

16 September 2024

Dear

FOI ATISN 20862 Freedom of Information Request

Information requested

Thank you for your request which we received on 19 August. You asked for:

“Any and all Data Protection Impact Assessments (DPIAs) conducted in relation to these [Children Missing Education CME database] proposals and any other documents such as proposed controller agreements, data sharing agreements and other related materials that cover this proposal and address the impact of the processing on the data rights of the subjects involved.”

Our response

Having considered the public interest test, we can confirm that, whilst Welsh Government confirms it holds information relevant to 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 1.

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.

We have decided to withhold the following information:

Information being withheld	Section number and exemption name
Any and all Data Protection Impact Assessments (DPIAs) conducted in relation to these [Children Missing Education CME database] proposals and any other documents such as proposed controller agreements, data sharing agreements and other related materials that cover this proposal and address the impact of the processing on the data rights of the subjects involved.	s35(1)(a) "formulation of government policy" exemption.

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 from the public in understanding the ongoing development of our policies to support local authorities in their duties to help prevent children and young people from missing education.

We are aware that this is a complex and contentious policy area and that not all stakeholders are supportive of our proposals. To that end we recognise the public interest in making this information available for the purpose of greater transparency and openness.

Public interest arguments in favour of withholding

The proposed Children Missing Education (CME) database is still under review and officials are in discussion with the Cabinet Secretary 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 Cabinet Secretaries 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 Cabinet Secretary. This is because only Cabinet Secretaries have the mandate to make policy on behalf of the government. If the final decision is taken by someone other than a Cabinet Secretary, 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 is still live as the following aspects have still to be finalised in terms of content.

- Local authorities (LAs) to establish individual databases of CME children, that is, those children in their areas who are (or potentially are) missing education, and
- Local Health Boards (LHBs) to provide data to the relevant local authority relating to children who are usually resident in the LHB and the LA area

To determine the effectiveness of the regulations in identifying children who may be missing education, and to identify any practical difficulties that may need to be addressed, the Cabinet Secretary has agreed that the database arrangements will be piloted across a small number of local authorities for the first year (2025-2026). This will undergo a full evaluation, alongside continued policy development ahead of a proposed wider roll-out across Wales.

Again, we are aware that this is a complex and contentious policy area and that not all stakeholders are supportive of our 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. The Welsh Government is conscious of the need to implement policies that will help ensure that all learners are in receipt of a suitable and efficient education.

Further, it is important that Cabinet Secretaries and officials from government departments 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 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. To that end as stated, the information has been withheld under s35(1)(a).