



Llywodraeth Cymru  
Welsh Government

Ein cyf/Our ref ATISN 13341

4 September 2019

Dear,

**ATISN 13341 - Documents relating to the Equality Impact Assessment for the Transgender Action Plan**

Thank you for your request which I received on 6 August 2019. You asked for:

1. Minutes of all meetings between 19/11/2014 and 14/03/2016 at which the Equality Impact Assessment for the 'Welsh Government Action Plan to advance equality for transgender people' was discussed or mentioned.
2. All correspondence dated between 19/11/2014 and 14/03/2016 sent by or received by the Welsh Government in which the Equality Impact Assessment for the 'Welsh Government Action Plan to advance equality for transgender people' was discussed or mentioned. This should include all relevant internal communications within Welsh Government, as well as all relevant correspondence (email and paper) between Welsh Government and external organisations or individuals.

The information you requested is attached to this letter at Doc 1. I can confirm that some of the information in scope of your request should be withheld under the following exemption within the Freedom of Information Act (2000): Section 40(2) – personal information. I have set out my reason for withholding, in Annex 1 to this letter.

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,

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.

Welsh Government,  
Cathays Park,  
Cardiff,  
CF10 3NQ

or Email: [Freedom.ofinformation@gov.wales](mailto: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.

The Deputy Minister and Chief Whip has asked that I respond to the points you raise in your email dated 12 August.

We have conducted an internal review to find the Equality Impact Assessment but unfortunately, the document cannot be found. We explained this in the response to the FOI request 13028.

The Transgender Action Plan is now out of date. In terms of what actions we take next, we await the feedback of the UK Government's consultation of the Gender Recognition Act the findings of which are due to be published in the Autumn. Once in receipt of those findings, we intend to consider what action we will need to take in Wales to advance equality for transgender people. A new Transgender Plan would require a new Equality Impact Assessment to be produced to assess its impact .

We continue to strive to comply with the PSED at all times and pay due regard to the impact of the consultation on protected groups in Wales and to consider how these will support people living and working in Wales.

I would be happy to discuss any matters covered in this letter.

Yours sincerely

### **Redacted information:**

The names of officials are withheld under the exemption within the Freedom of Information Act (2000): Section 40 (2) – personal information.

We believe there is no legitimate reason, nor do we believe that it is necessary, to disclose the personal data of these individuals that would override their interests, fundamental rights and freedoms provided by the DPA 2018.

For that reason, the information is being withheld under section 40(2) of the Freedom of Information Act.

### **Freedom of Information Act 2000: Section 40(2)**

Section 40(2) together with the conditions in section 40(3)(a)(i) or 40(3)(b) provides an absolute exemption if disclosure of the personal data would breach any of the data protection principles.

‘Personal data’ is defined in sections 3(2) and (3) of the Data Protection Act 1998 (‘the DPA 2018’) and means any information relating to an identified or identifiable living individual. An identifiable living individual is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of the individual.

We have concluded that, in this instance, the information requested contains personal data.

Under Section 40(2) of the FOIA, personal data is exempt from release if disclosure would breach one of the data protection principles set out in Article 5 of the GDPR. We consider the principle being most relevant in this instance as being the first. This states that personal data must be:

*“processed lawfully, fairly and in a transparent manner in relation to the data subject”*

The lawful basis that is most relevant in relation to a request for information under the FOIA is Article 6(1)(f). This states:

*“processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data, in particular where the data subject is a child”.*

In considering the application of Article 6(1)(f) in the context of a request for information under FOIA it is necessary to consider the following three-part test:-

- **The Legitimate interest test:** Whether a legitimate interest is being pursued in the request for information;
- **The Necessity test:** Whether disclosure of the information/confirmation or denial that it is held is necessary to meet the legitimate interest in question;
- **The Balancing test:** Whether the above interests override the interests, fundamental rights and freedoms of the data subject.

Our consideration of these tests is set out below:

### **1. Legitimate interests**

The recorded information we hold that is caught by your request relates to the drafting briefing for the then Minister for Communities and Tackling Poverty. We believe that including the names of the officials involved adds nothing to the understanding of the communication as the content of the communications is self-explanatory and would be

similar irrespective of the actual individuals involved. For this reason, I do not believe there is any legitimate interest in disclosure of the individual's identity.

## **2. Is disclosure necessary?**

As the relevant officials were simply carrying out administrative tasks, I do not believe disclosure is necessary.

## **3. The balance between legitimate interests and the data subject's interests or fundamental rights and freedoms**

There is no general expectation on individuals that their personal data would be placed into the public domain simply as a result of a FoI request that captures a letter they had submitted on behalf of their respective organisations. We believe there is no legitimate reason, nor do we believe that it is necessary, to disclose the personal data of these individuals that would override their interests, fundamental rights and freedoms provided by the DPA 2018.

For that reason, the information is being withheld under section 40(2) of the Freedom of Information Act.