

Ein cyf / Our ref: ATISN 13093

Dyddiad / Date: 10/06/2019

Dear ,

Internal review in respect of Request for Information – reference ATISN 13093

I am writing in relation to your request for an internal review of Care Inspectorate Wales' (CIW) response to your information request dated 2 April 2019. I have been asked to undertake this review and I have set out my findings and conclusions below.

I am sorry you felt dissatisfied with the response from CIW to your information request and hope the outcome of this review assists in clarifying matters.

You have requested this review on the basis of the following issues:

1. CIW did not provide the exemptions being relied on when it did not provide the information requested.
2. CIW has not provided assistance to the requester.

In undertaking this review I have considered:

- your information request dated 8 April 2018 and CIW's response 22 May 2018,
- your information request dated 2 April 2019 and CIW's response 1 May 2019,
- the points you have raised in your e-mail dated 10 May 2019 in which you request an internal review, and
- further clarity provided by you on 31 May 2019 in relation to the meaning of 'notifications upheld'.

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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 and conclusions

Issue 1: CIW did not provide the exemptions being relied on when it did not provide the information requested.

Findings

In your information request dated 2 April 2019, 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 from April 2018 to 31 March 2019. Category of each notification including but not limited to (*you then provided a list of the notification categories under Regulation 26*)
2. The number of notifications in question 1 that were upheld for each category.
3. A brief description of actions taken by CIW as a result of the upheld notifications in question (3)
4. The total number of Regulation 26 notifications that were upheld for EACH of the four fiscal years up to March 2018.
5. A brief description of actions taken by CIW as a result of the upheld notifications in question (4)

On 1 May 2019 CIW provided you with the information requested at point 1 above. However, CIW states it was unable to provide any information in relation to questions 2 to 5 as it does not determine whether notifications are upheld or not.

Conclusions

Not upheld. CIW does not hold the information requested therefore it is not relying on an exemption under the Act.

In coming to this conclusion I have considered CIW's response to you on 1 May 2019 and your e-mail providing clarification on 31 May 2019. In your e-mail to me on 31 May 2019, you clarified what you mean by 'notifications upheld' as follow:

'By that I mean proven. So for example in a professional body when allegations of misconduct are investigated and found to be true the term upheld is used. That is what I mean here'.

Upon receiving notifications under the Domiciliary Care Agencies (Wales) Regulations 2004, they are reviewed by inspectors for any action required. Inspectors do not investigate the substance of the notification to determine if it is true or not. There is an assumption the event happened otherwise the provider would not have made the notification. Therefore CIW is not withholding information on the basis of an exemption under the Freedom of Information Act 2000. It does not hold information on the numbers of 'notifications upheld'. In addition, the inspector does not reject notifications on the basis of them being a minor incident nor is this recorded.

The inspector reviews the notification in the context of other notifications and intelligence CIW may have about the provider to determine whether any action is required by CIW e.g. an inspection, referral to some other agency or no further action.

Issue 2: CIW has not provided assistance to the requester

Findings

In its response to your April 2019 information request on 1 May 2019, CIW explained a lack of clarity for providers about the thresholds for some notifications has led to them notifying CIW of events which did not require notification.

It goes on to refer to the explanation provided to you in its response to an earlier information request from you in April 2018. CIW explained 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.

In your e-mail dated 10 May 2019 in which you request an internal review, you explain:

'Specifically, the assistance I request is in regard to the caveat in response in Question One. You state:

"We outlined in our previous response to you that 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."

The reason why I am asking Questions 2-5 is to determine how many regulation 26 were in fact things like medical errors where a patients well being was impacted as opposed to minor incidents where providers are perhaps still getting accustomed to the thresholds. But CIW has chosen not to help in this endeavour and has not provided a reason for exempting questions 2-5'.

Conclusions

Not upheld:

In coming to this conclusion I have considered CIW's response to you on 22 May 2018 and 1 May 2019 and your e-mail requesting an internal review on 10 May 2019.

I find CIW did attempt to assist you by providing explanation about the lack of clarity around thresholds for notifications under the Domiciliary Care Agencies (Wales) Regulations 2004. CIW could have been clearer by explaining thresholds for notifications were not set out as part of the 2004 regulations. The interpretation of 'impact on the wellbeing of people' is therefore open to broad interpretation ranging from very minor to serious impact both positive and negative. Therefore the need to report incidents including those related to medication is open to wide interpretation. CIW does not reject notifications on the basis of them being minor incidents nor does it record this. It reviews them as described above.

Under the new legislation (The Regulation and Inspection of Social Care (Wales) Act 2016), statutory guidance provides clear guidance on thresholds for notification of such events. As explained in CIW's response of 1 May 2019, providers are currently being registered under this legislation.

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, Care Inspectorate Wales