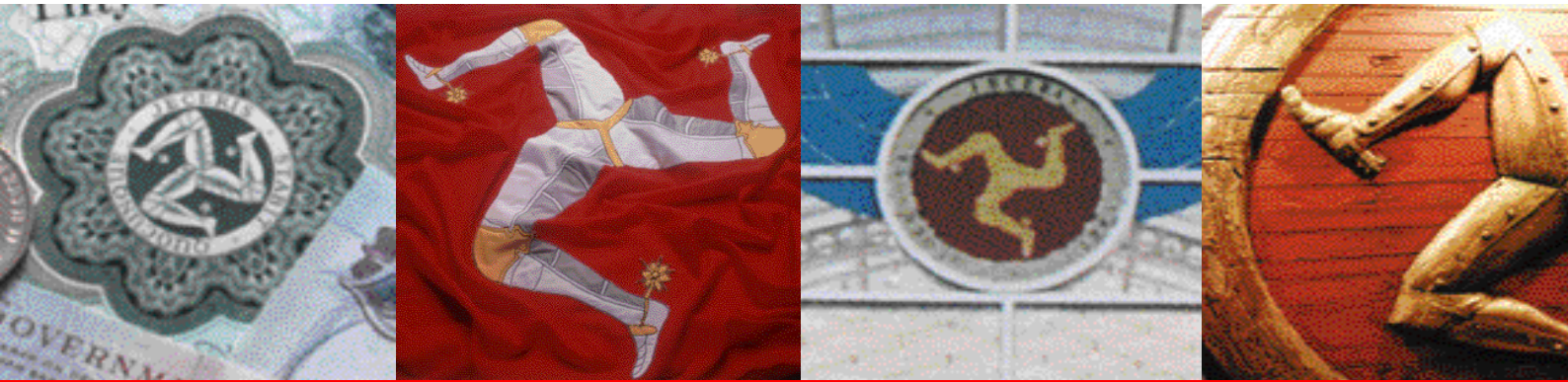




**Isle of Man
Government**

Reiltys Ellan Vannin



Consultation on a Cost Limit for Freedom of Information Requests

Cabinet Office
Oik Coonceil ny Shirveishee

August 2016

Contents

1.	Introduction	3
2.	Impact of the Act	4
3.	Options for Managing the Impact of FOI Requests	5
4.	Issues on which views are sought	6
5.	Summary	7
6.	Appendix - List of Direct Consultees	9

1. Introduction

- 1.1. The Freedom of Information Act 2015 (the Act) has placed the right of access to information held by public authorities on a legal footing for the first time. It is intended that the Act will be extended across the public sector on a phased roll out as follows:

1 Feb 2016	Pilot phase Cabinet Office and the Department of Environment, Food and Agriculture
1 Jan 2017	Other Government Departments, the Information Commissioner and Tynwald and its branches
1 Jun 2017	Statutory Boards and Offices and publicly owned companies
1 Jan 2018	Local Authorities and private companies to the extent that they perform functions or exercise powers conferred on a public authority under an enactment

- 1.2. Prior to the Act the Isle of Man had the benefit of learning from the experience of neighbouring jurisdictions and their respective Freedom of Information (FOI) regimes. During the pilot phase of introduction, covering the Cabinet Office and Department of Environment, Food and Agriculture (DEFA) further practical insight has been gained, outlined in more detail below.
- 1.3. One of the primary purposes of the pilot phase has been to identify areas for refinement and further improvement, particularly prior to the Act's extension to other parts of the public service. The pilot phase has also served as an opportunity to observe and gather evidence on the impact of FOI requests on Departments and the use of the rights granted by the Act to Isle of Man residents.
- 1.4. The Isle of Man Government's ongoing commitment to openness and transparency remains at the forefront of the FOI regime. The policy proposals outlined in this consultation are in no way intended as a barrier to access; rather they seek to strike a careful balance with effective government and value for the taxpayer. Given the Island's demographics, in terms of size and resources, reflection on experience to date is also considered a useful exercise.
- 1.5. The FOI Team looks forward to receiving comments from the public and interested parties, and would encourage feedback on this consultation.

2. Impact of the Act

2.1. The Act came into force in respect the Cabinet Office and Department of Environment, Food and Agriculture on 1 February 2016 and to date, 41 requests have been received. During this time the following statistics have been collated on the time taken to respond to requests and an average cost of responding to requests. This time is based on an average staff cost of £25 per hour and includes the time taken to co-ordinate the request, search and retrieve information, assess information against the Act, consult with third parties, apply exemptions, redact the information and formulate a response

All Requests	Cabinet Office	DEFA
Total number of requests received	28	13
Average cost of responding to requests	£463	£578
	Approximately 19 hours work per request	Approximately 23 hours work per request.

2.2. Further analysis shows that 12 separate FOI requests were submitted by a single requester simultaneously to the Cabinet Office and 2 by the same single requester to DEFA. The following tables provide statistics on the burden placed on the Cabinet Office and DEFA by one requester.

Single Requester	Cabinet Office	DEFA
Total number of requests	12	2
Average cost of responding to requests.	£671	£1,549
	Approximately 27 hours work per request.	Approximately 62 hours work per request

Requests from <u>all other</u> requesters (not including requests from the single requester)	Cabinet Office	DEFA
Total number of requests	16	11
Average cost of responding to requests	£297	£335
	Approximately 12 hours work per request.	Approximately 14 hours work per request.

2.3. Conclusions which can be drawn from these statistics are that:

- i. The Act is generally working well, people are using it and it is resulting in some good quality information being made public. This can be evidenced by looking at the FOI responses page online.¹
- ii. There is the potential for multiple requests submitted contemporaneously by individual requesters to place a disproportionate burden on public authorities. This is evidenced

¹ www.gov.im/about-the-government/access-to-government-information/freedom-of-information-responses/.

by the fact that the average cost for answering the requests by the Cabinet Office for one requester is more than twice the cost of answering other requests.

- iii. More single requests have been submitted by different individuals than multiple requests by a single requester.
- iv. Whilst protection exists within the legislation for the burden on public authorities to be managed by way of the vexatiousness provisions, public authorities have so far been unwilling to do this.
- v. It remains of paramount importance to encourage transparency and the disclosure of information by proactive publication and in response to FOI requests. However whilst encouraging focussed FOI requests there is a burden placed on the taxpayer when a public authority has to answer unfocussed requests.

3. Options for Managing the Impact of FOI Requests

Fees

- 3.1. One method suggested for managing the burden on public authorities is the introduction of an upfront fee payable by the requester at the time of submitting an FOI request. This option has been discounted for a number of reasons:
 - A fee could deter people with limited means regardless of the importance of the request.
 - There would be an administrative burden in collecting the fee.
 - None of our neighbouring jurisdictions charge an upfront fee to submit an FOI request.
- 3.2. The recent UK Independent Commission on Freedom of Information² (the UK Commission) has recently concluded that it would not be appropriate to impose an upfront fee. The intention of the UK is therefore to continue with the current regime of not charging a fee for making FOI requests but to maintain the costs limit currently provided for in the UK's regulations (The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004).

Cost Limit

- 3.3. The Act gives the Council of Ministers powers to make Regulations regarding a cost limit, above which a public authority may refuse to give an applicant the requested information, if the public authority estimates that the cost of searching for or preparing (or both) the information to give to the applicant would exceed the amount prescribed by regulations made for the purposes of this paragraph. To date, this practical refusal reason has not been used because of the absence of such regulations.
- 3.4. Based on the experience of the Cabinet Office and DEFA to date, and prior to the extension of the Act to other public authorities, views are sought from the public on the

² www.gov.uk/government/publications/independent-commission-on-freedom-of-information-report

proposal that a cost limit³ is put in place (in addition to the existing vexatiousness provisions), to provide some level of protection against the burden caused by the time taken to respond to some FOI requests. To support the spirit of the Act any provisions should balance protecting the resources of a public authority by managing the burden placed on them whilst at the same time not discouraging the making of FOI requests.

4. Issues on which views are sought

4.1. It is proposed that the introduction of a cost limit would provide such protection for public authorities without the need to adopt an upfront fee for making requests. The views of the public are sought on the following policy proposals for such a limit:

i. Would you support a proposal that;

a. a public authority can refuse to comply with a request if it estimates that it will take more than 12 hours to collate the information or less than 12 hours to collate the information but more than 12 hours to physically redact the information, therefore setting a prescribed limit of £300 in each instance and an overall time limit of up to 24 hours per request;

or alternatively;

b. a public authority can refuse to comply with a request if it estimates that it will take:

- **more than 12 hours to search for the information; or**
- **less than 12 hours to search for the information but more than 28 hours to comply with a request for information by any reasonable means, which includes the provision of a copy of the information in permanent form or in another form acceptable to the applicant; the provision of a digest or summary of the information and the provision to the applicant of a reasonable opportunity to inspect a record containing the information. Therefore setting a prescribed limit of £300 to search for the information and £700 for the preparation of the information for disclosure**

- *Statistics collated from the pilot indicate that the most onerous requests (which result in a diversion of resources), being two to DEFA from a single requestor would be able to be refused under the proposed limit. Other requests which have included both significant collation time and significant redaction time to date would still be able to be complied with as they would not have exceeded the costs limit in each case.*
 - *This already appears to follow the suggestion of the UK Commission, stated above, to protect the resources of a public authority. It also takes account of the practical situation where the information is easy to find, but vast in terms of scope and the requirement to redact.*

³ in accordance with s11(3)(f)

- ii. **Would you support a proposal that 2 or more similar requests from the same person or associated persons, received within 60 days of each other can be aggregated for the purposes of calculating if the prescribed cost limit is exceeded;**

- *This will reduce the possibility of having overlapping requests where a public authority is dealing with several requests at any one time from one requester to the detriment of other requesters and the ability of the public authority to either respond on time or continue with its own day to day business.*
- *This is in line with regulations in the UK and in Jersey.*

- iii. **Would you support the proposal that subject to a specified maximum, a public authority can charge for the physical supply of information (disbursements such as photocopying etc.) and communicating it (putting in an applicant's preferred format, for example);**

- *To date, all information has been supplied electronically but this will cover the situation where information is requested in hard copy.*

- iv. **Would you support the proposal that a public authority would have discretion to waive charges for the physical supply of information, in whole or in part and/or discretion to respond to a request notwithstanding the fact that the costs limit could be used to refuse a request?**

- v. **Should it be recognised within any regulations that public authorities that are not central government departments will have fewer resources and that a lower costs limit should be adopted in respect of these, for example for those authorities who employ fewer than 20 full time officers?**

- *Both the UK's and Jersey's respective fees regulations draw a distinction between public authorities which form part of central government and those which do not. They each recognise that a central government department has greater resources to manage FOI requests and therefore set a lower costs limit for other public authorities. It is proposed that this is explored further during consultation.*

5. Summary

- 5.1. The introduction of cost limit regulations would form the balance to extending FOI across Departments and later all other public authorities, as it would provide the means by which requests that would significantly impact on the Department's business, could be refused.
- 5.2. Introducing a cost limit for FOI requests represents a policy change for the Isle of Man FOI regime and; in the interests of transparency and in the spirit of the Act, this public consultation on the principles of the proposed cost limit, as outlined above, is considered appropriate, to gauge the views of stakeholders.

- 5.3. The findings of the consultation will be referred back to the Council of Ministers, with draft regulations (if applicable). If supported, any regulations would be considered at the December 2016 sitting of Tynwald, at the same time as the Order proposing extending FOI to the remaining Departments, as there is a political commitment to Departments being included in the FOI regime by 1 January 2017.

6. Consultation Process

- 6.1. Comments are invited on the proposals in this consultation document. The consultation is being conducted by the Cabinet Office.

- 6.2. The closing date for comments is **16 September 2016**. Please send your views to:

Freedom of Information Team
Cabinet Office
Government Office
Bucks Road
Douglas
Isle of Man
IM1 3PN

Email: foi@gov.im

- 6.3. If by reason of a disability you are unable to respond or get in touch in writing please telephone 685314.
- 6.4. When submitting your views please indicate if you are responding on behalf of an organisation.
- 6.5. To ensure that the process is transparent and consistent with the Government's Code of Conduct on Consultation responses can only be accepted if you provide your name with your response.
- 6.6. Unless specifically requested otherwise, any responses received may be published either in part or in their entirety along with the name of the person or body that has submitted the response. Please mark your response clearly if you wish your response and/or name to be kept confidential. Confidential responses will be included in any statistical summary and numbers of comments received.
- 6.7. The purpose of consultation is not to be a referendum but an information, views and evidence gathering exercise from which to take an informed decision. In any consultation exercise the responses received do not guarantee changes will be made to what has been proposed.
- 6.8. A summary of the responses will be published after the consultation has closed.

7. Appendix - List of Direct Consultees

Tynwald Members

Clerk of Tynwald

Local Authorities

Information Commissioner

Chief Officers of Government Departments, Boards and Offices

Isle of Man Chamber of Commerce

Isle of Man Law Society

Positive Action Group



**Isle of Man
Government**

Reiltys Ellan Vannin



**This document can be provided in
large print on request**

Cabinet Office
Government Office
Bucks Road
Douglas
IM1 3PN

www.gov.im/about-the-government/offices/cabinet-office/