

4 October 2022

Dear

FOI ATISN 016631 Freedom of Information Request

Information requested

Thank you for your request which we received on 6 September. You asked for:

1. The names of all EHE representative groups consulted by Welsh Government officials on the subject of the proposed EHE legislation changes between 1st September 2021 and 3rd August 2022.
2. Copies of all written records of the communications that have taken place with the groups listed in Q1 to include agendas, any meeting minutes and any other written communication between the Education Directorate/Geoff Goss/Jeremy Miles and the EHE family representative groups referred to in Q1 between 1st September 2021 and 3rd August 2022.
3. Copies of the meeting agenda, minutes and any and all subsequent communications following the meeting between Jeremy Miles, Education Minister, and Education otherwise held on 18/05/22.

We have interpreted the request for “any and all subsequent communications” as referring to communications that relate to the meeting rather than all post meetings communications.

Our response

The Welsh Government engaged with the following elective home education (EHE) representative groups regarding the new EHE proposals between 1 September 2021 and 3 August 2022:

- Families First in Education
- Education Otherwise
- Home Educators' Qualifications Association

Having considered the public interest test, we can confirm that, whilst Welsh Government confirms it holds information relevant to the remainder of 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.

Next steps

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

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 Fol 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.

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 the education of children whose families choose to home educate their children. 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.

Public interest arguments in favour of withholding

The proposed Elective Home Education policies are still under review and officials are in discussion with the Minister in relation to finalisation of policy in this area. 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 without having to provide a running commentary on the development of the policy 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.

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).