

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

Bí linn/Join us  

Láithreán Gréasain/Website: www.garda.ie

Ríomh-phoist:/Email: foi@garda.ie

Re: Freedom of Information Request FOI-000168-2016 Partially Granted

Dear

I refer to your request, dated 4th May, 2016 and received on 5th May, 2016 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:

- 1. The number of Gardai and their rank currently under suspension from duty.*
- 2. The longest length of time that a serving Garda has been suspended from duty.*
- 3. The second and third longest length of time that serving Garda has been suspended from duty.*
- 4. The numbers who are currently suspended more than five years; between four and five years; between three and four years;*
- 5. between two and three years; between two and one years and those suspended less than 12 months.*
- 6. All the legal costs to the Gardai concerning the suspension of members since 2012.*
- 7. The number of Gardai who have been dismissed from their post in 2015; in 2014; in 2013 and 2012 and the reasons in each case.*

I wish to inform you that I have decided to **partially grant** your request on 1st June 2016.

1. Findings, particulars and reasons for decision

The purpose of this letter is to explain my decision. The sections of the FOI Act which can apply to deny access to documents are known as its exemption provisions.

I am partially granting parts 1, 3, 4 and 5 of your request seeking the current number of members under suspension by rank and the lengths of the suspension periods. Due to the very small number of members currently suspended I am withholding the rank and the specific duration of the suspension period of the members concerned. I am conscious of my obligations to retain personal information in a confidential and secure manner and prevent personal information from being released into the public domain unnecessarily. Personal information is defined at 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—

- (iii) information relating to the employment or employment history of the individual,*
- (v) information relating to the individual in a record falling within section 11(6)(a),*
- (vi) information relating to any criminal history of, or the commission or alleged commission of any offence by, the individual,*
- (xi) the name of the individual where it appears with other personal information relating to the individual or where the disclosure of the name would, or would be likely to, establish that any personal information held by the FOI body concerned relates to the individual,*

As referenced at section 2 above, section 11(6)(a) refers to access to records but does not include certain personal records. Section 11(4) sets out the right of access to records and the types of records that can be accessed. However in section 11 there are number records that are considered personal and are not automatically subject to release by an FOI body. Section 11(6)(a) sets out the records that are not included for release at section 11(4).

(6) Subsection (4) shall not be construed as applying, in relation to an individual who is a member of the staff of an FOI body; the right of access to a record held by an FOI body that—

- (a) is a personnel record, that is to say, a record relating wholly or mainly to one or more of the following, that is to say, the competence or ability of the individual in his or her capacity as a member of the staff of an FOI body or his or her employment or*

employment history or an evaluation of the performance of his or her functions generally or a particular such function as such member,

I am refusing to provide details of Rank and specific suspension periods as I believe that the individuals involved will become easily identifiable beyond their family and friends and it would be considered a breach of the confidentiality upon which the information is being held by the Garda Organisation. The release of information about such a small number of incidents, such as rank and suspension period, which is specific to each individual, will allow for a person to become more identifiable and possibly named in the public domain. I am therefore applying Section 37(1) Personal Information which states:

Section 37 - 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).*

There is a Public Interest Test applicable to section 37 of the FOI Act.

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 its business in a confidential manner,
- That there is a reasonable and implied expectation by employees 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 in the context of its disciplinary proceedings outweighs the public interest which would be served were the records released to you.

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 period of suspension for a member of An Garda Síochána 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 part of an internal disciplinary investigation as per 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 all information relating to the process, inclusive of the decision to suspend a person, as confidential. Therefore I am now applying section 35(1)(b) of the FOI Act to only partially grant your request as set out in parts 1, 3, 4 and 5.

Section 35 – Information obtained in confidence

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.*

I have partially granted parts 1, 3, 4 and 5 and granted part 2 of your request as shown in the table below.

Number of Gardaí currently on suspension	24
Longest length of time that a serving Garda has been suspended	2,276 Days
The numbers who are currently suspended 3 – 6 Years	6
The numbers who are currently suspended 0 – 3 Years	18

With regard to part 6 of your request as shown below there are no costs directly associated with the process of suspending a member of An Garda Síochána

6. *All the legal costs to the Gardaí concerning the suspension of members since 2012.*

In the normal course of events members of An Garda Síochána are suspended by a Senior Officer. Therefore there are no legal costs directly attributed to the suspension of any members. Members of An Garda Síochána appear before disciplinary boards that are chaired by legal professionals, the costs of which are borne by the Garda Vote. There is no account taken of a person being suspended or not when establishing a board to examine disciplinary matters. The Internal Affairs section, which deal with matters relating to discipline, do not record legal costs by type of discipline and therefore cannot supply the breakdown of legal costs to the Organisation by various actions taken by the Organisation such as suspending a person. Therefore specific records relating to legal costs for suspensions do not exist. I am refusing part 6 of your request on administrative grounds under section 15(1)(a) which states:

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,

With regard to part 7 of your request, the information sought in respect of dismissals from An Garda Síochána is in part available under the 'Internal Affairs' and 'Managing our Resources' headings of the Annual Reports which are located in the Publications tab on our website, www.garda.ie. Reports for years 2012 to 2014 are available on the website. The 2015 annual report will be published on our website shortly. As information has been provided into the public domain in an appropriate format by the Garda Organisation that meets the interest of the public and preserves the rights of the individual I am refusing part 7 of your request under Section 15(1)(d) & 15(1)(f).

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—

- (d) the information is already in the public domain,*
- (f) the FOI body intends to publish the record and such publication is intended to be effected not later than 6 weeks after the receipt of the request by the head,*

In addition to section 15, I am also applying Section 37(1) to part 7 of your request. All details relating to the dismissal of a member of An Garda Síochána are treated with the utmost confidentiality as they may become the subject of litigation at a later stage but also because the individuals involved reasonably expect an equitable duty of confidence to exist with regard to personal information between the parties concerned. The reason why a person was dismissed is not widely available within the Garda Organisation or in the public domain and is personal to the individual involved. Personal information, as defined at section 2 of the FOI Act, includes information relating to a person's employment or employment history and due to the small number of Gardaí dismissed each year it is reasonable to expect that the details could be attributed to an individual, either internally or publicly, where otherwise they were unknown. It would be an irresponsible act to provide this personal and sensitive information on the belief that it could not be attributed to a particular individual.

Section 37 - Personal Information

- (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).*

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 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 by employees 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 in the context of its disciplinary proceedings outweighs the public interest which would be served were the records released to you.

2. Rights 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-000168-2016**.

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

 **JUNE 2016**