

**Code of Practice on  
Access to Government Information**



**Isle of Man  
Government**

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**Approved and issued by the Council of Ministers**

**Amended with effect from 1 February 2016**

## **Introduction**

This revised version of the Code of Practice on Access to Government Information has been developed in response to changes in the legislation of the Isle of Man (and further afield) since this document was first issued, by the Council of Ministers, in September 1996. The most notable of these changes are the enactment of the Public Records Act 1999 ("PRA"), which establishes a Public Record Office and the provision for public records, the Data Protection Act 2002 ("DPA"), which regulates the processing of information relating to individuals and most recently the Freedom of Information Act 2015 ("FOIA"), which makes provision for the disclosure of information held by public authorities.

Taken together with the above legislation, this Code represents the Isle of Man Government's view that citizens must have adequate access to information to promote the public interest but in a way that is balanced with the requirement to maintain privacy of individuals and effective Government. Therefore exceptions to the right of access are detailed within the relevant pieces of legislation and this Code.

In addition, to the legislative changes, the Isle of Man Government is committed to open government and transparency and much of what is done by the Government is detailed on our webpages, which can be found at [www.gov.im](http://www.gov.im).

This revised Code takes account of the legislative changes but in all other respects remains the same as the Code issued in 1996. The main difference that will be noted is that this Code cannot be used where the correct route to access information is through the access provisions of the PRA, DPA, FOIA or any other piece of legislation which provides for an application for information to be made. This Code can therefore be used in the following circumstances:

1. To make an application for information created before 11 October 2011 (the date on which FOIA becomes applicable).
2. To make an application, which would be correct to make under the provisions of the Freedom of Information Act 2015 but;
  - a. which is to an area of the Government which is not defined as a public authority for the purposes of FOIA; or
  - b. the applicant for the information does not reside in the Isle of Man.

The other main revision of this Code is that the enactment of FOIA provided for the appointment of the Information Commissioner as an independent regulator of information rights. Part of the function of the Information Commissioner is to regulate the DPA, FOIA and this Code.

To obtain information under the terms of this Code you should make an application, in writing to the relevant Government Department. Should you feel that you have not received an adequate response to your request, a complaints procedure can be found at paragraph 11 of this Code.

Further information and advice can be found by clicking on the following link <https://www.gov.im/about-the-government/accessing-government-information/>.

## **Code of Practice on Access to Government Information**

[Throughout this code references are made to 'Department' and 'Minister'. The code applies:-

1. To information created before 11 October 2011; and
2. To information created on or after 11 October 2011 and held by a Department which is not a public authority for the purposes of FOIA
3. When a request for information is made by a non-Isle of Man resident.

The Code is equally applicable to Statutory Boards, Offices and all parts of the Isle of Man Government. The terms 'Department' and 'Minister' should be read accordingly.]

### **Part I**

#### **Purpose**

1. This Code of Practice supports the Government's policy of extending access to official information, and responding to reasonable requests for information, except where disclosure would not be in the public interest as specified in Part II of this Code.
2. The aims of the Code are:
  - to improve policy-making and the democratic process by extending access to information in order to provide the basis for the consideration of proposed policy;
  - to protect the interests of individuals and companies by ensuring that reasons are obtainable for administrative decisions, except where there is statutory authority or established convention to the contrary; and
  - to support and extend the principles of public service.

These aims are balanced by the need:

- to maintain high standards of care in ensuring the privacy of personal and commercially confidential information; and
- to preserve confidentiality where disclosure would not be in the public interest or would breach the provisions of the DPA or the confidences of a third party, in accordance with statutory requirements and Part II of the Code.

#### **Information the Government will release**

3. Subject to the exemptions in Part II, the Code commits Government Departments:
  - (i) to publish the facts and analysis of the facts which the Government considers relevant and important in framing major policy proposals and decisions; such information will normally be made available when policies and decisions are announced;
  - (ii) to publish or otherwise make available, as soon as practicable after the Code becomes operational, explanatory material on Departments' dealings with the public (including such rules, procedures, internal guidance to officials and similar administrative manuals as will

assist better understanding of departmental action in dealing with the public) except where publication would prejudice any matter which should properly be kept confidential under Part II of the Code;

- (iii) to give reasons for administrative decisions to those affected;
  - (iv) to make available on request:
    - full information about how public services are run, how much they cost, who is in charge, and what complaints and redress procedures are available; and
    - full information about what services are being provided, what targets are set, what standards of service are expected and the results achieved.
  - (v) to release, in response to specific requests, information relating to their policies, actions and decisions and other matters related to their areas of responsibility.
4. There is no commitment that pre-existing documents, as distinct from information, will be made available in response to requests. The Code does not require Departments to acquire information they do not possess, to provide information which is already published, to provide material which the Government did not consider to be reliable information, or to provide information which is provided as part of an existing charged service other than through that service.

### **Responses to Requests for Information**

5. Information will be provided as soon as practicable. The target for response to simple requests for information is 10 working days from the date of receipt. This target may need to be extended when significant search or collation of material is required. Where information cannot be provided under the terms of the Code, an explanation will be given.

### **Scope**

6. The Code applies to Government Departments, Statutory Boards, Offices and all other bodies comprising the Government. This Code does not apply to information created on or after 11 October 2011 and held by Government Departments, Statutory Boards, Offices and any other bodies defined for the purposes of FOIA as a Public Authority.

### **Charges**

7. Bodies referred to in paragraph 6 should make no charge for processing simple requests for information. Where a request is complex and would require extensive searches or records or processing or collation of information, a charge, reflecting reasonable costs, may be made if notified in advance.

### **Relationship to Statutory Access Rights**

8. In addition to the provisions of FOIA and the DPA, there are certain statutory access rights to information. Where access to information is governed by such statutory rights the provisions of that statute should be followed and not the Code. The Information Commissioner is the regulator for the purposes of FOIA and the DPA and it is not envisaged that the Information Commissioner will become involved in supervising other statutory rights, outside of his own remit. Where a statutory right is proposed but has yet to be implemented, access to relevant information may be sought under the Code, but the Code should not be regarded as a means of access to original documents or personal files.

## **Public Records**

9. The Code is not intended to override statutory provisions on access to public records under the terms of the PRA or any other statutory provisions on access to public records.

## **Jurisdiction of Courts, Tribunals or Inquiries**

10. The Code only applies to Government-held information. It does not apply to or affect information held by courts or contained in court documents. 'Court' includes tribunals and inquiries (other than administrative tribunals and inquiries). The present practice covering disclosure of information before, courts, tribunals and inquiries will continue to apply.

## **Investigation of Complaints**

11. Complaints that information which should have been provided under the Code has not been provided, or that unreasonable charges have been demanded, should be made first to the Department or body concerned. If the applicant remains dissatisfied, complaints may be made through a Member of Tynwald to the Information Commissioner. Complaints will be investigated by the Information Commissioner who will advise the complainant of his decision.

## **Reports to Tynwald**

12. The Information Commissioner will present an annual report to Tynwald on his work under the Code, listing the complaints dealt with and the outcome.

# **Part II**

## **Reasons for Confidentiality**

The following categories of information are exempt from the commitments to provide information in this Code.

References to harm or prejudice include both actual harm or prejudice and risk or reasonable expectation of harm or prejudice. In such case, it should be considered whether any harm or prejudice arising from disclosure is outweighed by the public interest in making information available.

The exemptions will not be interpreted in a way which causes injustice to individuals.

### **1. Security and External Relations**

- (a) Information whose disclosure would harm national security or defence.
- (b) Information whose disclosure would harm the conduct of international relations or affairs.
- (c) Information received in confidence from other governments, courts in other jurisdictions or international organisations.

### **2. Internal discussion and advice**

Information whose disclosure would harm the frankness and candour of internal discussion, including:

- proceedings of the Council of Ministers and Council of Ministers' committees;
- internal opinion, advice, recommendation, consultation and deliberation;

- projections and assumptions relating to internal policy analysis; analysis of alternative policy options and information relating to rejected policy options;
- confidential communications between Departments, public bodies and regulatory bodies.

3. **Communications with the Royal Household and the Governor**

Information relating to confidential communications with Her Majesty the Queen or other Members of the Royal Household and Her Majesty's personal representative, or relating to confidential proceedings of the Privy Council.

4. **Law enforcement and legal proceedings**

- (a) Information whose disclosure could prejudice the administration of justice, including fair trial and the enforcement or proper administration of the law.
- (b) Information whose disclosure could prejudice legal proceedings or the proceedings of any tribunal, public inquiry or other formal investigation (whether actual or likely) or whose disclosure is, has been or is likely to be addressed in the context of such proceedings.
- (c) Information relating to proceedings which have been completed or terminated, or relating to investigations which have or might have resulted in proceedings.
- (d) Information covered by legal professional privilege.
- (e) Information whose disclosure could prejudice the prevention, investigation or detection of crime, the apprehension or prosecution of offenders, or the security of any building or penal institution.
- (f) Information whose disclosure could harm public safety or public order.
- (g) Information whose disclosure could endanger the life or physical safety of any person, or identify the source of information or assistance given in confidence for law enforcement or security purposes.
- (h) Information whose disclosure could increase the likelihood of damage to the environment, or rare or endangered species and their habitats.

5. **Immigration and Nationality**

Information relating to immigration, nationality, consular and entry clearance cases.

6. **Effective management of the economy and collection of taxes**

- (a) Information whose disclosure would harm the ability of the Government to manage the economy, or could lead to improper gain or advantage.
- (b) Information whose disclosure would prejudice the assessment or collection of tax, duties or National Insurance contributions, or assist tax avoidance or evasion.

7. **Effective management and operations of the Public Service**

- (a) Information whose disclosure could lead to improper gain or advantage or would prejudice;

- the competitive position of a Department or other public body or authority;
  - negotiations or the effective conduct of personnel management or commercial or contractual activities;
  - the awarding of discretionary grants.
- (b) Information whose disclosure would harm the proper and efficient conduct of the operations of a Department or other public body or authority or of any regulatory body.

8. **Public employment, Public Appointments and Honours**

- (a) Personnel records (relating to public appointments as well as employees of public authorities) including those relating to recruitment, promotion and security vetting.
- (b) Information, opinions and assessments given in confidence in relation to public appointments.
- (c) Information, opinions and assessments given in relation to recommendations for honours.

9. **Voluminous or vexatious requests**

Requests for information which are vexatious or manifestly unreasonable or are formulated in too general a manner, or which (because of the amount of information to be processed or the need to retrieve information from files not in current use) would require unreasonable diversion of resources.

10. **Publication and prematurely in relation to publication**

Information which is or will soon be published, or whose disclosure would be premature in relation to a planned announcement or publication.

11. **Research, statistics and analysis**

- (a) Information relating to incomplete analysis, research or statistics, where disclosure could be misleading or deprive the holder of priority of publication or commercial value.
- (b) Information held only for preparing statistics or carrying out research, or for surveillance for health and safety purposes (including food safety) and which relates to individuals, companies or products which will not be identified in reports or that research or surveillance, or in published statistics.

12. **Personal Information**

Any disclosure of personal data which should be made under the DPA or would otherwise contravene the DPA (in particular the Data Protection Principles) and/or FOIA. .

13. **Third Party's Commercial Confidences**

Information including commercial confidences (including grants and loans), trade secrets or intellectual property whose unwarranted disclosure would harm the competitive position of a third party.

14. **Information given in confidence**

- (a) Information held in consequence of having been supplied in confidence by a person who:
  - gave the information under a statutory guarantee that its confidentiality would be

protected; or

- was not under any legal obligation, whether actual or implied, to supply it, and has not consented to its disclosure.
- (b) Information whose disclosure without the consent of the supplier would prejudice the future supply of such information.

15. **Statutory and other restrictions**

- (a) Information whose disclosure is prohibited by or under any enactment, regulation, European Community law or international agreement.
- (b) Information whose release would constitute a breach of Parliamentary Privilege.

Approved and issued by the Council of Ministers

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[insert date]