

Private & Confidential

[REDACTED]

2 June 2020

Our Ref: FOIR 023 2020

Re: – FOI decision part granting request

Dear [REDACTED]

I refer the request you made under the Freedom of Information Act 2014 on 5 May 2020. I note you that your request was for a copy of the following:

"copies of any briefings/submissions/reports or other review/overview documents prepared for senior management or the board with regard to the high level of deaths in long term residential settings in Ireland.

From April 1st 2020 to May 5th."

I, Kathleen Lombard, have now made a final decision to part grant your request. This decision was made today, 2 June 2020.

The purpose of this letter is to explain that 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 enclosed with this letter, it shows the documents that I considered to come within the scope of your request. It describes each document and refers to the sections of the FOI Act which apply to prevent release. The schedule also refers you to sections of the

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detailed explanation given under heading 2 below, which are relevant to the documents in question.

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

Two different exemptions have been applied to three records relating to this request. The specific records to which these exemptions were applied are identified in the schedule.

(a) Section 36(1)(b) and (c)-Commercially Sensitive Information

Section 36(1)(b) of the FOI Act states:

“Subject to subsection (2), a head shall refuse to grant an FOI request if the record concerned contains—

- (a) trade secrets of a person other than the requester concerned,*
- (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.”*

The records concerned contain sensitive information relating to the number of COVID 19 cases in specific long term residential centres. The disclosure of this information could be reasonably be expected to result in a material financial loss to the owners and operators of these long term residential centres. Accordingly, I am of the view that Section 36(1)(b) and (c) applies and access to this information must be refused.

Public Interest Consideration

I acknowledge that the above exemption is subject to a “public interest test” under Section 36(3). This provision provides for the release of commercially sensitive information if releasing the information outweighs the public interest in refusing access to the information.

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 members of the public exercising their rights under the FOI Acts.
- The public interest in openness and transparency among FOI bodies.

In favour of refusing access to the records:

- The public interest in business owners and operators not being unduly impeded in the effective pursuit of their business.
- The public interest in safeguarding the flow of information to and from public bodies, particularly at a time of a national health crisis.

I consider that the public interest in favour of refusing these records outweighs the public interest in releasing them in this instance.

However, in the interest of transparency, the exempt information has been redacted from the records so access to enable access the remainder of the record.

(b) Section 32(1)(b) –Public Safety

Section 32(1) of the FOI Act states:

“(1) A head may refuse to grant an FOI request if access to the record concerned could, in the opinion of the head, reasonably be expected to:

(a) prejudice or impair—

(i) the prevention, detection or investigation of offences, the apprehension or prosecution of offenders or the effectiveness of lawful methods, systems, plans or procedures employed for the purposes of the matters aforesaid,

(ii) the enforcement of, compliance with or administration of any law,

(iii) lawful methods, systems, plans or procedures for ensuring the safety of the public and the safety or security of persons and property,

(iv) the fairness of criminal proceedings in a court or of civil proceedings in a court or other tribunal,

(v) the security of a penal institution,

(vi) the security of a children detention school within the meaning of section 3 of the Children Act 2001 ,

(vii) the security of a remand centre designated under section 88 of the Children Act 2001 ,

(viii) the security of the Central Mental Hospital,

(ix) the security of a building or other structure or a vehicle, ship, boat or aircraft, or

(x) the security of any system of communications, whether internal or external, of the Garda Síochána, the Defence Forces, the Revenue Commissioners or a penal institution,

(b) endanger the life or safety of any person, or

(c) facilitate the commission of an offence.”

The records concerned contain information relating to of the number of cases of COVID 19 in specific long term residential centres during the pandemic. Having examined the records, I am of the view that the release of this information, at a time of a critical public health emergency, would give rise to significant distress to residents in these long term residential centres, and their families, and endanger their mental and physical health. For this reason, I am of the view that Section 32(1)(b), applies and access to the records should be refused.

Public Interest Consideration

I am aware that the above exemption is subject to a “public interest test” under Section 32(3)(b). This provision provides for the release of information covered by the exemption if the public interest in the releasing the information outweighs the public interest in refusing access to it.

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 openness and transparency among FOI bodies.

In favour of refusing access to the records:

- The public interest in protecting the mental and physical health of residents and their families.

While I acknowledge there is a strong public interest in the release of this information, I consider that the public interest in favour of refusing these records is even stronger. Accordingly, access to the records must be refused.

In the interest of transparency, the exempt information has been redacted so access to enable you to access the remainder of the record.

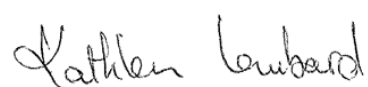
3. Rights of appeal

If you are unhappy with this decision you may seek an internal review. In the event that you wish to do so, please e-mail foi@hiqa.ie. The appeal will involve a complete reconsideration of the matter by a more senior member of the staff of HIQA. Please note that a fee of €30 applies in the case of an internal review.

You should make your appeal within 4 weeks, from the date of this notification, 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 contact the FOI Liaison Officer, Lydia Buckley, on foi@hiqa.ie or 0858709023.

Yours sincerely



Kathleen Lombard
Board Secretary