

18 October 2024

Dear

**ATISN 21955 Freedom of Information request - Children missing Education Database**

Thank you for your request under ATISN 21955 which we received on 23<sup>rd</sup> September 2024.

As clarified in our letter of 25th September, you asked for:

1. Impact assessments on the potential impact of families not accessing NHS healthcare if the Children Missing Education database is implemented.

Our response:

Impact assessments that have been undertaken in relation to this policy are available on the following link: [Children missing education database | GOV.WALES](#)

2. If impact assessments have not been carried out, the date they will be carried out.

Our response:

As per link above.

3. Copies of any specific impact assessments and risk assessments that have been carried out to ensure this database only captures children missing education and does not disproportionately capture children who are receiving a suitable education via elective home education.

Our response:

As per link above. Additionally, the consultation document clarifies that the database will only include information relating to children who are missing education. In relation to home educated children, the Welsh Government's [statutory guidance on elective home education](#) states: Until the local authority is assured the home educated child is receiving a suitable education then the child is potentially within scope of the section 436A duty and Welsh Government statutory guidance on children missing education will apply. The children missing education (CME) database is aligned to the existing statutory guidance for local authorities, which is available here: [statutory-guidance-help-prevent-children-young-people-missing-education.pdf \(gov.wales\)](#). Local authorities apply the definition of CME as stated within the guidance.

4. Information relating to responses received against the questions within the consultation allocated to Local Health Boards, General Medical Services

Contractors, and Local Authorities (Questions 9 – 19 of the consultation). Specifically, you asked for:

- The number of responses received for each question that was allocated to Local Health Boards, General Medical Services Contractors and Local Authorities (questions 9 – 19)
- For each question from 9 - 19, the number and percentage of responses received by those not in the correct stakeholder group for that question.

Our response:

The number of responses to each question allocated to a particular stakeholder group is information that is publicly available. This information is included on the following link:

[https://www.gov.wales/sites/default/files/consultations/2024-09/children-missing-education-database-summary-of-responses\\_1.pdf](https://www.gov.wales/sites/default/files/consultations/2024-09/children-missing-education-database-summary-of-responses_1.pdf)

The numbers of responses received from persons or organisations to questions not allocated to that person or organisation, are included in the enclosed **Annex A**. As these questions were only relevant to specific stakeholders, further analysis (i.e. percentage breakdowns) is not held.

5. The total number / percentage of responses received that are not included in the consultation summary of responses, due to formatting reasons, including those received by post.

Our response: 0

6. Specific slides, or handouts used in the focus groups.

Our response: please see the powerpoint slides included at Doc.1

7. Data Privacy Impact assessment.

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 FoI act. Our engagement and consideration of the public interest test is set out in the enclosed **Annex B**.

The request you sent me contains personal information about you - for example, your name and address. The Welsh Government will be the data processor for this information and, in accordance with the General Data Protection Regulation, it will be processed in order to fulfil our public task and meet our legal obligations under the Act to provide you with a response. We will only use this personal information to deal with your request and any matters which arise as a result of it. We will keep your personal information and all other information relating to your request for three years from the date on which your request is finally closed. Your personal information will then be disposed of securely.

Under data protection legislation, you have the right:

- to be informed of the personal data we hold about you and to access it
- to require us to rectify inaccuracies in that data
- to (in certain circumstances) object to or restrict processing
- for (in certain circumstances) your data to be 'erased'
- to (in certain circumstances) data portability
- to lodge a complaint with the Information Commissioner's Office (ICO) who is our independent regulator for data protection

For further information about the information which the Welsh Government holds and its use, or if you wish to exercise your rights under the GDPR, please see contact details below:

Data Protection Officer  
Welsh Government  
Cathays Park  
CARDIFF  
CF10 3NQ  
Email: [DataProtectionOfficer@gov.wales](mailto:DataProtectionOfficer@gov.wales)

The contact details for the Information Commissioner's Office are:

Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF

Website: [www.ico.org.uk](http://www.ico.org.uk)

Any information released under the Freedom of Information Act 2000 or Environmental Information Regulations 2004 will be listed in the Welsh Government's Disclosure Log (at <https://gov.wales/about/open-government/freedom-of-information/responses/?lang=en>).

Yours sincerely

## **Annex A**

Questions 9 to 19 of the consultation exercise were technical questions for Local health boards, General medical services contractors and Local authorities. Additional responses received for each question from those not in the relevant stakeholder group, are included below. Numbers include all duplicate responses and individual responses attributed to a campaign.

### **Local health boards (9 to 12)**

Question 9: Can you identify any key privacy risks and associated compliance and corporate risks? 181

Question 10: Do existing protocols concerning data of children who have died ensure that any processing of that data does not lead to any inappropriate communications with families? 95

Question 11: Do you have any previous experience of this type of data disclosure/processing? 93

Question 12: Are there additional resource and technical implications of processing and disclosing the required data to local authorities? 97

### **General medical services contractors (13 to 14)**

Question 13: Can you identify any key privacy risks and the associated compliance and corporate risks? 174

Question 14: Do existing protocols concerning data of children who have died ensure that any processing of that data does not lead to any inappropriate communications with families? 88

### **Local authorities (15 to 19)**

Question 15: Do you (the local authority) believe that your existing children missing education systems and processes enable you to be confident you are aware of all children of compulsory school age within the local authority area? 67

Question 16: Do existing protocols concerning data of children who have died ensure that any processing of that data does not lead to any inappropriate communications with families? 64

Question 17: Can you identify any key privacy risks and the associated compliance and corporate risks? 132

Question 18: Do you have any previous experience of this type of processing? 64

Question 19: Are there additional resource and technical implications of processing the data received from local health boards? 128

## Annex B

### 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 FoI 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
Data Protection Impact Assessment (DPIA)	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).