

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 ND62



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Re: Freedom of Information Request FOI-000187-2020 Internal Review

Dear

I refer to your appeal in relation to the following request which you have made under the Freedom of Information Act 2014 (FOI Act) for records held by An Garda Síochána.

A Chief Superintendent who is a more senior member of staff of this organisation has reviewed your request and has decided to **vary** the original decision of the Freedom of Information Officer.

Your original request sought:

Under the FOI Act 2014, I am seeking the following:

- *an anonymised record indicating the number of gardai who have been convicted of a crime since 1 Jan 2017, the nature of the conviction, and the status of any disciplinary action that was taken against them.*

Your appeal sought:

I wish to seek internal review of the following.

Providing anonymised information in the fashion sought in this request cannot be considered a disclosure of personal information. It would not serve to identify the individual in any way, unless the details were already in the public domain.

There is a very strong public interest in the public's right to know information about criminal convictions within An Garda Síochána, and how they are dealt with.

Insufficient weight has been given to this in your decision.

In any event, the definition of personal information in the FOI Act specifically excludes information like this.

It does not cover cases where an individual holds a position as an employee of a public body and where it relates to that person's employment by the state.

Additionally, Section 35 cannot apply to a member of staff and they are expressly excluded from this confidentiality provision.

The Act is clear: "(2) Subsection (1) shall not apply to a record which is prepared by a head or any other person (being a director, or member of the staff of, an FOI body or a service provider) in the course of the performance of his or her functions unless disclosure of the information concerned would constitute a breach of a duty of confidence that is provided for by an agreement or statute or otherwise by law and is owed to a person other than an FOI body or head or a director, or member of the staff of, an FOI body or of such a service provider."

In arriving at this decision, the Internal Reviewer had regard to this request and decision letter of 5th June, 2019.

Having reviewed your request and the associated correspondence the Internal Reviewer has decided to **vary** the decision of the Freedom of Information officer, which is in his remit, as per section 21(2)(b) (i) of the FOI Act.

On foot of the decision by the Internal Reviewer, I have decided to **part grant** your request on 27th July 2017.

The purpose of this letter is to explain that decision.

1. Findings, particulars and reasons for decision

I can confirm that records held by Internal Affairs Section indicate that since 1st January 2017, 22 members of An Garda Síochána have been convicted of criminal offences. The nature of the offences involved is as follows:

Offence	No of members Convicted
Sec. 52 Road Traffic Act 1961 as amended	2
Sec. 4 Criminal Justice (Theft & Fraud Offences Act 2001	3
Sec, 10 Non Fatal Offences Against the Person Act 1997	2
Sec. 6(1) Child Trafficking & Pornography Act 1998	1
Sec. 3 Criminl Law (Sexual Offences) Act 2006	1
Sec. 62 Garda Siochana Act 2005	1
Sec. 25 Criminal Justice (Theft & Fraud Offences Act 2001	1
Sec, 12(a) Criminal Law Act – Providing False Reports	1
Sec. 5 Child Trafficking & Pornography Act 1998	1
Sec. 4 Road Traffic Act 2010 as amended, Sec. 53 Road Traffic Act 1961 as amended, No NCT, No Tax	1
Drink Driving (Northern Ireland Conviction)	1
Sec. 4 Road Traffic Act 2010 as amended	1
Sec. 4 & 5 Road Traffic Act 2010 nd Section 52 Road Traffic Act 1961-2016	1
Sec. 4 Road Traffic Act 2010 as amended	1
Sec. 45 Criminal Justice (Sexual Offences) Act 2017	1
Sec. 3 Misuse of Drugs Act 1977-1984	1
Sec. 26 Theft & Fraud Offences Act 2001, Sec. 38 & 54 Road Traffic Act 1961 as amended	1
Sec. 2 Criminal Law (Rape) (Amendment) Act 1990	1

I am refusing to release records pertaining to the element of your request seeking “*the status of any disciplinary action that was taken against them*” on the basis that the information concerned is of a personal nature to the individuals involved.

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,*
- (i) 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.

Yours sincerely,



ASSISTANT PRINCIPAL

PAUL BASSETT

FREEDOM OF INFORMATION OFFICER

 **JULY, 2020.**