

Dear

ATISN 26615 Wadham College of Science (Reg 680/6007)

Information requested

Thank you for your request which was received on 26 January. You asked for:

Information relating to your school, including material on inspection policy and practice, no pupils/below threshold policy, legal, policy and operational basis for 31 October deadline, internal communication and external communication concerning your school with Estyn and UKVI/Home Office.

Our response

The information you requested is enclosed.

I have decided that some of the information is exempt from disclosure under section(s) FOIA Section 21 Information already accessible, Section 40 personal data and Section 42 Legal Professional Privilege of the Freedom of Information Act and is therefore withheld. Some information within documents that is not relevant to the matters you have asked about have been removed.

The information already accessible, correspondence between the Welsh Government and Wadham College of Science and published documents, is set out in the table attached in Section 1 and 3.

The reasons for applying exemptions Section 40 and Section 42 are set out in full at Annex 2 to this letter.

Section 1) Welsh Government outgoing inspection-related requests/notifications to WCS

See Section 1 - Annex 1.

Section 2) Associated internal Welsh Government communications (drafting/clearance/approval)

See Section 2 - Annex 1.

Section 3) Policy/practice: “no-pupil / below-threshold” independent schools and inspection triggers

Links to the current independent schools registration and operational guidance dated 2024 is included in the table at Annex 1. The guidance document from 2014 can be found at Doc 6.

Section 4) The “31 October” confirmation deadline: legal basis, policy basis, and operational logic

We have interpreted your request for recorded information that explains or evidences the basis for any Welsh Government practice of imposing or using a '31 October' as a reference to the deadline of 31 October 2024, mentioned in correspondence of 17 January 2024.

Our letter of 17 January 2024 was in response to the covering letter received with your post inspection action plan on 1 December 2023 when you said '*Currently, we have no students; the likely outcome is that we anticipate we may have compulsory-aged students from September 2024*'. In order to give you sufficient time to recruit and enrol compulsory school-aged pupils in September 2024 and respond to the points raised in the post inspection action plan, we asked you to provide confirmation by 31 October 2024. It is not a statutory deadline, but an operational deadline set at the time to ensure that we held accurate and up-to-date records for your school.

Section 5) WCS-specific: rationale and approvals for October 2023 visit/inspection activity (including attempted/aborted visits)

Please see information released under Section 6 – Annex 1.

The Welsh Government/Independent Schools hold no record of attempted or aborted visits to Wadham College of Science.

Section 6) External correspondence: Welsh Government with Estyn and UKVI/Home Office relating to WCS

Documents relating to Section 6, correspondence between Welsh Government and Estyn are set out in Annex 1. We have no records of correspondence between the Welsh Government and UKVI/Home Office relating to WCS.

Section 7) UKVI/Welsh Government information sharing instruments (MoU/ISA/SOP) relevant to independent schools

The Welsh Government do not have an information sharing instrument relevant to independent schools with the Home Office/UKVI or any UK Government department and no draft proposals exist.

Section 8) Three-year non-provision (“three-year rule”): removals from the register, criteria, and any “reset” policy

8A – The number of independent schools removed from the register during the specified period that did not provide full time education to any pupils for a continuous three-year period is 7.

8B – Internal guidance, policy criteria – see Section 3.

8C – Internal guidance policy on applying a “three-year” concept where inspections were suspended or disrupted to the extent such records are held; no such records are held.

Section 9) Records evidencing procedural compliance, consistency, risk, escalation, and decision logic (WCS handling)

You have requested evidence demonstrating consistency or comparator handling with other independent schools in a similar no-pupil/pre-admissions phase. This is the first case of its kind, and there are no directly comparable examples.

Section 10)

This information is exempt from disclosure under section(s) under FOIA Section 42 Legal Professional Privilege of the Freedom of Information Act and is therefore withheld.

Sections 11) to 16)

We have noted your instructions in preparing this response.

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,

1) Welsh Government outgoing inspection-related requests/notifications to WCS – will not be released under s.21 - Information accessible to applicant by other means (WCS already received from WG)

29/01/21 – registration letter
08/03/21 – email acknowledging receipt of material change request to increase numbers on roll
30/03/21 – letter giving decision on request to increase numbers on roll
24/05/21 – advice on applying for boarding provision
28/10/21 – email enquiring if there are any pupils on roll
12/05/23 – email enquiring if there are any statutory aged pupils on roll
17/11/23 – letter requesting Post Inspection Action Plan
04/12/23 – email acknowledging Post Inspection Action Plan and letter
17/01/24 – letter follow up to receiving Post Inspection Action Plan
15/04/24 – email acknowledging complaint
26/04/24 – email and letter response to complaint
22/05/24 – email acknowledging correspondence
17/06/24 – response to correspondence
12/07/24 – email response
03/06/25 – email relating to school registration

2) Associated internal Welsh Government communications (drafting/clearance/approval)

Doc 1
Doc 2
Doc 3
Doc 4
Doc 5

3) Policy/practice: “no-pupil / below-threshold” independent schools and inspection triggers

2014	Independent registration and operation guidance 2014 Doc 6
2024	Independent schools registration: guidance GOV.WALES
	All independent schools in Wales must be registered with the Welsh Ministers and are subject to a framework of regulations. The principal regulations and order are: <ul style="list-style-type: none"> • The Independent School Standards (Wales) Regulations 2024 • The Independent Schools (Provision of Information) (Wales) Regulations 2024 • The Independent Schools (Prohibition on Participation in Management) (Wales) Regulations 2024 • The Independent Schools (Publication of Inspection Reports) (Wales) Regulations 2003

- [The Independent Schools \(Religious Character of Schools\) \(Designation Procedure\) \(Wales\) Regulations 2003](#)
- [The Designation of Schools Having a Religious Character \(Independent Schools\) \(Wales\) Order 2009](#)
- [Education \(Independent Schools\) \(Unsuitable Persons\) \(Wales\) Regulations 2009](#)

4) The “31 October” confirmation deadline: legal basis, policy basis, and operational logic

See letter.

5) WCS-specific: rationale and approvals for October 2023 visit/inspection activity (including attempted/aborted visits)

See information released under Section 6.

6) External correspondence: Welsh Government with Estyn and UKVI/Home Office relating to WCS

Doc 7

Doc 8

Doc 9

Doc 10

Doc 11

Doc 12

Doc 13

Doc 14

Doc 15

Doc 16

Doc 17

Doc 18

Doc 19

Doc 20

Doc 21

Doc 22

Doc 23

Doc 24

Doc 25

Doc 26

05/11/25 - There was a meeting between Estyn and the WG when WCS was discussed. There is no formal record of the meeting.

7) UKVI/Welsh Government information-sharing instruments (MoU/ISA/SOP) relevant to independent schools

See letter.

8) Three-year non-provision (“three-year rule”): removals from the register, criteria, and any “reset” policy

See letter and Section 3 above.

9) Records evidencing procedural compliance, consistency, risk, escalation, and decision logic (WCS handling)

See letter.

10) Legal advice (metadata + non-privileged surrounding communications)

See letter.

11) to 16)

See letter.

Freedom of Information Act 2000: Section 40(2)

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.

We have concluded that, in this instance, the information requested contains 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:

Legitimate interests

The Welsh Government recognises there is a legitimate interest in being able to identify individuals involved in any discussions.

The Welsh Government cannot identify any other legitimate interest in you or the public receiving the personal data captured by your request.

Is disclosure necessary?

The Welsh Government is of the view that it is not necessary to disclose the personal information caught by your request - we do not believe it is necessary to disclose the personal data to understand the information.

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

As it has been concluded it is not necessary to disclose the personal information caught by the request, there is no requirement to balance the rights and interests of those individuals against the rights, under FOIA, of the requester.

To conclude, as release of the information would not be legitimate under Article 6(1)(f), and as no other condition of Article 6 is deemed to apply, release of the information would not be lawful within the meaning of the first data protection principle. It has therefore been withheld under section 40 of the Freedom of Information Act. Section 40 is an absolute exemption and not subject to the public interest test.

Section 42 of the Freedom of Information Act 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, or documents created by or for lawyers for the “dominant” (main) purpose of litigation. The information in question was advice requested and provided by the Welsh Government's legal services and we believe that LPP attaches to this information.

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

Public interest in disclosure

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...".

There is a strong public interest in assuring the public that the Welsh Government is effectively discharging its responsibilities as the regulator of independent schools in Wales. That independent schools are well run, appropriately managed and compliant with the regulatory framework governing their operation, and that any concerns relating to the running of independent schools are handled robustly, lawfully and in a way that safeguards the welfare of learners. There is also a public interest in ensuring that decision-making processes within Government are fair, accountable and subject to appropriate oversight.

Public interest in maintaining the exemption

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 prejudice.

Legal advisers need to be able to present the full picture to their client, 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 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.

In weighing up the arguments for and against release, we consider that the public interest in withholding the information is sufficient to outweigh the public interest in its disclosure. To that end, the information has been withheld under section 42.