



Llywodraeth Cymru
Welsh Government

Ein Cyf/ Our ref ATISN 13603

25 March 2020

Dear _____,

Complaint in respect of Request for Information – reference ATISN 13603– Data on foundation stage/key stage 2 pupils

In your emails of 22 November 2019, you requested the following information:

Information on schools with Foundation Phase and/or Key Stage 2 pupils, specifically you requested –

- *School reference number (Local authority number + School number)*
- *School name*
- *Local authority*

Additionally, for each of the above schools in the academic year 18/19:

- *% 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"*
- *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)*
- *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*
- *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*



Where relevant, for each of the above schools, for each of the following academic years, 2017/18 and 2018/19:

- 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
- 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

Where relevant, for each of the above schools, for each of the following academic years, 2013/14, 2014/15, 2015/16, 2016/17, 2017/18 and 2018/19:

- 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
- Absence % (i.e. sessions authorised and unauthorised absence divided by sessions possible)

Welsh Government responded explaining that your requests highlighted within Annex 1 to the letter had been exempted from disclosure under section **36(2) (c)** of the Freedom of Information Act. The requested information withheld under this exemption related mostly to attainment data for 2017/18 and 2018/19.

As you are aware section 36(2) (c) is a qualified exemption requiring consideration of the public interest in deciding whether or not the information should be released. In your letter you set out a number of public interest arguments to support the release of the information. I have considered these alongside the public interest arguments in favour of withholding the information. In the context of section 36(2) (c) I have considered in particular the potential adverse effect on the ability of government to meet its objectives and the disruptive effects of disclosure and the resultant diversion of resources in managing the effects of releasing



the information. I have also given consideration to the public interest as distinct from the interests of the public: just because a topic is discussed in the media and is 'of interest' does not automatically mean that there is a public interest in its disclosure.

As you set out in your letter there are a number of public interest arguments to support the release of the information that you have requested, notably the public interest in transparency and accountability. There are also public interest arguments to support withholding the information:

- There is considerable evidence that the use of test data for accountability purposes is detrimental to the quality of education that children receive. In order to improve educational standards Government policy seeks to minimise the inappropriate use of school performance data for school comparison and accountability purposes. The use of data for such purposes risks undermining outcomes for learners. These arguments have been set out in the consultation on the regulatory changes to reporting arrangements for teacher assessments and national test data published in November 2017. <https://gov.wales/mandatory-reporting-online-national-reading-and-numeracy-test-results>
- Government policy is that test and teacher assessment and national test data should be used for formative assessment purposes, that is, to support teachers to understand the needs of learners and modify their teaching and adopt appropriate interventions or strategies. The use of assessment data for both formative and accountability purposes is generally agreed to be incompatible. Again this was set out in the consultation document referred to above.
- The need for transparency and accountability in relation to school performance is recognised and supported. A considerable amount of data including summative though not formative data relating to pupil and school performance is placed in the public domain, including:
 - reports to parents on their child's performance each school year
 - governing bodies produce annual reports to parents, school prospectuses and school development plans
 - Members of the public have access to the My Local School website, which presents contextual information from a range of sources about a particular school.
 - Parents are able to compare the performance of their child with published national level data
 - The findings arising from Estyn inspections are published
 - School performance in A/AS Level and GCSE examination are reported annually.

Therefore while there are public interest arguments for the release of the information requested there are also public interest arguments for withholding the information and I am content that on balance the original decision to withhold the information is the correct one. The conduct of public affairs and the ability of Government to meet its objectives would be adversely affected by the release of the information requested.

Additionally, Welsh Government decided that some of the information was exempted from disclosure under section **40(2)** ('personal information') of the Freedom of Information Act.

Reliable official statistics depend on public co-operation and goodwill to provide accurate and timely information requested in surveys and other data collections. Such co-operation

and goodwill is maintained by protecting the confidentiality of information provided by respondents.

The statistical disclosure rules applied to this dataset are consistent with

- the Code of Practice for Statistics, published by the National Statistician, and in particular Trustworthiness Pillar and the Data Governance principle (T6). This says that “Organisations should look after people’s information securely and manage data in ways that are consistent with relevant legislation and serve the public good.”
- Regulatory Guidance published by the Office for Statistics Regulation from 2018 “Building Confidence in the handling and use of data”
- the Government Statistical Service Disclosure Control Guidance
- our obligations to protect the confidentiality of personal data as specified in our Privacy Notice

In the response to the request, as outlined in Annex 2 of our original response, we have not provided any data where between 1 and 4 pupils have been assessed, either in total or with the specified characteristics of FSM, EAL or SEN. These rules have also been applied to all the data published for a number of years on My Local School.

We agree that in larger classes (in our case here this means classes of 5 or more pupils) the number of pupils automatically provides a greater degree of protection against releasing data that could be used to identify an individual. So, for example, if only one pupil in a class of 30 pupils had achieving the expected level, it would be harder to identify that individual because there are additional safeguards when dealing with a larger group of pupils.

However, we do not believe that a class of 1 to 4 pupils constitutes a large enough population size so that it would be impossible to identify someone from the data.

The most likely person to identify an individual from this dataset is a parent of one of the pupils. This parent (our ‘motivated intruder’) from our class of 1 - 4 pupils could do so in a number of ways. Examples include:

- if the intruder is the parent of the only pupil in the class of 4 who achieved the CSI, this parent could use a published percentage of 25% to gain the knowledge that none of the other three pupils in the class achieved the CSI.
- If the parent knows one or more of the other parents on a social basis and has some prior knowledge of the characteristics of their children, they could combine this prior knowledge with the published data to identify the characteristics of the remaining pupils. For example, if the parent knows that their child and the child of a friend are not eligible for free schools meals, and we were to publish a figure which says 50% of pupils eligible for free school meals achieved the CSI, the parent could put this information together to work out that both the other children in the class of 4 are eligible for free school meals. In this case a dataset that is focused on educational outcomes could be used to determine the characteristics of the pupil and of their family’s financial status.

Deducing such information could be done at no financial cost and would not require any particular skills.

The data in this request also includes special category data (SEN data is considered to be data concerning health) and the SEN status of a child could be disclosed in the second scenario above.

We believe that there is a real risk of disclosing data about an identifiable individual if data for classes of 4 pupils or fewer were published. This includes the risk of disclosing special category data. We therefore conclude that because there exists such a risk the data must be considered personal data under the Freedom of Information Act 2000. We have therefore refused to disclose information about groups of 4 pupils or fewer in order to protect the confidentiality of personal data, in line with the undertakings we have given to the data subjects and consistent with the guidance from the National Statistician, the Office of Statistics Regulation and the Office for National Statistics.

I have conducted an independent review of your case and I am satisfied that this was handled correctly.

I have considered your complaint in accordance with the procedure outlined in the [Welsh Government's Practical Guide for Making Requests for Information](#) which is available by post on request or via the internet.

The decision taken in applying the guidance from the Information Commissioner and the criteria set out in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 to collate your multiple requests was appropriate.

If you remain dissatisfied with this response you also have the right to complain to the Information Commissioner at:

Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

Tel: 01625 545 745
Fax: 01625 524 510
Email: casework@ico.gsi.gov.uk

Yours sincerely

Jo-Anne Daniels

Director, Mental Health, Vulnerable Groups and NHS Governance

