

9 August 2023

Dear

ATISN 18754 Ministerial Correspondence

Information requested

Thank you for your request which I received on 24 July. You asked for:

1. Details of who is responsible for replying to your correspondence.
2. How much time was spent on replying to your correspondence.
3. Whether the response been drafted.
4. Whether the response has been considered by lawyers?
5. When a reply will be received.
6. The percentage of correspondence to the Minister for Education and Welsh Language that is responded to within the time frame given.
7. Whether the response will be used to provide further guidance to all schools in Wales.
8. What is the legal basis for the statutory guidance on school uniforms?
9. Whether lawyers confirmed that the requirement of not having logos on items of school uniform can be enforced.

Our response

A copy of the information I have decided to release is enclosed.

1. The Minister for Education and Welsh Language is responsible for replying to your correspondence as the matters you raise fall to his portfolio. In general when we receive ministerial correspondence it is passed to the relevant policy department. There, civil servants will prepare advice for the minister on the terms of a response. This enables the minister to consider the letter in the context of all relevant and up to date background information.
2. No information held.
3. A response has been drafted and was issued on 28 July.
4. The response to your correspondence was not considered by lawyers.
5. A response to your correspondence was issued on 28 July.
6. No date range was specified in your request. From the start of this year 85% of correspondence was responded to within the deadline.
7. The response will not be used to update the current Statutory Guidance on School Uniform and Appearance.

8. The guidance is statutory and as such governing bodies and head teachers must have regard to it when formulating and revising their school uniform policies.
9. This information is exempt under s42(1). Legal Professional Privilege applies.

I have decided that **some of the information** is exempt from disclosure under section 42(1) of the **Freedom of Information Act** and is therefore withheld. The reasons for applying these exemptions are set out in full at Annex A to this letter.

Next steps

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/Environmental Information Regulations 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:

Whether lawyers confirmed that the requirement of not having logos on items of school uniform can be enforced, d.

This Annex sets out the reasons for the engagement of section **42(1)** of the **Freedom of Information Act** and our subsequent consideration of the Public Interest test.

Section 42(1) (Legal Professional Privilege)

This exemption states:

1. Information in respect of which a claim to legal professional privilege or, in Scotland, to confidentiality of communications could be maintained in legal proceedings is exempt information.

Legal professional privilege (LPP) covers communications between lawyers and their clients for the purpose of obtaining legal advice (Advice Privilege), or documents created by or for lawyers for the “dominant” (main) purpose of litigation (Litigation Privilege). The information in question relates to whether advice was sought and provided from our legal advisors. We believe that the Advice Privilege of LPP attaches to this information.

The section 42 exemption is qualified, which means that it is subject to a public interest test.

Public Interest Test

Public interest arguments in favour of disclosure

The Welsh Government recognises that school uniform and other items that are required to be purchased in accordance with a school uniform policy can be a financial burden, particularly for low income and large families. The Welsh Government is committed to using every lever it can to help people with the cost-of-living; school uniform and other such items can be a financial burden on families. By encouraging governing bodies to limit the need for logos and branded school uniforms, this will help

keep school uniform costs as affordable as possible for families across Wales. A public consultation as held in October and November 2022, and responses received helped to update the Statutory Guidance on School Uniform policy, which now states that branded uniform, including the use of logos should not be a compulsory requirement for pupils. However, families can still opt to purchase uniforms from a retailer of their choice, including specialist providers.

Public interest arguments in favour of withholding

That there is a public interest served in public authorities being able to access advice which benefited from professional legal privilege was noted in *Bellamy v the Information Commission and DTI* [EA/2005/0023] in which the tribunal, on the subject of LPP said:

"there is a strong element of public interest inbuilt into the privilege itself. At least equally strong countervailing considerations would need to be adduced to override that inbuilt interest...it is important that public authorities be allowed to conduct a free exchange of views as to their legal rights and obligations with those advising them without fear of intrusion, save in the most clear case..."

The Welsh Government is of the firm view that it is highly important to maintain legal professional privilege and that, in the absence of at least equally strong countervailing considerations, any attempt to undermine the principle of legal professional privilege would result in substantial harm.

Legal advisers need to be able to present the full picture to their clients, in this case all UK Government and devolved administrations, which includes arguments in support of final conclusions and any relevant counter-arguments. This is the purpose behind the long-established principle of legal professional privilege.

It is in the nature of legal advice that it often sets out the possible arguments both for and against a particular view. If recipients or providers of legal advice believe that it is likely that the legal advice would be published, especially so soon after being sought and in a complex political environment, then it is unlikely that comprehensive advice would be commissioned or provided. This would be likely to result in substantial harm to the quality of decision-making since it would not be fully informed. It would also undermine the ability of legal advisers and their clients to rely confidently on the protection afforded by the principle of legal professional privilege.

Moreover, disclosure of legal advice has a significant potential to prejudice the governments' ability to defend its legal interests - both directly by unfairly exposing its legal position to challenge, and indirectly by diminishing the reliance it can place on the advice having been fully considered and presented without fear or favour.

To that end, we believe the information in question should be properly withheld under Section 42(1) of the Freedom of Information Act.

The Welsh Government believes that **information provided by lawyers in confidence** should be exempt from disclosure.