



02/02/2018

Dear ,

**ATISN 11883: Communication about home education and home educated children**

Thank you for your request which I received on 8 January 2018 asking for copies of Government communications to and from the office of the Children's Commissioner for Wales and the National Independent Safeguarding Board on the topic of elective home education and home educated children from January 2017 to the present date.

I have decided that some of the information caught by your request should be exempted from disclosure under the s40(2) "personal data" exemption provided by the Freedom of Information act 2000. A full description of our application of this exemption is set out in Annex A to this letter.

In a number of instances the information falling within the remit of your request was contained within emails and minutes of meetings discussing other matters. We have only considered disclosure of those parts relating to elective home education and home educated children.

On occasion, the redaction of exempted information and the removal of information relating to other matters has resulted in something that is little more than a collection of odd words or sentences. Rather than provide these we have, in line with the guidance from the Information Commissioners Office, provides a summary of the relevant information.

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: [FreedomOfInformationOfficer@gov.wales](mailto:FreedomOfInformationOfficer@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,

Y Grŵp Addysg a Gwasanaethau Cyhoeddus  
Education and Public Services Group

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 A**

### Application for Exemption

#### Section 40 – Personal Data

Section 40 of the Freedom of Information Act sets out an exemption from the right to know if the information requested is personal information protected by the Data Protection Act 1998 (DPA). Personal data is defined in Section 1(1) of the DPA as: “personal data” means data which relates to a living individual who can be identified from those data; or from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller”.

I have concluded that, in this instance, the withheld information within the Departure Request amounts to third party personal data.

Under Section 40(2) of the FOI Act, personal data is exempt from release if disclosure would breach one of the data protection principles. I consider the principle being most relevant in this instance as being the first.

The first data protection principle states:

Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless -

(a) at least one of the conditions in Schedule 2 is met, and (b) in the case of sensitive personal data, at least one of the conditions in Schedule 3 is also met.

I consider that the withheld information in relation to names and contact details falls within the description of personal data as defined by the DPA and that its disclosure would breach the first data protection principle. The first data protection principle has two components:

1. Personal data shall be processed fairly and lawfully and
2. Personal data shall not be processed unless at least one of the conditions in DPA schedule 2 is met

Guidance from the Information Commissioner’s Office (Personal information (section 40 and regulation 13) v 1.4) states:

If disclosure would not be fair, then the information is exempt from disclosure.

This approach was endorsed by the Court of Appeal in the case of Deborah Clark v the Information Commissioner and East Hertfordshire District Council where it was held:

“The first data protection principle entails a consideration of whether it would be fair to disclose the personal data in all the circumstances. The Commissioner determined that it would not be fair to disclose the requested information and thus the first data protection principle would be breached. There was no need in the present case therefore to consider whether any other Schedule 2 condition or conditions could be met because even if such conditions could be established, it would still not be possible to disclose the personal data without breaching the DPA” (paragraph 63).


Our analysis of the ICO's key considerations in assessing 'fairness', as set out in the Guidance, are presented below.




The withheld information amounts to the personal data of third party officers who do not have public facing roles and would not expect their names and contact details to be released in this context. There are set procedures in place for members of the public to contact both the Welsh Government using generic contact mechanisms. Having such systems in place means members of the public do not make direct contact with officials and avoids those officials dealing with potentially unnecessary and disruptive correspondence. In this context, the civil servants were liaising with each other as part of their normal course of business. In doing so, there would be no expectation that their personal details would at any time be placed in the public domain.

The Welsh Government does not believe there is any legitimate interest in the public or the requestor having access to this information, and we do not see any legitimate reason why the named officials need to be contacted directly. Because of that, it is believed release of this information would be unfair and so breach the first data protection principle. Despite withholding information of individual officer details, it remains clear which body issued or received the correspondence, which is the primary factor.




For that reason, I believe the information should be withheld under section 40(2) of the Freedom of Information Act. This is an absolute exemption and not subject to the public interest tests.

Annex B

Document Date	Document Subject	Information	Documents (Where applicable)
07 Sept 2017	RE: Officials Meeting 15 September	An e-mail dated 7 September 2017, from officials at the office of the Children's Commissioner for Wales to Welsh Government officials, titled "Re: Officials Meeting 15 September", set out suggestions for the agenda for a meeting with the Cabinet Secretary for Communities and Children as well as for a meeting between officials. In relation to the agenda for the meeting with Cabinet Secretary, "Cross-cutting children's issues: Elective Home Education and Mental Health" were suggested as an agenda item.	The e-mail contains information that is exempt under section 40 (2) and discussions on other matters.
28 Sept 2017	Note of Quarterly Meeting between Children's Commissioner for Wales and Welsh Government	In an e-mail dated 28 September 2017, Welsh Government officials sent draft minutes of the quarterly meeting between Welsh Government and Children's Commissioner officials to Children's Commissioner officials. The draft minutes referred to elective home education as follows:  SH (Sally Holland, the Children's Commissioner for Wales) will meet with Kirsty Williams to discuss issues, particularly elective home education.	The e-mail contains information that is exempt under section 40 (2) and discussions on other matters.
29 Sept 2017	Email from Sally Holland, Children's Commissioner for Wales - Annual Report 2016/17 290917	E mail attaching embargoed copy of the Commissioner's report which refers to elective home education in a recommendation.  Link provided to the Commissioner's annual report as it is in the public domain <a href="https://www.childcomwales.org.uk/wp-content/uploads/2017/10/A-">https://www.childcomwales.org.uk/wp-content/uploads/2017/10/A-</a>	 29 September 2017.msg <<Doc 1>>


		<a href="#">Year-of-Change-CCFW-Annual-Report.pdf</a>	
04 Oct 2017	RE: Note of Quarterly Meeting between Children's Commissioner for Wales and Welsh Government	E-mail dated 4 October from Children's Commissioner officials to Welsh Government officials, with suggestions for amendments to the draft minutes sent on 28 September; however, no amendment was suggested to the part of the minutes referring to elective home education, which said:  "SH (Sally Holland, the Children's Commissioner for Wales) will meet with Kirsty Williams to discuss issues, particularly elective home education."	An extract from the draft minutes has been provided, as the majority of the content is not relevant to the request.
06 Oct 2017	Press release for Children's Commissioner for Wales annual report - EMBARGOED	E-mail dated 6 October sharing embargoed press release with the Welsh Government; press release refers to elective home education	 06 October 2017.msg <<Doc 2>>
11 Oct 2017	FW: EHE	Email dated 11 October sharing the 'An evidence based review of the risks to children and young people who are educated at home' report with colleagues.	 From.docx  <<Doc 4>> The e-mail contains information that is exempt under section 40 (2) and discussions on other matters.
11 Nov 2017	FW: EHE Ministerial Briefing - Final	Email dated 11 November, sent to the Welsh Government Governance Unit. Email refers to the 'An evidence based review of the risks to children and young people who are educated at home' report which is attached.	 FW EHE Ministerial Briefing - Final.msg <<Doc 5>>

Y Grŵp Addysg a Gwasanaethau Cyhoeddus  
Education and Public Services Group

20 Nov 2017	RE: CASCADE report on Elective Home Education along with briefing from the National Independent Safeguarding Board	Email detailing the arrangements for the Cabinet Secretary for Education and the Minister for Children and Social Care to meet with the NISB board to discuss the CASCADE report.	 From2.docx  <<Doc 8>> The e-mail contains information that is exempt under section 40 (2) and discussions on other matters.
30 Nov 2017	Note from Sally Holland, Children's Commissioner for Wales	E mail dated 30 Nov including Children's Commissioner for Wales press release in response to Welsh Government response to her annual report – press release refers to elective home education	 30 November 2017.msg <<Doc 9>>
30 Nov 2017	RE: Welsh Government response to the Children's Commissioner for Wales annual report 2016-17 - embargoed copies of response and written statement	E-mail providing a copy of Welsh Government response to the Commissioner's report and written statement to the Children's Commissioner's office, Welsh Government response refers to elective home education in response to one of the recommendations in the report. Links provided to report and statement as they are in the public domain  <a href="http://gov.wales/docs/dsijlg/publications/cyp/171130-response-to-annual-report-16-17v2-en.pdf">http://gov.wales/docs/dsijlg/publications/cyp/171130-response-to-annual-report-16-17v2-en.pdf</a>  <a href="http://gov.wales/about/cabinet/cabinetstatements/2017/firstministerresponse/?lang=en">http://gov.wales/about/cabinet/cabinetstatements/2017/firstministerresponse/?lang=en</a>	 30 November 2017 - 2.msg <<Doc 12>>
11 Dec 2017	Notes from quarterly meeting	By attachment to an e-mail dated 11 December 2017, Children's Commissioner shared with Welsh Government official draft minutes of a meeting between officials held on 5 December 2017. The draft minutes contain the following in relation to elective	An extract from the draft minutes has been provided, as the majority of the content is not relevant to the request.

		<p>home education:</p> <p><b>Welsh Government response to the Commissioner's Annual Report, including Commissioner's response</b></p> <p>KC provided an overview of the debate, published response and actions thereafter.</p> <p>SH expressed she was pleased that most of her recommendations had been accepted or partially accepted by Welsh Government but that she was disappointed with the response in relation to home education.</p> <p>SH confirmed that the response to this particular recommendation highlighted the lack of progress by Welsh Government and that she was surprised the written response did not reflect some of the conversations she'd had with Welsh Government about the topic.</p> <p>KC expressed that they were surprised with the Commissioner's press statement in response to the written statement and asked SH to confirm next steps in relation to a potential review.</p> <p>SH confirmed that she had a meeting with officials on 4 December about it and was reassured about Welsh Government next steps. SH confirmed that she will also want to discuss with relevant Ministers during her upcoming meetings, and will decide following those meetings whether or not to use her powers to review the actions</p>	
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		<p>of Welsh Government.</p> <p>KC confirmed there were different legislative vehicles being considered. RT confirmed that Commissioner would expect at least a statement of intent from Welsh Government as an interim measure and that a full CRIA should be undertaken on those options.</p> <p>SH suggested Welsh Government had further discussions with ADSS and Directors of Education, who are supportive of SH call.</p> <p>KC highlighted a lesson learned from this year's process including the need for Welsh Government to share an early embargoed copy of the written statement with SH, which may have avoided the need for SH to issue a strong statement following late receipt of this year's written statement.</p>	
05 Jan 2018	RE: Elective home education	Email concerning a news article in the Western Mail regarding Elective Home Education.	 From1.docx  <<Doc 16>> The e-mail contains information that is exempt under section 40 (2) and discussions on other matters.