



Llywodraeth Cymru
Welsh Government

21 September 2020

Dear

ATISN 14255 Information relating to the implementation of Children (Abolition of Defence of Reasonable Punishment) (Wales) Act 2020

Thank you for your request, addressed to Karen Cornish, which I received on 21 August, relating to the implementation of Children (Abolition of Defence of Reasonable Punishment) (Wales) Act 2020 (“the Children Wales Act”). You asked for:

1. Minutes/notes from the following stakeholder meetings, held since introduction (i.e. between March 2019 and September 2020):
 - Flying Start Health Visitors and All Wales Health Visiting Network stakeholder meeting;
 - HM Courts & Tribunals stakeholder meeting;
 - Police representatives and PLU stakeholder meeting;
 - Education Trades Unions;
 - Ex-President Emeritus of Malta.
2. Minutes/notes from the four Expert Stakeholder Group meetings: February 2019, March 2019, July 2019, and November 2019.
3. A copy of the presentation and any notes from the All Wales Heads of Children’s Services meeting, in Caersws – 25th October 2019.
4. A copy of the options for data collection considered by police and a copy of options paper consider by the SIG.
5. A copy of the social services metrics for data collection, as distributed to the Data Collection group.
6. Copy of the ‘Underlying Principles for a Diversion Scheme’ presentation, at the December meeting of the Out of Court Disposals Task and Finish Group.
7. Minutes/notes from the discussion led by the Police Liaison Unit on possible diversion scheme options with the advantages and disadvantages of the options.
8. Minutes/notes from the OOCd meetings for 19 March 2020 and 15 June 2020.
9. Minutes/notes from the Parenting Expert Action Group meeting of 23 January 2020.
10. A copy of the work-plan which was agreed in the Parenting Expert Action Group meeting of 23 January 2020.
11. Minutes/notes from the Strategic Implementation Group meeting of the 3 February 2020.

Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

12. Presentation on proposed campaign creatives for communications work presented at Strategic Implementation Group meeting of the 3 February 2020.
13. Minutes/notes from all Strategic Implementation Group and Task and Finish group meetings in 2020.
14. Information relating to the Operations, Guidance and Training Task and Finish Groups discussion regarding the mapping of key processes and to identify key pieces of overarching guidance which may need updating.
15. Data Collection and Monitoring Task and Finish Group – work plans for the collection of data from the police, social services and other relevant public services.
16. A copy of the communications plan (with a focus on the 6 month period following Royal Assent) as presented to the Expert Stakeholder Group.
17. Minutes/notes from the following stakeholder meetings:
 - Meeting in Scotland to discuss the implementation of the Welsh and Scottish Acts - 20 Feb 2020
 - Visits in relation to the development of an Out of Court Disposal (South Wales Police, Gwent Police and North Wales Police, 19, 24 and 27 February 2020),
 - Attendance at the Home Office Advisory Group meeting.

The response to each of the questions can be found in Annex A to this letter.

I have decided that some of the information you have requested is exempt from disclosure under Section 40(2) and section 22(1) of the Freedom of Information Act 2000 ("FOIA) and is therefore withheld. I have also concluded that, in this instance, some information related to this request is held for the purpose of the formulation and development of government policy and is therefore exempt under Section 35(1)(a) of the FOIA at this time. The reasons for applying these exemptions are set out in full in Annex B to this letter.

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 A - ATISN 14255

1. Minutes/notes from the following stakeholder meetings, held since introduction (ie between March 2019 and September 2020):

- Flying Start Health Visitors and All Wales Health Visiting Network stakeholder meeting
- HM Courts & Tribunals stakeholder meeting
- Police representatives and PLU stakeholder meeting
- Education Trades Unions
- Ex-President Emeritus of Malta

Response:

- No minutes or notes are held regarding the Flying Start Health Visitors and All Wales Health Visiting Network stakeholder meetings. Welsh Government officials attended the meetings for the relevant section of the meeting relating to the Children Wales Act. Welsh Government does not have a secretariat role for these groups and, if minutes were taken would have been taken by the organisation which organise these meetings. There is no expectation that minutes from this type of meeting would be provided to the Welsh Government as officials attended only for the relevant agenda item.
- A copy of the minutes of the HM Courts & Tribunals stakeholder meeting of 24 April 2019 can be found at appendix 1- the name of a junior member of staff has been exempted according to Section 40 of the FOIA as outlined in Annex B.
- No minutes or notes are held regarding Police representatives and PLU stakeholder meetings, these were informal meetings and no notes or minutes were taken.
- No minutes are held for the meetings of the Education Trades Unions 5 July and 10 September 2019 - Welsh Government officials from the Implementation Team attended the meetings for the relevant section of the meeting relating to the Children Wales Act. These meetings are not minuted, however, action points from the 10 September 2019 meeting were taken and are as follows:
 - Send group video link (*For clarity this is referring to the video published on the Welsh Government website. An updated version of this video can be found [here](#)*).
 - A link to the Children (Abolition of Defence of Reasonable Punishment) (Bill) Wales Committee Stage 1 report – Send onto Group. (*For clarity this report can be found [here](#)*).
 - Send on meeting information to group regarding meeting taking place in the Park Plaza, Cardiff.
 - Send on Sarah Canning's details for more information.
- No recorded information is held regarding the meeting with Ex-President Emeritus of Malta. No note was taken of the telephone call on 29 April 2019.

2. Minutes/notes from the four Expert Stakeholder Group meetings: February 2019, March 2019, July 2019, and November 2019.

Response:

- A summary of the meetings will be published on the Welsh Government website. A link to where these documents are published can be found [here](#). This request has been exempted according to Section 22(1) of the FOIA as outlined in Annex B

3. A copy of the presentation and any notes from the All Wales Heads of Children's Services meeting, in Caersws – 25th October 2019.

Response:

- A copy of the presentation given at the meeting is provided at appendix 2. Welsh Government did not have a secretariat role at the All Wales Heads of Children's

Services meeting and in this case only attended for the relevant agenda item on the Children Wales Act. No notes are held by us as notes or minutes of this meeting, if taken, would have been captured by the organisation who organised the meeting, and we would not have expected to receive a copy of these minutes.

4. A copy of the options for data collection considered by police and a copy of options paper consider by the SIG.

Response:

- A copy of the paper can be found at appendix 3.

5. A copy of the social services metrics for data collection, as distributed to the Data Collection group.

Response:

- The Social Services metrics have been published as part of the 'Performance and Improvement Framework for Social Services Measuring Activity and Performance – Guidance 2020-21'. The metric regarding the physical punishment of a child by a parent or carer can be found on page 13 (CH/005a & CH/005b) and page 14 (CH/011a & CH/011b) of the document which can be accessed [here](#).

6. Copy of the 'Underlying Principles for a Diversion Scheme' presentation, at the December meeting of the Out of Court Disposals Task and Finish Group.

Response:

- The presentation was given orally. The aid memoire used to present the information is no longer held.

7. Notes on the discussion led by the Police Liaison Unit on possible diversion scheme options with the advantages and disadvantages of the options.

Response:

- Information is held that falls into scope of your request but this is being withheld under the Freedom of Information exemption, Section 35 - information relating to the formulation and development of government policy as outlined in Annex B.

8. Minutes/notes from the Out of Court Disposal meetings for 19 March 2020 and 15 June 2020.

Response:

- The meeting due to be held on 19 March 2020 was cancelled due to the COVID-19 situation. A meeting was held on 15 June 2020. A summary of the meeting will be published on the Welsh Government website, following ratification by the group. A link to where these documents are published can be found [here](#). This has been exempted according to Section 22(1) of the FOIA as outlined in Annex B.

9. Minutes/notes from the Parenting Expert Action Group meeting of 23 January 2020.

Response:

- A meeting of the Parenting Expert Action Group was held on 23 January 2020. A summary of the minutes of the meeting will be published on the Welsh Government website. A link to where previous summaries of meetings of the Task and Finish Groups are published can be found [here](#). This has been exempted according to Section 22(1) of the FOIA as outlined in Annex B.

10. A copy of the workplan which was agreed in the Parenting Expert Action Group meeting of 23 January 2020.

Response:

- A copy of the work-plan agreed in January 2020 can be found at appendix 4.

11. Minutes/notes from the Strategic Implementation Group meeting of the 3 February 2020.

Response:

- A meeting of the Strategic Implementation Group was held on 3 February 2020. A summary of the meeting will be published on the Welsh Government website. A link to where previous summaries of meetings of the Task and Finish Groups are published can be found [here](#). This has been exempted according to Section 22(1) of the FOIA as outlined in Annex B.

12. Presentation on proposed campaign creatives for communications work presented at Strategic Implementation Group meeting of the 3 February 2020.

Response:

- This was a presentation provided by an external contractor, we do not hold this information.

13. Minutes/notes from all Strategic Implementation Group and Task and Finish group meetings in 2020

Response:

- Meetings of the Strategic Implementation Group in 2020 were held on 3 February and 4 August. A summary of the meeting will be published on the Welsh Government website. A link to where previous summaries of meetings of the Strategic Implementation Group are published can be found [here](#). This has been exempted according to Section 22(1) of the FOIA as outlined in Annex B.
- A meeting of the Out of Court Disposal Task and Finish Group was held on 15 June 2020. A summary of the meeting will be published on the Welsh Government website. A link to where previous summaries of meetings of the Task and Finish Groups are published can be found [here](#). This has been exempted according to Section 22(1) of the FOIA as outlined in Annex B.
- A meeting of the Parenting Expert Action Group was held on 23 January 2020. A summary of the meeting will be published on the Welsh Government website. A link to where previous summaries of meetings of the Task and Finish Groups are published can be found [here](#). This has been exempted according to Section 22(1) of the FOIA as outlined in Annex B.
- A meeting of the Operations, Guidance and Training Task and Finish Groups was held on 25 February 2020. A summary of the meeting will be published on the Welsh Government website. A link to where previous summaries of meetings of the Task and Finish Groups are published can be found [here](#). This has been exempted according to Section 22(1) of the FOIA as outlined in Annex B.
- A meeting of the Data Collection and Monitoring Task and Finish Group was held on 26 February 2020. A summary of the meeting will be published on the Welsh Government website. A link to where previous summaries of meetings of the Task and Finish Groups are published can be found [here](#). This has been exempted according to Section 22(1) of the FOIA as outlined in Annex B.
- A meeting of the Expert Stakeholder Group (Communications) was held on 28 February 2020. A summary of the meeting will be published on the Welsh

Government website. A link to where previous summaries of meetings of the Task and Finish Groups are published can be found [here](#). This has been exempted according to Section 22(1) of the FOIA as outlined in Annex B

14. Information relating to the Operations, Guidance and Training Task and Finish Groups discussion regarding the mapping of key processes and to identify key pieces of overarching guidance which may need updating.

Response:

- This discussion took place during the meeting of the Operations, Guidance and Training Task and Finish Groups which was held on 25 February 2020. Information on this discussion will be included in a summary of the meeting which will be published on the Welsh Government website. A link to where previous summaries of meetings of the Task and Finish Groups are published can be found [here](#). This has been exempted according to Section 22(1) of the FOIA as outlined in Annex B.

15. Data Collection and Monitoring Task and Finish Group – work plans for the collection of data from the police, social services and other relevant public services.

Response:

- The workplan was developed as part of the Data Collection and Monitoring Task and Finish Group meeting that took place on 26 February 2020. The workplan will be included in a summary of the meeting which will be published on the Welsh Government website. A link to where previous summaries of meetings of the Task and Finish Groups are published can be found [here](#). This has been exempted according to Section 22(1) of the FOIA as outlined in Annex B.

16. A copy of the communications plan (with a focus on the 6 month period following Royal Assent) as presented to the Expert Stakeholder Group.

Response:

- A copy of the communications plan as presented to the Expert Stakeholder Group meeting on 28 February can be found at appendix 5.

17. Minutes/notes from the following stakeholder meetings:

- **Meeting in Scotland to discuss the implementation of the Welsh and Scottish Acts - 20 Feb 2020**
- **Visits in relation to the development of an Out of Court Disposal (South Wales Police, Gwent Police and North Wales Police, 19, 24 and 27 February 2020)**
- **Attendance at the Home Office Advisory Group meeting**

Response:

- A copy of the minutes of the Children (Equal Protection from Assault (Scotland) Bill implementation group are available on the Scottish Government website and can be accessed [here](#).
- The purpose of the meetings with each of the police forces was to gain an insight into how diversion operates in each police force area. No note was taken.
- A copy of the minutes detailing the section of the meeting when officials from the Implementation Team attended the Home Office Advisory Group meeting are attached at appendix 6.

Annex B: Information withheld for FOI request ATISN 14255

Information being withheld	Section number and exemption name
Item 1, personal information relating to the junior civil servants who attended the meeting with HM Courts & Tribunals.	Section 40(2) of the Freedom of Information Act. Personal data protected by the Data Protection Act 2018 (DPA). Personal data is defined in Section 1(1) of the DPA.
Summaries of the minutes of the Strategic Implementation Group meetings, task and finish Group meetings and the Expert Stakeholder Group (Communications) will be published on the Welsh Government website. These will join the documents already published. This refers to items 2, 8, 9, 11, 13, 14 and 15	Section 22(1) of the FOIA – information intended for future publication
Item 7 Minutes/notes from the discussion led by PLU on possible diversion scheme options with the advantages and disadvantages of the options	Section 35(1)((a) “formulation of government policy”

This Annex sets out the reasons for the engagement of Sections 40(2) and 22(1) of the FOIA and our subsequent consideration of the Public Interest Test.

Section 40(2) – Personal Data

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

We believe there is no legitimate interest in disclosing the personal information of a junior member of staff contained in the minutes of a meeting. In this instance, we believe the data subject has no expectation that their personal information would be made public. This is a junior member of staff, simply going about their daily business, and would have had no expectation that their personal information would be made public.

2. Is disclosure necessary?

We believe disclosure is not necessary as the information requested was for minutes or notes of a meeting, and the recorded discussion has been provided. If this information was disclosed it would be placed indefinitely in the public domain which would not be fair to the individual in question, given that they do not have a public facing role. Furthermore, we recognise there are differing views on, and strong feelings about, the legislation to remove the defence of reasonable punishment and that it would be unfair to potentially open individuals to online scrutiny for simply carrying out their normal duties

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

Thus, we believe release of this information would be unfair to the junior member of staff who does not hold a public facing role. 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 of the Freedom of Information Act. Section 40 is an absolute exemption and not subject to the public interest test.

Sections 22(1) – Information intended for future publication

Regarding items 2, 8, 9, 11, 13, 14, and 15 whilst we can confirm the Welsh Government holds information of this description, it is considered exempt under Section 22 of the FOIA. This states (inter alia):

- 1) *Information is exempt if-*
- (a) *the information is held by the public authority with a view to its publication, by the authority or any other person, at some future date (whether determined or not),*
 - (b) *the information was already held with a view to such publication at the time when the request for information was made, and*
 - (c) *it is reasonable in all the circumstances that the information should be withheld from disclosure until the date referred to in paragraph (a).*

We can confirm that the conditions under (a), (b) and (c) are satisfied. We have published summaries of meetings of these task and finish meetings which took place in 2019 and there is the intention to continue to publish these documents, when they have been ratified by the groups' members.

The documents are not being disclosed at this time as the summaries of the meetings have not been agreed. It is in the public interest to only publish the documents after they have

been agreed by the attendees. This will take place when the meetings resume and the documents can be ratified by the relevant groups. The intention is to publish the documents detailed in your letter by the end of the year.

Section 35(1)(a): Formulation of Government Policy

When the Children (Abolition of Defence of Reasonable Punishment) (Wales) Act 2020 (“the Children Wales Act”) was passed in March 2020 this provided clarity that the physical punishment of children in Wales would be prohibited on commencement of the Children Wales Act in March 2022. The overarching aim of the Children Wales Act is to help protect children’s rights by abolishing the common law defence of reasonable punishment of children so it can no longer be relied on by parents and/or those acting in loco parentis as a defence to common assault and battery in any criminal or civil court proceedings within the territory of Wales. As set out in the Explanatory Memorandum, following commencement of the Children Wales Act, the police, social services and other front line professionals will need to make appropriate decisions on what response to take if a parent or adult acting in loco parentis physically punishes a child. One aspect of this activity is the development of a suitable diversion scheme which could provide a proportionate response and provide interventions to support behaviour change. This activity requires new policy formulation and the involvement of Welsh Ministers in the policy decision making process.

Members of the Out of Court Disposals and Diversion Task and Finish Group are considering an approach to using out of court disposals and diversion for those individuals who may be charged with the offence of common assault and battery, in circumstances where the defence of reasonable punishment would have applied prior to commencement of the Children Wales Act. It is very important that in developing the most appropriate policy response we involve front line professionals to ensure that the most effective processes, training and provision to support behaviour change are put in place. In formulating new policy in this area front line professionals need to have a confidential place to robustly assess various options. The Welsh Government needs to be able to, in private, freely explore ideas with external stakeholders to gauge their attitude and reaction to a range of proposed policy ideas in order to develop robust, well-considered and effective policies. Having to disclose this information would weaken our ability to ascertain stakeholders genuine and unguarded views. By the early release of information there is a risk that the stakeholders we work with will be less willing to engage in exploration of policy ideas because of a risk of confusion about proposals which have not yet been fully formulated.

The information captured by your request amounts to a discussion paper considered at the Out of Court Disposal Task and Finish Group meeting on 19 December 2019. This information is only held for the purpose for formulation and development of policy, as set out above. The policy for Welsh Government in this area is currently developing and evolving and is therefore incomplete. It is likely that disclosure of this information would add ambiguity rather than clarity.

Officials have carefully considered the discussion paper captured by this request and consider that the information in question should be exempt under Section 35(1)(a) of the FOIA. Section 35(1)(a) is a qualified exemption therefore consideration has been given to the public interest test. This means that in order to withhold information under the provisions, it has to be shown that the public interest in withholding the information outweighs that in releasing it.

Public interest arguments in favour of disclosure

There is support for both sides of the debate relating to whether children should be physically punished and we recognise that there is public interest in the public having an opportunity to understand the decisions and actions taken by the Welsh Government.

We recognise that transparency and openness in the Welsh Government's policy-making process improves public trust.

The Welsh Government has endeavoured to ensure we are as transparent as possible regarding the legislation as a whole. The Explanatory Memorandum, which was published when the Bill was introduced (and revised at Stage 2 of the scrutiny process), sets out in detail what provisions in the legislation mean; what it is attempting to achieve and its financial, legal and policy implications. The legislation was meticulously scrutinised by the Senedd and the Welsh Government provided further clarification on a number of issues raised by Members of the Senedd. Throughout the passage of the legislation we have engaged with a wide range of stakeholders including Members of the Senedd; professionals who will implement the Act; Third Sector and lobby groups and members of the public. In addition we have been engaging with a range of stakeholders in developing our awareness raising campaign, including testing creative ideas with members of the public.

Public interest arguments in favour of withholding

We consider that it is important for Welsh Government officials to be able to have a safe space to undertake key discussions with third parties freely and be able to formulate proposals with regard to a possible diversion scheme.

Disclosure of any early discussions could set a precedent that information concerning future planning and policy development should be disclosed under FOI disclosures ahead of plans being finalised. This could inhibit the free and frank exchange of ideas; could harm future deliberations with key parties and therefore potentially reduce the likelihood of the most effective policy being put in place. In addition it will not provide the clarity that the public require and could prejudice the formulation of future government policy going forward.

It is important that such plans and proposals are worked through and are in, at least, a near final state before being made public.

Conclusion

We believe that the wider public interest favours maintaining a good working relationship with third parties, to maintain free and frank exchange of views internally and externally with 3rd parties, who are key to formulating the policy and its implementation. Disclosure in this instance would be likely to negatively impact discussions, with the potential to undermine the decision making process here in Wales. Whilst recognising that there are public interest arguments for disclosure of the requested information related to this request, we conclude that the public interest in withholding the information outweighs that in releasing it in this instance.