

3 October 2022

Dear ,

ATISN 16577 The Children Act 2004 Database (Wales) Regulations 2020

Thank you for your request which I received on 12th August. You asked for information in relation to the section on “Collaboration/Involvement” in the published document <https://gov.wales/sites/default/files/consultations/2020-01/integrated-impact-assessment-summary.pdf>:

- Who were these health colleagues, digital transformation teams and data protection colleagues who were engaged with and mentioned in this document?
- Comments made by the above on the proposed legislation.
- The ICO's comments on the proposed legislation.
- The outcome of the engagement with the ICO.
- Whether the DPIA referred to in the document had been published
- Access to the DPIA if it has been published.
- If the DPIA has not been published, the reason for not doing so.

We wrote to you on 13 September to inform you that our consideration of the public interest tests under the section 35(1)(a) “formulation of government policy” exemption was taking longer than we would have liked and that we expected to respond by 12 October.

Having now considered the public interest test, I can confirm that, whilst Welsh Government holds the information relevant to your request, it is considered exempt from release under Section 35(1)(a) of the Fol act. Our engagement and consideration of the public interest test is set out in the attached Annex.

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

1. Engagement of Exemptions

When considering the release of information captured by a request, we are required to consider the potential effects of disclosure of the information to the wider World. This is because information released in response to a FoI request is released to the World, not just to the person submitting the request. As such we need to take into account how any other individual may use, or misuse, the information if it is placed into the wider public domain. So, whilst the requester may have a legitimate, and benign, interest in accessing the requested information, we could conclude that the risk that the information could be misused by others is more compelling and thus the information should be withheld.

Section 35(1)(a)

This states:

Formulation of government policy,

Section 35(1)(a) covers information relating to the formulation or development of government policy:

(1) Information held by a government department or by the Welsh Assembly Government is exempt information if it relates to:

(a) the formulation or development of government policy,

The exemption acknowledges that government needs a safe space to develop ideas, debate live issues, and reach decisions away from external interference and distraction. The information captured by this request relates to the formulation of government policy.

Section 35 is a public interest tested exemption. This means that, in order to withhold information under its provisions, it has to be shown that the public interest in withholding outweighs that in releasing.

2. Public interest arguments in favour of release

The Welsh Government recognises the inherent public interest in openness and transparency that release of this information would engender. Further, there is interest in the public understanding the ongoing development of our policies to support families who choose to home educate their children at home. We are aware that this is a complex and contentious policy area and that not all stakeholders are convinced about our current proposals. To that end we also recognise the public interest in making this information available for the sake of greater transparency and openness.

3. Public interest arguments in favour of withholding

The proposed Elective Home Education policies are still under development and officials are in discussion with the Minister in relation to finalisation of the policy position. As such this is very much a “live” issue in terms of policy development.

It is not only ministers who are involved in making government policy. Civil servants, external experts and stakeholders will also be involved at various stages of the policy process. The important point is that government policy will ultimately be signed off either by the Cabinet or the relevant minister. This is because only ministers have the mandate to make policy on behalf of the government. If the final decision is taken by someone other than a minister, that decision will not in itself constitute government policy.

As stated above, the exemption acknowledges that government needs a safe space to develop ideas, debate live issues, and reach decisions away from external interference and distraction. The need for a safe space in this context is valid as the policy position hasn't been finalised and is still live as the following have still to be finalised in terms of content:

- Statutory Guidance for Elective Home Education,
- Handbooks for families and learners and
- Our proposed wider package of support and
- The proposed database.

Again, we are aware that this is a complex and contentious policy area and that not all stakeholders are convinced about our current proposals, however we take the view that civil servants and subject experts need to be able to engage in the free and frank discussion of all the policy options internally, to expose their merits and demerits and their possible implications as appropriate that can be challenged before it has been finalised; we are aware that we need to make progress and finalise policy to ensure that all learners are in receipt of a suitable and efficient education.

Further, we consider it important for ministers and officials from all devolved administrations to be able to have a safe space to undertake discussions and believe their candour in doing so would likely be affected by a fear of whether the content of such discussion would be made public.

Additionally, the Data Protection Impact Assessment (DPIA) that has been requested has not been finalised and finer policy details will evolve and inform its development. This includes information relating to our engagement of the Information Commissioner's Office (ICO).

In terms of the public interest in this area, the Welsh Government has endeavoured to ensure we are as transparent as possible through the media, publication of documents, Ministerial meetings with stakeholders and public statements in the Senedd along with ministerial press conferences.

In conclusion we believe it is within the wider public interest to withhold the information related to this request in order to provide the government with a safe space to consider and form policy as the Minister has yet to make the final policy decision. To that end, the information has been withheld under s35(1)(a).