

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

Ríomh-phoist/Email: foi@garda.ie

Re: Freedom of Information Request FOI-000455-2016. Request Refused.

Dear

I refer to your request, dated the 7th December 2016 and received on the 8th December 2016 from the Department of Justice and Equality, which you 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:

- *A breakdown of the cost of the State funerals for Garda Tony Golden and Adrian O'Donohoe*

I wish to inform you that I have decided to refuse your request on the 4th January, 2017.

The purpose of this letter is to explain my decision. This explanation has the following parts:

1. An explanation of the relevant findings concerning the records to which access is denied;
2. A statement of how you can appeal this decision should you wish to do so.

1. Findings, particulars and reasons for decision.

Firstly, a search of the records held by the Finance Directorate, An Garda Síochána was conducted to establish if any records were held to any costs incurred in a State funeral being provided following the deaths on duty of D/Garda Donohoe and Garda Golden.

I have reviewed the records held, and considered them, in accordance with the provisions of the FOI Act.

The cost incurred by members of An Garda Síochána performing duty during the State funerals for both D/Garda Donohoe and Garda Golden, is not available, as a separate Cost Code, from the Garda Vote, was not created for either occasion.

The information contained in the records is financial in type but it is also personal in nature. The details of the cost associated with arranging the State funerals for D/Garda Donohoe and Garda Golden are not known to the public and is personal to the families of the deceased individuals. Section 2 of the FOI Act provides a definition of ‘personal information’, as follows:

“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,*

The FOI Act details fourteen specific categories of information which is personal without prejudice to the generality of the foregoing definition.

I am of the view that the cost associated with a funeral are only known to the individual’s family and close friends and the cost of the funeral is considered personal information under the provisions of section 37 of the FOI Act.

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),

The information remains personal under section 37, which includes personal information relating to a deceased individual.

Section 37(2) of the FOI Act sets out certain circumstances in which the exemption at section 37(1) does not apply. I am satisfied that none of the circumstances in section 37(2) apply to the information which I have found to be exempt under sections 37(1).

(2) subsection (1) does not apply if-

- (a) subject to subsection (3), the information concerned relates to the requester concerned,*
- (b) any individual to whom the information relates consents, in writing or such other form as may be determined, to its disclosure to the requester,*
- (c) information of the same kind as that contained in the record in respect of individuals generally, or a class of individuals that is, having regard to all the circumstances, of significant size, is available to the general public,*

(d) the information was given to the FOI body concerned by the individual to whom it relates and the individual was informed on behalf of the body, before its being so given, that the information belongs to a class of information that would or might be made available to the general public, or

(e) disclosure of the information is necessary in order to avoid a serious imminent danger to the life or health of an individual,

but, in a case falling within paragraph (a) or (b), the head concerned shall ensure that, before the FOI request concerned is granted, the identity of the requester or, as the case may be, the consent of the individual is established to the satisfaction of the head.

I am then required to consider section 37(5), the Public Interest, as it applies to the records.

Section 37(5) of the FOI Act provides that access to the personal information of a third party may be granted where:

(a) the public interest that the request should be granted outweighs the public interest in the right to privacy of the individual to whom the information relates, or,

(b) the grant of the request would benefit the individual aforesaid.

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 State funerals of its members who are killed in the line of duty in a confidential manner,
- That there is a reasonable and implied expectation by employees and their families 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 have, on balance, decided that the public interest in preserving the personal information and the reasonable expectation that personal information can be maintained in a confidential

manner by An Garda Síochána, in the context of financial expenditure for the State funerals provided for D/Garda Donohoe and Garda Golden who died in extremely tragic circumstance in the service of the State, outweighs the public interest which would be served were the records released to you. I am also cognisant of the sensitivity of the matter due the fact that the deaths of these members are relatively recent.

The Office of the Information Commissioner in Case Number: 160187 (Mr X and the Department of Transport, Tourism and Sport, (FOI Act 2014), outlines that the Supreme Court Judgement in the Rotunda case outlined the approach that the Information Commissioner should take when balancing the public interest in granting access to personal information with the public interest in upholding the right to privacy of the individual(s) to whom it relates. Therefore in considering section 37(5)(a), the decision maker must distinguish between private interests from “*true public interests recognised by means of a well known and established policy adopted by the Oireachtas, or by law*”.

The FOI Act in itself recognises the public interest in ensuring the openness and accountability of public bodies in the expenditure of public funds. On the other hand, the language of section 37 and the Long Title of the FOI Act recognise a very strong public interest in protecting the right to privacy, which is protected under Article 40.3.1 of the Constitution. The FOI Act is to enable members of the public to “*obtain access, to the greatest extent possible consistent with the public interest and the right to privacy, to information in the possession of public bodies.*”. Accordingly, when considering section 37(5)(a), privacy rights will be set aside only where the public interest served by granting the request (and breaching those rights) is sufficiently strong to outweigh the public interest in protecting privacy.

According to Defence Forces Ireland “*A State Funeral may be accorded to the remains of*

- *The President and former Presidents,*
- *An Taoiseach and former Taoisigh,*
- *Any other personage to whom the Government decides to accord such a funeral.”*

Both D/Garda Donohoe and Garda Golden, in the course of performing their ordinary duties, made the ultimate sacrifice, resulting in their tragic deaths, whilst serving the State and its citizens.

The State funeral provided to D/Garda O’Donohoe and Garda Golden was a means for the State to honour the service given to the State and its citizens by those members of An Garda Síochána, and to acknowledge the sacrifice made by those members, and suffered by their families, while serving the public of this State.

The cost of the funerals of D/Garda Donohoe and Garda Golden is information which, in my opinion, is very sensitive and is, inherently, private information to the members’ families and is known to a limited number of persons. The release of the requested information, which relates to the circumstances of the extremely tragic deaths of D/Garda Donohoe and Garda Golden, is, in my opinion, contrary to the purpose of the FOI Act (section 37) and to the individual’s right to privacy as protected under Article 40.3.1 of the Constitution.

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-000445 - 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: BOFIE2D

You must ensure that your FOI reference number FOI-000445-2016 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.

^{5th}
5 JANUARY 2017.