

Mr. John Hamill

1 February 2022

Re: FOI Request – FOI/007/22

Dear Mr Hamill,

I refer to your email dated 4 January 2022 and our response dated 13 January 2022, which acknowledged your request. I, Marianne Kelly, am the decision maker in respect of your request.

### Request

In your email dated 4 January 2022, you sought the following record under Section 12 of the Freedom of Information Act 2014 (the "FOI Act"):

*"a copy of the Religious Sisters of Charity Health Service Philosophy and Ethical Code".*

### Decision

I have decided not to grant your request. The purpose of this letter is to explain my decision and I have included:

1. Reasons for the decision not to grant access to the record in question; and
2. A statement of how you can appeal this decision should you wish to do so.

### Reasons for decision

I have determined that access cannot be granted to the record in question on the grounds of sections 30 and 36 of the FOI Act. The following considerations formed part of my decision.

#### 1. Section 30(1)(b) of the FOI Act

Section 30(1)(b) of the FOI Act provides:

*"(1) A head may refuse to grant an FOI request if access to the record concerned could, in the opinion of the head, reasonably be expected to—*

*(b) have a significant, adverse effect on the performance by an FOI body of any of its functions relating to management (including industrial relations and management of its staff)"*

It is worth noting that the record in question is a document which was developed by and relates to the Religious Sisters of Charity. The Religious Sisters of Charity is not itself an FOI Body within the meaning of the FOI Act. In addition, the record in question has been superseded by the Ethical Framework. It is this latter document and not the previous code which is relevant to any ongoing operations of St Vincent's University Hospital.

I am of the view that the release of a copy of the Religious Sisters of Charity Health Service Philosophy and Ethical Code and any suggestion that this code is still relevant to or guides the operations, objectives and initiatives of St. Vincent's University Hospital or the new National Maternity Hospital would be thoroughly misleading.

Taken out of context, including the suggestion in your own email that the previous ethical code was an important part of the 2017 negotiation and agreement with respect to the new National Maternity Hospital, this could result in the public at large incorrectly believing that St Vincent's University Hospital and the new National Maternity Hospital would operate on the basis of this old and superseded ethical code.

In my view, any such incorrect belief would in turn potentially impact on the performance of our functions relating to management, including the management of our staff. This is on the basis that these misleading sentiments could adversely affect our staff by suggesting that they themselves operate on the basis of an outdated and superseded ethical code. This could in turn result in an undue administrative management burden being imposed on St Vincent's University Hospital in dealing with this negative impact.

I am therefore of the view that, subject to the public interest considerations discussed below, the Records are exempt from disclosure under section 30 of the Act

## 2. **Section 36 of the FOI Act (commercial sensitivity)**

Section 36(1) of the FOI Act provides as follows:

*"Subject to subsection (2), a head shall refuse to grant an FOI request if the record concerned contains—*

*(a) trade secrets of a person other than the requester concerned,*

*(b) financial, commercial, scientific or technical or other information whose disclosure could reasonably be expected to result in a material financial loss or gain to the person to whom the information relates, or could prejudice the competitive position of that person in the conduct of his or her profession or business or otherwise in his or her occupation, or*

*(c) information whose disclosure could prejudice the conduct or outcome of contractual or other negotiations of the person to whom the information relates."*

In my view, the release of the record in question could reasonably be expected to result in a material financial loss or gain to St Vincent's University Hospital and, furthermore, could prejudice the conduct or outcome of any negotiations and ongoing dealings with regard to the new National Maternity Hospital.

As mentioned above, the record in question is a document which was developed by and relates to the Religious Sisters of Charity. The Religious Sisters of Charity is not itself an FOI Body within the meaning of the FOI Act. In addition, the record in question has been superseded by the Ethical Framework. It is this latter document and not the previous code which is relevant to any ongoing operations of St Vincent's University Hospital.

I am of the view that the release of a copy of the Religious Sisters of Charity Health Service Philosophy and Ethical Code and any suggestion that this Code is still relevant to or guides the operations, objectives and initiatives of St. Vincent's University Hospital or the new National Maternity Hospital would be thoroughly misleading.

Taken out of context, including the suggestion in your own email that the previous ethical code was an important part of the 2017 negotiation and agreement with respect to the new National Maternity Hospital, this could result in the public at large incorrectly believing that St Vincent's University Hospital and the new National Maternity Hospital would operate on the basis of this ethical code.

I am therefore of the view that, subject to the public interest considerations discussed below, the Records are exempt from disclosure under section 36 of the Act

## 3. **Public Interest Test**

In reaching my decision in respect of your request, I have taken the public interest into consideration in respect of the exemptions contained in sections 30 and 36 of the FOI Act.

The following factors favour the release of records (in general) are:

- The right of the public to access information under the FOI Act;
- Ensuring that the operations of the St. Vincent's University Hospital (or the prospective operations of the new National Maternity Hospital) are transparent and open;
- Enhancing public understanding of how St. Vincent's University Hospital operates (or how the new National Maternity Hospital will operate); and
- facilitating access to records by members of the public to the greatest extent possible.

The following factors favour withholding the records requested:

- notwithstanding the public interest factors listed above, release of the code will not enhance the public understanding of how St. Vincent's University Hospital operates (or how the new National Maternity Hospital will operate), as neither St. Vincent's University Hospital nor the new National Maternity Hospital does, or will, operate on the basis of such code. Instead, the release of the record may have the opposite effect in terms of providing incorrect information as to how St Vincent's University Hospital operates, or how the new National Maternity Hospital will operate;
- notwithstanding the public interest factors listed above, release of the code will also not ensure that the operations of the St. Vincent's University Hospital (or the new National Maternity Hospital) are transparent and open as the code has no relevance to such current or prospective operations;
- there is no public interest in the release of a record that would be incorrect or misleading on the grounds that it is out of date and has been superseded;

Having considered the above factors, it is my view that the factors favouring the withholding of the record in question significantly outweighs any public interest in its release.

#### **Right of Appeal**

If you are unhappy with this decision you may appeal it. In the event that you need to make such an appeal, you can do so by writing to the Freedom of Information Office, St. Vincent's University Hospital, Elm Park, Dublin 4 or by e-mail to [foi@svhg.ie](mailto:foi@svhg.ie)

Your correspondence should include a fee of €30 for processing the appeal. Payment should be made by way of bank draft, money order, postal order or personal cheque made payable to St. Vincent's University Hospital, Elm Park, Dublin 4. You should make your appeal within 4 weeks from the date of this notification, where a day is defined as a working day excluding, the weekend and public holidays. The appeal will involve a complete reconsideration of the matter by a more senior member of the staff of this body.

Yours sincerely



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Marianne Kelly,

Freedom of Information Office