

18th October 2024

Dear

Complaint in respect of ATISN 20862 - Request for data sharing impact information

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

I understand your complaint relates to the Welsh Government's decision to withhold information requested by you under ATISN 20862, due to an exemption of the information under Section 35(1)(a) of the FoI act.

Under ATISN 20862 you requested copies of any Data Protection Impact Assessments (DPIA) that were undertaken by the Welsh Government in relation to the Children missing education database proposals. When reviewing your complaint I have considered how the exemption was applied, how that decision and rationale were explained to you, and your reasons for disagreeing with the Welsh Government's decision to withhold the information.

The application of the exemption

The Welsh Government's response of 16 September confirmed that the 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. It can also include pilot projects implemented by the government to test the efficacy of a proposal, ahead of any final decisions being made.

In this instance, the CME database policy proposals remain under development, as they have not been implemented and could be subject to change following the pilot next Spring. 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.

S35(1)(a) is a qualified exemption. This means the Welsh Government will assess the balance of the public interest for and against disclosure prior to its use. In considering whether to disclose the information in this instance, officials considered whether the public interest in maintaining the exemption outweighs the public interest in disclosure. Whilst we recognised as part of this assessment, the benefit that sharing the DPIA may bring to some members of the public, especially those in opposition of the pilot proposals, this did not outweigh the public interest to disclose. In undertaking the public interest assessment, part of the focus was on the potential

harm to the development of the policy, which is considered to be high risk in this instance. This includes the likelihood of misinformation being shared, the risk of outdated information being in the public domain, or the information being used as a tool to delay progress of the policy via increased levels of correspondence to Government. Additionally, as the DPIA is a tool that is developed to inform the policy direction and determine and address risk, potential harm could arise from disclosing the identified risks of the proposed policy, and the intended mitigations to those risks. We have also considered the potential intent behind the request for this information in this instance, and frequency and content of correspondence and requests from you in relation to this policy area. This has not been in support of the pilot proposals we are progressing.

In addition to the identified harms, officials considered the significant amount of engagement and consultation that had been undertaken in relation to this policy to date, and the amount of information that has already been shared publicly. 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 which have ensured that this policy is fully informed. Following the first consultation significant amendments were made to the policy to reflect concerns raised by some consultees. An integrated impact assessment was published, in addition to the Children's Rights Impact Assessment, and an outline of the data sharing processes is also available within the consultation documents. The decision to withhold this particular information at this point in time has been clearly and consciously applied, and should not impact on the general public's understanding of the policy. There is nothing outlined in your complaint that changes this position.

How the decision was explained

The response to you of 16 September outlined the decision to withhold the information under Section 35(1)(a) of the FoI act. The response clarified that 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. The response explained the rationale and outlined the public interest assessments in favour of disclosure, and against disclosure. The decision not to disclose the information was clearly conveyed and I hope that the information outlined within this response provides additional context and clarity.

Additional points raised by you in your complaint

The basis of your complaint is that you do not agree with the application of the exemption and have stated that a DPIA is undertaken after (and not before or during) the policy making process. This is not the case. The ICO states: "A DPIA should begin early in the life of a project, before you start your processing, and run alongside the planning and development process".

The DPIA is a tool that helps policymakers assess the implications of a potential proposal ahead of final decisions being made. It may include different options, varying opinions and evaluate identified risks. It should always be undertaken before any proposal that involves large scale processing is implemented. Additionally, it

may be revised during the policy development process and should be treated as a living document. Should a proposal change significantly, a new DPIA should be undertaken.

Additionally, we have interpreted your complaint as implying that consultation with the ICO had either not taken place, or had not been correctly applied. The response of 16 September confirmed that the Welsh Government does hold the information requested but that it was exempt from disclosure. Whilst those points will also be addressed in the response to your recent Freedom of Information request (ATISN 21953), I would like to reassure you that the Welsh Government engaged fully with the Information Commissioner's Office to develop a DPIA, as required under the General Data Protection Regulations (GDPR). Information in relation to the DPIA process is available from the ICO's website, at the following link: [Data protection impact assessments | ICO](#)

As stated above I have considered your complaint 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. I 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