

12 October 2023

Dear

FOI Request – ATISN 18979 - Working Group on Banning Conversion Practice

Information requested

Thank you for your request which I received on 14 September 2023. You asked for:

1. Could you please email me any information relating to the selection process for members of the group? That would include correspondence between officials or political representatives, or any notes or documents, relating to the choice of groups or individuals to be included in the group.
2. Could you please email me details of the process by which members were appointed?

Our response

A copy of the information is enclosed.

1. I have decided that some of the information in response to the first part of your request is exempt from disclosure under sections 40(2) and 38(1) 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 information I have released is set out at Annex 2.
2. As stated in the published Terms of Reference of the Working Group, the Working Group consisted of individuals which were invited for their expertise and/or experience concerning Conversion Practices. A direct invitation to individuals could not be delegated to another individual.

Membership of the group was by invitation and members were appointed by the Deputy Minister for Social Partnership.

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

Application of exemptions/exceptions

The Freedom of information Act/Environmental Information Regulations provide a right for anyone to ask a public authority to make requested information available to the wider public. As the release of requested information is to the world, not just the requester, public authorities need to consider the effects of making the information freely available to everybody. Any personal interest the requester has for accessing the information cannot override those wider considerations.

I have decided to withhold the following information:

Names of individuals and organisations, where shown as REDACTED or replaced with e.g. [official 1] – have been withheld in line with exemptions under (s40(2) and s38(1) of the Freedom of Information Act.

This Annex sets out the reasons for the engagement of section(s) (s40(2) and s38(1) and our subsequent consideration of the Public Interest Test.

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 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

Freedom of information requests are handled as 'applicant blind' and public authorities are not entitled to speculate on why a requester seeks information.

Conversion practice is a very complex and sensitive subject with strong opposing views. Disclosure would allow greater scrutiny of the composition of the working group to show that as wide range of views and opinions as possible were involved and being heard.

2. Is disclosure necessary?

In terms of transparency, the selection process for the banning conversion practices working group can be satisfied by the release of the remainder of the information. The identification of the individuals, or organisations small enough for individuals to be identified, involved in that process is not necessary to meet that interest.

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

The Welsh Government believes there is a risk to the fundamental rights and freedoms of the data subjects if this information is released, as evidenced by internet articles, posts, forums and blogs personally and professionally attacking those who have previously been named as being involved with the LGBTQ+ Action Plan which includes the commitment to ban conversion practices. These redactions are intended to prevent online trolling and further identification of any additional individuals. We believe these harms, alongside the release of the remainder of the information, outweigh any legitimate interest in the release of the information.

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(2) and section 38(1) of the Freedom of Information Act. Section 40 is an absolute exemption and not subject to the public interest test.

Engagement of section 38(1) (a) and (b) 'Health and safety' of the Freedom of Information Act

We believe that the release of information, to the World, that could potentially identify individuals who have a professional or personal interest in this issue would be likely to expose them the risk of harm. Society has become much more polarised and aggressive in defense of personal views and opinions where bullying and threats, particularly via social media, are now a common occurrence where topics are emotive. Unfortunately, such threats and bullying is not just restricted to any individuals perceived to be involved but can also extend to their family members and friends.

Public Interest Test

Public interest arguments in favour of disclosure

Whilst the Welsh Government acknowledges the general interest in openness and transparency, we can identify no public interest in publishing this information.

Public interest arguments in favour of withholding

Names of individuals and organisations who subsequently became members of the banning conversion practices working group, and were content for that information to be made public, have been published on the Welsh Government website. An opportunity was given for members not to be publicly identified to protect them from the risk to their fundamental rights and freedoms - as evidenced by internet articles, posts, forums and blogs personally and professionally attacking those

previously involved in this policy area. This same protection has therefore been extended to those considered for membership.

Balance of public interest test

On balance the public interest is not sufficient to release this information.