

15 June 2023

Dear

**Complaint in respect of Request for Information – reference ATISN 17407
National Transgender Guidance for Schools and Local Authorities**

Your email of 22 May requested a review of our original response to the above Fol.

In seeking the review you state the response comprises vague replies, rather than releasing the requested information. You further state that for the first two questions, the word "which" in the request have been ignored completely and that whilst the response does provide some detail you assume information is being withheld by Welsh Government. You further state no reason for partially withholding the information has been mentioned in the response and assume this is an oversight. As you do not mention any issues in relation to points three to five of your initial request we have limited the extent of the review to the first two questions, which were as follows:

1. Information on which Welsh Government departments, groups, divisions or teams are involved in the development of the above guidance. (The Action Owner only is mentioned in the Action Plan).
2. Information on which external organisations, public bodies, groups and/or individuals are currently involved in the development of the above guidance.

Following internal review we have found that part of the original decision is upheld and part is reversed; and that you should have been informed in our original correspondence of the reason for withholding information.

In relation to the aspect of the **original decision which is reversed**, this relates to the information contained in (1) of the above - those internal Welsh Government teams involved in the development of the guidance. In this respect we have concluded that there is no inherent risk in providing the detail of the Divisions (not individuals) which were consulted as part of the process of developing the guidance. Our original response noted that the work is led by the Equity in Education Division and draws on support and input from other policy and delivery groups across Welsh Government as appropriate. The full list of those Division's involved in the work thus far is below. Additional Divisions of the Welsh Government may be involved as the policy develops.

- Equity in Education Division
- Curriculum, Assessment and School Improvement Division
- Pedagogy, Leadership and Professional Learning Division
- Support for Learners Division

- Equality and Human Rights Division
- Cohesive Communities Division
- Digital Learning Division
- Strategic Comms and Marketing Division
- Health and Social Services: Quality and Nursing Division
- Mental Health and Vulnerable Groups Division
- Tackling Poverty and Supporting Families Division
- Further Education and Apprenticeships Division
- Inclusion and Corporate Business Division
- Office of the Chief Medical Officer Division

In relation to the aspect of the **original decision which is upheld**, this relates to the information contained in (2) of the above – external organisations, public bodies, groups and individuals involved in the development of the guidance. Our original response noted our plans to engage external stakeholders including children and young people; and individual organisations including local authorities; education practitioners; unions; Estyn; charities; equalities and human rights organisations; the health sector and sports sectors.

In considering whether or not to release the specific detail of the organisations and representatives directly engaged with we considered whether the information, if disclosed, could adversely affect those individuals. In taking the decision to withhold this information we have considered that, in the current climate, organisations (or individuals within those organisations) could be targeted as an organisation supporting LGBTQ+ people. Coordinated and targeted attacks (social media posts, protests, malicious allegations, and general smear campaigns) have the potential to place these stakeholders at significant risk. This could also affect the support they provide to vulnerable clients. It was concluded that the information in relation to representatives has the potential of identifying individuals and due to the sensitivity surrounding the subject of this request we believe identifying the representatives involved in the development of the guidance could put these individuals at risk. ICO guidance in relation to ‘identifying an individual’ supports the argument to withhold the information. In addition information we hold may indirectly identify an individual and therefore can be considered personal data and subject to the UK GDPR.

If you cannot identify an individual directly from the information (for example where all identifiers have been removed) an individual may still be identifiable by other means. This may be from information already held, or information obtained from other sources. A third party could use this information, combining it with other information available to them to identify individuals. In choosing to disclose or withhold information we must carefully consider all of the means that any party is reasonably likely to use to identify an individual. This is important because we could inadvertently release or disclose information that could be linked with other information to, inappropriately, identify an individual.

On this basis we believe it appropriate that the information is withheld as an exemption under the Freedom of Information Act 2000 in line with section 40(1) and (2) – third party personal information; and section 35 – the formulation or development of government policy. In addition to the potential risk to individuals and their organisations, in relation to the S35 the Welsh Government’s ability to work with

stakeholders on the formulation of policy, in this area and also in others, may also be hampered if this information were disclosed and it resulted in risk of harm to the organisations or individuals involved. This could result in reputational damage to the Welsh Government and hamper stakeholder involvement and engagement in future activity; inhibit the free and frank provision of advice; and inhibit the exchange of views for the purposes of deliberation and policy formulation.

If you remain dissatisfied with this response you also have the right to complain to the Information Commissioner at:

Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

Tel: 01625 545 745
Fax: 01625 524 510
Email: casework@ico.gsi.gov.uk

Also, if you think that there has been maladministration in dealing with your request, you have the option to make a complaint to the Public Services Ombudsman for Wales who can be contacted at:

Public Services Ombudsman for Wales
1 Ffordd yr Hen Gae
Pencoed
Bridgend
CF35 5LJ

Telephone: 0845 6010987 (local rate)
Email: ask@ombudsman-wales.org.uk

Yours faithfully

Owain Lloyd
Cyfarwyddwr y Gymraeg ac Addysg / Director of Education and the Welsh Language