner 27/15	All	Section 31 (1)(a)	Legal privilege	Nil	Nil	Refused

**Schedule A Requester Name: Sarah Barton File Re: FOI-000216-2017**

Page No	Description of document	Deletions	Relevant Section of FOI Acts	Reason for decision	Person(s) Consulted	Objections Yes/No	Decision Maker's decision
Page 127-132	Correspondence From Office of the Commissioner to Legal Affairs 1/7/15	All	Section 31 (1)(a)	Legal privilege	Nil	Nil	Refused
Page 133-147	Correspondence From Office of Commissioner SCM to Legal Affairs	All	Section 31 (1)(a)	Legal privilege	Nil	Nil	Refused
Pages 148-166	Correspondence from Legal Affairs to Office of Deputy Commissioner SCM	All	Section 31 (1)(a)	Legal privilege	Nil	Nil	Refused
pages 167-168	Correspondence from Head of Legal Affairs to Garda Commissioner	All	Section 31 (1)(a)	Legal privilege	Nil	Nil	Refused
		Total number of pages			168		
		Total number of pages for full release					
		Total number of pages for partial release					
		Total number of pages being withheld			168		