

Private & Confidential

[REDACTED]
[REDACTED]
23 February 2022

Our Ref. FOIR 010 022

Re: – FOI Decision (part grant)

Dear [REDACTED]

I refer your recent requests under the Freedom of Information Act (FOI Act) 2014.

- Correspondence related to the response to COVID-19 between HIQA and Esker Lodge Nursing Home from 1st of March 2020 until 1st of August 2020. The request excludes routine correspondence related to the registration process and report development and publication process.
- Copies of all protected disclosures (redacted if necessary) from the 1st of March 2020 until 1st of August 2020 made by staff members at Esker Lodge Nursing Home

I note an extension was applied to this request, extending the deadline for response to 23 February 2022. As noted in the email issued on 16 February 2022, this extension was applied on the basis of Section 14(1)(b) of the FOI Act.

I, Ann Wallace, have now made a final decision to part grant your requests. 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 requests;
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 both your requests. It describes each document and refers to the

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

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

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

(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."*

These records contains information relating to a specific private nursing home, Esker Lodge, and third party service providers. This includes information which could reasonably be expected to result in a material financial loss to the owners and operators of the nursing home and other businesses. Accordingly, I am of the view that Section 36(1)(b) applies to this information and access to it 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.

However, in the interests of transparency and where it was possible to do so, certain exempt information has been redacted in order to allow access to the remainder of the record.

(b) 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 contains the personal information of third parties, including the names of employees of the nursing home, service providers, and details relating to the medical care of specific residents. 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 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.

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@higa.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 (€10 for medical card holders) 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.

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.

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

Yours sincerely
Ann Wallace
Regional Manager