

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-000083-2019 Request Part-Granted

Dear

I refer to your request, dated 16th February 2019 and received on 18th February 2019 which you have made under the Freedom of Information Act 2014 (FOI Act) for records held by An Garda Síochána. I note that your request was clarified further on 19th February 2019 and again on 5th March 2019.

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:

Original Request:

A database/spreadsheet/list containing the following data:

- 1. The number of employees of the agency sacked in 2016, 2017, 2018.*
- 2. The reason for the dismissal of each of the above employees.*
- 3. The number of employees of the agency suspended in 2016, 2017, 2018.*
- 4. The reason for the suspension of each of the above employees.*
- 5. The number of complaints of bullying received by the agency in 2016, 2017, 2018.*
- 6. The number of complaints of sexual harassment received by the agency in 2016, 2017, 2018.*

Clarified Request – 19th February 2019

I'd like to clarify that this is in regard to Garda members. If possible, would you be able to include Garda staff as a separate from members?

Further clarification – 5th March 2019

Proceed on overall reasons for suspensions

I have numbered your request for ease of reference.

I wish to inform you that I have decided to part-grant your request on the 14th March, 2019.

The purpose of this letter is to explain my decision.

1. Findings, particulars and reasons for decision.

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

Part 1 and 3 of your request is seeking *the number of employees of the agency sacked in 2016, 2017, 2018 and the number of employees of the agency suspended in 2016, 2017, 2018.*

Table A below sets out the number of dismissals of Garda members and Garda Staff for years 2016, 2017 and 2018.

Table A: - Number of Members Dismissed

Dismissals from An Garda Síochána			
	2016	2017	2018
Garda Members	0	1	2
Garda Staff	0	0	0

Table B below sets out the number of suspensions of both Garda members and Garda Staff for the years 2016, 2017 and 2018.

Table B: - Number of Members Suspended

Suspensions from An Garda Síochána			
	2016	2017	2018
Garda Members	8	9	21
Garda Staff	0	0	2

It should be noted that the figures outlined above regarding suspensions for Garda members are those who are on long term suspensions, the figures do not include those Garda 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.

Parts 2 and 4 of your request is seeking *the reason for the dismissal of each of the above employee and the reason for the suspension of each of the above employees.*

Under Section 37(1), I wish to advise that I am withholding the specific reasons for dismissals and suspensions of each of the members concerned.

I am refusing to provide details of specific reasons for each member 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 reasons for dismissals and suspensions, which is specific to each individual, will allow for a person to become more identifiable and possibly named in the public domain

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),*
- (vii) information relating to any criminal history of, or the commission or alleged commission of any offence by, 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 a number of 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 dismissal and suspension proceedings outweighs the public interest which would be served were the records released to you.

In addition to Section 37, I am also applying Section 35(1)(b) to the release of the reasons for dismissals and suspensions. 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 dismissals and 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 dismiss or 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.

Parts 5 and 6 of your request is seeking 'the number of complaints of bullying received by the agency in 2016, 2017, 2018 and the number of complaints of sexual harassment received by the agency in 2016, 2017, 2018'.

I am to advise you that the information sought in relation to Garda members has been the subject of a number of previous FOI requests which are published on our decision log on the Garda website. The decision reference numbers are as follows:

- FOI-000071-2018
- FOI-000008-2019

These decisions may be accessed by following the attached link:

<https://www.garda.ie/en/Information-Centre/Freedom-of-Information/Decision-Log/Human-Resource-Management/>

I am therefore refusing to provide information in respect of bullying and sexual harassment for Garda members for years 2016, 2017 and 2018 in accordance with Section 15(1)(d) of the FOI Act which states:

Section 15 – 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—
(d) The information is already in the public domain*

However, table C below outlines the number of bullying harassment and sexual harassment complaints in respect of Garda Staff:

Table C: - Complaints of Bullying, Harassment & Sexual Harassment - Garda Staff

Bullying, Harassment & Sexual Harassment - Garda Staff			
	2016	2017	2018
Bullying & Harassment	2	3	1
Sexual Harassment	0	0	20

There are two policies in place to deal with allegations of bullying, harassment and sexual harassment in the workplace within An Garda Síochána.

With regard to Garda members, I can advise that the policy – 'Working Together to Create A Positive Working Environment' applies. This booklet outlines the Policy and Procedures of the Garda Síochána for dealing with bullying, harassment and sexual harassment in the workplace.

In relation to Civilian members, the Dignity at Work – an anti-bullying, harassment and sexual harassment policy for the Irish Civil Service, issued by the Department of Public Expenditure and Reform, is a Civil Service wide policy which is applied to civilian staff working within An Garda Síochána.

Both policies are available on the Garda website at www.garda.ie

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-000083-2019**.

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: BOFIIIE2D

You must ensure that your FOI reference number FOI-000083-2019 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,

 **ACTING ASSISTANT PRINCIPAL OFFICER**

MARIA BRODIGAN
FREEDOM OF INFORMATION OFFICER

14th **MARCH 2019**