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Bwrdd Iechyd Prifysgol
Bae Abertawe
Swansea Bay University
Health Board

Cadeirydd/Chair: **Emma Woollett**
Prif Weithredwr/Chief Executive: **Mark Hackett**

gofalu am ein gilydd, cydweithio, gwella bob amser
caring for each other, working together, always improving

Rydym yn croesawu gohebiaeth yn y Gymraeg ac yn y Saesneg. We welcome correspondence in Welsh or English.

Dyddiad/Date: 10th February 2021
Ein Cyf / Our Ref: 21-A-045

01639 648363

FOIA.Requests@wales.nhs.uk

[REDACTED]

[REDACTED]

Corporate Services
Headquarters
1 Talbot Gateway
Baglan
Port Talbot, SA12 7BR

Dear [REDACTED]

I refer to your Freedom of Information Act Request acknowledged by ourselves on 29th January 2021. Your request sought information relating to Brynsiriol Care Home.

Please provide me with copies of nurse assessment reports submitted to the Commissioning Team, Neath Port Talbot, Public Health Wales and Care Inspectorate Wales (CIW) in relation to Brynsiriol Care Home.

The particular reports I require are:

- **Copy of a nurse assessment report emailed to CIW on the 11th December 2020**
- **District nurse findings and concerns emailed to CIW on the 9th December 2020.**

The Health Board is withholding the above information under Section 43(2) and Section (40)1 of the FOI Act.

Section 43(2) – Commercial interests

Section 43(2) is applicable if disclosure of the information would or would be likely to prejudice the commercial interests of any person, including the public authority itself. A commercial interest relates to a person's ability to participate competitively in a commercial activity i.e. the purchase and sale of goods or service. In this case, the information concerns the service being provided by a particular care home. Therefore, is considered commercial in nature.

Disclosure of the emails and reports requested, in these circumstances may very well cause reputational damage to the home. This is particularly so in relation to information relating to specific safeguarding concerns. The Health Board accepts that this would be



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likely to prejudice the commercial interests of the home and that section 43(2) is engaged.

Public interest in disclosure

The Health Board accepts that there is a strong public interest in the Health Board being accountable and transparent about the monitoring activities of care homes. This involves the spending of public money and more importantly, the care of vulnerable individuals. It is understandable that the public would wish to be as reassured as much as possible about the quality of care on offer and what actions the Health Board takes to ensure that standards are maintained, as well as how care homes respond to any concerns.

Public interest in maintaining the information

However, the Health Board accepts that the disclosure of the information would be likely to prejudice the commercial interests of the home because it would be likely to cause reputational damage to the home, placing it at a disadvantage in comparison with other providers which would be likely to result in financial loss. There is a legitimate public interest in ensuring that undue harm is not done to the commercial interests of third parties through the disclosure of information under the FOIA. There is also a public interest in protecting the relationship between the Health Board and third party businesses and ensuring that businesses are not discouraged unnecessarily from entering into arrangements with public authorities that contribute to public services.

Balance of public interest

When balancing this information, it is not always necessary or proportionate to disclose every last piece of information in order to satisfy the public interest. This is not the same as saying the needs of a business are more important than the needs of residents or their relatives, but simply that there is an appropriate balance to be considered with any decisions about disclosure.

In this case, there is clearly a concern which has given rise to this request, with a particular focus on areas where the home may be offering poor service. While that is a personal issue, it also points towards a broader public interest in allowing the public to understand more about the quality of care being offered by this particular home. However, there are other routes available to pursue particular concerns about care homes.

Therefore, in conclusion without appropriate context, the disclosure of this information would be likely to cause reputational damage to the home, thereby prejudicing its commercial interests. Disclosure in the form requested would be likely to create a misleading impression of the quality of care being offered and would provide a very limited picture of the issues and therefore the Health Board has engaged Section 43(2) of the FOIA.

Section 40 (1) – Personal Information

This exemption provides that third party personal data is exempt if its disclosure would contravene any of the data protection principles.

The Health Board considers that there is a sufficient risk of the identification of individuals. Even with specific names redacted out of these reports and emails, that the information is still capable of revealing personal data about various individuals because of the circumstantial details, including staff at the health board, residents at the home, and staff members at the home.



Undoubtedly, this information is of a very sensitive nature concerning the care received by individual residents and provided by individual staff members. The Health Board has also confirmed that those reporting safeguarding concerns do so in the expectation that it will be confidential, since to do otherwise may risk the failure to make those reports in the first place. Medical and care details and individual employment matters are also typically very private matters, normally attracting a very limited audience. Also the Health Board can accept that disclosure of this information to the general public in response to this request would be outside the reasonable expectations of the individuals concerned.

Therefore, Section 40(2) is engaged and the Health Board has classed this as personal data as defined under the General Data Protection Regulation (GDPR) and Data Protection Act 2018 and its disclosure would be contrary to the data protection principles and constitute as unfair and unlawful processing in regard to Articles 5, 6, and 9 of GDPR. We are therefore withholding this detail under Section 40(2) of the Freedom of Information Act 2000. This exemption is absolute and therefore there is no requirement to apply the public interest test.

I hope this information is helpful. If you require anything further please contact us at FOIA.Requests@wales.nhs.uk.

Under the terms of the Health Board's Freedom of Information policy, individuals seeking access to recorded information held by the Health Board are entitled to request internal review of the handling of their requests. If you would like to complain about the Health Board's handling of your request please contact me directly at the address below or register your complaint via FOIA.Requests@wales.nhs.uk.

If after Internal Review you remain dissatisfied you are also entitled to refer the matter to the information commissioner at the Information Commissioner's Office (Wales), 2nd Floor, Churchill House, Churchill Way, Cardiff, CF10 2HH. Telephone Number: 029 2067 8400.

Yours sincerely



Pam Wenger
Director of Corporate Governance

