

An Garda Síochána

Oifig Saoráil Faisnéise
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

Mr. Martin Grant,
Irish Independent,
Independent House,
27 – 32 Talbot Street,
Dublin 1.

Re: Freedom of Information Request FOI-000180-2016 Partially Granted

Dear Mr. Grant,

I refer to the Freedom of Information Act 2014 (FOI Act) and your submission to An Garda Síochána dated the 10th May 2016 and received on the 11th May 2016. I also refer to my correspondence of 7th June 2016 extending the time for completion of this 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 is shown below:

“The Amount of money paid/the amount of money agreed/expected to be paid in respect of contracts for media training by An Garda Síochána in 2012, 2013, 2014, 2015 and 2016. Please provide the actual contract document”.

I wish to inform you that I have decided to partially grant your request on 4th July 2016.

The purpose of this letter is to explain my decision.

1. Findings, particulars and reasons for decisions.

I refer to the first part of your request ‘*The Amount of money paid/the amount of money agreed/expected to be paid in respect of contracts for media training by An Garda Síochána in 2012, 2013, 2014, 2015 and 2016.*’ With regard to the amount of money paid for media training for years 2012 to 2016 I can inform you that An Garda Síochána have made payments to The Communications Clinic Ltd. totaling €800 in 2014, €10,400 in 2015 and €11,490.23 in 2016 (to the 30th June 2016).

An Garda Síochána awarded a contract, after a public procurement competition, to The Communications Clinic in respect of *Media Training for Personnel in An Garda Síochána* and the contract was signed on the 30th September 2015. The media training programme for Senior Officers and Managers enables An Garda Síochána to provide more spokespeople to the media in order to keep the public informed about how An Garda Síochána prevents and tackles crime.

The following is the reference number on the etenders website to locate the details and documents for the specified lot i.e. Framework Agreement, Contract and Request for Tender at www.etenders.gov.ie .

Tender Ref	Competition
T.003/2015	Provision of Single Supplier Framework Agreement for Media Training for Personnel Managers of An Garda Síochána

With regard to ‘*the amount of money agreed...to be paid in respect of contracts for media training by An Garda Síochána in 2012, 2013, 2014, 2015 and 2016*’. This amount is estimated in the Request for Tender document at Part 1.5 which is available on the etenders website. The value of some service contracts are not included on the Contract Award Notice on etenders compared to a goods contract. The amount will depend on the level of usage which can vary from year to year. The rate quoted per item is the tendered rate hence the actual amount can vary depending on usage.

I wish to explain to you that the FOI Act refers to the provision of records held by a public body and not information. A decision by the Office of Information Commissioner in the case of Mr. Y and the Department of Jobs, Enterprise and Innovation (FOI Act 2014), Case Number 150276, has particular reference with regard to your query of “*money expected to be paid*” in respect of media training. The following interpretation of the purpose of the FOI Act was provided for in the decision made by the Office of Information Commissioner in this case.

“The FOI Act provides for a right of access to records as opposed to a right of access to information. It does not require public bodies to provide clarification of any matter that a requester considers to be relevant where the information sought is not contained in a specific record.”

The future expected payments for media training are not applicable to the provisions of the FOI Act unless there is an administrative record to support future payments. As the expenditure of the money concerned has not yet occurred there are no administrative financial records and this part of your request, seeking information in to the future, is refused as the records do not exist. I am refusing your request for information under section 15(1)(a) of the FOI Act as shown below.

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—

- (a) the record concerned does not exist or cannot be found after all reasonable steps to ascertain its whereabouts have been taken.***

In relation to the second part of your request *'Please provide the actual contract document'*, the actual contract document as held by An Garda Síochána was identified as requested and is provided as a record in response to your request. The documents provided include the following.

1. **Contract Document,**
2. **(2x) Framework Agreements,**
3. **Confidentiality Agreement (Schedule B),**
4. **Request for Tender (Schedule C),**
5. **Tenderers' Statement (Schedule D),**
6. **Article 45 of EU Directive 2004/18/EC (Schedule D).**

A number of records are provided in full without any exception provisions under the FOI Act being applied. The document titled *Commissioner of An Garda Síochána and the Communications Clinic Agreement: Media Training for Personnel in An Garda Síochána* is provided in full without redactions. The Framework Agreement made on the 1st day of October 2015 is also provided in full without any redactions. In addition to these two documents the *Confidentiality Agreement* made on the 18th June 2015 is provided. The Request for Tender titled *"Request for Tender to Establish a Single Supplier Framework for the provision of Media Training for Personnel in An Garda Síochána"* and the *Tenderers' Statement* are also provided in full. A document titled *Appendix Nine* dated the 18th December 2014 relating to Article 45 of EU Directive 2004/18/EC is also released to you.

I have granted access to the records shown above in accordance with the provisions of the FOI Act insofar as An Garda Síochána is included as a partially included agency.

I am refusing access to the remaining four documents, in full or partially, and applying certain exception provisions of the FOI Act to the content of the records.

1. **Declaration of Personal Circumstances (Schedule D),**
2. **Proposal Document Provision of Media & Communication Skills Training (Schedule D),**
3. **Media Skills Preparation Handbook (Schedule D),**
4. **Schedule of Fees (Schedule F).**

Section 35(1)(a) has relevance to all four documents.

The disclosure of the circumstances which relate to the financial situation and criminal prosecutions of the tenderers, company director or partner is considered to be personal information that was obtained in confidence on the implied mutual understanding that the content of such a document would not be publicly exposed. The content which upon initial review appears to be standard in nature does in no way lessen the significance of the declaration as to compliance with certain conditions and is commercially sensitive, confidential and of a personal nature.

Any records of this nature are part of a financial agreement between two bodies and are not provided on the basis that the information will be made available publicly to potentially be used by competitors to the detriment, financially or otherwise, of one or both of the parties involved. The release of such information in my opinion is a breach of the confidentiality expected by the external service providers engaging with An Garda Síochána. The signatory date on the document was prior to An Garda Síochána becoming subject to the FOI Act and it is reasonable to expect that an implied

expectation of confidentiality existed at the time of signing. While full disclosure of all records would clearly enhance transparency around the expenditure of public funds by An Garda Síochána a balance must be struck between the competing interests of confidentiality and the public.

It is likely and reasonable to believe that potential future service providers will reconsider their position when tendering for a contract with An Garda Síochána. The potential exposure of personal circumstances of directors, partners or tenderers of a company could limit the number of companies tendering for contracts with the Garda organisation and restrict the choice of service providers available thus impairing the ability to obtain the best financially viable service available using public funds.

In addition to the Declaration of Personal Circumstances, the Schedule of Fees, Media Skills Preparation Handbook and the Proposal Document contain very specific information which was designed specifically for the contract with An Garda Síochána. The information contained therein shows pricing structures, training proposals and methods. It is accepted that the pricing structures and training methods may be similar throughout the media training sector however the documents provided by The Communications Clinic that won the contract could be replicated by other competing organisations in future and as the authors were successful in the competition the confidentiality of these documents is of commercial value. The Proposal Document and Media Presentation Skills Preparation Handbook both show the tradecraft and philosophy used by The Communications Clinic and how they conduct their business. The confidential manner in which the information is held by An Garda Síochána allows for Tenderers to securely identify their particular skills without revealing their unique tradecraft. Therefore there is a mutually agreeable implied acceptance that the information will remain confidential.

The structuring of fees is very sensitive information that was submitted in response to the tendering process and shows the overall fees and discounts applied in certain circumstances. Their pricing structures must remain confidential therefore An Garda Síochána is not releasing information that will impact on the ability of an organisation to compete in a commercially viable way and allow for future competitions to proceed uninhibited.

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. It can reasonably be expected that there will be reluctance by commercial entities to supply similar information if they are aware that their confidential tenders will be released under the FOI Act.

In summation I am satisfied that the records concerned are subject to an implied mutual understanding of confidentiality and on the understanding that they would be held in a confidential manner. I am also satisfied that the release of these records would prejudice or reasonably be expected to prejudice the receipt of this type of commercially sensitive information in the future which is of importance to the tendering process for An Garda Síochána in ensuring the best possible service provider's options are made available to An Garda Síochána when using public money.

Therefore I am now also applying section 35(1)(a) of the FOI Act to the four documents as outlined on the attached Schedule of Records.

Information obtained in confidence

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

(a) the record concerned contains information given to an FOI body, in confidence and on the understanding that it would be treated by it as confidential (including such information as aforesaid that a person was required by law, or could have been required by the body pursuant to law, to give to the body) and, in the opinion of the head, its disclosure would be likely to prejudice the giving to the body of further similar information from the same person or other persons and it is of importance to the body that such further similar information as aforesaid should continue to be given to the body,

Public Interest Test

There is a Public Interest Test associated with section 35 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.
- 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 personal financial information pertaining to Tenderers and company staff 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 in a confidential manner by An Garda Síochána in the context of documents received as part of its tendering processes with external organisations outweighs the public interest which would be served were the records released to you.

The provision of other contract related documents satisfies the public interest in this matter.

Further to this, I am also satisfied that the release of financial information at this level could prejudice the competitive position of The Communications Clinic and is deemed commercially sensitive in accordance with the provisions of section 36 of the FOI Act.

The pricing structure of The Communications Clinic with regard to the services provided to An Garda Síochána is not known to competitors or the public in general and if the records were made available to you it is reasonable to expect that it would prejudice the ability of The Communications Clinic to compete in other contracts or negotiations in the future. In addition I am of the view that the release of the fees could reasonably be expected to result in a material financial loss by The Communications Clinic as it could prejudice their competitive position in the conduct of their business. The advertising of these fees and tradecraft documents such as the Media Skills Preparation Handbook and the Proposal Document into the public domain could also reasonably be expected to assist competitors by giving them competitive advantage when seeking the same media contracts as The Communications Clinic. In addition the current customers may become aware of a difference in fees being applied by The Communications Clinic which could in turn prejudice any current or future negotiations with these customers.

With regard to your request I draw your attention to a recent Office of Information Commissioner decision titled: *Mr X and University College Cork (UCC) (FOI Act 2014) case number: 150444*. This particular case is relevant as the competitive position of a commercial entity was considered under section 36(1)(b) of the FOI Act.

The relevant section and subsections of the FOI Act pertaining to this part of your request are shown below.

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.*

Therefore, I am also refusing the four documents as outlined above under the provisions of section 36(1)(b) & 36(1)(c) as they contain 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.
- 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 addition the limited non-commercially sensitive information contained within these records is available in the public domain and is not being provided as per section 15(1)(d) of the FOI Act.

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,

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 **F01-000180-2016**.

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 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

6 JULY 2016