

Frequently Asked Questions¹

1. Which authorities will be covered by the Freedom of Information Act?

In order to properly assess and manage the impact of the Act, the Council of Ministers proposes to phase its introduction. It is anticipated that in the first instance, the Act will only apply to Government Departments and to the Cabinet Office.

When fully introduced, the Act will cover all public authorities in the Isle of Man; that is all Government agencies (Department, Boards, Offices and associated Bodies) and all local authorities.

The Act will also cover publicly-owned companies, defined as either:-

- a company in which one or more public authorities owns, whether directly or indirectly, shares or other interests which, when taken together, enable them to exercise more than half the number of votes in a general or other meeting of the company on any matter; or
- a company to the extent that it performs functions or exercises powers under an enactment.

The Act does not cover what might be termed 'semi-public' authorities such as political parties, trade unions or other associations.

2. What information could be released under the Freedom of Information Act?

Unless subject to an exemption (absolute or qualified), or if a practical refusal reason applies, all information held by a public authority covered by the Act is potentially subject to release if requested.

This means, for example, that businesses which provide goods or services to public authorities, or which receive money from them, should be aware that information which they provide to an authority (or which it holds about them) could be released. However, in such circumstances, it is likely that certain exemptions, such as information provided in confidence or the economy and commercial interests will be relevant.

Companies which fall within the second definition of publicly-owned companies in question 1 should consider the potential implications of the Act with the public authority on whose behalf they perform a statutory function or exercise powers.

A request for information needs to be considered on a case by case basis, and release will depend on a number of factors including the nature of the information

¹ The FAQs are written for guidance purposes only and should not be taken as official advice on how the Freedom of Information Act will operate. The Questions are written as if the Bill as currently drafted will be enacted; therefore references to the 'Act' are for presentational purposes only and do not pre-empt the outcome of the consultation process.

requested and the timing of a request (for example, an exemption which applies at one point in time might not apply at a later stage).

Applicants cannot use the Freedom of Information Act to request their own personal information; they will continue to have to submit a subject data access request under the Data Protection Act 2002. There are also exemptions for personal information of a third person as part of a complex interaction between the Freedom of Information Act and the Data Protection Act.

In summary, there are a number of circumstances under which information will not be released under the Act, including if:-

- It was created before 11 October 2011, the start of the current Administration (see question 8);
- It was requested by someone not ordinarily resident in the Isle of Man (see question 9);
- It relates to information held by a public authority not listed in Schedule 1 of the Act at the time of the request (linked to the Act's phased introduction, see question 1);
- An absolute or a qualified exemption applies;
- A practical refusal reason applies (e.g. if the request is vexatious);
- It is not a 'valid request' (e.g. if the request is not submitted in the correct manner).

In some of these circumstances, a public authority would consider a request with reference to the existing Code of Practice on Access to Information (see question 7).

3. Will Council of Ministers' papers be available?

Proceedings of the Council of Ministers are currently statutorily confidential under the Council of Ministers Act 1990. This position will not change for information created prior to the proposed start of the freedom of information regime, 11 October 2011.

However, for information created from this date it is proposed that the legal position will change to the extent that access to Council papers will be governed by the exemption regime and other parameters set out in the Freedom of Information Act.

As is the case in other jurisdictions, the introduction of a Freedom of Information Act in the Isle of Man does not mean that Council of Ministers' papers, or other internal advice and discussions, will be available to the public without restriction; a position which is central to the balance between openness and effective government.

4. Why introduce a Freedom of Information Act if the current Code of Practice works well?

At present, unlike in many other developed jurisdictions, the people of the Isle of Man do not have a statutory right of access to information held by public authorities.

Under a Freedom of Information Act, residents will be able to exercise their 'information rights' with the added weight and with the protection of the law, thus providing a firmer footing on which to do so.

The Act creates a number of statutory duties on public authorities which are not in place at present, such as a duty to provide advice and assistance to people making requests and a duty to advise an applicant about the progress of their request.

Furthermore, the experience in other jurisdictions has shown that the force of law is often required as a driver for cultural change within public authorities to reinforce a culture of openness and transparency.

The introduction of a Freedom of Information Act honours a commitment which the Chief Minister gave in his statement of policy priorities to Tynwald when it elected him to the position.

5. Why will a Freedom of Information Act cost more than the Code of Practice?

The Code of Practice is embedded across Government but in some parts of Government, especially those which receive very few requests under the Code, the working knowledge of the Code is directly proportionate to the number of requests that are received.

However, the introduction of a statutory freedom of information regime, placing as it does a legal duty on public authorities and their staff to provide information, necessarily increases the awareness raising and training obligations on authorities; obligations which will have to be rigorously applied and which are ongoing. These obligations will incur a cost, particularly in respect of potential legal proceedings and legal advice.

Moreover, experience from elsewhere has shown that a statutory right of access to information has increased the number of requests for information which are received by public authorities. This can mean that more officer time and more resources are required to meet this increased demand. It is the potential increase in the number of requests which in some authorities, particularly smaller ones, has led to very real concerns about their ability to effectively undertake other day-to-day duties.

6. How will the Freedom of Information Act differ from the Code of Practice?

The fundamental difference is that it creates a legally enforceable right to access information. It also imposes legal duties on public authorities.

As a consequence of creating a legal access right, the Act has to be more prescriptive than the Code in a number of areas ranging from the requirements necessary for an information request to be valid through to the review and enforcement provisions.

As already noted, the Act will alter the basis on which information can be requested and the circumstances under which it will be made available. The amendment to the statutory confidentiality of Council of Ministers proceedings is an example of this change.

The type and range of information available under the Act, however, is expected to be similar to what is already obtainable under the Code of Practice.

In accordance with all other freedom of information regimes, the Act (like the Code), contains exemptions from the right of access. In the Act, these exemptions are either absolute or qualified (the latter requiring an assessment of the public interest), a much clearer division than in the current Code.

Moreover, it is proposed that the Act will use different terminology than that used in the Code, examples being the consolidation of 'practical refusal reasons' and the 'decision period' for public authorities to decide whether or not to release information.

7. In what circumstances will the Code of Practice still apply once the Freedom of Information Act has been introduced?

Given the proposed phased implementation of the Act, together with the parameters which it will set around the scope of the statutory regime, the Code of Practice will still cover information requests in the following circumstances:-

- Requests for information created before 11 October 2011;
- Requests from non-residents of the Isle of Man;
- Requests for information held by public authorities not covered by the Act during its phased introduction which are currently subject to the Code; and
- Requests which are not valid requests for information under the Act (in certain circumstances).

8. Why limit the Freedom of Information Act to information created since the start of the current Administration?

The Council of Ministers has considered a number of parameters to help control the costs of implementing the Act. One of these parameters is the date from which the Act becomes effective in terms of the information which falls within its scope.

Opening up all information held by public authorities to a statutory freedom of information regime would significantly increase the cost for compliance for a number of reasons not least by increasing the potential number of requests and the obligations on public authorities to proactively manage and prepare older information for the statutory right of access.

As noted in question 7, requests for information created before 11 October 2011 will be considered with reference to the existing Code of Practice. There are also access rights to public records provided by the Public Records Act 1999 which are not affected by the Freedom of Information Act.

9. Why create a statutory right of access to information for Isle of Man residents only?

One of the consequences of freedom of information legislation elsewhere is the use of requests by private companies seeking information from public authorities which they then sell on.

These requests are often for detailed information and are submitted to many public authorities at the same time in a 'round robin' type format. As the Isle of Man Government appears on many databases and can sometimes be mistaken by companies as part of the UK – or subject to the UK Freedom of Information Act – it is not uncommon for public authorities on the Island to be caught by these 'round robin' requests.

By restricting the scope of the Act to Isle of Man residents, public authorities can avoid a statutory obligation to respond to automated 'round robin' requests from other jurisdictions and instead focus limited resources on requests from residents who consume the Government's services and who are directly affected by its decisions.

As noted in question 7, requests for information from non-Island residents will be considered with reference to the existing Code of Practice.

10. Why not just put the Code of Practice on Access to Information on a statutory footing?

This question has been asked in the past. The Freedom of Information Act is essentially what putting the existing Code of Practice on a statutory footing looks like.

By enacting the Code, provisions in an Act by their very nature have to be more prescriptive and precise than when on a non-statutory basis.

However, as the answers to some of previous questions have noted, the Council of Ministers has not sought to introduce an overcomplicated Act or to make its provisions in anyway disproportionate to the spirit and practice of the Code.

An Act is different from a Code, and these inherent differences are encapsulated in the Freedom of Information Act.