

Private & Confidential

[REDACTED]

[REDACTED]

04 June 2020

Our Ref. FOIR 026b 020

Re: Decision on FOI Request (part grant)

Dear [REDACTED],

I refer to the recent request which you made to the Health Information and Quality Authority under the Freedom of Information (FOI) Act 2014. I note this request was received on 7 May 2020, and the scope of the request, as clarified via email on 22 May 2020, was for the following records:

"1. Copies of all correspondence (letters/emails) and notes of phone calls received by the Health Information and Quality Authority from the following nursing homes under the regulation of HIQA relating to Covid-19 between March 1st and May 6th, 2020:

- [REDACTED]

2. Concerns received by HIQA from members of staff of registered centres as well as members of the public and the relatives of residents in relation to Covid-19 between March 1st and May 6th, 2020."

This decision concerns the second part of your request. As noted in correspondence dated 27 May 2020, the first part of your request involves a significant number of records and an extension is required in order to process the request. A decision on the first part of your request will issue separately to you by 25 June 2020.

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I, Bob Hennessey, Deputy Director of Regulation, have now made a final decision to part grant your request on 04 May 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 the Authority considers relevant to 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 detailed explanation given under heading 2 below, which are relevant to the document in question. It also gives you a summary and overview of the decision as a whole.

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

Two separate exemptions apply to records relevant to this request. The specific information to which each exemption applies is highlighted in the schedule.

Section 29 –Deliberative Process

Section 29(1) of the FOI Act states:

“A head may refuse to grant an FOI request –

(a) If the record concerned contains matter relating to the deliberative process 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 the staff of the body for the purpose of those processes), and

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

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Some of the information in the records relate matters currently under deliberations by the Authority. It is my view that the release of this information at this stage in the process would be contrary to the public interest as the information contained is still under consideration and follow-up actions are ongoing. I am satisfied that the release would be harmful to the process and it is therefore my view that this information should not be released. I have set out below the factors that I have considered in the public interest.

Public Interest Consideration

Factors in favour of release:

- The right of the public to have access to information
- The accountability of administrators and scrutiny of decision making processes

Factors against release:

- The need to preserve confidentiality having regard to the subject matter and the circumstances of the communications
- The release of records would impair ongoing regulatory processes and future decisions
- Premature release of records would impair the integrity and viability of the decision making process to a significant or substantial degree without countervailing benefit to the public

Having balanced the above factors, I place greater weight on the public interest in favour of not releasing this information. Therefore, my decision is to grant partial access and redact the exempt information from the records concerned.

Section 35 – Information obtained in confidence

Section 35(1) of the FOI Act states:

“Subject to this section, a head shall refuse to grant an FOI request if –

- (a) the record concerned contains information given to the FOI body, in confidence and on the understanding that it would be treated by it as confidential (including such information as aforesaid that a person was required by law, or could have been required by the body pursuant to law, to give to the body) and, in the opinion of the head, its disclosure would be likely to prejudice the giving to the body of further similar*

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information from the same person or other persons and it is of importance to the body that such further similar information as aforesaid should continue to be given to the body,

Some of the records concerned contain information given to the Authority in confidence and on the understanding that it would be treated as such and the disclosure would be likely to prejudice the giving to the Authority of further similar information from the same person or other persons. It is of importance to the Authority that such further similar information should continue to be given. Accordingly, it is my view that this information should not be released. In making my decision, I have had regard to the other provisions within Section 35.

Public Interest Consideration

The Authority accepts that the above exemption is subject, under Section 35(3), to a public interest test. This provides that access to an exempt record may be granted where the public interest would, on balance, be better served by granting than by refusing to grant the request.

Factors in favour of release:

- The right of the public to have access to information
- The public interest in ensuring transparency in terms of how public bodies carry out their tasks

Factors against release:

- The need to preserve confidentiality having regard to the subject matter and the circumstances of the communications
- The public interest in protecting the free flow of information
- The need for public bodies to carry out their functions in an efficient and effective manner.

Having considered the above factors, I am of the view that the information should not be released and that access to it should be refused. The exempt information has accordingly been redacted from the records which are partially released, as set out in the schedule.

4. Rights of appeal

If you are unhappy with this decision you may appeal it. Please note that a fee applies for an appeal, with the exception of an appeal against the imposition of a

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€30 fee. In the event that you need to make such an appeal, you can do so by emailing the Freedom of Information Unit, via foi@hiqa.ie. Payment should be made by way of electronic transfer. Please contact the FOI Office for further details.

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. The appeal will involve a complete reconsideration of the matter by a more senior member of the staff of the Authority.

4. Publication

All non-personal FOI requests will be recorded on an FOI disclosure log which will be published on the Authority's website in due course.

If you have any queries in respect of this FOI, please contact the FOI Liaison Officer, Lydia Buckley, on foi@hiqa.ie or 085 8709023.

Yours sincerely,

Bob Hennessy
Deputy Director of Regulation

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HIQA - Freedom of Information Schedule of Records: Summary of Decision Making



FOI Request Reference **FOIR 026 020**

FOI Received

07 May 2020

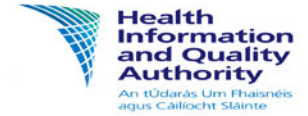
Decision Maker **Bob Hennessy**

Decision due no later than

04 June 2020

Rec. No	Brief description and date of record	File Ref	No. of pages	Third Party involvement Y/N	Decision: Grant/Part Grant/Refuse	Basis of Refusal: Section of Act	Reason for Decision	Public Interest Considerations (for and against release)	Record Edited/ Identify Deletions
1	Covid-19 related UROIs (concerns) for designated centres for Older People from 1 March to 6 May 2020	NA	19	N	Part grant	Section 29 & Section 35	Redacted information refer to: - UROIs that active and ongoing and therefore contain matter relating to HIQA's deliberative processes, or - UROIs received from employees/ workers categorised as information given in confidence or potential protected disclosures	See decision letter	Redactions made
2	Covid-19 related UROIs (concerns) for designated centres for People with a Disability from 1 March to 6 May 2020	NA	3	N	Part grant	Section 29 & Section 35	Redacted information refer to: - UROIs that active and ongoing and therefore contain matter relating to HIQA's deliberative processes, or - UROIs received from employees/ workers categorised as information given in confidence or potential protected disclosures	See decision letter	Redactions made

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