

To: Us For Them Cymru

Via email only

08 March 2021

Dear Us For Them Cymru,

Thank you again for your Freedom of Information request dated 11 January 2021. Here is what you requested:

We would like to submit a Freedom of Information request for any internal documents and emails sent from the office of the Children's Commissioner to Welsh Government in relation to the most recent school closure including any requests from your office to ensure that Children's Impact Rights Assessments have been written and adhered too / given due regard .

In our email to you dated 8 February 2021, we explained how the information requested may be subject to a qualified exemption and confirmed we would respond to you on or before 8 March 2021.

Our response

We have concluded that the majority of information you have requested is exempt from disclosure under section 36 (2) (c) of the Freedom of Information Act (prejudicial to the effective conduct of public affairs) and is therefore withheld. We have noted below the reasons for applying this exemption.

We believe the information you have requested should be exempt from disclosure as its release would be likely to undermine my office's role in influencing policy change in Wales during the Covid19 pandemic and beyond.

As noted, Section 36 is a public interest tested exemption. This means that in order to withhold information under it, the public interest in withholding must outweigh that in releasing.

- Public interest arguments in favour of disclosing

We acknowledge the general public interest in openness and transparency that release of information engenders and the general public interest in this office's role and remit. We also acknowledge members of the public's desire



Tŷ Ystumllwynarth/Oytermouth House
Llys Siarter/Charter Court, Phoenix Way
Abertawe/Swansea SA7 9FS
01792 765600

post@comisiynyddplant.cymru
post@childrenscommissioner.wales

comisiynyddplant.cymru
childrenscommissioner.wales

to contribute to the public debate, and how information can assist understanding of existing or proposed policy.

- Public interest arguments in withholding

There is a statutory obligation for this office to safeguard and promote the rights of children in Wales. The release of information, such as the information you have requested, out of context and in an incomplete way could cause unnecessary alarm or confusion to children, which could also have a negative impact on their wellbeing.

Throughout this ongoing pandemic, we have published regular public statements via news outlets and online on the topics concerned, which are based on facts – an important element of our public communications during the pandemic has been to ensure we do not further alarm children, young people and their families and are seen as a source of reliable facts.

In undertaking my duties to safeguard and promote children's rights, a key element of my team's work is to work alongside Government and others, including other elected representatives, as well as the civil service, on policy development and policy scrutiny. Releasing the information could adversely affect the organisation's proper functioning and discourage openness in expressing opinions in a safe space. It could also impair the organisation's ability to obtain information in the future from these key stakeholders.

Moreover, the information requested relates to topics of discussion that remain ongoing. Public interest lies with enhancing the mutual trust built between this office and elected members and the civil service during this ongoing pandemic to protect children's rights and wellbeing. The method of working alongside, described here, does not impede my ability to independently scrutinise and critique the government and other public services' policy decisions, including in public, as has been seen throughout the pandemic.

- Balance of public interest test

We consider that the public interest arguments to withhold the requested information outweigh the public interest arguments to release the information. If I'm to discharge my functions effectively during this ongoing pandemic and beyond, I need to be able to work in a safe space with civil servants and with elected members and that relies on mutual trust between my office and those key stakeholders. Information about my work is regularly published for public consumption, and the relationship between the office and the Government is regularly scrutinised via Senedd Cymru's committee structure. Accordingly, we believe that the information should be withheld on



the basis that its release would be likely to prejudice the effective conduct of public affairs.

Transparency

Whilst we believe the majority of the information should be withheld, as noted above, we understand the public's desire to contribute to the public debate and the need for us to demonstrate how we are championing children's rights. As such, there is one document we have classified differently. This is a letter we sent to the First Minister on 16 December 2020. The contents of this letter, shared as an attachment, formed part of the public statements and press interviews at the time and is not marked private nor confidential. As such, we feel that the release provides information on how we sought to ensure the Government protected children's rights during deliberations on school closures during December 2020/January 2021.

We'd also like to draw your attention to two scrutiny sessions on 5 November 2020 and 28 January 2021, where we gave evidence to the Senedd's Children, Young People and Education Committee about the Government's actions during the pandemic. Here's the transcript to 5 November 2020 session: <https://record.assembly.wales/Committee/6545> and here's a transcript of the 28 January 2021 session: <https://record.assembly.wales/Committee/11157>. Here's a link to a document submitted by us in advance of the meeting of 28 January, relevant to your request: <https://business.senedd.wales/documents/s500006395/CYPE5-03-21%20-%20Paper%201.pdf>.

Next steps

If you are dissatisfied with the information we have provided, you have the right to request an internal review. All reviews are impartial and undertaken by a member of the Commissioner's Management Team. Reviews are usually be completed within 20 working days following the date a request for review is received. In exceptional cases, the time for response may be extended to 40 working days.

Requests for internal review should be clearly marked, and should be mailed to post@childcomwales.org.uk.

If you remain dissatisfied with the findings of the internal review, you should contact the Information Commissioner on the details below:
Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire, SK9 5AF. // T: 01625 545700 // W: www.ico.org.uk



Comisiynydd
Plant Cymru

Children's
Commissioner
for Wales

Please note that the Information Commissioner will not normally investigate a complaint until it has been through our own internal review process.

Kind regards,



Sally

Sally Holland
Comisiynydd Plant Cymru
Children's Commissioner for Wales

Rydym yn croesawu gohebiaeth a galwadau yn Gymraeg. Byddwn yn ateb gohebiaeth a gwladau a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd cysylltu yn Gymraeg yn arwain at oedi | We welcome receiving correspondence and calls in Welsh. We will respond to correspondence and calls in Welsh, and contacting us in Welsh will not lead to delay.

