

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

Bí linn/Join us  

Láithreán Gréasain/Website:
www.garda.ie

Riomh-phoist/Email: foi@garda.ie

Ms. Deborah McAleese

Re: Freedom of Information Request FOI-000398-2017 Request Refused

Dear Ms. McAleese,

I refer to your request, dated and received on the 13th September 2017 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:

I would like to request the following information under FOI:

- How many officers have been convicted of a criminal offence since January 2016?
- In each case what offence was committed eg, drink driving, speeding, gbh etc?
- What action has been taken by Garda in each case? E.g., suspension, dismissal etc

I wish to inform you that I have decided to refuse your request on the 20th September 2017.

The purpose of this letter is to explain that decision.

The sections of the Act which can apply to deny access to documents are known as its exemption provisions.

1. Findings, particulars and reasons for decision

A search was conducted in the disciplinary section of Human Resources & People Development in Garda Headquarters to identify the records sought in your request. The information contained in the records has been reviewed and is deemed ‘*personal information*’ in character.

Under Section 37 of the FOI Act, the Head of a public body shall (mandatory) refuse to grant an FOI request if access to the record concerned would involve the disclosure of personal information. Personal information is defined under Section 2 of the FOI Act and includes the following:

Section 2 – Interpretation

2. (1) In this Act—

“*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—

(vi) information relating to any criminal history of, or the commission or alleged commission of any offence by, the individual,

(vii) information relating to any proceedings for an offence committed, or alleged to have been committed, by the individual, the disposal of such proceedings or the sentence imposed by any court in such proceedings,

Section 37 – Personal Information

I am refusing to provide the records you seek as it is my opinion that the information contained therein comes within the ambit of the definition of *Personal Information* as per Section 2 of the FOI Act. The provision of these records to you would be releasing personal information which is prohibited by the FOI Act. This decision is made in accordance with Section 37(1) of the FOI Act which 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).”

In applying Section 37(1) of the Freedom of Information Act, a public interest test must be applied to ensure the actions taken are done so in the best interest of the public.

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,
- The public interest does not override the right of a public body to confidentially retain the personal information of staff,
- That the Organisation can conduct its business in a confidential manner,
- That there is a reasonable and implied expectation by employees that sensitive personal information will remain confidential.

A Public Interest Test was carried out when considering the release of this 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 in the context of its disciplinary proceedings outweighs the public interest which would be served were the records released to you.

Section 35 – Information obtained in confidence

In addition to section 37(1) I am also applying section 35(1)(b) to the release of the information you seek. The disclosure of personal information of this nature would, in my opinion, be a breach of an implied equitable agreement between An Garda Síochána and the individual(s) involved. A criminal conviction contains the necessary quality of confidentiality whereby an individual could reasonably expect an equitable duty of confidence to exist between the parties concerned. Any records of this nature are obtained for the specific purpose of conducting an internal disciplinary investigation as per Statutory Instrument S.I. 214/2007, the Garda Síochána (Discipline) Regulations 2007 (as amended). Furthermore, where disciplinary matters proceed to a Board of Inquiry, Regulation 29(8) states “*An Inquiry shall be held in private*”. I am also of the view that it would be unconscionable for this organisation, engaged in processes involved in alleged breaches of discipline, not to treat the information relating to the process as confidential. Therefore I am now applying section 35(1)(b) of the FOI Act to your refuse your request.

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.*

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-000398-2017**.

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-000398-2017) 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

 **SEPTEMBER 2017**