

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 21 June 2023

**Public Authority:** Welsh Government  
**Address:** Cathays Park  
Cardiff  
CF10 3NQ

#### **Decision (including any steps ordered)**

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1. The complainant requested from the Welsh Government, information relating to the five meetings chaired by Cardiff University Professor concerning Relationships and Sexuality Education<sup>1</sup> (RSE).
2. The Welsh Government refused to provide the information to part one of the request, and cited section 35(1)(a) (formulation and development of government policy), section 36(2)(b)(ii) (free and frank provision of advice and exchange of views), section 36(2)(c) (other prejudice to the effective conduct of public affairs), section 38 (health and safety) and section 40(2) (personal information) of FOIA. Regarding part two of the request, the Welsh Government provided information which it considered to be within scope of the request.
3. The Commissioner's decision is the Welsh Government was entitled to rely on section 35(1)(a) to withhold the information requested.
4. Therefore, the Commissioner does not require the Welsh Government to take any steps as a result of this decision.

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<sup>1</sup> <https://www.gov.wales/curriculum-wales-relationships-and-sexuality-education-rse-code>

## Request and response

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5. On 14 September 2022 the complainant wrote to the Welsh Government and requested information in the following terms:

“Between March and September 2017, an expert panel, chaired by Cardiff University Professor EJ Renold, held five meetings to discuss the future of Welsh Sex and Relationships Education.

Please could you provide the following:

  1. The Meeting minutes for each of those five meetings.
  2. A list of attendees for each of those five meetings.”
6. On 13 October 2022 the Welsh Government provided its response. It considered the information to part one of the request to be exempt from disclosure under section 35(1)(a) (formulation or development of government policy) of FOIA and withheld this information. Regarding part two of the request, the Welsh Government said this was published as an annex to the report and directed the complainant to a link<sup>2</sup> where the information could be found.
7. On 14 October 2022 the complainant expressed his dissatisfaction to the Welsh Government about its response and refused to accept its reasons for the exemption to part one of the request. The complainant asked the Welsh Government for an internal review on 11 November 2022.
8. On 11 January 2023 the Welsh Government provided its review response and maintained its original position to withhold the information (the minutes) to part one of the request. Regarding part two of the request (list of attendees) the Welsh Government believed that “the release of the membership of the expert panel meets this request.”
9. The complainant contacted the Commissioner on 2 February 2023 to complain about the way his request for information had been handled.
10. Following the Commissioner’s intervention, on 6 March 2023 the Welsh Government informed the complainant that it maintained its position to rely on section 35(1) of FOIA to withhold the information.

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<sup>2</sup> <https://www.gov.wales/sites/default/files/publications/2018-03/the-future-of-the-sex-and-relationships-education-curriculum-in-wales.pdf>

11. The Welsh Government also relied on other exemptions: section 36(2)(b)(ii) (free and frank provision of advice and exchange of views), section 36(2)(c) (other prejudice to the effective conduct of public affairs), section 38 (health and safety) and section 40(2) (personal information) of FOIA, and it set out its reasons.
12. On 20 March 2023 the complainant expressed to the Welsh Government, his dissatisfaction with the additional exemptions.
13. During the investigation of this case, the Welsh Government confirmed that each exemption cited, relates to "the content of the full set of minutes." It did not mention 'a list of attendees', which the complainant had also requested. The Welsh Government provided the Commissioner with the withheld information – five sets of minutes to the meetings.

### **Reasons for decision**

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14. The Commissioner notes the response from the Welsh Government to part two of this request, where it directed the complainant to a document which listed the Expert Panel and not the 'attendees' of each meeting. The Commissioner does not consider that this general list fulfils this part of the request (part two). However, the withheld minutes do include this information, and therefore cover both parts of the request.

### **Section 35(1)(a) – formulation of government policy**

15. Section 35(1)(a) of FOIA states:

Information held by a government department or the Welsh Government is exempt information if it relates to-

- (a) the formulation or development of government policy

16. The Commissioner understands these terms broadly refer to the design of new policy, and the process of reviewing or improving existing policy.
17. 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.
18. Section 35 is class-based, there is no need to consider the sensitivity of the information in order to engage the exemption. However, it is a qualified exemption and is subject to the public interest test.

19. The Welsh Government confirmed to the complainant the information being withheld - "minutes of the Sex and Relationships Expert Panel Meetings, which concern policy views and options that relate to ongoing policy development."
20. It explained reasons why it considered the information is exempt from disclosure, and said 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.
21. The Welsh Government said RSE is a sensitive and controversial subject. Therefore, it believes it is imperative that in developing these policies, there is a safe and open environment where a free and frank exchange of broad views and opinions can be expressed and deliberated. It deems the release of this information would be likely to result in officials and stakeholders becoming more inhibited in what it says, damaging the quality of advice and deliberation and leading to poorer decision-making. This, it added, would impact on the quality of learning taking place in schools.
22. The Welsh Government stated that aspects of this policy are continuously debated in society and anti-RSE campaigners discuss sensitive and highly contested elements. Campaigners also call to task both stakeholders involved in the process and teachers in schools in an aggressive manner with some participants suffering threats and harassment. The Welsh Government provided the Commissioner with examples of this within its correspondence to him.
23. The Commissioner has had sight of the withheld information which consists of minutes of the five SRE Expert Panel Meetings held during the dates in question. It concerns policy views and options that relate to ongoing policy development. He accepts that it is reasonable for the Welsh Government to consider that there is a need for a safe space for it to deliberate on these matters.
24. From the Welsh Government's submissions, the Commissioner notes that although it has been six years since the SRE Expert Panel report was published, many of these issues are still "live" and policy is still in development regarding what schools need to support them in "delivering high quality RSE".
25. The Welsh Government explained to the Commissioner that whilst the information contained within the minutes are six years old (2017), it considers disclosure would be likely to lead to an escalation of abuse and harassment to individuals. It also said, even if the information was redacted, the minutes could easily be read and shared out of context.

26. The Commissioner accepts that the disclosure of this information will prejudice school-level policy development and will have wider implications. He also notes the information relates to the formulation and development of an ongoing policy development. He acknowledges that there is still a debate around implementing aspects of the Curriculum, and the Curriculum for Wales is being rolled out on a phased basis. This means these matters will remain subject to debate and discussion for some time. Therefore, the Commissioner is satisfied section 35(1)(a) of FOIA is engaged in this instance.

### **Public interest test**

27. The Commissioner has considered the context of the information, in order to determine whether the public interest in maintaining the exemption outweighs the public interest in favour of disclosure.

### **Public interest arguments in favour of disclosing the information**

28. The Welsh Government acknowledges the general public interest in openness and transparency that release of this information would generate. It recognises there is a public interest in supporting the public to better understand the evidence being considered by the Welsh Government, as it develops policy related to RSE. It said, "this policy area is extremely sensitive, the subject of what is taught in schools under RSE is emotive, engendering strong feelings on certain elements from differing perspectives." The Welsh Government stated that disclosure could illustrate how evidence and approaches considered by the Expert Panel, informed policy around provision in schools and additional support for practitioners and learners.

### **Public interest arguments in favour of maintaining the exemption**

29. The Welsh Government believes withholding the information requested at part one, protects the integrity of the co-development process and all organisations and individuals involved.
30. The Welsh Government argued that a safe and open environment is imperative to have, where a free and frank exchange of broad views and opinions can be expressed and deliberated.
31. It said the release of this information would be likely to result in officials and stakeholders within this process becoming more inhibited in what they say, damaging the quality of advice and deliberation and lead to poorer decision-making. The Welsh Government believes that it would be likely to cause harmful effects.

32. The Welsh Government explained "Co-development 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. 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." The Welsh Government said that stakeholders being able to express their views in confidence, is an important part of this process, and making this information publicly available would prejudice future policy development.
33. The Welsh Government informed the complainant that extensive stakeholder engagement and input from different specialists from a range of perspectives, have fed into the process of policy development for RSE. It said "it is important it can continue to draw upon the evidence and experiences provided by stakeholders, encouraging candid and honest conversations that support effective policy-making." The Welsh Government believes publication of the discussions (the minutes) about RSE will likely dissuade stakeholders from engaging in the policy development process, negatively impacting the evidence available to officials. The Welsh Government said that it is a concern, especially in a sensitive area of policy, such as RSE.

### **Balance of the public interest test**

34. The Commissioner considers that in general, there is often likely to be significant public interest in disclosure of policy information, as it can promote government accountability, increase public understanding of the policy in question, and enable public debate and scrutiny of both the policy itself and how it was arrived at.
35. The Commissioner considers in this instance, the balance of the public interest favours maintaining the exemption. In reaching this conclusion, the Commissioner does not seek to underestimate the concerns that have been raised about RSE and he accepts that such concerns increase the public interest in disclosure of the withheld information. However, he considers the risks of disclosure both in terms of safe space and chilling effect are notable.
36. In this case, the Commissioner understands that this policy relates to children in education in Wales, and it is in the public interest for the public (specifically families) to know how this policy was discussed and developed. The Commissioner also agrees it is in the public interest for the Welsh Government to provide reassurance that due diligence was undertaken in the process of developing the Curriculum.

37. However, the Commissioner accepts that a safe space is needed to develop ideas, debate live issues and reach decisions away from external interference and distraction, and the need for a safe space will be strongest when the issue is still live. The Commissioner also accepts that this subject (RSE) which is part of the new curriculum in Wales and schools in Wales, has raised concerns and controversy amongst parents/guardians and campaign groups. He is aware that the subject will have its challenges.
38. As this information relates to a policy development for RSE, around which there is still significant discussion and debate, the Commissioner believes disclosure of the information requested could impact policy decisions. This would undermine the safe space needed for policy formulation and development.
39. The Commissioner has also considered the SRE panel report published in 2017, which the Welsh Government had referred to within its submissions. He notes the conclusions of the deliberations of the SRE expert panel were included in this report, and the Welsh Government maintains that this report is enough to satisfy the public interest. It also provided the Commissioner with a list of the documents in relation to the RSE within the new Curriculum for Wales.
40. These were published for general comment in public consultations and discussed and debated "as part of the Senedd processes." The Welsh Government believes that the documentation/content of the report, should be enough to satisfy the public interest test. It said it should also demonstrate that to release the initial preliminary discussions around support for high quality RSE in schools, would be misleading at this stage.
41. The adverse effects, both on the policy process and the policy itself, were highly relevant considerations at the time of the request and are still relevant at this time. The public interest around information illustrating how approaches considered by the Expert Panel informed policy covering provision in schools, will be served by there being transparency and accountability when policy has been decided, and is no longer live.

### **The Commissioner's position**

42. In conclusion, the Commissioner considers that, taking account of the particular stage of the policy making process, allowing for deliberation of policy formulation in a protected space, carries more weight.

43. The Commissioner finds that the public interest in maintaining the exemption outweighs the public interest in disclosure at the time of the request. Therefore, the Commissioner's decision is the Welsh Government was entitled to rely on section 35(1)(a) of FOIA to withhold the information requested.
44. Consequently he has not found it necessary to go on to consider the application of sections 36(2)(b)(ii), 36(2)(c), 38 and 40(2) of FOIA.



## Right of appeal

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45. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)  
GRC & GRP Tribunals,  
PO Box 9300,  
LEICESTER,  
LE1 8DJ

Tel: 0300 1234504

Fax: 0870 739 5836

Email: [grc@justice.gov.uk](mailto:grc@justice.gov.uk).

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

46. If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.
47. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

**Signed .....**

**Joanna Marshall**  
**Group Manager**  
**Information Commissioner's Office**  
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