

Private & Confidential

By email only: [REDACTED]

1 February 2022

Our Ref. FOIR 001 022

Re: FOI request, part granting request 001 2022

Dear [REDACTED]

I refer to your request dated 05 January 2022 made under the Freedom of Information Act 2014, for records held by the Health Information and Quality Authority (HIQA). Your request was subsequently amended to the following:

Can I have a breakdown of the nature of the 25 concerns regarding 11 nursing homes received by HIQA between January 1, 2021 to October, 2021 of nursing homes in Donegal.

The aim of HIQA is to advance high-quality and safe care for people accessing health and social care services in Ireland. HIQA is responsible for the monitoring, inspection and registration of designated centres for older people, such as nursing homes, in Ireland.

HIQA does not have a remit to investigate individual complaints; however, all unsolicited information, which can be received from anyone concerned about a centre, is used to inform HIQA's monitoring of each residential centre.

Where HIQA has concerns related to the safety of residents and the quality of care that they are receiving, providers are required to take immediate action to address this. HIQA inspector's follow-up with providers to ensure that the actions are being implemented and are resulting in improvements for residents.

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Where there are risks to the safety of residents or where the provider has failed to address areas of concern repeatedly, HIQA can take escalated action, up to and including court action to cancel the registration of the centre.

I, Ann Delany, Regional Manager, have now made a final decision to part grant your request on 1 February 2022.

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 HIQA 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

The sections of the Act which can apply to deny access to documents are known as its exemption provisions.

Section 29(1) of the FOI Act 2014 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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The information withheld under this exemption relates to matters currently under deliberations by HIQA. 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 Test

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 right of the public to have access to information
- The accountability of administrators and scrutiny of decision making processes
- The information will make a valuable contribution to the public debate on an issue

In considering the public interest factors which favour withholding the records I have taken account of the following:

- The need to preserve confidentiality having regard to the subject matter and the circumstances of the communications
- The release of records would impair future decisions
- Premature release could contaminate the decision making process
- 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 favouring the withholding of the records and, therefore, my decision is to redact the relevant UROIs.

Section 35 – Information obtained in confidence

- (1) 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 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,*

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The decision maker contend that the records concerned contain information given to HIQA in confidence and on the understanding that it would be treated as such, its 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 HIQA that such further similar information as aforesaid should continue to be given.

There are no discernible or particular public interest grounds leaning in favour of a release in this specific case. The decision maker has decided to release a redacted version of the records in this request so that all possible identifiable information is removed.

Section 37 – Personal Information

In relation to all records identified in the schedule, each contains matters where access to the records would involve disclosure of personal/identifiable information within the meaning of Section 37 of the FOI Act. Where appropriate HIQA has sought to the largest extent possible to redact personal or identifiable information so as to part grant records identified.

Section 37(1) provides as follows:

Subject to this section, 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).

Section 37(5) provides that a head may grant the request if the:

“public interest that the request should be granted outweighing the public interest that the right to privacy of the individual to whom the information relates should be upheld.”

Grounds for Decision to Part Grant Request

The records contain the name(s) of individual(s) and or other personal identifiable data and for this reason HIQA is of the view that the exemption applies and the records will be redacted in order not to disclose the personal identifiable information of third parties.

Public Interest Consideration

HIQA accepts that Section 37(1) is subject to Section 37(5) 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

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refusing to grant the request.

Section 42 (M) – Restriction of Act

Section 42 (M) provides as follows:

42. This Act does not apply to –

(m) a record relating to information whose disclosure could reasonably be expected to reveal, or lead to the revelation of –

(i) the identity of a person who has provided information in confidence in relation to the enforcement or administration of the law to an FOI body, or where such information is otherwise in its possession, or

(ii) any other source of such information provided in confidence to an FOI body, or where such information is otherwise in its possession.

Grounds for Decision to Refuse Request

This section states that the Act does not apply to a record that may reveal the identity of a source of confidential information. The information contained in the relevant records was received in confidence and could reveal the source of the information; therefore, the Act does not apply to these records.

3. 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 €30 fee. In the event that you need to make such an appeal, you can do so by writing to the Freedom of Information Unit, Health Information and Quality Authority, Dublin Regional Office, George's Court, George's Lane, Smithfield, Dublin 7, D07 E98Y or by e-mail to 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.

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4. Publication

It is the policy of HIQA to make decisions on non-personal FOI requests, including this decision letter and a copy of the records released, available to the public on our website <https://www.hiqa.ie/about-us/freedom-of-information>. Any personal information relating to you, such as your name etc., will be removed from the decision letter before this happens. This decision letter and the records released under FOI, will be added to our website approximately one week after today's date.

Yours sincerely,

Ann Delany
Regional Manager

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