

Private & Confidential



3 July 2020

Our Ref. FOIR 037 020

Re: – FOI Decision (part grant)

Dear ,

I refer the request you made under the Freedom of Information Act (FOI Act) 2014 on 8 June 2020. I note you that your request, as refined in an email dated 15 June 2020, was for the following:

The list of names of nursing homes submitted by Hiqa to the Department of Health and the HSE at the beginning of the pandemic which were of concern.

I, Gillian Hastings, have now made a final decision to part grant your request. This decision was made today, 2 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

e-mail: info@hiqa.ie www.hiqa.ie

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

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

(a) 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."

A number of records contain information relating to views on the risk of specific nursing homes during the COVID-19 pandemic. Having examined the records, I am of the view that the

releasing information relating to specific nursing homes, at a time of a public health emergency, would give rise to significant distress to residents in these nursing homes and their families, and adversely affect the mental and physical health of residents and their families. The residents in many of these nursing homes, and their families, have been severely impacted by COVID 19 and the release of this information to the public at large would cause further distress and harm to these individuals. For this reason, I am of the view that Section 32(1)(b), applies and access to the records should be refused.

It is also my view that the release of this information could be reasonably expected to prejudice or impair the public health plans for ensuring the safety of the public during a national public health emergency. As such, I find that Section 32(1)(iii) also applies in this instance.

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 the specific nursing homes considered at risk during the pandemic.
- 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.
- The public interest in ensuring an efficient response to COVID 19 and that plans and measures are executed in a timely manner.
- The public interest in ensuring adherence to public health policies implemented during the national pandemic.

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 in this instance. Accordingly, access to the records must be refused.

(b) 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."*

A number of records contain information relating to specific private nursing homes. The disclosure of this information could be reasonably be expected to result in a material financial loss to the owners and operators of these nursing homes. Accordingly, I am of the view that Section 36(1)(b) and (c) applies and access to this information must be refused.

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

(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. 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.

Please note, details of all non-personal FOI requests are published on HIQA's FOI disclosure log available on HIQA's website: <http://www.hiqa.ie>

If you have any queries in relation to this decision, please contact the FOI Liaison Officer, Sean Lynch, on foi@hiqa.ie or 085 8050586.

Yours sincerely

Gillian Hastings
Statutory Investigations Coordinator