



Isle of Man
Government

Reiltys Ellan Vannin



Council of Ministers

Summary of the consultation responses on the Freedom of Information Bill 2014

June 2014



Introduction by the Chief Minister

The consultation on this important piece of legislation, extended by two weeks, closed on 4 April 2014. The responses have now been carefully considered and the Council of Ministers has agreed the areas of the Bill that will be subject to review.

This short report summarises some of the main themes from the consultation exercise, which attracted a total of 34 responses including eight from individuals.

Given the significance of the legislation and the efforts made to publicise the consultation, the number of responses may be seen as disappointingly small, particularly when compared to other consultations on issues of public interest. The response level is certainly too low to provide any meaningful statistical feedback in this report, or to draw any definitive conclusions about broader public attitudes to the introduction of a Freedom of Information Act in the Isle of Man.

However, the purpose of consultation is to provide an opportunity for the submission of views, and I would like to thank those organisations and individuals who took the time to contribute their thoughts and observations upon this weighty subject.

The Bill will now be reviewed along the lines identified in this report and the final Bill will be put before the Council of Ministers for approval for introduction into the House of Keys.

A handwritten signature in black ink that reads "Allan Bell". The signature is written in a cursive, flowing style.

**Hon A R Bell MHK
Chief Minister**

Introduction

The eight week consultation on the Freedom of Information ("FOI") Bill ran from 11 February 2014 until 4 April 2014. In total, 33 responses were received, broken down as follows:-

Departments, Boards and Offices: 17

Local Authorities: 7

Other direct consultees: 2

Individual responses: 8

Following a request from one of the authorities that will fall within the scope of the Act when fully implemented, the consultation period was extended by two weeks. A number of measures were taken to publicise the consultation and to make responding to it as easy and as accessible as possible (including active promotion via social media, a number of media releases, a dedicated email address and an electronic feedback form).

Given the small number of responses to the consultation in terms of absolute numbers, drawing any meaningful conclusions about the strength of opinion on the detail of the Bill is problematic.

Some submissions focussed on the implementation of the FOI regime and issues that need to be addressed once the Bill has been enacted (such as training needs, improved records management, preparedness for implementation, IT and communications systems etc). This is very useful feedback, but not strictly relevant to the amendment of the Bill at this stage of its progress. There were also issues raised in respect of the possible introduction of the Environment Information Regulations and the European Union Directive on the Re-use of Public Sector Data, neither of which the Island is obliged to introduce given the nature of our limited relationship with the EU.

Summary of the consultation responses¹

1) Issues raised by Departments, Boards and Offices

Many authorities raised concerns about the potential diversion of resources that an FOI regime would require and supported the proposals to properly manage its introduction. There was concern that the Act would require additional resources at a time when Departmental and other budgets are coming under considerable strain.

Departments highlighted issues that were specific to their area of work, particularly in respect of the exemption regime, and in such instances the Cabinet Office has engaged directly with them to further explore the issues that were raised.

¹ The following is a *summary* of responses, designed to provide a brief, representative, overview. It should not be read as a definitive list of all the points that were raised in the consultation. However, in preparing this document, the Cabinet Office has carefully reviewed all comments that were received during the consultation process. See Appendix 1 for a list of respondents to the consultation.

By way of broad summary, the comments in respect of the clauses of the Bill as drafted included the following:-

- Broad support for the Act's phased implementation, including a proposal to limit the first phase to one or two pilot areas to allow others to learn from initial teething problems
- Align the date of information covered by the Act to the date that it comes into force – rather than to 11/10/11 – particularly in the context of partnership working with the private sector
- Consult with the bodies to which the Act will be extended in later stages of its implementation
- Support the phased introduction so that the impact on publicly-owned companies can be properly assessed
- Define 'ordinarily resident' in the Act
- Strengthen the exemption regime in relation to confidential information provided by another state in the course of international treaties
- Remove the ability for a public authority to refuse a request if the applicant does not consent to publishing their name
- Alter the definition of public authority to ensure that those authorities who perform commercial activities are not placed at a competitive disadvantage
- Broad support for limiting the Act to Island residents, whilst acknowledging that this is not 100% watertight and must not be overly bureaucratic
- Support for fees to be charged for initial requests, particularly if linked to an online request form
- Support for practical refusal reasons and the exemption regime
- Concern that a 20 working days response time could be problematic, particularly for smaller authorities, and the need for clarity in the relevant clause
- Concern that the appeal process could be lengthy and administratively intensive
- Support for the policy formulation exemption (currently only available to Departments) to be extended to Statutory Boards
- Acknowledgment that further work will be required in due course to link the new Act to the Public Records Act

2) Issues raised by Local Authorities

Common themes raised by local authorities included that the Bill provides more protection to Government than it does to local authorities and that the proposed fees structure should be published with the Bill (rather than when enacted). No authority raised concerns about their eventual inclusion in the FOI regime although it is clear that a firmer indication of the timetable for the phased implementation would be welcome.

One authority felt that the exemption regime allowed for too much interpretation and should more clearly prescribe exactly what information is and is not exempt.

One authority suggested that the Information Commissioner, having held office for a five year period, could be re-appointed for a second five-year term with the consent of Tynwald, but that there be no option for a third five-year term.

3) Issues raised by other direct consultees

One direct consultee provided a comprehensive response to the consultation, focussing their comments on a number of the Bill's clauses. The general thrust of the response was that the Bill is weaker and more restricted than the UK Act in a number of respects and the detailed comments on some of the clauses reflected this belief. In summary, the consultee believed more generally that:-

- the effective date be extended to coincide with the start date of the Code of Practice on Access to Government Information (1st September 1996)
- the Act should cover more public authorities from the outset
- the Act should include bodies which provide under contract any service whose provision is a function of the authority
- the provision for requesters to consent to publication of their name should be withdrawn
- the provision to charge a fee for complaining to the Commissioner should be dropped
- the application of provision for access to environmental information should be strengthened
- the requirement for the Commissioner to comply with a code of practice on certain matters may undermine their independence
- the restriction in not allowing the Commissioner to investigate disputes about disclosure of legal advice ought to be relaxed
- the role of Chief Minister, as ultimate arbiter in disputes, may be perceived as being partial

There were also a number of general points about the introduction of an FOI regime raised in the responses from direct consultees.

4) Issues raised in individual responses

Eight individuals responded to the consultation, most of whom were in favour of strengthening the proposed access regime provided for in the Bill.

Of those respondents who did not wish to see the Bill strengthened, the need for an Act at all (given the existence of the Code of Practice on Access to Information) was raised; another respondent felt that the start date should be aligned to when the Act comes into force rather than to October 2011; and another did not object to the principle of the Bill but raised concerns about its costs in the current economic climate.

Comments in favour of strengthening the Bill's access regime supported broadening its scope to include more public authorities from commencement and allow it to cover information created before 2011. Other issues included:-

- support for relaxing the form by which requests can be made
- prevent authorities from amending information once a request had been made and not charging a fee for reasonable requests
- create a mechanism for challenging the issue of 'certificates' to ensure that they are not abused
- the code of practice in the Bill might delay implementation of the Act
- the removal of the terms frivolous etc in respect of requests

- some scepticism about the proposed costs of the regime
- a belief that the grounds of refusal are broad and in some instances unnecessary
- clauses 59 and 60 of the Bill (relating to an administrative code of practice) undermine the entire Bill by giving too much power to the Council of Ministers

Areas of the draft Freedom of Information Bill that will be reviewed

All consultation responses have now been carefully considered and the Council of Ministers has agreed to a number of areas where the consultation draft of the Bill will be reviewed.

The areas which will be subject to review in light of the consultation responses and the opportunity that it has given officers to further consider the Bill include:-

- Finalising the structure of the phased implementation of the Act
- Re-aligning the instances where an authority may release information on payment of a fee where a 'practical refusal reason' applies and further clarifying the provision for requesting additional fees and its link to refusing a request
- Simplifying the provisions relating to the duty to advise and assist and advising on the progress of a request
- Aligning with the residency qualification the circumstances under which the Information Commissioner need not make a decision
- Considering an amendment to the obligation on authorities to comply with information notices (issued by the Commissioner) so that the legal professional privilege that can be claimed is limited to proceedings under the Act rather than a general claim
- Adding a duty to consult with organisations that are added to Schedule 1 (i.e. that come within the Act's scope in future phases of implementation)
- Removing the provision allowing authorities to refuse to answer a request when a requester does not give their consent to their name being released
- Strengthening the qualified exemption in international relations insofar it relates to confidential information contained within international agreements
- Including a specific reference to deceased persons' medical records in the absolute exemption on personal information
- Including a prosecuting authority for the offence of record tampering

In addition to the above, which is neither an exhaustive nor a definitive list, technical work will continue on the personal information exemptions as well as the usual drafting requirements for new legislation and its interaction with the existing statute book. A number of suggestions for improved readability, clarity and correction of typographical errors were raised in responses and these will also be incorporated as appropriate.

Next steps

The revised Bill will be submitted to the Council of Ministers for approval and, subject to any further changes, permission will then be sought to introduce the Bill into the House of Keys at the beginning of the 2014/15 legislative session (from October 2014 onwards).

Appendix 1 – full list of consultation respondents

Departments, Boards and Offices etc

Department of Community, Culture and Leisure
Department of Education and Children
Department of Economic Development
Department of Environment, Food and Agriculture
Department of Home Affairs
Department of Infrastructure
Department of Social Care
Treasury
General Registry
Communications Commission
Isle of Man Post Office
Manx National Heritage
Manx Radio
Manx Utilities Authority
Office of the Data Protection Supervisor
Office of Fair Trading
Office of Human Resources

Local Authorities

Douglas Borough Council
Lonan Parish Commissioners
Malew Parish Commissioners
Marown Parish Commissioners
Patrick Parish Commissioners
Peel Town Commissioners
Ramsey Town Commissioners

Other Direct Consultees

Positive Action Group
Isle of Man Trade Union Council

Individuals

Mr Pat Ayres (Liberal Vannin Party Vice-Chair)
Mr Dougie L Bairstow
Mr Roy Beale
Mr Chris Blythe
Mr Andrew Cowie
Mr Ross Miller
Mr Andrew Jessopp
Mr Tony Wild MLC



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