

14 November 2023

Dear

Complaint in respect of ATISN 19112 – Impact Assessments

I am responding to your email which was received on 1 November 2023 in which you asked us to review the response issued to your request for information under the Freedom of Information Act 2000 (FOIA). This letter is to inform you of the outcome.

In your email dated 2 October 2023, you said that you had been advised by an official (in connection with a different FOI request) that "Impact Assessments during the pandemic could be done retrospectively", and you asked for the following:

- *Could you quote the legislation or guidelines that provides the Minister with the authority to make highly sensitive decisions without carrying out an EIA?*
- *Was this power time limited?*

This was processed under the Freedom of Information Act 2000. We responded to you on 31 October confirming that the Welsh Government does not hold the information that you had requested.

Your email of 1 November says: "*I am interpreting the reply as meaning the Welsh Government has no information to support [the official's] statement*". With respect, I believe your interpretation is incorrect. Our response means that the Welsh Government does not hold information regarding legislation or guidelines that provides the Minister with the authority to make highly sensitive decisions without carrying out an EIA.

I have reviewed our response and I am satisfied that it was the correct response. There is no such legislation or guidance. I suspect that the question you asked was not the right question; or at least, not the question that you thought you were asking. However, the question that you did ask was perfectly clear, and therefore there was no reason for us to contact you at the time of your request to seek clarification.

Nevertheless, we spoke on the telephone on 13 November 2023, so that I could get a clearer understanding of the information you were seeking, in the hope that I might be able to provide at least some of the answers you wanted.

I explained that since the start of the pandemic, when many staff were being redeployed to support the Welsh Government's response to the national emergency, some Integrated Impact Assessments were published retrospectively. (I believe we have provided you with copies of some of these in response to previous FOI requests.) In these circumstances, policy officials were told to keep a clear record of the reason(s) for departing from the usual methods of assessing impact, and to ensure that such decisions to depart from the usual approach were proportionate and justified – with each case considered separately on its merits. Officials were also reminded that Ministers must demonstrate that they have consciously directed their minds to their obligations – eg in respect of equality – when making decisions. Crucially, Ministers must be advised of the impact of decisions and legislation on those who might be most marginalised and disadvantaged. As far as I am

aware, this was the position throughout the pandemic; even when formal Integrated Impact Assessments were published retrospectively.

You told me that you would like to know how this advice was conveyed to officials. As I said when we spoke, the only record I have been able to find is a news article that was disseminated to all staff on the Welsh Government intranet. The only date on the article is 14 April; although no year is given, the file name would indicate that it was 2020. I attach a copy of the form that was used to submit the news article.

NB. As required by section 40 of the FOIA, I have redacted the personal information (ie. identities) of individuals who are named in the form.

I appreciate that this information probably does not fully address all of your concerns, but I am sharing it with you because it is the only recorded information that I have been able to find that explains our approach to Impact Assessments during Covid-19.

In summary, I have reviewed our response to your FOI request in accordance with the procedure stated in my previous letter to you (dated 31 October 2023). In my view this was a correct response, and therefore I do not uphold your complaint.

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

[FOI and EIR complaints | ICO](#)

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 sincerely

Deputy Director of Operations
Health & Social Services