

Private & Confidential

[REDACTED]
[REDACTED]
[REDACTED]

Our Ref. FOIR 034 020

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:

Correspondence between HIQA and HSE (National Director level and CEO) and the Department of Health regarding COVID 19 outbreak in nursing homes between 1 February 2020 to 4 June 2020.

Your request was received by this, the Health Information and Quality Authority, on 4 June 2020 and was subsequently amended to the above.

I, Gillian Hastings, have now made a decision to part grant your request. This decision was made today, 03 July 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.

Head Office:
Unit 1301, City Gate, Mahon,
Cork, Ireland.
Tel: +353 (0) 21 240 9300
Fax: +353 (0) 21 240 9600

Dublin Regional Office:
George's Court, George's Lane,
Dublin 7, Ireland
Tel: +353 (0) 1 814 7400
Fax: +353 (0) 1 814 7499

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 of the record, either in full or in part.

The schedule also gives you a summary and overview of the decision as a whole and refers you heading 2 below, which explains the decision made in respect of the records.

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

Some exemptions have been applied to records relating to this request. The specific records to which these exemptions are applied are identified in the schedule and discussed in detail below.

(a) Section 36(1)(b) -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.”*

A total of 10 of the records, identified in the schedule, contain information of a sensitive nature relating to designated centres for older persons and persons with disabilities. The disclosure of this information could be reasonably be expected to result in a material financial loss or prejudice the competitive position of the owners and operators of these designated centres. Accordingly, I am of the view that Section 36(1)(b) applies and access to this information must be refused.

In making my decision, I have regard to the other provision in Section 36, including those in Section 36(2).

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 weighted the public interest issues which arise in this case, taking into account of the following factors.

In favour of release of the information:

- 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. Accordingly, access to Records no. 2, 7, 8, 9, 15, 21, and 25 has been refused in full. However, in the interests of transparency, the commercially sensitive was redacted from Records no. 1, 14, 20, 24, 26, in order to enable you to access the remainder of the Records.

(b) Section 32(1)(a)(iii) and 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.”

These 10 records also contain information relating to designated centres which was compiled in order to assist in the management and control of the COVID 19 pandemic. Having examined the records, I am of the view that the release of this information could be reasonably expected to prejudice or impair the plans for ensuring the safety of the public and the safety or security of persons and property. As such, I find that Section 32(1)(iii) applies in this instance.

I am also of the view that release of the information may endanger the life and safety of persons, given the fact that the pandemic is still on-going. Accordingly, I find that Section 32(1)(b) also applies.

In making the above decision, I have had regard to the other parts of Section 32, including Section 32(3).

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 knowing how COVID 19 has been responded to by public bodies.
- The public interest in openness and transparency among FOI bodies.

In favour of refusing access to the records:

- The public interest in ensuring an efficient response to COVID 19.
- The public interest in protecting the life and wellbeing of members of the public during the course of a public health crisis.

I consider that the public interest in favour of refusing access to the information outweighs the public interest in releasing the information. Accordingly, access to Records no. 2, 7, 8, 9, 15, 21, and 25 has been refused in full. However, in the interests of transparency, the commercially sensitive was redacted from Records no. 1, 14, 20, 24, 26, in order to enable you to access the remainder of the Records.

(c) Section 37 –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)."

Records no 3, 4, 5, 14, 16, 17, 18, 19, 22, 24, 26 contain the personal information of third parties including mobile numbers. Access to this information has been refused on the basis of Section 37(1), and this information has been redacted from the records concerned to enable you to access the remainder of the records.

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 and communicate effectively.

(d) Section 29(1)(a)–Deliberations of a FOI body

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

and, without prejudice to the generality of paragraph (b), the head shall, in determining whether to grant or refuse to grant the request, consider whether the grant thereof would be contrary to the public interest by reason of the fact that the requester concerned would thereby become aware of a significant decision that the body proposes to make"

Record no. 21 contains details relating to the establishment of the Financial Support Scheme for nursing homes which is currently undergoing a review by the Department of Health. These details are therefore part of an active deliberation by the Department of Health.

In these circumstances, I am of the view that releasing these records would be contrary to the public interest. For this reason, I am of the view that the records concerned should be refused on the basis of Section 29(1)(a).

In making this decision, I have considered the other provisions of Section 29, including Section 29(2).

I have also considered the following public interest 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 public bodies being able to perform their functions effectively.
- The public interest in public bodies communicating with one another on important issues.

(e) Section 30(1)(a)–Deliberations of a FOI body

Section 30(1) of the FOI Act provides:

“(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 the effectiveness of tests, examinations, investigations, inquiries or audits conducted by or on behalf of an FOI body or the procedures or methods employed for the conduct thereof,*
- (b) have a significant, adverse effect on the performance by an FOI body of any of its functions relating to management (including industrial relations and management of its staff), or*
- (c) disclose positions taken, or to be taken, or plans, procedures, criteria or instructions used or followed, or to be used or followed, for the purpose of any negotiations carried on or being, or to be, carried on by or on behalf of the Government or an FOI body.”*

I am of the view that the above exemption also applies to Record no. 21. The record contains information directly relevant to the implementation of the Financial Support Scheme and could prejudice the audit strategy and oversight of public monies if released.

Public Interest Consideration

I am aware that the above exemption is subject to a “public interest test” under Section 30(2). 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.

In favour of refusing access to the records:

- The public interest in public bodies being able to carry out their functions in efficient and effective manner
- The public interest in public bodies communicating with one another on important issues.

In this instance, I am of the view that the public interest is best served by refusing to release this information. Accordingly, access to Record no. 15 is refused.

3. Appeal Rights

In the event that you are not happy with this decision you can make an internal appeal by writing to the Freedom of Information Unit by e-mail to foi@hiqa.ie. A fee of €30 applies in the case of an appeal involving non-personal requests. 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.

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

4. Publication

This Authority will publish details of all non-personal Freedom of Information requests received on its website.

If you have any queries in relation to this decision, please feel free to contact the FOI Officer, Lydia Buckley, on foi@hiqa.ie or 0858709023.

Yours sincerely,

Gillian Hastings
Statutory Investigations Co-ordinator