

19 November 2024

Dear

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

Further to your email of 23 October, your complaint has been reviewed in accordance with the procedure outlined in the [Welsh Government's Practical Guide for Making Requests for Information](#).

Your complaint relates to the content of the Welsh Government's response under ATISN 21955, issued on 18 October. Specifically, your complaint is in relation to the Welsh Government's response to three of the points within your request, which are copied below for completeness:

Under ATISN 21955 you asked for:

- (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.
- (6) Specific slides, or handouts used in the focus groups.
- (7) Data Privacy Impact Assessment / Data Protection Impact Assessment

When reviewing your request for an internal review we considered the basis of your complaint for each of the three points and whether the information provided under ATISN 21955 met the requirements under the Freedom of Information Act 2018.

### **Point 3**

Under point 3 you asked the Welsh Government to provide *“copies of any impact assessments that were carried out to ensure the children missing education (CME) database only captures children missing education and does not disproportionately capture children who are receiving a suitable education via elective home education”*.

Within your complaint you have stated that: *“This specific point is not addressed in the links provided or in the response provided. It is a simple Yes or No answer, and if yes either a link or an attachment should be provided”*.

To provide clarification on this point, the information is held by the Welsh Government and has already been provided to you. Links to the published draft Children's Rights Impact Assessment and Integrated Impact Assessment were provided in the response of 18 October and both included the information you requested. The published Children's Rights Impact Assessment directly addresses your query; it states:

*“The proposals will not impact upon the majority of home educated learners and their families as the local authority will normally have determined that a suitable and efficient education has been provided by their family. These learners will not be included on the CME database.”*

Additional information in response to point 3 of your request was provided via a link to the Integrated Impact Assessment. The Integrated Impact Assessment summary references which information will be included on the CME database and provides further context on the policy. This is relevant to your query under point 3 as it includes the definition of ‘children missing education’ and confirms that this does not include children who are known (by the local authority) to be in receipt of a suitable education at home. The Integrated Impact Assessment summary states:

***What action is the Welsh Government considering and why?***

*Making of regulations that would require local authorities in Wales to establish a database of children who may be missing education, that is, they are not on roll at school, in receipt of provision other than at school (EOTAS) or home educated (EHE) and determined by the local authority to be in receipt of a suitable education.*

In addition to providing links to the published information, the Welsh Government’s response clarified the basis and background to the CME database proposal. The response stated:

*..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.*

The basis of your complaint is not that the information was not provided, but that it did not meet your expectations and own interpretation of the existing policy. To clarify, your complaint states that the information provided: *“does not alleviate any concerns as the links provided appear to clearly show this will substantially and disproportionately affect, capture and share home educated children’s data”*.

We have reviewed the information and there is nothing in the Welsh Government’s response to you, or in the signposted information to support this statement. The response included links to the impact assessments containing the specific requested information and supporting information to aid your understanding of the proposal. The response was supplemented with additional information that clarified what information will be captured by the children missing education database arrangements. As the initial response answered your query to this point in full, there

is nothing further that can be added to this aspect of your request. However, you may wish to revisit the statutory guidance (referenced in the links above) as this does set out the scope of the section 436A duty, and the definition of children missing education, which includes children who are known to the local authority but the local authority has been unable to determine that the education provided at home is suitable and efficient.

### **Point 6**

The Welsh Government's response of 18 October included the slides used at the children and young people engagement events in May 2024. The document you have referred to in your complaint is the children's consultation form, which is now included at **Annex A**.

### **Point 7**

The basis of your complaint in relation to point 7 is that you do not agree with the Welsh Government's application of the exemption in this instance. In reviewing this aspect of your complaint we considered how the exemption was initially applied, how the decision was explained to you and the reasons you have provided in disagreement with the decision.

The response of 18 October confirmed that the requested information was exempt from disclosure under Section 35(1)(a) of the Freedom of Information Act, which covers information relating to the formulation or development of government policy. The 'formulation' of policy refers to the stages of the policy development process where options are generated and analysed, risks are identified, consultation occurs, and advice is submitted to Ministers. The ICO's guidance on 'formulation of government policy' exemption recognises that pilots can be a valid part of the policy formulation process:

*In some cases, the government may decide to run a pilot scheme or trial to test a potential policy on a small scale before deciding whether to roll it out in full. Piloting a policy is one way of gathering evidence on its efficacy before making a final decision on whether or not to take it forward. Pilot schemes may therefore form part of the policy formulation process, particularly if the scheme's limits and end date are clearly defined, and no final decision has yet been taken on whether or in what form the policy should be adopted or rolled out more widely.*

The exemption was applied as the CME database policy has not been implemented. A pilot is scheduled to take place in 2025, and the policy could be subject to change following the pilot. The application of S35(1)(a) is necessary as this ensures that Government has a safe space to develop the policy, and crucially, to test it via the pilot exercise. This exemption is particularly important where the policy considerations are as recent or current as they are here.

As set out under ATISN 21955, the Welsh Government assessed the balance of the public interest for and against disclosure prior to its use. Within your complaint you stated: *"because of the links and the information you have provided it appears that the public interest in disclosing significantly outweighs withholding this particular*

*information*". On reviewing the information that was provided to you we are unable to agree with your interpretation of the assessment, which appears to be the basis of your complaint. The response under ATISN 21955 provided assessments both for and against disclosure, with the balance clearly in favour of the exemption. As set out in the Welsh Government's response, S35(1)(a) acknowledges that 'government needs a safe space to develop ideas, debate live issues, and reach decisions away from external interference and distraction'. When reviewing this aspect, we looked at whether any additional information could be provided to help to explain how the exemption was applied, with specific emphasis on these points.

Part of the focus when considering your request for this information to be made public, was on the potential harm to the development of the policy, which has been determined to be high risk in this instance. Potential harms that could arise from this information being in the public domain include misinformation or outdated information being shared, or the information being used as a tool to delay progress of the policy via increased levels of correspondence to Government.

When considering exemption and public interest assessment, officials noted the extensive engagement and consultation that had been undertaken in relation to this policy, the amount of publicly available information, whether there was a genuine wider public interest in disclosing further information, and also how the disclosure of information relating to the work has impacted on the policy development to date.

Work in relation to this policy has, and continues to be transparent and informed by stakeholders and the public. Two, separate public consultations have taken place to accurately represent the policy to the general public and ensure that the policy is informed by those with an interest. An integrated impact assessment and Children's Rights Impact Assessment were published, in addition to an outline of the data sharing processes within the consultation documents. Despite full transparency of the policy development to date, general interest in the policy remains low, with little or no engagement from members of the public without a link to home education. Within the home education community in Wales home education support groups and some home educators strongly oppose the proposals. However, the number of consultation responses that could be attributed to individuals in Wales were a very small proportion of the overall known number of home educators in Wales. This is noted within the consultation summary report, which is available on the Welsh Government's website.

In light of the vast amount of information that is publicly available, the exemption of this document should not impact on the general public's understanding of the policy. It could, however, facilitate interference from groups and individuals who are strongly opposed to the policy proposals and existing legislation.

As with all government policy there must be a balance between providing information that is genuinely in the public interest and ensuring that government can develop policy without excessive obstruction. Whilst private interests are not relevant to the consideration of the public interest test, there is nothing outlined in your complaint to show that there is a wider public interest that would be served by disclosing the information at this time. The Welsh Government acknowledges that this position could change at a later date.

As stated above your complaint has been considered 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. Wherever possible the Welsh Government will try to find a mutually agreeable solution to a complaint. We hope that the reasons outlined within this response are clear why we are unable to meet your request at this time.

If you remain dissatisfied with this response you 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.

Yours sincerely