

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-000052-2018 Request Part Granted

Deaí

I refer to your request, dated 30th January, 2018 and received on 30th January, 2018 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:

1. *A county by county breakdown of the number of times that pepper spray was used by the Gardai while on duty in 2017.*
2. *A county by county breakdown of the number of times that pepper spray was used by the Gardai while on duty in 2016.*
3. *The number of pepper spray cans and the amount of pepper spray purchased by the Gardai in 2017.*
4. *The amount spent on pepper spray cans and pepper spray by Gardai in 2017.*
5. *The number of pepper spray cans and the amount of pepper spray purchased by the Gardai in 2016.*
6. *The amount spent on pepper spray cans and pepper spray by Gardai in 2016.*

I wish to inform you that I have decided to part grant your request on the 26th February, 2018.

The purpose of this letter is to explain that decision.

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1. Findings, particulars and reasons for decision

The specialist equipment assigned to each member of An Garda Síochána serves an operational requirement within the environment in which they operate. It is the aim of An Garda Síochána to uphold and protect the human and constitutional rights of everyone by providing a high quality, effective policing service in partnership with the community and in co-operation with other agencies. Incapacitant spray provide an additional tactical option that may be available to Gardaí in the resolution of an incident. Its use should be seen in the context of the Conflict Management Model as a whole. The nature of policing is so diverse that it will never be possible to document guidance to cover every eventuality. What is important is that any action taken is lawful. Any use of incapacitant spray must be necessary and must be “*reasonable in the circumstances*” as the member of An Garda Síochána believes them to be. Individual Gardaí must be prepared to account for their decisions and justify their actions within the scope of legislation and regulations governing the use of non-lethal force.

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.

The term “administrative records” is understood to mean records relating to the processes of running and managing a business or organisation. 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.

I am therefore refusing Part 1 and 2 of your request as outlined below as it falls outside the scope of the FOI Act insofar as the records do not meet the criteria of administrative records as defined in the Act.

1. *A county by county breakdown of the number of times that pepper spray was used by the Gardai while on duty in 2017.*
2. *A county by county breakdown of the number of times that pepper spray was used by the Gardai while on duty in 2016.*

I am refusing Part 3 and 5 of your request as outlined below pursuant to section 36(1)(b) of the FOI Act as the records concerned contain commercially sensitive information.

3. *The number of pepper spray cans and the amount of pepper spray purchased by the Gardai in 2017.*
5. *The number of pepper spray cans and the amount of pepper spray purchased by the Gardai in 2016.*

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,*

I am satisfied that the release of the number of units of incapacitant spray purchased would prejudice the competitive position of the current supplier by making the cost per unit publically known in conjunction with Part 4 and Part 6 of your request. This information therefore is commercially sensitive in accordance with the provisions of section 36 of the FOI Act.

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.

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 the supplier with regard to the services provided to An Garda Síochána is not known to competitors or the public in general. If the records were made available to you it is reasonable to expect that it would prejudice the ability of supplier to compete in other contracts or negotiations in the future.

I am of the view that the release of the number of units of incapacitant spray purchased by An Garda Síochána in conjunction with the information released to you in Parts 4 and 6 could reasonably be expected to result in a material financial loss to the supplier. It could reasonably be expected to prejudice their competitive position in the conduct of their business. The placing of this specific information into the public domain could also reasonably be expected to give a competitive advantage to other companies seeking similar contracts with An Garda Síochána or other public bodies in the future.

Furthermore, the supplier's current customers may become aware of a difference in pricing structures being offered to An Garda Síochána which could prejudice any current or future negotiations with these customers.

The release of this information into the public domain could reasonably be expected to disadvantage the supplier when tendering for future contracts as competitors would be aware of the pricing structure and thereby likely to affect current and future contractual negotiations.

I am therefore refusing Parts 3 and 5 of your request under the provisions of section 36(1)(b) as it seeks commercially sensitive information.

I have decided to grant Part 4 and Part 6 of your request where you sought:

4. *The amount spent on pepper spray cans and pepper spray by Gardai in 2017.*
6. *The amount spent on pepper spray cans and pepper spray by Gardai in 2016.*

I am providing the Total Cost (including VAT) of the combined purchase of incapacitant spray cans and incapacitant spray that was purchased in 2016 and 2017 as detailed below:

Year	2016	2017
Amount spent by An Garda Síochána on incapacitant spray	€38,376 (including VAT)	€58,671 (including VAT)

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-000052-2018**.

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-000052-2018) 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**
SHARON KENNEDY
FREEDOM OF INFORMATION OFFICER

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