

Ein cyf / Our ref: **ATISN-12226**

Dyddiad / Date: 22/05/2018

Dear ,

ATISN 12226 – Request for information

Thank you for your request dated 08/04/2018 for information regarding Regulation 26 notifications received by Care Inspectorate Wales in relation to domiciliary care services.

You asked for:

1. The total number of times Care and Social Services Inspectorate Wales received a notification under Regulation 26 of the Domiciliary Care Agencies (Wales) Regulations 2004 for EACH of the three fiscal years from April 2015 up to March 2018.
2. The date of each notification in question (1).
3. The name of the domiciliary care organisation related to each notification in question (1).
4. A brief description of what happened for each notification in question (1).

Alternatively, if the above could not be provided, you requested:

5. The five domiciliary care organisations with the most Regulation 26 notifications for each of the three fiscal years from April 2015 until March 2018.

Care Inspectorate Wales (formally Care & Social Services Inspectorate Wales) has decided some of the information requested is exempt from disclosure under section 38 and section 43 of the Freedom of Information Act and is therefore withheld. The reasons for applying these exemptions are set out at Annex 1 enclosed.

Please find enclosed a list of Regulation 26 notifications received by CIW for each of the three fiscal years from April 2015 to March 2018 which includes the date received and the analysis code of each notification and the total number for each year.

Arolygiaeth Gofal Cymru (AGC)
Swyddfa Merthyr Tudful
Llywodraeth Cymru
Adeiladau'r Llywodraeth
Parc Busnes Rhydycar
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CF48 1UZ
www.arolygiaethgofal.cymru

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Care Inspectorate Wales (CIW)
Merthyr Tydfil Office
Welsh Government
Government Buildings
Rhydycar Business Park
Merthyr Tydfil
CF48 1UZ
www.careinspectorate.wales

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.

CIW uses a range of analysis codes to log notifications and I urge caution in the interpretation of this information. Notifications are reviewed by inspectors for any action required. The analysis coding of notifications does not necessarily indicate failure on the part of the provider, it could indicate that positive action has been taken in response to an event, for example referring incidents to safeguarding could include issues that the domiciliary care agency has identified and taken responsive action to protect a vulnerable person.

In addition regulation 26 for domiciliary care does not actually specify the need to report medication errors, only incidents which either impact on the wellbeing of people or result in disciplinary measures against staff. The need to report medication errors is therefore open to wide interpretation. CIW gave new guidance on reporting medication errors in domiciliary care (28 April 2016); wrote to all providers, and strengthened reporting forms to encourage higher reporting of medication errors, especially in domiciliary care. This has resulted in increased reporting.

If you are dissatisfied with the Welsh Government's handling of your request, you can ask for an internal review within 40 working days of the date of this response. Requests for an internal review should be addressed to the Welsh Government's Freedom of Information Officer at:

Information Rights Unit,
Welsh Government,
Cathays Park,
Cardiff,
CF10 3NQ

or Email: FreedomOfInformation@gov.wales

Please remember to quote the ATISN reference number above.

You also have the right to complain to the Information Commissioner. The Information Commissioner can be contacted at:

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

However, please note that the Commissioner will not normally investigate a complaint until it has been through our own internal review process.

Yours sincerely

Annex 1

Freedom of Information Request ATISN 12226

Information being withheld	Section number and exemption name
The names of the domiciliary care organisations to which each Regulation 26 notification requested relates.	<ul style="list-style-type: none">• Section 38 of the Freedom of Information Act – Health & Safety• Section 43 of the Freedom of Information Act – Commercial Interests.
The five domiciliary care organisations with the most Regulation 26 notifications for each of the three fiscal years from April 2015 until March 2018.	<ul style="list-style-type: none">• Section 38 of the Freedom of Information Act – Health & Safety• Section 43 of the Freedom of Information Act – Commercial Interests.

When considering the disclosure of information in response to a Freedom of Information request, we need to take into consideration the effects of making the requested information freely available to everybody as disclosures, in response to requests, are made to the world at large and not just to the requester. Consequentially, whilst a requester may have a legitimate interest in being provided with the information and may have no intention of misusing that information, little, if any, weight can be given to the requester's intentions. Rather it is the likely uses that any unknown person may put the released information to that is given greater weight.

Section 38 (1) – Health & Safety

Section 38 of the FOIA provides an exemption from disclosing information if it would endanger any individual. This exemption states:

Information is exempt information if its disclosure under this Act would, or would be likely to (a) endanger the physical or mental health of any individual, or (b) endanger the safety of any individual.

The Welsh Government believes the disclosure of information identifying the name of the care service provider along with the Regulation 26 notification they are subject to is exempt under section 38(1)(a). For the information to be exempt the Welsh Government must demonstrate there is a causal link between endangerment and disclosure of the information. The Welsh Government must also show disclosure would or would be likely to have a detrimental effect on the physical or mental health of any individual. This effect must be more than trivial or insignificant.

Endanger the physical health or safety of service users due to lack of provision of care services:

Access to services and continuity of care is vital to individuals who receive services and their families. A service could be withdrawn due to commercial impact of publication of information that is not accurately represented leaving people without a service.

Section 38 is a qualified exemption. This means even if the information requested is exempt from disclosure, we must go on to consider and decide whether the public interest in maintaining the exemption outweighs the public interest in its disclosure. For section 38 this involves weighing up the risks to the health and safety of an individual or group against the public interest in disclosure in all circumstances of the case.

The Welsh Government recognises there is a public interest in the disclosure of any information which shows care service providers that are failing to provide adequate care.

However, the Welsh Government also has a responsibility to ensure there is an adequate provision of care services across the whole of Wales. It is not possible to disclose information on Regulation 26 notifications with the required context because of the way in which the information is coded. It does not provide the level of detail to identify whether the notifications are as a result of a positive action by the domiciliary care agency or whether the notification could indicate an issue of concern about the service. This would present a misleading picture that undermines the quality of care provided. The result of confidence in a care service provider being reduced would be for individuals and/or commissioners of care to seek an alternative care provider. The knock on effect would be care service providers going out of business meaning an insufficient number of care service providers to meet demand. This would impact on individual's health as they would not be receiving the care they need. This would also transmit to their family members or other individuals associated with the individual due to both concern for the individual's well-being but also their own health due to the added burden of providing care they may not be equipped to provide.

On balance, the Welsh Government believes the public interest is in favour of withholding the information due to the need to ensure the provision of adequate care for both individuals in care and the population of Wales generally.

Section 43(2) – commercial interests

Section 43 of the FOIA provides an exemption from disclosing information if it would prejudice the commercial interests of any person. This exemption states:

(2) Information is exempt information if its disclosure under this Act would, or would be likely to, prejudice the commercial interests of any person (including the public authority holding it).

In order to apply section 43, the Welsh Government must be satisfied there is a real and significant risk of prejudice to care service provider's commercial interests. Care service providers have a legitimate commercial interest in ensuring they are perceived as providing a level of care acceptable to users. Release of information about a care service provider's Regulation 26 notifications without proper context would result in a perception of their care delivery and likely harm their commercial standing in respect of the provision of care.

CIW holds a significant amount of information regarding Regulation 26 notifications submitted by domiciliary care agencies. The way in which this information is recorded does not provide the level of detail required to identify whether the notifications are as a result of a positive action by the agency or whether the notification could indicate an issue of concern about the service. This makes it hard to provide any context to the information.

CIW therefore believes that to release the information with the names of the services included would likely impact on the commercial interests of these domiciliary care

organisations if the information was interpreted in a way which implied that these notifications indicate issues of concern within these services.

Section 43 is a qualified exemption. This means that, even if the information requested is exempt from disclosure, we must go on to consider and decide whether the public interest in maintaining the exemption outweighs the public interest in its disclosure.

The Welsh Government recognises there is a public interest in the disclosure of any information relating to the standards of service given by care providers in Wales. However, disclosure of a care service provider's Regulation 26 notifications without context could lead to a perception of poor care resulting in the service providers losing business. This would lead to a lack of care service provision in Wales where the service is then no longer commercially viable. CIW has a responsibility to keep vulnerable people in Wales safe. It is in the wider public interest that CIW does not compromise the health or safety of individuals by releasing information which could result in a shortage of care service provision in Wales.

On balance, the Welsh Government believes the public interest lies in favour of withholding the information due to the need to ensure that there is continuity in care for those people in Wales who rely on these services. CIW already provides detailed information on each individual care service to the public through inspections reports for each service, which are made publicly available. CIW believes these inspection reports give much more accurate and reliable information about the standard of care provided by these services than the information regarding Regulation 26 notifications about these services would.