

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-000322-2017 Part Grant

Dear

I refer to your request, dated the 18th July, 2017 and received on the 19th July, 2017 which you have made under the Freedom of Information Act 2014 (FOI Act) for records held by An Garda Síochána. I also refer to my correspondence dated 15th August, 2017 extending your 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:

Please provide copies of briefing material prepared for the Noirin O'Sullivan in relation to her appearance before the Dail's Public Accounts Committee meetings in 2016 and 2017.

I wish to inform you that I have decided to part-grant your request on the 6th September, 2017.

The purpose of this letter is to explain that decision.

1. Findings, particulars and reasons for decision

On receipt of your request, a search was conducted in the Office of the Commissioner, Office of the Chief Administrative Officer and the Finance Directorate within An Garda Síochána.

I wish to advise you that the Commissioner of An Garda Síochána did not appear before the Committee of Public Accounts during 2016. In 2017, the Commissioner appeared before the Committee of Public Accounts on the 4th of May, 20th of June and the 13th of July.

The Sections of the Act which may deny access to information are known as its exemptions.

I am refusing your request for ‘copies of briefing material prepared for the Noirin O’Sullivan in relation to her appearance before the Dail’s Public Accounts Committee meetings’ for the meeting of the 4th of May, 2017 as the briefing documents are published on the Oireachtas website under the ‘Committee of Public Accounts Correspondence’ page.

In this regard, I wish to advise you that I am refusing to release the briefing documents for the meeting of the 4th of May, 2017 under Section 15(1)(d) which states:

*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.*

In relation to the meeting of the 20th June, 2017 I wish to advise you that no briefing documents were provided to the Garda Commissioner, therefore I am refusing this part of your request on administrative grounds as the records sought by you do not exist.

Section 15(1)(a) of the FOI Act states:

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,

A number of records have been identified in respect of the meeting of the 13th of July, 2017.

Please note that the records are provided in the order as they appear in the briefing pack as per Page 1 (Cover Page) of **Schedule 1 Commissioner’s Office Records**.

These records are now attached and a schedule of records accompanies each. The schedules outline the redactions that have been applied to the enclosed documents and the reasons for same.

Schedule 1 Commissioner’s Office Records.

Schedule 1.1 Summary Financial Briefing Document

Schedule 1.2 Vote 20 Garda Síochána Appropriation Account 2015

Schedule 1.3 Update on the Modernisation and Renewal Plan June 2017

Schedule 1.4 Crime Statistics June 2017

Schedule 1.5 Inhouse Monthly Expenditure Report

Schedule 1.6 Garda ICT Capital Provisions 2016-2021

Part 1(n) of Schedule 1 the FOI Act –Partially Included Agencies

Section 6(2)(a) of the FOI Act provides that an entity specified in Schedule 1, Part 1 of the Act shall, subject to the provisions of that Part, be a Public body for the purposes of the Act. Schedule 1, Part 1 contains details of bodies that are partially included for the purposes of the Act and also details of the certain specified records that are excluded. If the records sought come within the description of the exclusions of Part 1, then the Act does not apply and no right of access exists.

Part 1(n) of Schedule 1 of the FOI Act provides that An Garda Síochána is not a public body for the purposes of the FOI Act other than in relation to administrative records relating to human resources, or finance or procurement matters.

The term “administrative records” is understood to mean records relating to the processes of running and managing a business or organisation. As a result the FOI Act excludes operational policing business as opposed to the defined administrative processes of An Garda Síochána.

Sections of the information contained in **Schedule 1 (Commissioner’s Office Records)**, do not, in my opinion, constitute an administrative record. Certain records relate to operational policing matters and are therefore not considered administrative records for the purposes of the FOI Act insofar as An Garda Síochána is concerned. Similarly records contained within **Schedule 1.1 (Summary Financial Briefing Document)**, **1.3 (Update on the Modernisation and Renewal Plan, June 2017)** and **1.4 (Crime Statistics)** are not considered administrative records for the purposes of the FOI Act. I have therefore deemed those records to be outside the scope of the FOI Act and they shall not be provided. These records have been redacted accordingly and are identified in the attached Schedule of Records.

In addition to Part 1(n) of Schedule 1 of the FOI Act, I am also applying Section 36 to the record contained at **Schedule 1.1 (Summary Financial Briefing Document)**, which states:

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.***

There are a number of building programmes currently ongoing within An Garda Síochána. In this regard, a number of the records have been withheld in respect of the companies contracted to carry out these works.

I am cognisant of the fact that the release of information under the Act is, in essence, a release to the public at large. Specific information of the supplier(s) with regard to the services provided to An Garda Síochána is not known to competitors or the public in general. If this information was made available to you, it is reasonable to expect that it would prejudice the ability of supplier to compete in other contracts or negotiations in the future.

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:

- Accountability of a Public Body with regard to the expenditure of public funds.
- 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.
- That the provision of overall expenditure figures meet the needs of the Public Interest in this matter.

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.

Restriction of the Act

Section 42 refers to the restrictions included in the FOI Act with regard to records that are exempt for release by An Garda Síochána.

In this regard, a number of records **Schedule 1 (Commissioner's Office Records)**, and **Schedule 1.1 (Summary Financial Briefing Document)** are refused under Section 42 (b) and (j) of the FOI Act wherein it states that:

Restriction of Act

42. *This Act does not apply to—*

(b) a record held or created by the Garda Síochána that relates to any of the following:

- (i) the Emergency Response Unit;*
- (ii) the Secret Service Fund maintained by it;*
- (iii) the Special Detective Unit (SDU);*
- (iv) the witness protection programme sponsored by it;*
- (v) the Security and Intelligence Section;*
- (vi) the management and use of covert intelligence operations;*
- (vii) the Interception of Postal Packets and Telecommunications Messages (Regulation) Act 1993;*
- (viii) the Criminal Justice (Terrorist Offences) Act 2005 ;*
- (ix) the Criminal Justice (Surveillance) Act 2009;*
- (x) the Communications (Retention of Data) Act 2011;*

(j) a record given by an FOI body to a member of the Government or a Minister of State for use by him or her for the purposes of any proceedings in either House of the Oireachtas or any committee of either or both of such Houses or any subcommittee of such a committee (including such proceedings in relation to questions put by members of either such House to members of the Government or Ministers of State (whether answered orally or in writing)),

I am refusing to provide the record as per **Schedule 1.2 (Vote 20 Garda Síochána Appropriation Account 2015)** as this document is available on the website of the Office of the Comptroller and Auditor General. I am providing the URL below for your ease of reference:

[http://www.audgen.gov.ie/viewdoc.asp?fn=/documents/annualreports/2015/AppAcc/En/Vote 20.pdf](http://www.audgen.gov.ie/viewdoc.asp?fn=/documents/annualreports/2015/AppAcc/En/Vote%20.pdf)

In this regard, I wish to advise you that I am refusing to release this record under Section 15(1)(d) which states:

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 **FOI-000322-2017**.

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: BOFIIIE2D

You must ensure that your FOI reference number FOI-000322-2017 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

17th SEPTEMBER 2017