

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 ND62



Freedom of Information Office,
An Garda Síochána, Athlumney House,
IDA Business Park,
Johnstown, Navan,
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C15 ND62

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-000120-2024 Request Part Granted

Dear

I refer to your request, dated and received on 27th March, 2024 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:

We refer to the contract awarded by An Garda Síochána to the successful tenderer pursuant to the above RFT. We hereby are making a request pursuant to Freedom of Information Act 2014 (as amended) to exercise the right of access to the following documents and records relating to the above RFT, copies of which we request you provide to us in soft copy form:

- 1.Tender documents, supporting documents and correspondence submitted by the successful tenderer to An Garda Síochána in relation to the above RFT;*
- 2.Declarations, licences, permits, certificates, permissions and health & safety policies and statements submitted by the successful tenderer to An Garda Síochána in relation to the above RFT;*
- 3.ESPDs in respect of sub-contractors named by the successful tenderer in its tender;*
- 4.The location of sites and storage facilities that are to be used for the provision of services under the contract with the successful tenderer;*
- 5.An Garda Síochána's Crime Prevention Officer (CPO) Reports for sites and storage facilities that are to be used for the provision of services under the contract with the successful tenderer;*

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6. *Records of verification by An Garda Síochána of the successful tenderer's tax clearance position prior to award of the contract;*
7. *Copies of all documents relating to the assessment and marking of the successful tenderer's tender, including score sheets, assessment comment forms, internal memos and any other similar or related documentation and correspondence; and*
8. *The contract and/or terms of engagement between the successful tenderer and An Garda Síochána.*

I wish to inform you that I have decided to part grant your request on 25th April 2024. The purpose of this letter is to explain that decision.

1. Findings, particulars and reasons for decision

Upon receipt of your request was forwarded to the relevant section of An Garda Síochána, where searches have been conducted and a number of records located. These records have been examined in respect of each part of your request.

1. Tender documents, supporting documents and correspondence submitted by the successful tenderer to An Garda Síochána in relation to the above RFT;

The tender response documents submitted by the successful tenderer, consist in the main of details of how that company proposes to provide services to An Garda Síochána. It contains significant amounts of technical information on how the company organises their business activities as well as information on the pricing structure of the successful bid. I am satisfied that the release of this information would amount to the release of commercially sensitive information.

Section 36 of the Act requires that FOI bodies refuse the release of commercially sensitive information, given that the release of information under the FOI Act essentially amounts to a release to the world at large. Section 36 states that

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

The essence of the test to be considered by an FOI Body in section 36(1)(b) is not the nature of the information, but the nature of the harm which might be occasioned by its release. The harm test in the first part of section 36(1)(b) is that disclosure "could reasonably be expected to result in material loss or gain". The standard of proof in relation to the second limb of section 36(1)(b) is low; all that is required is the possibility of prejudice with the only requirement being that disclosure "could prejudice the competitive position" of the person concerned.

The records sought in this part of your request clearly consist of sensitive financial and technical information in respect of how the successful tenderer operates their business. The information at question here is not historic information as it relates to a contract signed in 2022 and renewed in 2023. I am cognisant of the fact that the release of information under the Act is, in essence, a release to the public at large. Financial, commercial and technical information, such as that contained within these records, is not known to competitors or the public in general.

I am of the view that the release of these records would amount to the release of financial information such as pricing structures, commercial information such as the relationship between the tenderer and their subcontractors, and technical information in relation to how the tenderer would satisfy the requirements of the tender. The release of such information could reasonably be expected to result in a material financial loss by the tenderer as it would allow competitors become aware of significant information in respect of the operation of the successful tenderers business.

Furthermore the supplier's current customers may become aware of a potential difference in pricing structures being offered to An Garda Síochána which could prejudice any current or future negotiations with these customers. The placing of these pricing structures into the public domain could also reasonably be expected to give a competitive advantage to other companies seeking similar contracts.

If the records sought were made available to you, it is reasonable to expect that it would prejudice the ability the successful tenderer to compete in other contracts or negotiations in the future as competitors would be aware of substantial amounts of sensitive financial, commercial and technical information. Such information could reasonably be expected to be used by rivals of the successful tenderers in future tender competitions. Such tender competitions are run by An Garda Síochána and other public bodies on a regular basis. The information contained in these records would be of interest to parties that may be considering competing for future tender competitions and the release of the information in these records would be certain to prejudice the competitive position of the successful tenderer.

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 issues 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 procurement process used 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 and its suppliers can conduct their business with external contractors in a confidential manner.
- That there is a reasonable and implied expectation by contractors that financial and technical 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.

In reaching my decision, I am bound to consider only the public interest in the release of the records, as opposed to any private interest of the requester. Having balanced the public interest factors both for and against the release, I have 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 am also satisfied that none of the exemptions provided for at Section 36(2) apply in this case.

2. Declarations, licences, permits, certificates, permissions and health & safety policies and statements submitted by the successful tenderer to An Garda Síochána in relation to the above RFT;

Declarations, licences, permits, certificates, permissions and health & safety policies and statements submitted by the successful tenderer form an integral part of the tender submission provided by the successful tenderer.

As with the tender response document itself, the records requested in this part of your request contain technical and operational information in respect of the successful tenderers business. This information also amounts to commercially sensitive information in respect of the operation of the successful tenderers business. I must therefore refuse the release of these records in accordance with Section 36(1) of the FOI Act.

The public interest factors outlined above have also been considered in respect of this part of your request. I have again concluded that the public interest in preserving the information contained in these particular records 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 am also satisfied that none of the exemptions provided for at Section 36(2) apply in this case.

3. ESPDs in respect of sub-contractors named by the successful tenderer in its tender;

The use of sub-contractors by tenderers is an essential commercial decision by a tenderer. For the tenderer, the relationship with sub-contractors is a key factor in the tenderers ability to fulfil a contract. The release of information in respect of sub-contractors used by a tenderer would provide significant information on the service offering proposed by the tenderer. The need to utilise sub-contractors identifies areas where the tenderer does not have capacity, thereby highlighting weaknesses in the tenderers own business capability in a public way. Information useful to commercial rivals of the tenderer would thereby be placed into the public domain. Such information could reasonably be expected to be used by rivals of the successful tenderers in future tender competitions. Such tender competitions are run by An Garda Síochána and

other public bodies on a regular basis. From the sub-contractors point of view, a list of customers constitutes an important commercial and economic asset of the subcontractor. I must therefore refuse the release of these records in accordance with Section 36(1) of the FOI Act.

The public interest factors outlined in respect of the first part of the request have also been considered in respect of this part of your request. I have again concluded that the public interest in preserving the information contained in these particular records 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 am also satisfied that none of the exemptions provided for at Section 36(2) apply in this case.

4. The location of sites and storage facilities that are to be used for the provision of services under the contract with the successful tenderer;

In examining this aspect of your request, I am mindful of my obligations and the role of An Garda Síochána in respect of public safety and the protection of property. Vehicles are stored by successful tenderers on behalf of An Garda Síochána at nominated premises. Vehicles stored include vehicles detained under Section 41 of the Road Traffic Act 1994, official Garda vehicles and other vehicles seized or transported by An Garda Síochána for investigative, evidential and technical examination purposes.

I am refusing to release the locations of sites and storage facilities as the release of such information could prejudice or impair the investigation of offences by An Garda Síochána in accordance with section 32 of the FOI Act. The functions of An Garda Síochána are, in the main, directed towards the prevention, detection and investigation of criminal activities. It is not in the public interest to impair or prejudice Garda functions by releasing information under the FOI Act which could reasonably be expected to harm an investigation, put at risk public safety, the safety of property or be detrimental to the investigative process. For example, it is reasonable to expect that the persons/companies supplying certain operational related services to An Garda Síochána, such as vehicle storage, receive due consideration for their safety and that of their premises and are not unnecessarily placed in situations where they could be subjected to harm in any way. There are certain circumstances when assistance is provided to An Garda Síochána relating to investigations where vehicles are towed and stored by private companies. It is reasonable to expect that the identification of the locations where such vehicles are stored were to be publically available, those who provide a service in such circumstances could be subjected to intimidation or other harmful methods in an attempt to negatively impact a criminal investigation. Similarly the vehicles towed must not be interfered or tampered with to ensure the investigative process, enforcement of law or lawful methods to protect public safety are not impaired or prejudiced.

Section 32 – Law enforcement and public safety

As such, I am satisfied that Sections 32(1)(a)(i), 32(1)(a)(ii), 32(1)(a)(iii) and 32(1)(a)(ix) (Law enforcement and public safety) are applicable to the information you have requested. As a result of these genuine and reasonable concerns the release of these records are excluded under section 32 of the FOI Act.

32.(1) A head may refuse to grant an FOI request if access to the record concerned could, in the opinion of the head, reasonably be expected to—

(a) *prejudice or impair -*

- (i) *the prevention, detection or investigation of offences, the apprehension or prosecution of offenders or the effectiveness of lawful methods, systems, plans or procedures employed for the purposes of the matters aforesaid,*
- (ii) *the enforcement of, compliance with or administration of any law,*
- (iii) *lawful methods, systems, plans or procedures for ensuring the safety of the public and the safety or security of persons and property,*
- (ix) *the security of a building or other structure or a vehicle, ship, boat or aircraft, or*

5. An Garda Síochána's Crime Prevention Officer (CPO) Reports for sites and storage facilities that are to be used for the provision of services under the contract with the successful tenderer;

An Garda Síochána is for the purposes of the FOI Act defined as a partially included agency. In accordance with Part 1(n) of Schedule 1, only records held by An Garda Síochána in respect of finance, procurement and human resource matters can be considered for release under the Act. Records relating to operational policing matters fall outside the scope of the Act as it relates to An Garda Síochána and no right of access to such records exists. A crime prevention report is in its very essence an operational policing document and as such falls outside the scope of the Act. In accordance with Part 1(n) of Schedule 1 of the Act, this part of your request is therefore, refused.

Notwithstanding the provisions of Part 1(n) of Schedule 1, the CPO reports consists in its entirety of information relating to the security of premises intended to be used for the provision of services under the contract. As such the provisions of Section 32(1)(a)(i), (iii) and (ix) would also apply to this part of your request.

6. Records of verification by An Garda Síochána of the successful tenderer's tax clearance position prior to award of the contract;

Successful tenderers for contracts with public bodies, including An Garda Síochána, are required to possess a valid tax clearance certificate. Records in respect of the successful tenderers own specific tax history by their very nature consist of the financial information of the tenderer. As with parts 1 and 2 of your request, these records consist of commercially sensitive information.

I have again concluded that the public interest in preserving the information contained in these particular records 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. Therefore, I must also refuse this part of your request. In doing so, I am satisfied that none of the exemptions provided for at Section 36(2) apply in this case.

7. Copies of all documents relating to the assessment and marking of the successful tenderer's tender, including score sheets, assessment comment forms, internal memos and any other similar or related documentation and correspondence;

I am obliged to apply the provisions of Section 36(1) of the Act in respect of all assessment and marking documentation. These records consist of financial commercial and technical information in respect of the successful tenderer.

I am satisfied that the release of such financial, commercial and technical information would undoubtedly prejudice the competitive position of these successful tenderer by making key sensitive information publically known. As such, this information is commercially sensitive to the company in question, in accordance with the provisions of Section 36 of the Act. Therefore, for the reasons outlined above, and cognisant of the public interest arguments previously outlined, I am refusing this part of your request in accordance with Section 36(1)

8. The contract and/or terms of engagement between the successful tenderer and An Garda Síochána.

The contract signed between An Garda Síochána and the successful tenderer is enclosed herewith, as is a copy of the contract for Year 2. In accordance with the provisions of the FOI Act I have made a number of redactions to these documents.

In respect of the original contract, I have redacted details of the fees charged by the successful tenderer. I am of the view that the release of the pricing structure of the tenderer could reasonably be expected to result in a material financial loss by the supplier as it could prejudice their competitive position in the conduct of their business. The placing of these pricing structures into the public domain could also reasonably be expected to give a competitive advantage to other companies seeking similar contracts with public bodies.

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

Therefore, I am refusing your request under the provisions of section 36(1)(b) & 36(1)(c) as it seeks commercially sensitive information.

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.
- The public interest in ensuring An Garda Síochána is compliant with public procurement regulations
- 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.

In respect of both documents, I have redacted the personal information of named third parties. The FOI Act defines personal information as:

“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,*

I am satisfied that parts of both records relate to third parties, as well as information relating to their employment status. This third party personal information is information which An Garda Síochána is expected to keep in a confidential manner. Accordingly I find that section 37(1) of the Act applies to the records at issue. Section 37(1) provides that a public body shall refuse to grant a request if access to the record concerned would involve the disclosure of personal information relating to an individual other than the requester. It provides that FOI bodies protect the release of personal information into the public domain. Although the Act seeks to promote openness and transparency from public bodies, the Act also requires public bodies to respect the constitutional right to privacy of individuals about whom the public body holds information.

Section 37 of the FOI Act states;

“(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).”

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 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 outweighs the public interest which would be served were the records released to you.

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-000120-2024**.

Freedom of Information Office, An Garda Síochána, Athlumney House, IDA Business Park, Johnstown, Navan, Co. Meath C15 ND62

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: An Garda Síochána Imprest Account

Account Number: 30000302

Sort Code: 951599

IBAN: IE28DABA95159930000302

BIC: DABAIE2D

You must ensure that your FOI reference number (FOI-000120-2024) 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 the FOI Office by telephone at (046) 9036350.

Yours sincerely,



ASSISTANT PRINCIPAL

PAUL BASSETT

FREEDOM OF INFORMATION OFFICER

25 APRIL, 2024.