

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  

Riomh-phoist/Email: foi@garda.ie

Re: Freedom of Information Request FOI-000037-2019 Request Part-Granted

Dear

I refer to your request, dated 8th January, 2019 and received on 9th January, 2019 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. The number of Gardai currently suspended from duty; their rank and reasons for their suspension.*
- 2. Correspondence between the Garda Representative Association (GRA) and the Gardai during the second half of 2018 relating to the general issue of disciplinary proceedings and delays in finalising matters where members are suspended for long periods of time.*
- 3. The number of Gardai suspended in excess of 10 years
The number of Gardai suspended between eight and 10 years.
The number of Gardai suspended between eight and six years
The number of Gardai suspended between five and six years
The number of Gardai suspended between four and five years.
The number of Gardai suspended between four and three years.
The number of Gardai suspended between three and two years.
The number of Gardai suspended between two and one years
The number of Gardai suspended between one and six months*

4. *Where a Garda has been suspended from duty in excess of three years, the reasons why members are suspended for that duration and more.*
5. *The number of Garda dismissed from duty in 2018.*

I wish to inform you that I have decided to part-grant your request on the 5th February, 2019.

For ease of reference I have numbered your request 1-5 inclusive.

The purpose of this letter is to explain my decision.

1. Findings, particulars and reasons for decision.

Upon receipt of your request, the Internal Affairs Section of An Garda Síochána were contacted to retrieve the information requested by you and a number of records were identified.

Under Section 37 (1) I wish to advise that I am part granting Part 1 of your request which is seeking *'the number of Gardaí currently suspended from duty; their rank and reasons for their suspension'*. Due to the very small number of members currently suspended, I am withholding the rank and the specific reasons for suspension of each of the members concerned see table on page 4 for details.

I am refusing to provide details of rank and the specific reasons for suspension as I believe that the individuals involved will become easily identifiable beyond their family and friends and it would be considered a breach of the confidentiality upon which the information is being held by the Garda Organisation. The release of information about such a small number of incidents, such as rank and reasons for suspension, which is specific to each individual, will allow for a person to become more identifiable and possibly named in the public domain

I am refusing Part 2 of your request under Section 37 (1) wherein you seek *'Correspondence between the Garda Representative Association (GRA) and the Gardaí during the second half of 2018 relating to the general issue of disciplinary proceedings and delays in finalising matters where members are suspended for long periods of time'*. I can advise you that the Internal Affairs Section have identified 3 files which contains correspondence between the GRA and An Garda Síochána during, however I am refusing the release of these records as the individuals involved could be identified beyond their family and friends and it would be considered a breach of the confidentiality upon which the information is being held by the Garda Organisation.

I am therefore applying Section 37(1) of the FOI Act to Part 1 & 2 of your request.

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).*

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,*

and, without prejudice to the generality of the foregoing, includes—

- (iii) information relating to the employment or employment history of the individual,*
- (v) information relating to the individual in a record falling within section 11(6)(a),*
- (vi) information relating to any criminal history of, or the commission or alleged commission of any offence by, the individual,*
- (xi) the name of the individual where it appears with other personal information relating to the individual or where the disclosure of the name would, or would be likely to, establish that any personal information held by the FOI body concerned relates to the individual,*

As referenced at Section 2 above, Section 11(6)(a) refers to access to records but does not include certain personal records. Section 11(4) sets out the right of access to records and the types of records that can be accessed. However, in Section 11 there are number records that are considered personal and are not automatically subject to release by an FOI body. Section 11(6)(a) sets out the records that are not included for release at section 11(4).

(6) Subsection (4) shall not be construed as applying, in relation to an individual who is a member of the staff of an FOI body; the right of access to a record held by an FOI body that—

(a) is a personnel record, that is to say, a record relating wholly or mainly to one or more of the following, that is to say, the competence or ability of the individual in his or her capacity as a member of the staff of an FOI body or his or her employment or employment history or an evaluation of the performance of his or her functions generally or a particular such function as such member,

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 employees that sensitive 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 in the context of its disciplinary proceedings outweighs the public interest which would be served were the records released to you.

I am granting part 3 of your request and the table below provides the details in relation to part 1 & 3 of your request.

Table A: - Number of Members Suspended – Duration

Number of Gardaí currently on suspension	38
The numbers who are currently suspended 6 - 10 years and over	4
The numbers who are currently suspended 3 - 6 years	6
The numbers who are currently suspended 0 - 3 years	28

Please note that the above figures include both the number of members whose suspension commenced in the calendar year indicated above and / or remained on suspension from the previous calendar year.

It should be further noted that the figures outlined above are those on long term suspensions, the figures do not include those members who have been suspended for short term periods, e.g. if a member is suspended for a day or part of while they may be the subject of court proceedings. It should be further noted that the numbers of members on suspension in An Garda Síochána vary, sometimes on a day to day basis as investigations are progressed or finalised.

In respect of part 4 of your request wherein you sought '*Where a Garda has been suspended from duty in excess of three years, the reasons why members are suspended for that duration and more*'. As previously advised above, following an examination of the records held at Internal Affairs section, I can inform you that, where a member has been suspended for a duration in excess of three years the reasons included the fact that some of the members are still subject of criminal proceedings before the courts whether by way of awaiting trial or awaiting an appeal before the courts.

In addition, a number of members are also currently pursuing Judicial Review proceedings before the High Court in relation to discipline matters and remain suspended pending the outcome of these proceedings and subsequent conclusion of discipline proceedings.

Therefore, I am applying Section 37 as detailed above and Section 35(1)(b) to the release of the information you seek. The disclosure of personal information of this nature would, in my opinion, be a breach of an implied equitable agreement between An Garda Síochána and the individual(s) involved. The reasons for suspension for a member of An Garda Síochána contains the necessary quality of confidentiality whereby an individual could reasonably expect an equitable duty of confidence to exist between the parties concerned. Any records of this nature are part of an internal disciplinary investigation as per the Garda Síochána (Discipline) Regulations 2007 (as amended). Furthermore, where disciplinary matters proceed to a Board of Inquiry, regulation 29(8) states "*An Inquiry shall be held in private*". I am also of the view that it would be unconscionable for this Organisation, engaged in processes involved in alleged breaches of discipline, not to treat all information relating to the process, inclusive of the decision to suspend a person, as confidential. Therefore, I am now applying section 35(1)(b) of the FOI Act which states;

Section 35 – Information obtained in confidence

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

(b) *disclosure of the information concerned would constitute a breach of a duty of confidence provided for by a provision of an agreement or enactment (other than a provision specified in column (3) in Part 1 or 2 of Schedule 3 of an enactment specified in that Schedule) or otherwise by law.*

Part 5 of your request is seeking the number of Garda dismissed from duty in 2018. I can now confirm that 2 members of An Garda Síochána were dismissed from duty in 2018.

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-000037-2019**.

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-000037-2019 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

 **FEBRUARY 2019**