

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

Teileafón/Tel: (046) 9036350

Bí linn/Join us  



Freedom of Information Office
An Garda Síochána
Athlumney House
IDA Business Park
Johnstown
Navan
Co Meath
C15 DR90

Láithreán Gréasain/Website:
www.garda.ie

Ríomh-phoist:/Email: foi@garda.ie

Re: Freedom of Information Request FOI-000329-2016 Request Partially Granted

Dear

I refer to your request, dated 11th September, 2016 and received on 12th September, 2016 which you have made under the Freedom of Information Act 2014 (FOI Act) for records held by An Garda Síochána. On the 7th October 2016 your FOI request was extended under the provisions of section 14(1) of the FOI Act. I am aware that a member of my staff was contact with you regarding this FOI request.

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 correspondence between civilian staff of An Garda Síochána and the following individuals on the issue of internal controls and structures within An Garda Síochána.

- I. Garda Commissioner Nóirín O'Sullivan and her office
- II. Deputy Garda Commissioner Dónall O'Cualáin and his office.

The timeframe for this request is 15/8/2016 – today's date

I wish to inform you that I have decided to partially grant your request on the 28th October, 2016.

The purpose of this letter is to explain my decision.

1. Findings, particulars and reasons for decision.

A search for relevant records was conducted in both the Office of the Garda Commissioner and Deputy Commissioner Governance and Strategy. A number of records were located that relate to your FOI request. Upon reviewing these records a number of exemption provisions were applied. The application of these exemption provisions is shown on the attached Schedule of Records.

Many of the records and/or sections of the records were provided in confidence or relate to personal contractual data and commercial information pertaining to the terms and conditions of an individual's contract. As a result I am partially releasing the records and the exemption provisions of sections 31, 35 and 36 are applied as necessary.

Parliamentary, court and certain other matters – Section 31

31. (1) A head shall refuse to grant an FOI request if the record concerned—

(a) would be exempt from production in proceedings in a court on the ground of legal professional privilege,

Legal Professional Privilege also includes Litigation Privilege which refers to confidential communications made between two parties where the dominant purpose of the document is to prepare for contemplated litigation. One document in particular, as set out on the attached Schedule of Records, is exempted under section 31(1) (a) of the FOI Act. In *Silver Hill Duckling v Minister for Agriculture* (1987) it was held that a party to any threatened litigation can prepare his/her case;

“whether by means of communications passing between him and his legal advisors, or by means of communications passing between him and third parties, and to do so under the cloak of privilege”.

The dominant purpose of the relevant correspondence is legal in nature and drafted in preparation of any contemplated litigation proceedings. Therefore the relevant correspondence is exempted under the FOI Act.

Information Obtained in Confidence – Section 35

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.

In the absence of any legislation or contractual confidentiality clause an *equitable duty of confidence* is relevant. For this to be relevant the content of the documents or the records themselves must have the necessary quality of confidence. Factors relevant for consideration in this regard include whether the information is confidential or secret or concerns private matters. In this case the records contain highly sensitive personal information discussing a personal situation relevant to the working arrangements and contractual obligations of a particular individual. This, in my opinion, meets the requirements for an equitable duty of confidence. Within the 53 pages provided there are reports that discuss information provided to Garda management with the expectation that

it would not be shared or published and instead treated confidentially due to the sensitivity of the topic being discussed and the personal nature of the information.

To prevent a breach of the equity of confidence the information cannot be provided as it was imparted in circumstances that impose an obligation of confidence and trust by the person receiving it and it would be to the detriment of the individuals involved if it was released to you. It would result in the individuals involved being maligned both in the public domain and within An Garda Síochána on a matter of a private nature.

In summary the attached records were provided in confidence to Garda management on the understanding that they would remain confidential and if released would result in a breach of an equitable duty of confidence. Therefore the provisions of section 35 must be applied as it is not a discretionary decision.

Public Interest Test

Section 35(1)(b) is not subject to the same general public interest balancing test as per section 35(1)(a) of the FOI Act however section 35(1)(b) is subject to a public interest defence if the records were to be released. The justification for releasing the records in the public interest include where the documents show a wrongdoing or a danger to the public or even to ensure the maintenance of the principle of justice. However in this case these type of matters does not arise and therefore there is no overriding public interest that requires the information to be released contrary to section 35(1)(b) of the FOI Act.

Having considered the possible reasons for justifying a release of the information in the interest of the public I have concluded that they do not override the duty of confidence expected in correspondence of this nature.

Commercially Sensitive Information – Section 36

36. (1) Subject to subsection (2), a head shall refuse to grant an FOI request if the record concerned contains—

- (c) information whose disclosure could prejudice the conduct or outcome of contractual or other negotiations of the person to whom the information relates.*

Pursuant to section 36(1)(c), access to a record must be refused where the disclosure of information contained in the record could prejudice the conduct or outcome of contractual or other negotiations of the person to whom the information relates. A number of the records provided relate to personal contracts and in some cases the specific conditions of the contracts. These contain commercially sensitive information specific to an individual and are the subject of the correspondence to Garda management. Negotiations and clarification regarding contracts and any change to the terms and conditions of said contracts is deemed commercially sensitive and public disclosure might interfere with or prejudice the conduct of such contractual negotiations at this time.

A disclosure of the relevant contractual conditions subject of negotiation with Garda Management could be expected to create distrust between the parties involved with regard to the confidentiality of conciliatory transactions offered to resolve the issues. The release of such information into the public domain will injure the prospect of similar conciliatory negotiations being made with future parties dealing with An Garda Síochána, as private negotiating positions will be publicly available for debate and opinion.

While certain matters may be known in general terms by the public the specific details are not. Therefore the documents are withheld under the provisions of the FOI Act due to the possible adverse affect it will have on current and future contractual discussion involving sensitive information on internal controls or structures.

Public Interest Test

The FOI Act recognises that there is a significant public interest in government bodies being open and accountable for its actions. On the other hand there is a need to strike a balance between the need for openness and preserving commercially sensitive information. When considering the public interest in releasing the documents I have taken into account the following factors.

- Ensuring openness and transparency of organisational functions to the greatest possible extent,
- The confidentiality of the information is outweighed by the needs of the public,
- That there is more than just a transitory interest by the public in this information,
- The public interest in members of the public exercising their rights under the FOI Act,

In considering the public interest factors which favour withholding the records I have taken account of the following factors.

- Allowing An Garda Síochána to conduct its business without undue public scrutiny,
- The public interest is not best served by releasing these records,
- That there is a reasonable and implied expectation by employees that sensitive personal contractual 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 information but having balanced the factors both for and against the release, I decided that the public interest in preserving the commercially sensitive information outweighs the public interest which would be served were the records released to you.

I am conscious of the fact that once records are disclosed under the provisions of the FOI Act there is no control as to whom the information is shared with. Therefore a release of records under the FOI Act is considered a release to the world in general and not just the individual requesting the information.

Access to parts of records – Section 18

18. (1) Where an FOI request would fall to be granted but for the fact that it relates to a record that is an exempt record, by reason of the inclusion in it, with other matter, of particular matter, the head of the FOI body concerned, shall, if it is practicable to do so, prepare a copy, in such form as he or she considers appropriate, of so much of the record as does not consist of the particular matter aforesaid and the request shall be granted by offering the requester access to the copy.

(2) Subsection (1) shall not apply in relation to a record if the copy provided for thereby would be misleading.

Section 18(2) has been applied to parts of the records provided. A record must be seen in the context of the overall report as providing context to the meaning of the document. I am of the opinion that the level of redaction in certain records is so significant that the record would be rendered nonsensical. In this regard, I am applying Section 18 of the FOI Act to this request.

I refer to the decision of Mr. Peter Tyndall, Information Commissioner (case number 160199) in which he states:

'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.'

Section 18 has been applied in limited circumstances to ensure that any information released to you is not misleading.

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 **F01-000329 - 2016**.

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: IE86B0F190001710026896
BIC: BOFIIE2D

You must ensure that your FOI reference number F01-000327-2016 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 OFFICER

7TH NOVEMBER, 2016

Requester Name:

File Re: FOI-000329-2016

Page No	Description of document	Deletions	Relevant Section of FOI Acts	Reason for decision	Decision Maker's decision
1 to 4	Examination of Reporting Structures - HR & PD	4	Section 31(1)(a)	Legal Professional Privilege	Withheld
5	Examination of Reporting Structures - Deputy Commissioner (DC) SCM	3	Section 35(1)(b) Section 36(1)(c)	Information given in confidence and commercially sensitive	Partially Released
6	Examination of Reporting Structures - Office of Commissioner (CR)	5	Section 35(1)(b) Section 36(1)(c)	Information given in confidence and commercially sensitive	Partially Released
7 to 8	Private and Confidential Correspondence to Commissioner	2	Section 35(1)(b) Section 36(1)(c)	Information given in confidence and commercially sensitive	Withheld
9	Email to Office of DC SCM	1	Section 35(1)(b) Section 36(1)(c)	Information given in confidence and commercially sensitive	Withheld
10 to 14	Correspondence from PAS to CR	5	Section 35(1)(b) Section 36(1)(c)	Information given in confidence and commercially sensitive	Withheld
15	PAS Competition	4	Section 35(1)(b) Section 36(1)(c)	Information given in confidence and commercially sensitive	Partially Released
16 to 25	PAS Competition	20	Section 35(1)(b) Section 36(1)(c)	Information given in confidence and commercially sensitive	Withheld
26	PAS Competition	3	Section 35(1)(b) Section 36(1)(c)	Information given in confidence and commercially sensitive	Partially Released
27 to 39	PAS Competition	13	Section 35(1)(b) Section 36(1)(c)	Information given in confidence and commercially sensitive	Withheld
40 to 43	Correspondence to DC SCM	4	Section 35(1)(b) Section 36(1)(c)	Information given in confidence and commercially sensitive	Withheld
44	Emails	5	Section 35(1)(b) Section 36(1)(c)	Information given in confidence and commercially sensitive	Partially Released
45	Email from DC SCM re Changes to Current Reporting Structures	N/A	N/A	N/A	Release
46 to 53	Emails	28	Section 35(1)(b) Section 36(1)(c)	Information given in confidence and commercially sensitive	Partially Released

Requester Name: File Re: FOI-000329-2016					
Page No	Description of document	Deletions	Relevant Section of FOI Acts	Reason for decision	Decision Maker's decision
		Total number of pages		53	
		Total number of pages for full release		3	
		Total number of pages for partial release		11	
		Total number of pages being withheld		39	