

Sent via email to:

Ein cyf / Our ref: ATISN 14230

Dyddiad / Date: 7 September 2020

Dear

ATISN 14230 – Freedom of Information Request

Thank you for your request which we received on 10/08/2020 in regard to death notifications made to the Care Inspectorate Wales by registered care homes during the COVID-19 pandemic.

You asked for:

The following information derived from the death notifications made to the Care Inspectorate Wales by registered care homes during the COVID-19 pandemic (taking figures from 1 Jan 2020 to date):

- *The number of people who died from confirmed or suspected COVID-19 at each registered home, including the name, and if possible, operator of the home.*
- *The number of people who died at each home from all causes including the name, and if possible, operator of the home.*

We have decided the disclosure of data in regard to deaths in care homes at individual care home level is exempt under sections 38(1) and 31(1) and of the Freedom of Information Act and is therefore withheld. The reasons for applying these exemptions are set out in full at Annex 1 to this letter.

Data on deaths of care home residents notified to Care Inspectorate Wales, including COVID-19 related deaths, is published on the Welsh Government Statistics website. This data is broken down by Local Authority within the background data available within these releases. The link to the latest release can be found at the following link:

<https://gov.wales/notifications-deaths-residents-related-covid-19-adult-care-homes>

Arolygiaeth Gofal Cymru (AGC)
Swyddfeydd Llywodraeth
Sarn Mynach
Cyffordd Llandudno
Conwy
LL31 9RZ
www.arolygiaethgofal.cymru

Care Inspectorate Wales (CIW)
Government Offices
Sarn Mynach
Llandudno Junction
Conwy
LL31 9RZ
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.

Additional data on deaths in care homes is available on the Office of National Statistics website at the following link:

<https://www.ons.gov.uk/peoplepopulationandcommunity/healthandsocialcare/causesofdeath>

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: Freedom.ofinformation@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

ATISN 14230 - Request for Information

Care Inspectorate Wales (CIW) has decided to withhold the following information:

Information being withheld	Section number and exemption name
<ul style="list-style-type: none">• The number of people who died from confirmed or suspected COVID-19 at each registered home.• The number of people who died at each home from all causes.	Sections: 38(1) – Health & Safety 31(1) – Law Enforcement of the Freedom of Information Act.

This annex sets out the reasons for the application of the above exemptions.

Section 38(1) – Health & Safety

Section 38(1) of the FoI Act states that information is exempt if disclosure would be likely to endanger the health and safety of people who work in and use health and social care services, and of the general public.

Section 31(1) – Law Enforcement

Section 31(1) of the Freedom of Information Act (FOIA) states that information is exempt if its disclosure under this Act would, or would be likely to, prejudice:

g) the exercise by any public authority of its functions for any of the purposes specified in subsection (2),

(2)The purposes referred to in subsection (1)(g) to (i) being:

(b)the purpose of ascertaining whether any person is responsible for any conduct which is improper,

(c)the purpose of ascertaining whether circumstances which would justify regulatory action in pursuance of any enactment exist or may arise,

(d)the purpose of ascertaining a person's fitness or competence in relation to the management of bodies corporate or in relation to any profession or other activity which he is, or seeks to become, authorised to carry on,

(i)the purpose of securing the health, safety and welfare of persons at work, and

(j)the purpose of protecting persons other than persons at work against risk to health or safety arising out of or in connection with the actions of persons at work.

CIW believes the above exemptions apply to this information for the following reasons.

CIW believes that disclosing data on deaths in care homes at individual care home level could potentially lead to the identification of individual service users. We believe we have a duty of confidentiality to deceased persons that endures after death. Putting this information into the public domain where those individuals could be identified would breach that duty of confidentiality and could cause distress to the living relatives of those

individuals as well as for people living and working in these care homes. We therefore believe disclosure of this information could endanger the health and safety of these individuals and so is exempt under Section 38(1) of the FOIA.

CIW considers notifications of death are obtained from providers with a reasonable expectation of confidentiality. Disclosure of this information by CIW into the public domain could affect the degree to which providers co-operate with us if they are concerned the details of notifications are being publicly disclosed at this sensitive time. This could then affect the level of information CIW receives and thereby limit our ability to exercise our functions to protect the health and welfare of people within care homes. We consider disclosure of this information is therefore exempt under Section 31(1)(g)/s31(2)(b),(c),(d),(i) and (j) of the FOIA. Additionally, if our functions of protecting the health and welfare of people within care homes are hindered, particularly during the current pandemic, this may endanger the health and safety of people who use care home services. Therefore we believe that for this reason the disclosure of the information is also exempt under Section 38(1) of the FOIA.

CIW believes disclosing data on deaths in care homes at individual care home level could substantially impact on care home providers' ability to continue to operate if the data released reflected high levels of deaths in individual care homes. We believe releasing this information could potentially result in a service being wrongly perceived as having poor standards of care which would likely impact on their ability to function both during and after the pandemic. Whilst CIW's role is not concerned with protecting individual businesses, we are concerned about the potential impact of a care service being impacted by disclosure and as a result unable to continue to provide care and support for the people whose home it is. This is particularly important given the current fragility of the care home sector as a result of the pandemic. We therefore believe the impact on the ability of care homes to operate would impact the health and safety of people within care homes as well as those who are seeking placements within them, and so the information is exempt under section 38(1) of the FOIA.

Public interest test

CIW recognises there is a high public interest in transparency about deaths and COVID-19 related deaths in care homes. We are continuing to support the Office for National Statistics (ONS) in the production and publication of official statistics on deaths in care homes and we regularly publish information on COVID-19 and deaths in care homes at both a national and local authority level so that the public can be aware of the current situation within the sector and within their local areas.

CIW does not think it is in the public interest to disclose information where this may result in distress to individuals. Nor is it in the public interest to prejudice our ability to protect the health and well-being of people living in care homes. In addition CIW does not believe it is in the public interest to negatively impact the care sector by releasing this information, particularly given the current pressures on the economy caused by the pandemic as this could prejudice their ability to provide the necessary quality and levels of care to their residents, which we consider is not in the public interest.

We believe that disclosure of information in regard to specific care services is appropriate only to those to whom it may directly affect, rather than to the public as a whole, and we

therefore feel this is better served via direct communication between service providers and those who use those services and their families.

CIW therefore believes the public interest in disclosing this information is outweighed by the public interest in withholding it from release.