

Ein cyf / Our ref: ATISN 14290

Dyddiad / Date: 27/11/2020

Dear

Complaint in respect of Request for Information reference ATISN 14290

I am writing in relation to your request for an internal review of Care Inspectorate Wales' (CIW) response to your request for information dated 7 September 2020.

I am sorry you felt dissatisfied with the response to your request. I have undertaken an internal review in line with our procedures and I have set out my findings and conclusions below.

Your request for information asked for:

The number of deaths attributed to Covid-19 in the Plasgeller Care Home, 2 Intermediate Road, Brynmawr, Ebbw Vale, NP23 4SE, from 12th March to the present.

As set out in your email dated 30 October 2020, you have requested an internal review on the basis that you disagree that the explanation set out in the response for withholding the requested data under Section 38(1) and Section 31(1) of the Freedom of Information Act is a valid or sufficient reason for withholding this information

In undertaking this review, I have considered:

- Your request for information dated 7 September 2020
- CIW's response to your request for information dated 30 October 2020 and the basis for the decision to withhold the information
- The points you have raised in your request for an internal review
- The Freedom of Information Act 2000

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Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

Findings

CIW received your request for information on 7 September 2020. The request was logged as a request under the Freedom of Information (Fol) Act and an acknowledgement was sent to you on 8 September 2020 confirming the information requested, advising that you would receive a response by 5 October 2020 and setting out your rights under the Data Protection Act.

A response to your request was sent to you on 5 October 2020. This response explained CIW had concluded the information you requested was exempt from disclosure under sections 38(1) (Health & Safety) and 31(1) (Law Enforcement) of the Freedom of Information Act and that it was therefore withheld.

The reasons for applying exemptions were set out in full at Annex 1 to the response. This set out the legislation that applies to these exemptions and the specific reasons why CIW believes that these exemptions apply to the information requested.

Under the Fol Act, the Section 38(1) and 31(1) exemptions require that a Public Interest Test is carried out. In this the authority must consider the public interest in disclosure of the requested information and balance this against the public interest in withholding it and then set out their conclusion. CIW's response to your request sets out the considerations made in regard to the public interest and concluded the public interest in disclosing this information is outweighed by the public interest in withholding it from release.

CIW's response explains whilst the information was being withheld at individual care home level, a link was provided to published data on the Welsh Government statistics website on deaths of care home residents notified to Care Inspectorate Wales, including COVID-19 related deaths, at Local Authority level.

You have explained you believe the need for democratic transparency from service providers overrides the justifications CIW has provided for withholding the information. You have also explained your constituents deserve to know what is happening in the public services around them and, as their local representative, it is your responsibility to hold services to account on their behalf.

Conclusion

I have concluded, in terms of timescales and process, your request was handled correctly in line with the Freedom of Information Act and Welsh Government policy on responding to requests for information.

I have considered the exemptions applied and the specific reasons CIW provided for these exemptions. I have concluded releasing data publicly to the wider world on the number of death notifications attributed to COVID-19 at individual care home level could:

- cause additional distress to living relatives of individuals who have died and those living and working in care homes (Section 38(1))
- affect the degree to which providers cooperate with CIW thereby limiting the intelligence it has and subsequently its ability to carry out its functions which protect people (Section 31(1)), and/or

- negatively impact on the stability of the care home thereby risking the care and support provided to people currently using the services and those who may require placements in the future (section 38(1)).

In addition I believe these risks are further exacerbated as CIW's data is based on notifications from care providers which may not fully reflect the situation in care homes. This is because the testing strategy has evolved throughout the pandemic. During the earlier phase, not all people were being tested to confirm their COVID-19 status.

I agree it is in the public interest to have transparent information about the services around them and it is for this reason CIW is making information about COVID-19 deaths in care homes available at a local authority level. This information provides an indication of the prevalence and impact of COVID-19 in local care homes.

I understand people may have a direct interest in a service, and wish to have this information about that specific care home. However whilst I believe it is right and proper for service users' family to be provided with the information as it affects them and their family members, this does not mean it is appropriate to put this information into the wider public domain. Care home providers have a legal duty of candour and must act in an open and transparent way with individuals who are receiving care and support and their representatives. Where this is not happening, CIW is happy to remind the service provider of this regulatory requirement.

For the reasons I have set out above. I agree with the original conclusion that the public interest in disclosing this information is outweighed by the public interest in withholding it from release.

However, I have also considered the points you have raised in relation to your ability to hold services to account on behalf of your constituents. Where service providers are not delivering good quality and safe services they should be held to account. Where your constituents have raised concerns about the quality and safety of services, I would encourage you to share these with us so we can use our powers of inspection and regulation to encourage improvement or take action where necessary.

Conclusion: I am upholding the original decision to withhold the requested information.

If you remain dissatisfied with this response you also have the right to complain to the Information Commissioner at:

Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

Tel: 01625 545 745

Fax: 01625 524 510

Email: casework@ico.gsi.gov.uk

Also, if you think that there has been maladministration in dealing with your request, you have the option to make a complaint to the Public Services Ombudsman for Wales who can be contacted at:

Public Services Ombudsman for Wales
1 Ffordd yr Hen Gae
Pencoed
Bridgend
CF35 5LJ

Telephone: 0845 6010987 (local rate)
Email: ask@ombudsman-wales.org.uk

Yours sincerely

Margaret Rooney
Deputy Chief Inspector