

Private & Confidential

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20 March 2020

Our Ref. FOIR 009 020

Re: – Decision on FOI Request (Part Grant)

Dear [Redacted]

I refer to the following request which you have made under the Freedom of Information Act 2014 for records held by the Health Information and Quality Authority (HIQA):

1. A copy of minutes between the chairman of Tusla and Hiqa, between 1st October 2019 and 20th February 2020.
2. A copy of minutes between the chief executive of Tusla and Hiqa, between 1st October 2019 and 20th February 2020.
3. Correspondence between the senior management of Tusla and the senior management of Hiqa, between 1st November 2019 and 20th February 2020.
4. Correspondence between the chair or chief executive of Hiqa, and the Minister for Children, or Department of Children secretary general, between 1st November 2019 and 20th February 2020.

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Your request was received by HIQA on 21 February 2020. I, Ms. Susan Geary, am the decision maker for this FOI request and have I made a decision to part grant your request today, 20 March 2020.

The purpose of this letter is to explain my decision. This explanation has the following parts:

1. A schedule of all of the records covered by your request
2. An explanation of the relevant findings concerning the records to which access is denied, and
3. A statement of how you can appeal this decision should you wish to do so.

This letter addresses each of these three parts in turn.

1. Schedule of records

A schedule is attached. It shows the documents that HIQA considers relevant to your request. It also gives you a summary and overview of the decision as a whole.

The schedule describes each document and indicates whether the document is released in full, released with deletions/redactions, or not released. The schedule refers to the Sections of the FOI Act which apply to prevent release.

2. Findings, particulars and reasons for decisions to deny access

A. Section 15(1)(a) - Records do not exist

Points 1 & 2 of your request sought a copy of minutes relating to meetings between the Chairman of Tusla and HIQA, and between the CEO of Tusla and HIQA between 1st October 2019 and 20th February 2020.

There are no minutes of meetings between the above parties for the relevant time frame. Accordingly, the records you seek do not exist and this part of your request must be refused on the basis of Section 15(1)(a) of the FOI Act.

B. Section 29(1)(a) - Deliberations of FOI bodies

I am of the view that the exemption provided for under S.29(1)(a) of the FOI Act applies to some of the records that came within the scope of this request.

Section 29 (1) A head may refuse to grant an FOI request—

(a) if the record concerned contains matter relating to the deliberative processes of an FOI body (including opinions, advice, recommendations, and the results of consultations, considered by the body, the head of the body, or a member of the body or of the staff of the body for the purpose of those processes),

(b) the granting of the request would, in the opinion of the head, be contrary to the public interest,

Reasons for Decision

The records to which this exemption applies, identified in the schedule, relate to on-going regulatory activity engaged in by the Office of the Chief Inspector. The records therefore contain information relating to the deliberate process of an FOI body. An inspection report is the progress of being compiled and is currently being considered by TUSLA. However, TUSLA have not yet made submissions in respect of the report as the timeframe to do so has not yet elapsed.

It is expected that the regulatory process will be concluded by the end of April 2020. Once the regulatory process is completed and the report finalised, it is open to you to seek access to the records again. At this stage the records will no longer be part of the deliberative process and this exemption will no longer apply.

Please note that current situation regarding COVID-19 may impact on this preliminary timeframe. If you wish, you can make contact with the FOI Office at the end of April and they will give you an update on the progress of the report.

Public interest considerations

The Decision Maker accepts that Section 29(1)(a) is subject to Section 29(1)(b), which provides that access to a record may be granted in specified circumstances where the public interest would, on balance, be better served by granting than by refusing to grant the request.

The following public interest factors were considered:

In favour of release:

- The public interest in openness and transparency in the how public bodies exercise their statutory functions. This interest has been met to some extent by the release of other records relevant to this request and the partial redaction of some documents.

In favour of refusal:

- The release of documents relevant to an ongoing regulatory matter would compromise the fair procedures applicable to the regulatory process.

- It would undermine the current regulatory activity, contrary to the public interest in HIQA conducting its regulatory activities.

After weighing the factors in favour of release against those favouring refusal, I has decided that on balance, the public interest favoured the non-disclosure of the record listed.

A. Section 37(1) - Personal Information

Section 37 of the FOI Act 2014 states:

“(1)...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).”

Some of the records contain the personal information of third parties (these records are indicated in the schedule). Access to this information has been refused on the basis of Section 37(1).

Public interest test

I acknowledge that Section 37(5)(a) provides for the release of personal information relating to third parties where the public interest that the request should be granted outweighs the right to privacy of the individuals to whom the information relates.

I have considered the public interest issues which arise in this case and have taken account of the following factors.

In favour of release:

- the public interest in the public knowing how a public body performs its functions;
- the public interest in members of the public exercising their rights under the FOI Acts.

In favour of withholding the records:

- the public interest in protecting the right to privacy;
- the public interest in public bodies being able to perform their functions effectively.

I consider that the public interest in preserving the privacy of the third party involved outweighs the public interest that would be served were the records to be released to you in this instance. Accordingly, the information concerned has been redacted from the records released.

3. Appeal Rights

In the event that you are not happy with this decision you can seek an internal review by writing to the FOI Unit, George's Court, George's Lane, Smithfield, Dublin 7, or by e-mail to foi@hiqa.ie. This appeal will involve a complete reconsideration of the matter by a more senior member of the staff of this body.

Please note that a fee of €30 (or €10 if you are a medical card holder), applies to internal reviews. Please contact the FOI Unit for payment details.

You should make your appeal within 4 weeks (20 working days) from the date of this letter, where a day is defined as a working day excluding, the weekend and public holidays, however, the making of a late appeal may be permitted in appropriate circumstances.

If you have any queries in relation to this decision, please feel free to contact the FOI Unit, on foi@hiqa.ie.

Yours sincerely,

Ms. Susan Geary
Regional Manager (Children's Service)