

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-000360-2017 Partially Granted

Dear .

I refer to your request, dated and received on 16th August, 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 correspondence of 29th August, 2017 advising you of the commencement of a third party consultation process.

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:

- 1. Copies of all correspondence between PwC and An Garda Síochána regarding the cultural audit that the company has been commissioned to carry out between 1 February 2017 and the present date*
- 2. A copy of the tender submitted by PwC in respect of the procurement process for the cultural audit*
- 3. A copy of the agreed terms or scope of the audit to be carried out under this contract, including schedules of surveys or focus groups*
- 4. A copy of any preliminary or final reports or documents furnished to An Garda Síochána by PwC pursuant to its carrying out of a cultural audit*

5. *Any records of future or past payments to PwC in respect of the contract to carry out a cultural audit*

Please note that I have numbered the details of your request for ease of reference.

I wish to inform you that I have decided to part grant your request on 3rd October, 2017.

The purpose of this letter is to explain my decision.

1. Findings, particulars and reasons for decisions

Upon receipt, the details of your request were forwarded to the Procurement Section and the Garda Síochána Analysis Service who conducted a search for records containing the information you have requested.

I am partially granting a number of records which are the subject of your FOI Request. I have applied specific exemptions that are explained below and set out in the attached schedules.

PricewaterhouseCooper (hereinafter referred to as PwC) was also contacted with regard to the release of certain information which could be deemed commercially sensitive.

The attached records have been located and have been deemed applicable to Part 1 of your request *‘Copies of all correspondence between PwC and An Garda Síochána regarding the cultural audit that the company has been commissioned to carry out between 1 February 2017 and the present date’*:

Schedule A Cultural Audit Documentation

Schedule B PwC letter to Procurement Section

I am aware that a member of staff of this Office was in contact with you on 29th September, 2017. It was agreed that Part 1 of your request would be considered in relation to correspondence between PwC and An Garda Síochána excluding 1,132 emails that have been identified. As outlined, the majority of these emails relate to meeting requests/scheduling, conference call requests/scheduling, meeting agendas, etc.

The attached records have been located and have been deemed applicable to Part 2 of your request *‘A copy of the tender submitted by PwC in respect of the procurement process for the cultural audit’*:

Schedule C Tender Response Document for a cultural audit of An Garda Síochána

The attached records have been located and have been deemed applicable to Part 3 of your request *‘A copy of the agreed terms or scope of the audit to be carried out under this contract, including schedules of surveys or focus groups’*

Schedule D Request for Tender for the provision of a Cultural Audit of An Garda Síochána.

Schedule E Draft AGS Culture Survey 2017

I wish to advise you that no focus group schedules have been generated.

Refusal on Administrative grounds to grant FOI requests – Section 15

Section 15 of the FOI Act is provided below.

15. (1) A head to whom an FOI request is made may refuse to grant the request where-

(a) the record concerned does not exist or cannot be found after all reasonable steps to ascertain its whereabouts have been taken,

In relation to Part 4 of your request ‘*A copy of any preliminary or final reports or documents furnished to An Garda Síochána by PwC pursuant to its carrying out of a cultural audit*’ I wish to advise you that no preliminary or final reports have been furnished to An Garda Síochána by PwC pursuant to carrying out the Cultural Audit.

I am therefore refusing Part 4 of your request on administrative grounds pursuant to Section 15(1)(a) of the FOI Act.

I am also refusing Part 5 of your request ‘*Any records of future or past payments to PwC in respect of the contract to carry out a cultural audit*’ on administrative grounds pursuant to Section 15(1)(a) of the FOI Act as no invoices have been received nor payments made to PwC in relation to the cultural audit to date.

The following exemptions have been applied to the attached documents relating to Parts 1-3 of your request:

Refusal on Administrative grounds to grant FOI requests – Section 15

Section 15 of the FOI Act is provided below.

15. (1) A head to whom an FOI request is made may refuse to grant the request where-

(d) the information is already in the public domain.

I am refusing to provide you with certain documents as outlined in **Schedule A** as the composite list of questions and answers is also available on the ETENDERS website and therefore already in the public domain and available to the requester.

I am also refusing to provide you with the Request for Tender as per **Schedule D** as the information is already in the public domain. Both documents are available on the ETENDERS website and can be accessed using Tender Reference: T.007/2017 and System ID: 113681.

Functions and Negotiations – Section 30

Section 30 of the FOI Act is provided below.

30. (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 the effectiveness of tests, examinations, investigations, inquiries or audits conducted by or on behalf of an FOI body or the procedures or methods employed for the conduct thereof,

The scoring techniques used by An Garda Síochána in relation to tenders for contracts are contained in the records provided at **Schedule A**. The mechanism used for marking each individual step is an effective method for managing the tendering process and choosing the best contractor. The release of such a detailed scoring system will unfairly give an advantage to competitors for future tender competitions held by the Garda Organisation. In addition when considering the release of records under the FOI Act, I must also have regard to the fact that the FOI Act places no restrictions on the type or extent of the subsequent use to which a record may be put and that release under FOI effectively amounts to disclosure to the world at large. I am of the opinion that it is reasonable to expect the marking system to be used to influence how a tender is produced for An Garda Síochána thus diminishing or impairing the effectiveness and integrity of the marking system itself.

The release of this type of detailed information is not in the best interest of the public as the release of scoring techniques only serves the personnel who wish to gain unfair advantage when tendering for future contracts and for that reason will prejudice the examination process.

Furthermore, I believe that the effectiveness of the cultural audit of An Garda Síochána would be prejudiced by release of PwC's commercial proposal as contained in records outlined in both **Schedule C** and **E**. Information contained in **Schedule C** and **E** outlines the proprietary information and methodology to be used in the cultural audit by PwC. The release of the tender response document and draft survey at this time would hinder the ability of PwC to perform the contract entered into with An Garda Síochána. This tender response document includes the scope of the audit, the methodology and the proposed composition of the focus groups involved. It is imperative that PwC can deliver an impartial and independent service to An Garda Síochána at all stages throughout its completion of a cultural audit. Is it critical that the independence and impartiality of the survey remains paramount.

Harm Test

Section 30 requires the following Harm Test to be carried out as part of the decision making process. A disclosure of the methodology and investigative techniques used by An Garda Síochána will put similar tests at a disadvantage by prejudicing the effectiveness of these methods. The attached records contain information that would be of significant assistance to both individuals and companies involved in future tendering processes allowing them to predict the likely marking system and make the necessary preparations or adjustments.

The release of marking systems would be prejudicial to the examination process by reducing the effectiveness of such an examination. Thus the harm caused is the impairment of current and future tendering processes caused by forewarning potential service providers as to the marking methods employed to award contracts.

With regard to the information withheld under Section 30(1)(a) in **Schedule C** and **E**, the release of PwC's methodologies and proprietary information would not augment the public interest to an adequate extent to overcome the countervailing public interest in the appropriate protection of commercially sensitive information. The release of same would be prejudicial to the audit function and therefore undermine the effectiveness of the cultural audit and the future implementation of the recommendations arising from it if the details are released at this time.

Section 30(2) was considered with regard to the overall public interest being better served by the release of certain information as detailed above. However, on balance, the preservation of tests, with regard to marking systems, will better serve the public by ensuring a more competitive tendering process. It is also difficult to see if the public interest would be best served by the release of the tender response document at this point. Rather the public interest will be best served on release of PwC's report on the cultural audit of An Garda Síochána. This report will fully describe the approach that was taken and the raw data gathered. The public interest in the matter will be entirely addressed by the release of those documents.

Information Obtained in Confidence – Section 35

Section 35 of the FOI Act is provided below.

Information obtained in confidence

35. (1) Subject to this section, a head shall refuse to grant an FOI request if

(a) the record concerned contains information given to an FOI body, in confidence and on the understanding that it would be treated by it as confidential (including such information as aforesaid that a person was required by law, or could have been required by the body pursuant to law, to give to the body) and, in the opinion of the head, its disclosure would be likely to prejudice the giving to the body of further similar information from the same person or other persons and it is of importance to the body that such further similar information as aforesaid should continue to be given to the body,

Section 35(1)(a) of the FOI Act provides for the mandatory refusal of a record containing information:

1. given to an FOI body in confidence, and
2. on the understanding that it would be treated by it as confidential, and
3. in the opinion of the head, its disclosure would be likely to prejudice the giving to the body of further similar information from the same person or other persons, and
4. it is of importance to the body that such further similar information as aforesaid should continue to be given to the body.

Each of the four criteria contained in section 35(1)(a) must be satisfied for this exemption to apply

- (1) The tender document submitted by PwC for the provision and operation of a cultural audit for An Garda Síochána contains very specific information which was designed specifically for An Garda Síochána. The information contained therein includes proprietary information, in particular PwC's intellectual property, methodology and know-how. The records feature the processes, communications and technology requirements including the details of a pilot test. It also includes details of other organisations that PwC has worked with in the past; in particular within pages 23-28 of **Schedule C**. PwC has provided this information to An Garda Síochána in confidence. The records also show pricing structures, formulas, processes and exact methods and specifications. It is accepted that the pricing structures and general specifications may be similar throughout the sector however the tender documents are provided by PwC in a confidential manner not visible to the public or other competitors.

- (2) As PwC was successful in the competition the confidentiality of these documents is of commercial value. This tender submission shows both the tradecraft and business attitude used by PwC and how they conduct their business. The confidential manner in which the information is held by An Garda Síochána allows for potential service providers to securely identify their particular skills without revealing their unique tradecraft. Therefore there is a mutual understanding and acceptance that the information will remain confidential.
- (3) The pricing structure is very sensitive information that was submitted in response to the tendering process and shows the overall pricing applied in certain circumstances, if applicable. These pricing structures must remain confidential if An Garda Síochána is able to secure an effective tendering process in the future. It is reasonable to expect and my opinion that the release of pricing structures, financial tradecraft and similar information will actively deter prospective tenderers from providing specific information. If it was known that An Garda Síochána released confidential financial information it would become a prohibitive factor in obtaining the best value for public funds in the future.
- (4) The tendering process is crucial for An Garda Síochána to meet the provisions of the Garda Síochána Act 2005 (section 7 refers). While An Garda Síochána can develop many services “*in-house*”, it is imperative that the opportunity to draw upon external expertise is not inhibited as the services they provide is vital for the effective progression of the Organisation. It is my opinion that the importance of external expertise is vital for An Garda Síochána to obtain the best service available now and in the future. It can reasonably be expected that there will be reluctance by commercial entities to supply similar information to An Garda Síochána if they are aware that their confidential tenders will be released under the FOI Act. I am conscious of the fact that once records are disclosed under the provisions of the FOI Act there is no control as to whom the information is shared with. Therefore a release of records under the FOI Act is considered a release to the world at large and not just the individual requesting the information.

In summation, I am satisfied that the records concerned are subject to an implied mutual understanding of confidentiality and that they would be held in a confidential manner. I am also satisfied that the release of these records will prejudice the receipt of this type of commercially sensitive information in the future.

Therefore I am applying section 35(1)(a) of the FOI Act to sections of the attached documentation as outlined on the attached Schedule of Records.

Public Interest Test

There is a Public Interest Test associated with section 35 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 commercially sensitive information without undue access by members of the public.
- Allowing a public body to take 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 information pertaining to its unique tradecraft 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 unique tradecraft 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 its tendering processes with external organisations, outweighs the public interest which would be served were the records released to you in full.

It is my belief that the provision of these partial records and other contract related documents satisfies the public interest in this matter.

Furthermore, upon release of their final published report(s), PwC will fully describe the approach that they have taken (including the number and make up of focus groups) and the raw data gathered in relation to the cultural audit of An Garda Síochána. The public interest will be fully satisfied by the release of those documents. However, if the records were to be released at this time the effectiveness of the cultural audit may be undermined which I believe would as a result dissatisfy the public interest in this matter.

Commercially Sensitive Information – Section 36

Section 36 of the FOI Act is provided 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.*

I am also satisfied that the release of information contained in **Schedule A** and **Schedule C** contains trade secrets and specific technical information which if provided at this level could prejudice the competitive position of PwC and is deemed commercially sensitive in accordance with the provisions of section 36 of the FOI Act. The business processes and methods, operational processes and pricing structure of PwC 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 ability of PwC to compete in other contracts or negotiations in the future.

PwC's present customers may become aware of a difference in pricing structures being offered to An Garda Síochána, if applicable, which could in turn prejudice any current or future negotiations with these customers.

Schedule C (tender response document) clearly contains commercial information within the meaning of Section 36(1)(b). This information represents the intellectual property, know-how and PwC's commercial position in relation to any future work of this nature for An Garda Síochána and other organisations. In the event that such information were to be released under an FOI request, PwC's methodologies and approach could be adopted by competitors or perhaps utilised by customers or potential customers of PwC. This would be to PwC's disadvantage and therefore likely to result in a material financial loss to PwC.

It is not unreasonable, in my opinion, to believe that the release of information regarding pricing structures, methodology for delivering on the contract provisions, their process of analysis of what the contract required and their proposal to meet those requirements could have negative commercial consequences for PwC, thereby prejudicing its competitive position. The release of such information should be seen in the context of the very limited number of companies who could respond to an RFT for the provision of a cultural audit of a Police force. It is therefore a very limited market requiring expert knowledge and the release of the redacted commercially sensitive information would be of benefit to PwC's competitors.

I believe that the release of the methodology used by PwC could hinder the ability of the company to perform the contract entered into with An Garda Síochána. Processes, methodologies, governance and controls have been jointly agreed at this point. To identify same to the participants of the survey could both delay and harm the outcome of the cultural audit which could in turn lead to a further round of consultations and delays. I am conscious that the disclosure of information via an FOI request is a disclosure to the world at large. The references to pricing structures and hourly rates are particularly sensitive and will give an insight into the business affairs of PwC that competitors would otherwise be without. Again, I am of the opinion that it is not unreasonable and in fact more likely than not, to believe that the result of releasing such harmful information will be twofold: (1) prejudicial to the competitive position of PwC in current and ongoing contractual obligations and (2) obtaining business information which will be to the advantage of competitors.

Certain information contained within **Schedule A** relates to other commercial entities. These details have been redacted accordingly. This information is commercially sensitive in that it would identify the organisations that were involved in the tender competition for a cultural audit of An Garda Síochána and subsequently not successful. I believe that if this information was to be released into the public domain, it could prove disadvantageous to these companies and could prejudice the competitive position of these companies in their future business endeavours.

Therefore, I am also partially refusing these documents as outlined above under the provisions of section 36(1)(a), 36(1)(b) & 36(1)(c) as they contain commercially sensitive 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 endeavors by external service providers outweighs the public interest which would be served were the records released to you.

I have considered the provisions of section 36(2) and decided that they do not have any bearing on the decision as the overriding interest is to protect the sensitive commercial and financial information in this case.

Personal Information, Section 37.

Furthermore, in relation to certain redactions within **Schedules A, B, and C**, I am also satisfied that this information is of a personal nature in accordance with the provisions of section 37 of the FOI Act.

I am conscious of my obligations to retain personal information in a confidential and secure manner and prevent personal information from being released into the public domain unnecessarily. Personal information is defined at section 2 of the FOI Act and includes the following.

Section 2 – Interpretation

2. (1) *In this Act—*
“personal information” means information about an identifiable individual that, either—
- (a) *would, in the ordinary course of events, be known only to the individual or members of the family, or friends, of the individual, or*
 - (b) *is held by an FOI body on the understanding that it would be treated by that body as confidential,*

I am refusing to provide the information contained within these specific records as redacted as I believe that it would be considered a breach of the confidentiality upon which the information is being held by the Garda Organisation. The release of this information, which is specific to an individual(s), will allow for a person to become more identifiable and possibly named in the public domain. I am therefore applying Section 37(1) Personal Information which states:

Section 37 - Personal Information

- 37 (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).*

There is a Public Interest Test applicable to section 37 of the FOI Act.

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 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,
- The right to privacy is outweighed by the needs of the public.

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 by members of the public,
- 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 service providers that personal information will remain confidential,
- That there is no overriding public interest that outweighs the individual's right to privacy.

A public interest test was carried out when considering the release of the personal information but having balanced the factors both for and against the release, I decided that the public interest in preserving the personal information 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 by writing to the address below and quoting reference number **FOI-000360-2017**.

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 (FOI-000360-2017) 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

 **OCTOBER 2017**