

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

Ríomh-phoist/Email: foi@garda.ie

Re: Freedom of Information Request FOI-000264-2017 Request Refusal

Dear

I refer to your request, dated 13th June, 2017 and received on 14th June, 2017 which you have made under the Freedom of Information Act (FOI) 2014 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:

- All agreements, memoranda of understanding and/or other arrangements with foreign countries concerning the sharing between Ireland and any other country, or international institution, of foreign-intelligence surveillance data.
- All policies, guidelines, opinions, reports and memoranda concerning:
 - The circumstances in which Ireland may share foreign-intelligence surveillance data with another country.

- Any limitations on the sharing of foreign-intelligence surveillance data with other countries.
 - The circumstances in which Ireland may request or otherwise acquire from another country electronic-surveillance data.
 - Any limitations on the acquisition (whether by request or otherwise) of electronic-surveillance data from another country.
 - Any limitations on Ireland's retention, use, or dissemination of electronic-surveillance data requested or otherwise acquired from another country, including the use of such data or data derived from it in civil, criminal, administrative, or other proceedings.
 - The circumstances, if any, in which Ireland may request or otherwise acquire electronic-surveillance data from another country.
1. As the Executive Director of the Irish Council for Civil Liberties (ICCL), an independent human rights organisation concerned with the promotion and protection of human rights in Ireland, I submit this request for information on behalf of ICCL, and in furtherance of the aims and objectives of ICCL.
 2. Please find enclosed an access to information request submitted in terms of the Freedom of Information Act 2014. The documents sought concern international data-sharing arrangements between Ireland and any other country. The arrangements through which the Irish government shares and receives foreign intelligence surveillance with other governments dramatically implicate the privacy of every person, both nationals and non-nationals. However, to date, those arrangements are largely shrouded in secrecy.
 3. In terms of this access to information request, the following records are sought:
 - 3.1. All agreements, memoranda of understanding and/or other arrangements with foreign countries concerning the sharing between Ireland and any other country, or international institution, of foreign-intelligence surveillance data.
 - 3.2 All policies, guidelines, opinions, reports and memoranda concerning:
 - 3.2.1 The circumstances in which Ireland may share foreign-intelligence surveillance data with
 - 3.2.2 Any limitations on the sharing of foreign-intelligence surveillance data with other countries.
 - 3.2.3 The circumstances in which Ireland may request or otherwise acquire from another country electronic-surveillance data.
 - 3.2.4 Any limitations on the acquisition (whether by request or otherwise) of electronic-surveillance data from another country.
 - 3.2.5 Any limitations on Ireland's retention, use, or dissemination of electronic-surveillance data requested or otherwise acquired from another

country, including the use of such data or data derived from it in civil, criminal, administrative, or other proceedings.

3.2.6 The circumstances, if any, in which Ireland may request or otherwise acquire electronic-surveillance data from another country.

4. It must be emphasised that:

4.1 I submit that I am lawfully entitled to the information sought both in terms of the Constitution and the Freedom of Information Act 2014.

4.2. It is submitted that there are no justifiable grounds of refusal as contemplated under Freedom of Information Act.

4.3. In the event that any ground of refusal is sought to be relied upon in response to this request:

4.4. If the record is in the possession of another public body, you should transfer this request to the information officer of that public body as soon as reasonably possible, and at most within 14 days after receiving this request.

5. I wish also to draw your attention to the decision of the European Court of Human Rights in the case of *Magyar Helsinki Bizottsag v. Hungary*, Application no. 180030/11, judgment of 8 November 2016. In that case, the Court found a violation of Article 10 of the European Convention on Human Rights and Fundamental Freedoms, finding in particular that the right to freedom of expression under Article 10 encompasses a right to seek and receive certain types of information under schemes such as the Freedom of Information Act, and that denial of requests for information could constitute an interference with that right.

ICCL notes in particular that the judgment in that case went on to consider whether a denial for a request for information could be justified as being necessary in a democratic society; finding in that case that broad an overly broad legislative authority to deny requests was disproportionate and did not adequately take into account the freedom of expression rights of the applicants.

6. As such, I submit that I am entitled to the complete record of the information sought. Please find enclosed together with this letter: a completed copy of a Form as contemplated under the Freedom of Information Act 2014.

I wish to inform you that I have decided to refuse your request on the 20th June, 2017.

The purpose of this letter is to explain my decision.

1. Findings, particulars and reasons for decision.

I advise that An Garda Síochána became subject to Freedom of Information under the FOI Act, 2014. Under Part 1 of Schedule 1 of the FOI Act a number of agencies were defined as “*partially included*” and An Garda Síochána is listed as one of them at Part 1(n).

The FOI Act specifically states that An Garda Síochána is subject to the Act in relation to “*administrative records relating to human resources, finance or procurement matters*” only.

I would also bring your attention to Section 42 of the Freedom of Information Act 2014 which provides for Restrictions of the FOI Act: -

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*
- (ii) the Secret Service Fund maintained by it*
- (iii) the Special Detective Unit (SDU);*
- (iv) the witness protection*
- (v) the Security and Intelligence Section;*
- (vi) the management and use of covert intelligence operations;*
- (vii) the Interception of Postal Packets and Telecommunications Messages (Regulation) Act 1993;*
- (viii) the Criminal Justice (Terrorist Offences) Act 2005;*
- (ix) the Criminal Justice (Surveillance) Act 2009;*
- (x) the Communications (Retention of Data) Act 2011.*

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 **F01-000264-2017**.

Freedom of Information, 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.

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 OFFICE

20th June, 2017