



Llywodraeth Cymru
Welsh Government

Ein Cyf/Our Ref: ATISN 13603

20 December 2019

Dear ,

ATISN 13603 – Data on Foundation stage/ Key stage 2 Pupils

Thank you for your request which I received on 22 November 2019 for a range of information on schools with Foundation Phase and/or Key Stage 2 pupils.

I have decided that information described in the enclosed list at **Annex 1**, is exempt from disclosure under section **36(2) (c)** 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. The requested information withheld under this exemption relates mostly to attainment data for 2017/18 and 2018/19.

Additionally, I have decided that some of the information is exempt from disclosure under section **40(2)** ('personal information') of the Freedom of Information Act and is therefore withheld. The reasons for applying this exemption are set out in full at **Annex 2** to this letter.

The following notes accompany the data in the Annexes.

Notes

"*" Refers to a data item that has been suppressed as it is potentially disclosive due to small numbers.

Data that can be shared is provided at **Annex 3**.

In relation to the exemption applied above, it should be noted that the Welsh Government will continue to publish teacher assessment and national test data at a National Level. Overall results for Wales are available on StatsWales: <https://statswales.gov.wales/v/Er1x>

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.

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:

The following information has been withheld for the reasons set out below:

Information being withheld under Fol exemption	Section number and exemption name
<p>2018/19 data on National Reading and Numeracy Test Results and Teacher Assessment Outcomes for every school in Wales with Foundation Phase and/or Key Stage 2 pupils. This includes:</p> <ul style="list-style-type: none">• The proportion of children in all year groups combined with a standardised score of less than 85 in the National Reading Test (English)• The proportion of children in all year groups combined with a standardised score of between 85 and 115 in the National Reading Test (English)• The proportion of children in all year groups combined with a standardised score of over 115 in the National Reading Test (English)• The proportion of children in all year groups combined with a standardised score of less than 85 in the National Reading Test (Welsh)• The proportion of children in all year groups combined with a standardised score of between 85 and 115 in the National Reading Test (Welsh)• The proportion of children in all year groups combined with a standardised score of over 115 in the National Reading Test (Welsh)• The proportion of children in all year groups combined with a standardised score of less than 85 in the National Numeracy Reasoning Test• The proportion of children in all year groups combined with a standardised score of between 85 and 115 in the National Numeracy Reasoning Test• The proportion of children in all year groups combined with a standardised score of over 115 in the National Numeracy Reasoning Test• The proportion of free school meal (FSM) children in all year groups combined with a standardised score of less than 85 in the National Reading Test (English)• The proportion of free school meal (FSM) children in all year groups combined with a standardised score of between 85 and 115 in the National Reading Test (English)	Section 36(2)(c) – would otherwise prejudice the effective conduct of public affairs

<ul style="list-style-type: none"> • The proportion of free school meal (FSM) children in all year groups combined with a standardised score of over 115 in the National Reading Test (English) • The proportion of free school meal (FSM) children in all year groups combined with a standardised score of less than 85 in the National Reading Test (Welsh) • The proportion of free school meal (FSM) children in all year groups combined with a standardised score of between 85 and 115 in the National Reading Test (Welsh) • The proportion of free school meal (FSM) children in all year groups combined with a standardised score of over 115 in the National Reading Test (Welsh) • The proportion of free school meal (FSM) children in all year groups combined with a standardised score of less than 85 in the National Numeracy Reasoning Test • The proportion of free school meal (FSM) children in all year groups combined with a standardised score of between 85 and 115 in the National Numeracy Reasoning Test • The proportion of free school meal (FSM) children in all year groups combined with a standardised score of over 115 in the National Numeracy Reasoning Test • The proportion of boys in all year groups combined with a standardised score of less than 85 in the National Reading Test (English) • The proportion of boys in all year groups combined with a standardised score of between 85 and 115 in the National Reading Test (English) • The proportion of boys in all year groups combined with a standardised score of over 115 in the National Reading Test (English) • The proportion of boys in all year groups combined with a standardised score of less than 85 in the National Reading Test (Welsh) • The proportion of boys in all year groups combined with a standardised score of between 85 and 115 in the National Reading Test (Welsh) • The proportion of boys in all year groups combined with a standardised score of over 115 in the National Reading Test (Welsh) • The proportion of boys in all year groups combined with a standardised score of less than 85 in the National Numeracy Reasoning Test • The proportion of boys in all year groups combined with a standardised score of between 85 and 115 in the National Numeracy Reasoning Test • The proportion of boys in all year groups combined with a standardised score of over 115 in the National Numeracy Reasoning Test 	
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- The proportion of girls in all year groups combined with a standardised score of less than 85 in the National Reading Test (English)
- The proportion of girls in all year groups combined with a standardised score of between 85 and 115 in the National Reading Test (English)
- The proportion of girls in all year groups combined with a standardised score of over 115 in the National Reading Test (English)
- The proportion of girls in all year groups combined with a standardised score of less than 85 in the National Reading Test (Welsh)
- The proportion of girls in all year groups combined with a standardised score of between 85 and 115 in the National Reading Test (Welsh)
- The proportion of girls in all year groups combined with a standardised score of over 115 in the National Reading Test (Welsh)
- The proportion of girls in all year groups combined with a standardised score of less than 85 in the National Numeracy Reasoning Test
- The proportion of girls in all year groups combined with a standardised score of between 85 and 115 in the National Numeracy Reasoning Test
- The proportion of girls in all year groups combined with a standardised score of over 115 in the National Numeracy Reasoning Test

2017/18 and 2018/19 data on Teacher Assessment Outcomes for every school in Wales with Foundation Phase and/or Key Stage 2 pupils. This includes:

- The percentage of all pupils achieving the Foundation Phase Indicator
- The percentage of all pupils achieving Outcome 5 or above at the end of Foundation Phase in Personal and social development, wellbeing and cultural diversity (PSD)
- The percentage of all pupils achieving Outcome 5 or above at the end of Foundation Phase in Language, literacy and communication skills – English (LCE) or Language, literacy and communication skills - Welsh (LCW)
- The percentage of all pupils achieving Outcome 5 or above at the end of Foundation Phase in Mathematical development (MDT)
- The percentage of FSM pupils achieving the Foundation Phase Indicator
- The percentage of English as an additional language (EAL) pupils achieving the Foundation Phase Indicator
- The percentage of pupils on the SEN register achieving the Foundation Phase Indicator

<ul style="list-style-type: none"> • The percentage of all pupils achieving Outcome 6 or above in PSD, LCE or LCW, and MDT in combination • The percentage of FSM pupils achieving Outcome 6 or above in PSD, LCE or LCW, and MDT in combination • The percentage of boys achieving the Foundation Phase Indicator • The percentage of girls achieving the Foundation Phase Indicator • The percentage of all pupils achieving the Core Subject Indicator at Key Stage 2 • The percentage of all pupils achieving Level 4 or above at the end of Key Stage 2 in English or Welsh (first language) • The percentage of all pupils achieving Level 4 or above at the end of Key Stage 2 in maths • The percentage of all pupils achieving Level 4 or above at the end of Key Stage 2 in science • The percentage of FSM pupils achieving the Core Subject Indicator at Key Stage 2 • The percentage of EAL pupils achieving the Core Subject Indicator at Key Stage 2 • The percentage of pupils on the SEN register achieving the Core Subject Indicator at Key Stage 2 • The percentage of all pupils achieving level 5 or above in English or Welsh (first language), Mathematics and Science in combination at the end of Key Stage 2. • The percentage of FSM pupils achieving level 5 or above in English or Welsh (first language), Mathematics and Science in combination at the end of Key Stage 2. • The percentage of boys achieving the Core Subject Indicator at Key Stage 2 • The percentage of girls achieving the Core Subject Indicator at Key Stage 2 • Any contextual value added for KS2 results for 2018/2019 results 	
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This Annex sets out the reasons for the engagement of section **36(2)(c)** of the **Freedom of Information Act** and our subsequent consideration of the Public Interest Test.

Engagement of section 36(2) (c) – would otherwise prejudice the effective conduct of public affairs of the Freedom of Information Act.

The Welsh Government believes that the data you have requested should be exempt from disclosure as release would be likely to undermine recent changes in education policy to eradicate the misuse of data for accountability purposes. The revised policy is aimed at

shifting the focus back to learners, and for teacher assessment data and National Reading and Numeracy Test result data to be used for the benefit of individual learners only.

Stakeholders have told us that the misuse of data can lead to additional stress on schools and pupils, and that such cultures can often divert attention from meeting the needs of young people as individuals, as schools seek to disguise weaknesses and present a more positive picture.

Public Interest Test

Section 36 is a public interest tested exemption. This means that, in order to withhold information under it, the public interest in withholding must outweigh that in releasing.

Public interest arguments in favour of disclosure

The Welsh Government acknowledges the general public interest in openness and transparency that release of information engenders. Further, Welsh Government recognises it is able to provide reliable data and parental access to quantitative data could provide more assurance to parents regarding schools meeting the academic needs of learners.

Public interest arguments in favour of withholding

With effect from 31 July 2018, amending regulations were introduced to ensure that the Welsh Government no longer publishes teacher assessment and National Reading and Numeracy Test result data at a school, local authority (LA) or regional consortia level.

The intention of Welsh Ministers is to change the current accountability system and to reinforce a key message that teacher assessment data and National Reading and Numeracy Test result data should only be used to inform learning. Withholding this data will support the success of the policy change. Releasing the data would enable crude 'league' tables to be formed, which would be at odds with the direction of travel for education in Wales.

Releasing the data will undermine the policy change designed to create a culture where data is used in the best interest of the learner to inform learning. This would also have a detrimental 'knock on' effect to the delivery of revised Curriculum and Assessment Framework.

Any future arrangements to renew emphasis on Assessment for Learning as an essential and integral feature of learning and teaching will be heavily impeded if the exemption was not applied.

Public consultation was undertaken and evaluation of the consultation responses gave clear indication that removing the availability of the teacher assessment data and the National Reading and Numeracy Test result data would be a positive step. Stakeholders felt that this would help put a stop to placing unrealistic expectations on learners at the end of key stages, and would be fairer on schools and on pupils, particularly those with additional special needs.

Balance of public interest test

I consider that the public interest arguments to withhold the requested information outweigh the public interest arguments to release the information. I consider that the public interest in understanding the data should be used for the purpose of benefitting individual learners. This information will also continue to be published at a national level. Accordingly, I believe that the information should be withheld on the basis that its release would be likely to prejudice the effective conduct of public affairs.

Annex 2:

Information withheld due to risk of disclosure of individual pupils

For each individual school and indicator, for each year 2013/14 to 2016/17, where the number of pupils in each category is greater than zero but less than 5:

- The percentage of all pupils achieving the Core Subject Indicator at Key Stage 2
- The percentage of all pupils achieving Level 4 or above at the end of Key Stage 2 in English or Welsh (first language)
- The percentage of all pupils achieving Level 4 or above at the end of Key Stage 2 in maths
The percentage of all pupils achieving Level 4 or above at the end of Key Stage 2 in science
- The percentage of FSM pupils achieving the Core Subject Indicator at Key Stage 2
The percentage of EAL pupils achieving the Core Subject Indicator at Key Stage 2
The percentage of pupils on the SEN register achieving the Core Subject Indicator at Key Stage 2
- The percentage of all pupils achieving level 5 or above in English or Welsh (first language), Mathematics and Science in combination at the end of Key Stage 2
- The percentage of FSM pupils achieving level 5 or above in English or Welsh (first language), Mathematics and Science in combination at the end of Key Stage 2
- The percentage of boys achieving the Core Subject Indicator at Key Stage 2
The percentage of girls achieving the Core Subject Indicator at Key Stage 2

For each individual school and indicator, for 2018/19, where the number of pupils in each category is greater than zero but less than 5:

% of children with school action (SEN)

% of children with school action plus (SEN)

% of children who are statemented (SEN)

% of children with English as an Additional Language (EAL)

% of children that recorded their ethnic background as anything other than "White-British"

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 2018 ('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 third party 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

As requests under the Freedom of Information Act are regarded as ‘applicant blind’, we are unaware of any particular interest the requestor has in this information and we are not entitled to speculate. However, the general legitimate interest in openness of public affairs notwithstanding, we do not believe that there are any further or particular legitimate interests in having access to this information when balanced against the assurances we have made regarding our use of the data in the fair processing notice and our duties to protect confidentiality.

2. Is disclosure necessary?

This information is not currently in the public domain. In the fair processing notice issued to parents we undertake to use this “personal information for research (carried out in a way that ensures individual children and young people cannot be identified) and for statistical purposes, to inform, influence and improve education policy and to monitor the performance of the education service as a whole.”

In *Corporate Officer of the House of Commons v Information Commissioner and Brooke, Leapman and Ungood -Thomas* [2008], the High Court found that there must be a pressing social need for any interference with privacy rights and that the interference must be proportionate. We believe that individuals have an expectation that the information we hold about them will be protected and not released in such a way that could allow them to be identified and we are not able to identify any pressing social need that would outweigh that expectation

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

We believe that the release of small numbers (which may be as low as 1), when taken in conjunction with other information that could be reasonably supposed to be available, could result in disclosing personal data about foundation stage/ key stage 2 pupils. To that end, we believe the information falls within the description of personal data as defined by the DPA.

Disclosing information that allows an individual's achievements and characteristics to be identified may be unfair, particularly when it could be used to make judgements about the pupil. The information is collected for statistical and research purposes only.

Our disclosure control rules are set in accordance with the [Code of Practice for Statistics](#). The Code provides producers of official statistics with the detailed practices they must commit to when producing and releasing official statistics. Principle T6 relates to data governance and states that "Organisations should be transparent and accountable about the procedures used to protect personal data when preparing the statistics and data, including the choices made in balancing competing interests. Appropriate disclosure control methods should be applied before releasing statistics and data". We believe that setting a disclosure threshold of 5 individuals strikes a reasonable balance between the FOIA principles of transparency and accountability and our duties under the Data Protection Act and the Code of Practice for Statistics to protect the confidentiality of individuals. As above, we can identify no pressing social need that would warrant changing this approach.

As release of the information would not be legitimate under Article 6(1)(f), and as no other condition of Article 6 is deemed to apply, release of the information would not be lawful within the meaning of the first data protection principle. It has therefore been withheld under section 40 of the Freedom of Information Act. Section 40 is an absolute exemption and not subject to the public interest test.

Annex 3:

Information requested that can be provided	Result
<p>Every school with Foundation Phase and/or Key Stage 2 pupils:</p> <ul style="list-style-type: none"> • School reference number (LA and School number) • School name • Local authority <p>For every school with Foundation Phase and/or Key Stage 2 pupils for academic years 2013/14, 2014/15, 2015/16, 2016/17, where the number of pupils in each category is greater than or equal to 5:</p> <ul style="list-style-type: none"> • The percentage of all pupils achieving the Core Subject Indicator at Key Stage 2 • The percentage of all pupils achieving Level 4 or above at the end of Key Stage 2 in English or Welsh (first language) • The percentage of all pupils achieving Level 4 or above at the end of Key Stage 2 in maths • The percentage of all pupils achieving Level 4 or above at the end of Key Stage 2 in science • The percentage of FSM pupils achieving the Core Subject Indicator at Key Stage 2 • The percentage of EAL pupils achieving the Core Subject Indicator at Key Stage 2 • The percentage of pupils on the SEN register achieving the Core Subject Indicator at Key Stage 2 • The percentage of all pupils achieving level 5 or above in English or Welsh (first language), Mathematics and Science in combination at the end of Key Stage 2. • The percentage of FSM pupils achieving level 5 or above in English or Welsh (first language), Mathematics and Science in combination at the end of Key Stage 2. • The percentage of boys achieving the Core Subject Indicator at Key Stage 2 • The percentage of girls achieving the Core Subject Indicator at Key Stage 2 <p>For every school with Foundation Phase and/or Key Stage 2 pupils, for academic years, 2013/14, 2014/15, 2015/16, 2016/17, 2017/18 and 2018/19:</p> <ul style="list-style-type: none"> • Absence % (authorised and unauthorised absence divided by sessions possible) • Unauthorised absence % (sessions unauthorised absence divided by sessions possible) 	<p>Attached at Document 1</p>

For every school with Foundation Phase and/or Key Stage 2 pupils in 2018/19, where the number of pupils is greater than or equal to 5:

- % of children with school action (SEN)
- % of children with school action plus (SEN)
- % of children who are statemented (SEN)
- % of children with English as an additional language
- % of children that recorded their ethnic background as anything other than "White-British"