5 November 2026

Dear

Re: ATISN 27423 and 27462 – Professor Jason Arday – follow up letter

My letter in response to your request for an internal review was emailed to you on 15 October. In that letter, I apologised that I had not been able to deal with your request in full and said that I was still considering other documents that may be covered by your original requests. As I explained, unfortunately, undertaking this work has taken longer than the usual 20 working day period for an internal review. This letter provides my findings in relation to the remaining elements of my internal review.

After receiving my letter of 15 October, you emailed on 16 October to make further points. All but one of the matters you raised in your email of 16 October were fully considered as part of the internal review of your original requests and will, therefore, not be revisited. The one issue you have raised which I should have clarified is that the exemption under which the short biography of the late Professor Arday is redacted is s41(1) Freedom of Information Act 2000 (FOI Act), and I apologise that I did not make that clear. In relation to your email of 16 October, if you are dissatisfied with my findings set out in my letter of 15 October, you have the right to make a complaint to the Information Commissioner (details at the foot of this letter).

With respect to my further consideration of your request for an internal review of the response you received to ATISN 27423 and 27462, as outlined in my previous letter of 15 October and as you are aware, the FOI Act provides a right for anyone to ask a public authority to make requested information available, in effect, 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 particular interest the requester has for accessing the information cannot override those wider considerations.

I have further considered the remaining documents and decided that emails sent from Welsh Government officials to the members of the Education sub-group are covered by your FOI request, and also the sub-group's Terms of Reference; all can be found at Annex A.
Whilst none of the documents attached to emails refer to Professor Arday and /or any contribution by him, they are captured by the FOI Act by virtue of being part of the emails sent to the Education sub-group members which would have included Professor Arday. However, you will note that three of the attachments are not being disclosed. As part of my consideration of the internal review, I have decided that the following documents are covered by s35(1)(a) of the FOI Act, namely: *Information held by a government department or by the Welsh Government is exempt information if it relates to the formulation or development of government policy:*

- Attachments to email of 23.2.24 – Minutes of 30.1.24; and Annex B, Item 3, ArWAP Grid Actions
- Attachments to email of 7.12.23 – Minutes of 23.10.23

In addition, and separately, I have identified one short excerpt of the minutes of an Internal Support and Challenge Group (ISCG) meeting from 23.2.23 which make reference to Professor Arday. I have decided that this excerpt too is exempt from disclosure under s35(a) of the FOI Act, namely: *Information held by a government department or by the Welsh Government is exempt information if it relates to the formulation or development of government policy.*

In relation to the withholding of all of these documents, you may be aware that the purpose of section 35(1)(a) is to protect the integrity of the policymaking process, and to prevent disclosures that would undermine this process and result in less robust, well-considered or effective policies. In particular, it ensures a safe space to consider policy options in private.

The purpose of both the ISCG and the Education sub-group was and is to discuss, test and constructively challenge government policy as it is being developed and implemented in relation to the Anti-racist Wales Action Plan. The Plan is constantly being reviewed and tested, with a formal refresh in November 2024, and with another review underway currently. This way of working is designed to ensure that the government's work towards the goals under the Anti-racist Wales Action Plan is informed, supported and tested by experts and experts by experience. I am satisfied that to release the minutes would have a chilling effect on policy development, with group members highly likely to feel that there is not a safe space for them to share and develop views honestly, openly and confidentially, without fear of discussions becoming public.

In Department of Health v Information Commissioner (EA/2018/0001 & 0002, 26 February 2019) the First Tier Tribunal set out the following when considering a request under the FOI Act. The First Tier Tribunal set out the purpose of the exemption at paragraph 138 in the following terms:
"We accept that the purpose of s 35 is to protect good government. It reflects and protects some longstanding constitutional conventions of government. It reserves a safe space to consider policy options in private – civil servants and subject experts need to be able to engage in free and frank discussion of all the policy options internally, to be able to expose their merits and demerits and possible implications."

In terms of what constitutes policy-making, whilst not described in the FOI Act, I consider the discussions within the ISCG and the Education sub-group to align with the definition referenced in the ICO guidance: *The Modernising Government White Paper (March 1999) provided a useful description of policymaking as: "the process by which governments translate their political vision into programmes and action to deliver 'outcomes', desired changes in the real world". In general terms, government policy can therefore be seen as a government plan to achieve a particular outcome or change in the real world. It can include both high-level objectives and more detailed proposals on how to achieve those objectives.*

Public interest test
S.35(1)(a) is subject to the public interest test. In order to satisfy the public interest test in relation to the exemption cited, 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. As context, I consider the minutes and working documents in refining the ArWAP to be sensitive, particularly in the

context of the purpose of the ISCG and Education sub-group discussions and formulation of policy. I have considered the public interest in maintaining the exemption in relation to this particular case and balanced it against the public interest in disclosure.

Public interest arguments in favour of disclosure
The Welsh Government acknowledges the general public interest in openness and transparency that release of this information would engender. Furthermore, we recognise there is a public interest in supporting the public to understand the late Professor Arday's roles and work.

Public interest arguments in favour of withholding
The Welsh Government recognises the general public interest in avoiding a chilling effect on the formulation of policy which is focused on utilising expertise and lived experience to shape and inform policy in order to achieve the goals under the Government's Anti-racist Wales Action Plan. Withholding the information would avoid the chilling effect and loss of a safe space for policy-making.

Balance of public interest test
I am satisfied that the public interest in maintaining the safe space for policy formulation outweighs the public interest in the disclosing material in relation to the late Professor Arday's roles and work.

In the interests of clarity, this letter and my letter of 15 October together constitute my full and final response to your complaint and request for internal review in relation to ATISN 27423 and 27462. I apologise again that this has taken longer than the usual 20 working day period.

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

Director, Communities and Social Justice