

**Private & Confidential**

[REDACTED]

16 January 2023

**Our Ref. FOIR 115 022**

**Re: – FOI Decision (part grant)**

Dear [REDACTED]

I refer your recent request under the Freedom of Information Act (FOI Act) 2014. Your request, which was received 13 December 2022, was for the following:

- Copies of all incidents reported to HIQA Chief Inspector by Nua Healthcare in regard to the Haven, Co Kildare
- Copies of all complaints received by HIQA in regard to the Haven, Nua Healthcare, in Co Kildare
- All correspondence (letter/email) between the Chief Inspector and inspectors of designated centres - and management of Nua Healthcare - on all matters connected to safety and quality of care at the Haven, Co Kildare
- All correspondence (letter/email) between HIQA management and HSE management in regard to any aspect of the quality of care and safety of service users at the Haven, Nua Healthcare, Co Kildare

I have now made a final decision to part grant your request.

The remainder of this letter will explain the decision to part grant your request. 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.

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## 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 or part 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.

[REDACTED]

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

Four 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 35 – Information obtained in confidence

[REDACTED]

(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,*

The decision maker contends 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.

### (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).”*

The records indicated in the schedule contain matters where access to the records would involve disclosure of personal/identifiable information within the meaning of Section 37 of the

FOI Act. In particular, the records contain the personal information of the residents of the centre, including medical information, and they include information about people who have supplied unsolicited information to HIQA, including names and contact information. Access to this information has been refused on the basis of Section 37(1).

### Public Interest Consideration

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 Act

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.

### **(c) Section 29(1) – Deliberations of FOI bodies**

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”*

The records identified in the schedule are part of the deliberative process, including draft inspection reports and other records related to the regulatory process. These records are, therefore, part of the deliberative process and their release would undermine the decision making process.

### Public Interest Consideration

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's 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 release of records would impair future decisions
- Release could contaminate the decision making process
- 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 interest

After considering these factors, I believe release of these records is contrary to the public interest and, therefore, my decision is to refuse access to the records indicated in the schedule.

#### (d) **Section 36 (1) Commercially Sensitive Information**

Section 36(1) 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.”*

The records indicated on the schedule contain information that is considered commercially sensitive. These records contains information on regulatory activity related to the provider and notifications received from the provider. Release of this information could potentially damage the provider’s reputation and, therefore, to its commercial relationships. Accordingly, I am of the view that Section 36(1)(b) applies and access to this information must be refused.

#### 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.

I consider that the public interest in favour of refusing these records outweighs the public interest in releasing them 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@hiqa.ie](mailto: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 (€10 for medical card holders) applies in the case of an internal review.

You should submit 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 Sean Lynch at [foi@hiqa.ie](mailto:foi@hiqa.ie) or 0858050586

Yours sincerely,

Mick Keating  
Regional Manager