



Kim Isherwood

16 October 2020

Dear Kim Isherwood,

**ATISN 14318 Relationship and Sexuality Education (RSE) Draft Wales 2019**

Thank you for your request of 16 September.

A copy of the information that it is possible to release is enclosed at Annex 1.

Some of the information is exempt from disclosure under section 40(2) of the Freedom of Information Act and is therefore withheld. The reasons for applying these exemptions are set out in full at Annex 2 to this letter.

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](mailto: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,

*Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.*

*We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.*



Y Grŵp Addysg a Gwasanaethau Cyhoeddus  
Education and Public Services Group



Llywodraeth Cymru  
Welsh Government

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,

Curriculum and Assessment Division

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[www.gov.wales](http://www.gov.wales)



## **ATISN 14318 Relationship and Sexuality Education (RSE) Draft Wales 2019**

*I would like the names of all the people directly involved in writing the RSE Draft Wales 2019. The authors, researchers & everyone involved in overseeing this particular document.*

The Draft RSE Guidance Wales 2019 was prepared and drafted by the Welsh Government. No contractors / researchers were involved in the drafting of this document.

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## ATISN 14318 Relationship and Sexuality Education (RSE) Draft Wales 2019

The following information has been withheld:

Information being withheld	Section number and exemption name
Names of individuals involved in the writing of the draft RSE Guidance Wales 2019.	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(2) of the Freedom of Information Act. Section 40 is an absolute exemption and not subject to the public interest test.

### 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.

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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:

#### The Legitimate interest test

The subject of what is taught in schools under Relationship and Sexuality Education is emotive, engendering strong feeling on both sides. This is one of the purposes of public consultation and the guidance was consulted on in early 2019.

#### The Necessity test

It is not necessary for the identities of those who actually undertook the drafting of the draft guidance to be made public. The document is a Welsh Government document which was published for consultation: it represents the views of the Welsh Government not personal views or opinions of the individuals concerned.

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### The Balancing test

It is not necessary to identify those who drafted the order as the guidance was published for consultation. The Welsh Government believes that disclosure would breach the fundamental right of those individuals as set out in the General Data Protection Regulations, 2018 and the Data protection Act 2018 and as such the information should be withheld under s40(2) of the FoIA.

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