

7 October 2022

Dear

ATISN 16753 - Stakeholders in developing the RSE Curriculum for Wales

Thank you for your request which I received on 13 October 2022. You asked for:

1. Information on who are the stakeholders in the development of the curriculum for Wales, RSE.
 - a. I have decided that some of the information is exempt from disclosure under section 40 of the Freedom of Information Act and is therefore withheld. The reasons for applying these exemptions are set out in full at Annex A.
 - b. Public stakeholders included Estyn and Public Health Wales.
2. Information on the funding paid to/ received by third parties which is used for RSE teachings in schools across Wales.
 - a. £175k was awarded to a third party in 2020/1 for a range of activities, and development of guidance was referenced as part of this. This work is ongoing.

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

Application of exemptions/exceptions

The Freedom of information Act provide a right for anyone to ask a public authority to make requested information available to the wider public. As the release of requested information is to the World, not just the requester, public authorities need to consider the effects of making the information freely available to everybody. Any personal interest the requester has for accessing the information cannot override those wider considerations.

I have decided to withhold the following information:

Information being withheld	Section number and exemption name
List of stakeholders involved in developing RSE in the curriculum.	Withheld under section 40(2) of the Freedom of Information Act.

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.

Some of the organisations who have been involved in developing RSE in the curriculum are very small and we believe that disclosing the names of these organisations would allow individuals to be identified.

We have concluded that, in this instance, the information we are withholding allows the identity of 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 recognise that the changes to what is to be taught under the Relationship and Sexuality Education syllabus has raised sensitive questions. Disclosing names of stakeholders would allow you to see that organisations with a wide range of views were involved in the development of RSE in the curriculum.

2. Is disclosure necessary?

We do not believe that disclosing the names of stakeholder organisations is necessary. Many methods were used to ensure that we sought views from as wide a range of groups, communities and individuals as possible. No organisation or group had a greater influence in the development of the proposals than any other.

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

Whilst we recognise that you have a legitimate interest in accessing the full list of stakeholders, we need to consider the likely results of disclosure to the World, rather than just to yourself.

The subject of what is taught in schools under Relationship and Sexuality Education is emotive, engendering strong feelings on certain elements from differing perspectives. Certain individual stakeholders involved in the development of RSE have been negatively targeted previously and whilst we do not suggest that you as the recipient of this information would use this information maliciously, there is a risk that this may happen again given that information released in response to a FOI request is made available to the wider world.

To that extent, where stakeholder details would allow for individuals to be identified and targeted, we believe disclosure would breach those individual's fundamental rights as provided by the DPA 2018. As such, disclosure would breach the provisions of the DPA 2018 and thus the information is exempt under s40(2) of the FOIA.

