

14 April 2026

Dear

Complaint in respect of ATISN 26711 – Response to EHRC

I am writing further to your email of 12 March 2026 and your request for an internal review of Welsh Government's response to your Freedom of Information Act request ATISN 26711. I have now undertaken the internal review and have set out my findings below.

In your original request dated 12 February 2026 you asked for the following information:

In your Plenary meeting on 10th February 2026, Jane Hutt responded to a question by Laura Anne Jones, and stated that the Welsh Government had supplied a response to the EHRC on 20th November 2025. Please provide a copy of this response, along with the letter sent to Welsh Government that precipitated this response.

In Welsh Government's response, the request for information was refused for the following reasons:

We have assumed you are referencing the question raised by Laura Anne Jones MS at plenary on 11 February 2026 to the Cabinet Secretary for Social Justice, Trefnydd and Chief Whip, as there was no question matching your description at plenary on 10 February 2026. We therefore assume your request is in relation to the Cabinet Secretary for Social Justice, Trefnydd and Chief Whip referencing a letter sent to the Secretary of State on the draft Code of Practice that was sent on the 20th of November 2025

I have decided that the information requested is exempt from disclosure under Section 35(1)(a) – Formulation or development of government policy and Section 28(1) – Relations within the United Kingdom 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.

I attach Annex A to this letter.

I have now fully considered your complaint and request for internal review. I have decided that the information you requested is exempt for disclosure. For this reason, I do not uphold your complaint. The reasons for my decision are set out below.

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.

The information requested is exempt from disclosure under Section 35(1)(a) – Formulation or development of government policy and Section 28(1) – Relations within the United Kingdom of the Freedom of Information Act. The information below sets out the reasons for the engagement of section(s) 35(1)(a) and 28(1) of the Freedom of Information Act and Welsh Government’s subsequent consideration of the Public Interest Test.

Engagement of Section 35(1)(a) – Formulation or development of government policy of the Freedom of Information Act

Disclosure of the requested information would weaken Ministers’ ability to discuss sensitive topics free from premature public scrutiny. The documents contain material relating to the ongoing formulation and development of Welsh Government policy.

The withheld information includes discussion, analysis, and internal commentary on policy considerations that remain live, including advice and preparatory thinking connected to Welsh Government’s ongoing work in the area of equality and human rights. Releasing this information at this stage would reveal unfinished policy positions, evolving internal options, and considerations that Ministers have not yet finalised.

Disclosure at this stage could disrupt the progress of policy development and potentially its effectiveness. Releasing this information could lead to premature public pressure or lobbying that could distort the process necessary to finalise policy.

Disclosure may lead to:

- Inhibiting the free and frank exchange of views between officials and Ministers while policy is still under development.
- Misunderstanding about the Welsh Government’s current or future policy position, especially where the information reflects early analysis rather than settled conclusions.
- Undermining the ability of officials to provide candid advice essential for effective policy development.

Engagement of Section 28(1) – Relations within the United Kingdom of the Freedom of Information Act

The withheld parts of the correspondence relate to intergovernmental engagement between Welsh Government and the UK Government on draft guidance proposed by the EHRC (a UK-wide body) on a non-devolved matter.

I am of the view that disclosing this information would be likely to prejudice:

- The trust and confidence expected in exchanges between Welsh Government, UK Government in relation to a UK-level regulator and a devolved government.
- The Welsh Government’s ability to engage fully, openly, and constructively with the UK Government in relation to the EHRC and other UK institutions on sensitive policy matters.

- The effectiveness of future cooperation and regulatory dialogue.

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

For Section 35(1)(a):

Strong public interest in protecting the space for safe, private, and candid policy development, especially where policy is ongoing or sensitive.

Welsh Government recognises that openness in government may increase public trust in and engagement with the government. We recognise that the decisions Ministers make may have a significant impact on the lives of citizens and there is a public interest in their deliberations being transparent.

Furthermore, Welsh Government recognises that there is public interest in how governments across the UK are responding to the For Women Scotland judgment, given its wider implications for the interpretation of sex and gender under the Equality Act 2010. We also acknowledge that people in Wales wish to understand how the Welsh Government is considering the judgment and ensuring compliance with its equality duties and responsibilities.

Public interest arguments in favour of withholding

The information requested concerns early internal discussions relating to a draft Code of Practice, which is not yet in the public domain and which relates to a non-devolved matter. The material reflects preliminary advice and internal deliberation that has not been finalised.

For Section 35(1)(a):

- Disclosure would risk chilling internal discussions, reducing the quality of analysis and advice provided to Ministers.
- Premature disclosure could mislead the public about policy positions that are not yet agreed, potentially affecting public confidence and stakeholder engagement.
- Ministers must be able to discuss policy freely and frankly, exchange views on available options and understand their possible implications.

For Section 28(1):

- Maintaining effective working relationships between Welsh Government, UK Government and UK-wide bodies is essential to developing and implementing equality and human rights policy on non-devolved matters.
- Disclosure would likely undermine the willingness of UK Government to engage openly with Welsh Government in the future.
- Protecting the integrity of intergovernmental processes is a recognised and significant public interest.

Balance of public interest test

In carrying out my internal review, I have decided, on balance that the public interest in withholding the information outweighs the public interest in disclosing it.

While there is a legitimate public interest in understanding Welsh Government's engagement with the UK Government on the EHRC draft code of practice, there is a stronger public interest in:

- Protecting the ongoing formulation of policy (S35), and
- Maintaining strong, functional intergovernmental relations (S28).

Disclosure at this time would cause real harm to those processes. Therefore, I uphold the decision to withhold this information. As stated above, for this reason, I do not uphold your complaint.

I have considered your complaint in accordance with the procedure outlined in the Welsh Government's Practical Guide for Making Requests for Information which is available by post on request or via the internet at:

<https://www.gov.wales/requesting-information-welsh-government-html>

If you remain dissatisfied with this response you 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.

Yours sincerely

A J John
Director, Communities and Social Justice

Annex A from letter of response of 12 March 2026

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:

Welsh Government response supplied to the Minister for Women and Equalities and the Secretary of State on 20 November 2025 as referenced by Jane Hutt MS in her response to Laura Anne Jones MS in Plenary on 10 February 2026 and the letter sent to Welsh Government that precipitated this response.

Both are exempt from disclosure under section Section 35(1)(a) – Formulation or development of government policy and Section 28(1) – Relations within the United Kingdom of the Freedom of Information Act

This Annex sets out the reasons for the engagement of section(s) 35(1)(a) and 28(1) of the Freedom of Information Act and our subsequent consideration of the Public Interest Test.

Engagement of Section 35(1)(a) – Formulation or development of government policy of the Freedom of Information Act

The Welsh Government believes that disclosure would weaken Ministers' ability to discuss controversial and sensitive topics free from premature public scrutiny. The documents contain material relating to the ongoing formulation and development of Welsh Government policy.

The withheld information includes discussion, analysis, and internal commentary on policy considerations that remain live, including advice and preparatory thinking connected to Welsh Government's ongoing work in the area of equality and human rights. Releasing this information at this stage would reveal unfinished policy positions, evolving internal options, and considerations that Ministers have not yet finalised. Timing is important here also, as disclosure at this stage, may also disrupt the progress of policy development and potentially its effectiveness. Publishing this information could also lead to premature public pressure or lobbying that could distort the process necessary to finalise policy.

Disclosure may lead to:

Inhibiting the free and frank exchange of views between officials and Ministers while policy is still under development.

Lead to misunderstanding about the Welsh Government's current or future policy position, especially where the information reflects early analysis rather than settled conclusions.

Undermining the ability of officials to provide candid advice essential for effective policy development.

Engagement of Section 28(1) – Relations within the United Kingdom of the Freedom of Information Act

The withheld parts of the correspondence relate to intergovernmental engagement between Welsh Government and the UK Government on draft guidance proposed by the EHRC (a UK-wide body) on a non-devolved matter.

Disclosing this information would be likely to prejudice:

The trust and confidence expected in exchanges between Welsh Government, UK Government in relation to a UK-level regulator and a devolved government.

The Welsh Government's ability to engage fully, openly, and constructively with the UK Government in relation to the EHRC and other UK institutions on sensitive policy matters.

The effectiveness of future cooperation and regulatory dialogue.

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

For Section 35(1)(a):

Strong public interest in protecting the space for safe, private, and candid policy development, especially where policy is ongoing or sensitive.

We recognise that openness in government may increase public trust in and engagement with the government. We recognise that the decisions Ministers make may have a significant impact on the lives of citizens and there is a public interest in their deliberations being transparent

Public interest arguments in favour of withholding

For Section 35(1)(a):

Disclosure would risk chilling internal discussions, reducing the quality of analysis and advice provided to Ministers.

Premature disclosure could mislead the public about policy positions that are not yet agreed, potentially affecting public confidence and stakeholder engagement. Ministers must be able to discuss policy freely and frankly, exchange views on available options and understand their possible implications

For Section 28(1):

Maintaining effective working relationships between Welsh Government, UK Government and UK-wide bodies is essential to developing and implementing equality and human rights policy on non-devolved matters.

Disclosure would likely undermine the willingness of UK Government to engage openly with Welsh Government in the future.

Protecting the integrity of intergovernmental processes is a recognised and significant public interest.

Balance of public interest test

On balance, I consider that the public interest in withholding the information outweighs the public interest in disclosing it.

While there is a legitimate public interest in understanding Welsh Government's engagement with the UK Government on the EHRC draft code of practice, there is a stronger public interest in:

Protecting the ongoing formulation of policy (S35), and

*Maintaining strong, functional intergovernmental relations (S28).
Disclosure at this time would cause real harm to those processes. Therefore, the
information is withheld.*