

Complaint in respect of ATISN 26923: outputs of Miller research additional engagement phase

Dear

I am writing to you further to my email acknowledging receipt of your complaint about the handling of your recent Freedom of Information request. I am writing to update you on the outcome of my review.

Having considered your complaint and the information, I have decided to uphold the original decision for the reasons below.

Whether the requested information falls within scope of the government policy exemption

As part of your complaint, you raise the point that the document should not fall in scope of the policy formation exemption because it is background to policy not a policy in itself. Section 35(1)(a) of the Freedom of Information Act is defined as follows:

(1) Information held by a government department or by the Welsh Government is exempt information if it relates to—

(a) the formulation or development of government policy,

As such, a document may fall into the scope of the exemption if it relates to the formulation of government policy. Given that this report was explicitly commissioned to inform the development of government policy, it must clearly fall within the scope of this exemption.

Public Interest test

You also raise the issue that the initial decision did not sufficiently consider the arguments in favour of disclosure. Having reviewed the letter, I have concluded that the annex broadly covers the main arguments in favour of disclosure. You raise the point that this is a particularly contentious area which should tip the balance in favour of disclosure. Though this potentially could have been discussed in more detail, the significance and controversy surrounding the issue raises a parallel and opposing argument in favour of not disclosing: ensuring that government has space to develop policies around this issue. On such a controversial issue, it is legitimate to conclude that releasing such information before that policy has been decided could pre-empt and potentially prejudice the development of that policy, creating particular focus on a very discrete element of engagement work.

In favour of disclosure, you also raise that the research will fill a gap in understanding. Having reviewed the document, given this is discrete pre-consultation research considered in the context of a wider range of evidence, I consider that it is very unlikely to fill any such gap.

You also make the point that it is extremely difficult for people to comment on the policy without access to the evidence that informed it. However, in considering the public interest test, the team had to consider the public interest at the point you made the request, not at a hypothetical future point. The document cannot be said to assist the public to understand a decision that has not yet been made.

You also make the point that the risk of misunderstanding is not an argument against disclosure. The annex to the letter outlining the original decision makes it very clear that consideration is focused on the risk of disclosure generally, not you as the requestor. In handling the request, the initial decision was rightly blind to your identity as requestor: no consideration was made as to who made the request, your background, knowledge level or personal interest. However, the team was entitled to consider the effects of disclosure to the public at large and any associated risk of the information being taken out of context, especially given the controversy of the issue and the fact that no policy has been finalised.

Conclusion

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

Deputy Director, Curriculum & Assessment