

30/01/2024

Dear

ATISN 20086 Stakeholders involved in developing draft trans guidance for schools

Information requested

Thank you for your request which I received on 12 January 2024. You asked for:

- A list of all internal and external stakeholders involved in developing the draft trans guidance for schools.
- The criteria used to determine which groups and individuals should be involved in the process of developing this draft guidance.
- Any terms of reference for involvement in the process of developing the draft guidance.
- Agendas and minutes from any meetings held relating to the development of the draft guidance.
- Any communications with the Department for Education in England relating to its draft guidance.

You have said that electronic copies or links to relevant documents would be acceptable in response to this request.

You have also said that you understand that some information might need to be redacted or anonymised, and that you have made reasonable efforts to find this information through our website.

Our response

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

You also requested:

- any terms of reference for involvement in the process of developing the draft guidance, and agendas and minutes from any meetings held relating to the development of the draft guidance;
- any communications with the Department for Education in England relating to its draft guidance.

In relation to these requests, I have decided that this information is exempt from disclosure under section 35(1) (a), formulation of government policy and is therefore withheld. The reasons for applying this exemption 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.

Information being withheld	Section number and exemption name
Terms of reference for involvement in the process of developing the draft guidance, and agendas and minutes from any meetings held relating to the development of the draft guidance. Any communications with the Department for Education in England relating to its draft guidance.	s35(1)(a) "formulation of government policy" exemption.

This Annex sets out the reasons for the engagement of section 35 of the Freedom of Information Act and our subsequent consideration of the Public Interest Test.

Engagement of section 35(1) (a) 'formulation of government policy' of the FOIA

As the nature of the withheld information clearly concerns policy that is still being developed and informed by a range of stakeholders and continues to be refined through a co-construction approach, I would suggest, the exemption is clearly engaged.

Public Interest Test

In order to satisfy the public interest test in relation to the exemption(s), it is necessary to conclude that the public interest arguments in favour of withholding the information are sufficient to *outweigh* the public interest arguments in favour of release.

Public interest arguments in favour of disclosure

There is a public interest in supporting the public to better understand the engagement and discussions that are taking place to inform the Welsh Government as it develops policy related to guidance to support learners in education. Disclosure could illustrate how evidence and approaches considered by the stakeholder groups involved in the development of the guidance informed policy around support in schools and additional support for practitioners and learners. This would show the some of the evidence considered in developing a sensitive policy area, which can be the subject of polarising public debate.

Public interest arguments in favour of withholding

To protect the integrity of the co-development process and all organisations and individuals involved, we are withholding some of the information requested. Drawing on evidence and discussion with a wide range of stakeholders meant that policy discussion directly involved

a range of organisations and individuals with wide ranging views and, in addition, strongly felt and conflicting views, values and opinions. In addition, it was important that a breadth of evidence was considered, not all of which will be reflected in the finalised guidance. Policy development in such a sensitive area with strong feeling from a range of conflicting stakeholders and individuals may be easily taken out of context.

It is an important part of this process that stakeholders can express their views in confidence. Making this information publicly available would prejudice future policy development.

Balance of public interest test

Extensive stakeholder engagement and input from different specialists and practitioners, from a range of perspectives, has fed into the process of guidance development for trans learners. It is important that the Welsh Government can continue to draw upon the evidence and experiences provided by stakeholders, encouraging candid and honest conversations that support effective policy making. Publication of such discussions would likely dissuade stakeholders from engaging in the guidance development process, negatively impacting the evidence and experience available to officials. This is especially a concern in sensitive area of policy development, such the development of guidance to support trans, non-binary or gender questioning learners.