

# 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)

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

## Re: Freedom of Information Request FOI-000257-2018 Request Refused

*Dear*

I refer to your request, dated and received on 3<sup>rd</sup> July 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 spreadsheet of costs associated with the development of the garda summer uniform broken down according to expenditure type.*
- 2. the name of any companies involved in the design and how much each of them were paid.*
- 3. copies of any tender documents associated with the above.*

For ease of reference, I have numbered your request parts 1, 2 and 3.

I am aware a member of my staff was in contact with you on the 10<sup>th</sup> July 2018 to clarify this request. It was agreed that your request related to the new summer uniform introduced this year and being tested in three areas.

I wish to inform you that I have decided to refuse your request on the 13<sup>th</sup> August 2018.

The purpose of this letter is to explain that decision.

## **1. Findings, particulars and reasons for decision**

Upon receipt of your request, a search was conducted in the Finance and Procurement Sections of An Garda Síochána and as a consequence a number of records were identified. The sections of the FOI Act which deny access to information are known as its exemptions. A number of exemptions under the FOI Act have been applied to the records identified in response to your FOI request. This decision letter deals with your request in three parts.

**Part 1** of your request sought.

*A spreadsheet of costs associated with the development of the garda summer uniform broken down according to expenditure type.*

The uniform apparel involved in the pilot was developed based on the feedback received from operational members, Garda management and the Uniform Committee within the Garda Síochána. The Uniform Committee comprises of representatives from the Garda associations, Health and Safety Section and Procurement Section. There are no costs associated with the development of the uniform which can be attributed to a specific commercial body or company as the development process was conducted by Garda management and the Uniform Committee.

I am therefore refusing Part 1 of your request on the grounds that no records exist in accordance with Section 15(1)(a) of the FOI Act which states:

### ***Refusal on administrative grounds to grant FOI requests***

*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.*

**Part 2** of your request sought;

- (2) the name of any companies involved in the design and how much each of them were paid."*

As previously stated in Part 1 above the uniform apparel involved in the pilot was developed based on the feedback received from operational members, Garda management and the Uniform Committee within the Garda Síochána. As there were no companies involved in the design of the uniform, in this case, there are no financial records showing the name of a particular company or how much was paid for the design.

Therefore, I am refusing Part 2 of your request on the grounds that no records exist in accordance with Section 15(1)(a) of the FOI Act.

### ***Refusal on administrative grounds to grant FOI requests***

*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.*

**Part 3** of your request sought;

(3) *Copies of any tender documents associated with the above.*”

In accordance with the Office of the Government Procurement Public Guidelines, the Garda Procurement Section sought quotes from companies involved in the uniform sector for the pilot phase of the development of the uniform. Three companies supplied tender response documentation and these records have been considered in compliance with your request. A number of exemptions under the FOI Act have been applied to these records to refuse the release of same.

Hunter Apparel Solutions Limited were successful in meeting the specifications of the Uniform Committee designs and were selected for the supply of the redesigned uniform for the purposes of the 3-month pilot. There are two other companies that submitted tender responses that were unsuccessful in securing the initial tender for the pilot phase. The following information is relevant to all three tender documents.

The content of the tender responses is detailed and provides scientific and technical specifications of their product, internal test analysis results and matters specific to the manner in which the product sought is made and quality assured. The level of detail provided is suitable for the purpose it was designed for and specific to the Garda needs. As this is a commercially based competition the details contained in the tender responses are highly sensitive when considered in the context of current and future competitiveness within the uniform clothing industry. Inclusive are the associated costs and pricing of each garment to the Garda Organisation. Based on the detail provided in the tender response regarding the product, it is highly probable to expect the release of such information would be detrimental to the commercial viability of Hunter Apparel Solutions Limited in this and other future competitions. Within the tender response are comments and considerations provided by the company that would reveal their own tradecraft within the uniform industry. The tender document highlights expertise and draws upon their experiences when considering certain aspects of the uniform. This type of explicated knowledge benefits the company when submitting a tender response and is considered trade secrets within the uniform clothing industry.

Specific consideration should also have given to the companies who did not secure the contract and the possible adverse commercial impact it could have should their names be released as unsuccessful tenderers for the Garda uniform. Certain conclusions could be drawn from their failure that would be prejudicial to the company in the absence of explanations and contextualisation relating to the reasons for their unsuccessful bid.

In summation, the release of commercial information submitted as part of an ongoing tendering process and subject to a pilot will prejudice the tenderer's positions in current and future competitions while proving unfairly advantageous to competitors who seek to secure contracts in the same commercial field and competitions. The prospect of prejudicing the commercial and competitive position by releasing a detailed tender response is not within the remit of the purpose of the FOI Act and Section 36 of the Act provides safeguards in that respect.

Section 36 (1)(a), (b) and (c) state:

***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.*

### **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.

## **Harm Test**

Section 36 also requires a harm test to be carried out as part of the decision making process. I am of the view that by releasing Hunter Apparel Solution's Ltd. pricing structure could reasonably be expected to result in a material financial loss by the company as it could prejudice their competitive position in the conduct of their business. The advertising of details pertaining to the design of the uniform, into the public domain could also reasonably be expected to give a competitive advantage to other companies seeking similar contracts with public bodies. The company'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.

In this regard, to release copies of the tender responses received for this pilot may prejudice the future ability of the three companies to tender for future contracts both within An Garda Síochána and outside the organisation. In addition, the company selected to provide the pilot uniform will be disadvantaged if its information was released into the public domain thus reducing competitiveness.

## ***Access to Part of Records – Section 18***

I believe that if the Tender Response of Hunter Apparel Solutions Ltd. was now to be released in its current format, the substantial redactions under Section 36 of the FOI Act would mean the report will be subject to Section 18. It will be released out of context and in a misleading fashion. I refer to the decision of Mr Peter Tyndall, Information Commissioner (case number 160199) in which he states:

*Finally, section 18 of the FOI Act provides that if it is practicable, records may be granted in part, by excluding the exempt material. Section 18 shall not apply if the copy of the record provided would be misleading. I take the view that neither the definition of a record under section 2 nor the provisions of section 18 envisage or require the extracting of particular sentences or occasional paragraphs from records for the purpose of granting access to those particular sentences or paragraphs. Generally speaking, therefore, I am not in favour of the cutting or "dissecting" of records to such an extent.*

The tender response could be misleading when Section 36 has been applied and should therefore be withheld.

## **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-000257-2018**.

***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:** BOFIE2D

**You must ensure that your FOI reference number (FOI-000257-2018) 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](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**  
**SHARON KENNEDY**  
**FREEDOM OF INFORMATION OFFICER**

13 **AUGUST, 2018**

Requester Name: [REDACTED]

File Re: FOI-000257-2018

Page No	Description of document	Deletions	Relevant Section of FOI Acts	Reason for decision	Decision Maker's decision
1 - 45	Tender Response	45 page	Section 36	Commercially Sensitive	Refuse
		<b>Total number of pages</b>			45
		<b>Total number of pages for full release</b>			
		<b>Total number of pages for partial release</b>			
		<b>Total number of pages being withheld</b>			45