



Isle of Man
Government

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Cabinet Office

Summary of the consultation responses on a Cost Limit for Freedom of Information Requests

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Response to Consultation on a Cost Limit for Freedom of Information Requests

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1. Introduction

- 1.1 A public consultation on a cost limit for freedom of information (FOI) requests was published on 5 August 2016. The consultation closed on 16 September 2016; a small number of responses were received slightly after that date and were accepted.
- 1.2 The consultation sought views on whether there should be a cost limit for FOI requests – a 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.
- 1.3 The consultation document emphasised that the Isle of Man Government's ongoing commitment to openness and transparency remain at the forefront of the FOI regime.

'The policy proposals outlined in the 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'.

- 1.4 The consultation was sent to the following 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
- 1.5 A summary of the responses is set out in this document. The consultation document is still available for reference on the [Isle of Man Government website](#). Council of Ministers is grateful to everyone who responded to the consultation.

2. Summary of the outcome of the consultation

- 2.1 A total of 22 responses were received. The majority of responses were from the public sector, including submissions from local government, industry associations and a member of the public. Some respondents requested that their responses were not published.
- 2.2 The respondents to the consultation were as follows:
 - i. Cabinet Office - Executive Office
 - ii. Clerk of Tynwald
 - iii. Department of Environment, Food and Agriculture (DEFA)
 - iv. Department of Home Affairs (DHA)
 - v. Department of Health and Social Care (DHSC)
 - vi. Department of Infrastructure (DOI)
 - vii. Treasury
 - viii. Public Sector Pensions Authority (PSPA)
 - ix. Manx National Heritage
 - x. Office of Fair Trading
 - xi. Information Commissioner
 - xii. Communications Commission (Comms Comm)

- xiii. IOM Post Office
- xiv. Douglas Borough Council
- xv. Lezayre Parish Commissioners
- xvi. Marown Parish Commissioners
- xvii. Braddan Commissioners
- xviii. Patrick Parish Commissioners
- xix. Ramsey Town Commissioners
- xx. Isle of Man Chamber of Commerce¹
- xxi. Positive Action Group
- xxii. Manx ICT Association
- xxiii. Private Individual

2.3 Specifically the consultation sought views specifically on five questions:

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**

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?**

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);**

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?**

¹ This response has been indicated as the views of respective businesses who are members of the IOM Chamber of Commerce.

- 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?**

3. Next Steps

- 3.1 The following sections detail the responses received in general and to the specific questions posed in the consultation. Whilst some respondents supported the concept of a cost limit, there was no consensus amongst respondents as to how this should be achieved. Furthermore some respondents, including parts of Government and the Information Commissioner advised that they felt that the introduction of a cost limit is premature at this time.
- 3.2 Council of Ministers has considered the responses received to the consultation and has agreed that it is premature to introduce a cost limit for FOI requests at this stage.
- 3.3 It is recognised from the pilot phase of the implementation that the Cabinet Office and the Department of Environment, Food and Agriculture have been reluctant to use the existing provisions in the Act to protect finite resources. Both Departments have sought to be as helpful as possible with FOI requests and consequently have not sought to narrow or refuse requests perhaps as robustly as should have been done.
- 3.4 Public authorities will be provided with further training (in conjunction with the Information Commissioner), guidance and support on how to manage the burden of FOI requests using the provisions existing with the Act. These include but are not limited to:-
- A public authority is not required to create information that it does not hold or derive information from information that it holds;
 - A public authority is not required to undertake substantial compilation of information that it holds;
 - A public authority can refuse to comply with a request where the request is vexatious, malicious, frivolous, misconceived or lacking in substance.

4. General Comments Received

Positive Action Group ("PAG")

PAG welcome the rejection of charging applicants for requests.

PAG agrees a careful balance needs to be struck with effective, open, transparent government and value for the taxpayer...Equally as important is a recognition that any cost limits should be subject to an explicit public interest test.

To consider limiting costs after 6+ months is premature as:- a) the public bodies may not have fully integrated the operation of the law into working practices and b) the introduction may have released a pent-up demand, within certain people, for statutory access to public information.

The impact assessment is based on only 41 requests.

The suggestion of cost limitation appears to have arisen because one person made 12 unfocussed requests. To impose such a restriction at this early stage of the Act is reminiscent of a teacher giving detention to the whole class for the misdemeanours of one pupil!

Cost limits should be subject to an explicit public interest test.

The response concludes that:

Cost limit considerations are held back until after the Act is fully implemented.

PAG does not discount completely the possible need to allow a request to be refused where the amount of work needed to answer it exceeds a given number of hours. To come to a conclusion about this after a limited introductory period is premature.

In order to avoid confusion or misinterpretation stricter definition is required for certain terms used within this document.

In the spirit of FOI any cost limit should be wholly justified according to explicit public interest considerations.

Department of Health and Social Care

Restricting FOI requests, other than by the legal criteria in the FOI Act itself should not be introduced.

Manx National Heritage

MNH propose a delay in implementing any cost limit for FOI requests, subject to a further 12 months experience and data review of FOI requests across the wider government Departments from January 2017. We do recognise a cost limit should be applied but until the process and administration input is more widely known and shared from more Departments the details of such a scheme should not be solely determined on just two bodies. Whilst experience and standards have been sought from other jurisdictions to benchmark the process, our administration functions are different and may require some adjustment to the cost scheme that can only be determined with more local evidence.

Ramsey Town Commissioners

Supportive of the introduction of FOI provisions but does not feel that a restriction on the basis of costs is appropriate. The Commissioners recognise however, that vexatious or repetitive requests should be able to be rejected. The Commissioners have no comment on the level of costs consulted upon, however would support the suggestion, in the consultation document, that individual authorities be permitted a discretion to waive any

charge introduced, so that authorities could determine their own policy and could review such from time to time in light of their experience.

Lezayre Commissioners

As a small authority there are limited resources to deal with information requests.

Braddan Commissioners

The Commissioners at this stage have simply stated that they think that a cost limit should be imposed, but they look forward to further details on the proposal to apply a lower cost limit on an Authority with staff fewer than 20 full time officers.

Private Individual

...my view is that if members of Tynwald have a right to information and are not clearly charged/invoiced then how can the Government impose an unfair charge/fee on its people? If the Government was to bring in a charge I firmly believe the Government MUST allow at least 5 requests without charge. Freedom of Information should be exactly that free to use.

Patrick Parish Commissioners

Members resolved to make no substantive comment other than to observe that a limit would be useful.

Chamber of Commerce

...As there is currently no formal process for weighting responses, Chamber would like to ensure this consultation does not count Chambers submission simply as 'one' response out of the total you receive and will be considered in accordance with the Code of Practice on Consultations which states: 'Do not simply count votes when analysing responses. Particular attention may need to be given to representative bodies, such as business associations, trade unions, voluntary and consumer groups and other organisations representing groups especially affected.'

We would also ask that you notify us when your response to the consultation is published.

In the original FoI consultation, we encouraged individual members to submit their views directly. On this occasion we are submitting a collective view gained from a broad representation of members by sector and size through Chambers Council.

The following is an extract from the original Bill consultation in Feb 2014 [p.9]:

'In the House of Keys on 12 November 2013, the Chief Minister advised that the working estimate for implementation was up to £500,000 per year for the initial stages, depending upon the timescale over which preparation is undertaken. The Chief Minister also confirmed his expectation that the sum of £500,000 ought not to be exceeded within any financial year going forward'.

The costs had been estimated when Tynwald passed the legislation, the Treasury would have budgeted for this (on the assumption Treasury budgets for the cost of all new legislation Tynwald passes). The total cost of complying (as stated in this consultation at 2.1) is £20,478, which is only 4% of the expected annual cost, 7 months into the Act coming into force.

Section 10(2) of the FoI Act: A public authority is not required by this Act to give the applicant the information if [s.10(2)(b)] a practical refusal reason applies.

The consultation document makes it clear that the public authorities have not been using the protection afforded under the vexatious provisions. It expressly states [at 2.3 iv] that 'public authorities have been unwilling to do this'. If this consultation has come about largely due to the concern that one single requester can make simultaneous multiple similar requests and this has had a consequent cost burden, then there needs to be more consideration given to providing clearer guidance on dealing with requests and on what requests may be refused as vexatious.

The new legislation is a big step forward in government transparency and if it is being abused by a few minority individuals, then the Government should tackle it this way properly rather than try and impose a cost limit to all requests which may exclude otherwise legitimate requests. Notably a recent review in the UK (where the Government wanted to lower the cost limit to ease the administrative burden and deal with fewer requests) did not make any recommendations to change the cost level

but rather seek to provide guidance on the vexatious provisions.

By introducing a blanket cost limit applicable to all FOI requests, this could seriously hamper the effectiveness of the legislation. The legislation has only been in force for 6 months and is currently only applicable to the Cabinet Office and DEFA so it does not seem that there is enough data to (a) say if a limit is needed and (b) if a limit is needed what that should be. More data is needed on the amount of requests being received and the cost of compliance in order for a fully informed view to be taken on any cost limit and the level of it.

If a low limit was set now, this could too easily be used to refuse to comply with a request on practical grounds.

Ultimately, if one person is abusing the system then that is what the vexatious provisions are for.

Isle of Man Post Office

The IOMPO would like raise a point relating to section 1.4 of the consultation, which states:

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.

With regards to this, it should be noted that the IOMPOs revenues are generated by commercial trading activity and not directly by the taxpayer. Taking this into account, it is a concern of the IOMPO that the FOI act could damage its commercial position and risk the loss of customers within its very competitive markets. This loss could lead to difficulty maintaining sufficient revenue to meet the Treasury demands for levy payable.

IOMPO understands that similar legislation in Jersey has sought to follow the public pound and seeks to extend FOI into bodies that receive funding from the public purse. IOMPO notes that the current scope of the FOI act would ensure that all of the IOMPO's activities were included, despite all of the IOMP's revenue being generated by commercial trading activity and potentially puts it at a disadvantage when compared to its closest competitor.

Office of Fair Trading

The OFT believes that the current consultation is premature and that the matter should be reviewed once the system has been rolled out to both the remaining Departments and Statutory Boards; and there is a broader and more established evidence base.

Information Commissioner ("IC")

Reassuring to note from the consultation that the Act is generally working well. However it is a concern to note that on average it is taking significantly longer to comply with a request than the UK average. It seems with one third of the requests having emanated from the same individual and the relative complexity of those requests that the current statistics are somewhat skewed.

The IC is not against the introduction of a cost limit but, in his opinion, they are a blunt instrument which may prevent misuse but may also prevent a good "public interest" request from being answered.

FOI contains provision to refuse requests that are, for example, repeated or similar, vexatious, malicious, frivolous, misconceived or lacking in substance. There are also provisions that expressly limit what action a Public Authority must take in complying with a request, for example, a Public Authority is not required to undertake substantial compilation or collation of the information it holds. FOI also provides that a public authority can request additional information to help locate the information sought and the duty to provide advice

and assistance can be used to clarify or focus a request.

The Commissioner believes that public authorities should be guided and encouraged to apply all the provisions of FOI first.

Manx ICT Association (MICTA)

To provide some context to our interest in this, we are supporters of Open Government Data and therefore the ability for the public to be able to find out its own answers to questions. We perceive that Information requests will fall into one of three categories:

- 1) Request for information that is held about yourself and/or your company (though provisions for this are through Data Protection more than Freedom of Information)
- 2) Statistical and financial information about government operations (the how much, how many type of questions)
- 3) Process Type of Questions (who did what and when and with what authority)

In our opinion, the first item we feel should be dealt with through a combination of a unified ID (digital and physical) that gives you access to your own data, and ability to open and shut data gates and see a complete audit trail. The second item, we believe, is all about open information and should be readily available for people to collate themselves should they require to do so. But it does imply that there is unified and structured information across Government to make this easier to do. The third item is the one that would require investigation on the part of Government parties, but again a unified way of documenting these that is consistent would make this easier.

However there does need to be a solution to the genuine concern of vexatious requests and, as is already stated, there is some provision for this in the Act but we would suggest the consideration of the following:

- 1) That there is an independent ombudsman to whom Government can make appeals to refuse a request. This Ombudsman would have guidelines but would be able to determine reasonableness and efficiency of the response. Therefore, the ombudsman could determine (in essence) that poor administration does not play a factor. The Ombudsman would also be able to determine if it were reasonable for the requestor to be able to find their own answer given available open data so, over time indirectly would also be commenting on the quality of this open data
- 2) Consider the creation of an Office of National Statistics (ONS) and a drive to common open data and methods of retrieval, in particular in relation to finances and budget. We are one of the few developed nations in the world that does not already have this.
- 3) Consider the classification of request types and in particular segment those which are the third type that we have identified as procedural. As this is very much open to interpretation it would actually be more efficient for this type to be supported by personal interaction. Therefore, it could be relevant for this type of request to have to come via a member of Tynwald as a "sponsor"
- 4) Set trigger tracking points automatically and then make these open. It is possible that many questions have a context in a commitment that was previously made and then querying if it came true. (eg we will spend £x on this project over x number of months). Systems should be tracking and reporting on the commitment almost in real time.

Marown Parish Commissioners

The members resolved that they support the proposal for a cost limit but have no firm view on the means of doing this.

DEFA

DEFA recommends that the ability to make a request at no charge should be re-considered.

There should be recognition of the balance between providing information to the general taxpayer without curtailing that freedom to receive it and the burden placed upon PAs (and consequent cost to the general taxpayer) by the multiple and commercial requesters, such

as stakeholders with obsessive behaviours and journalists.

Its bout fairness to the general taxpayer and the current rationale for not charging for a request leaves this "freedom" open to abuse.

Overall however DEFA takes the view that, although the intention of the cost limits is honourable its effect will be to introduce a further element of subjectivity and potential inconsistencies to legislation that already has many grey areas. Cost limits calculations would also mean more administration in calculating, recording and explaining. The Act, in s8, already gives a public authority the ability to refuse a request on the grounds of "... substantial compilation or collation of information ..."so adding this extra level of administration seems unnecessary.

Although the two paragraphs above appear contradictory they do reflect the views across the Department. This in itself symbolizes the complications that FoI can generate. The introduction of further areas for discretion and administration should be avoided.

In addition to the above, producing further guidance on refusing requests seems to contradict the "duty to provide advice and assistance" as required under s15 and the general purpose of the legislation that the FoIA exists to make information available.

"A public authority must give reasonable advice and assistance to persons who wish to make, or who have made, requests for information held by the public authority."

What would be useful and would fulfill the above requirement to advise and assist, is guidance on how to help a requester clarify or narrow a request. Guidance on questions such as those below would be more useful and go further towards fulfilling the basic purpose of FoI; to make information available.

- How many times should a PA ask a requester to clarify?
 - o suggest two or three times
- What help should be offered at each stage?
 - o For instance:
- Suggest a first letter requesting clarification with as much detail and questions as possible
- Next letter, if needed, explaining why first response has not clarified and requesting meeting or telephone conversation
- Next letter clarifying what has happened to date and a definite deadline before a refusal notice.

DEFA is following a process similar to this for a current request that has been very problematic.

The experience of DEFA has been that most of the officers involved in responding to FoI requests, particularly the larger, more complex ones, have been HEO and above. The figure to calculate the costs (£25/hr) is therefore thought to be significantly lower than reality. If cost limits are introduced this figure should be re-calculated in order to be realistic.

If it is ultimately decided to introduce cost limits DEFA's views on those are below. In this case we need to be cautious about creating additional administration that outweighs any benefit of charging.

5. Responses to Specific Questions

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.

Respondent	Response
PAG	<p>Lack of clarity in terms used in the two options.</p> <p>Puts forward the argument that the 12 hours suggested is substantially more restrictive than the UK.</p> <p>More consideration needs to be given to redaction time. Permitting it to provide a free-standing basis for refusing requests could encourage an authority to make unjustified exemption claims, aimed at increasing the volume of exempt information that has to be redacted perhaps to the point at which the request could be refused on cost grounds.</p>
Treasury	<p>Treasury supports proposal (a) that: -</p> <p><i>'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.'</i></p> <p>Treasury supports the principle of ensuring that there is an equitable balance between enabling information to be available to the public and maintaining effective government and value for money for the taxpayer. The pilot phase has demonstrated on occasion a need for the introduction of a cost limit regulation to ensure this balance is maintained.</p> <p>The two methods of cost limit calculation that are presented in the consultation paper appear reasonable. We have recognised that option b) includes in its calculation the time taken for <i>'the provision of a digest or summary of the information'</i>; which is not required from public authorities under FOIA.</p> <p>Treasury would encourage the provision of a set of guidelines for calculating costs to ensure requests are treated equally and to protect a public authority against the risk of challenge to their calculation.</p>
Douglas Borough Council	<p>Supports a. DBC would appreciate further information on the reasons why specific cost figures have been chosen.</p>

Lezayre Commissioners	Supports option a.
DHA	Believes option a. is the appropriate position to take
Cabinet Office – Executive Office	<p>The ability for a public authority (“PA”) to refuse a request that takes over 28 hours in total would assist in responding to certain requests.</p> <p>However, we feel that the weighting should be reversed and that the 12hr window should focus more on the review, redaction and provision of information – this would take into account any request regarding the provision of information in a specific format at an early stage which could then be considered when assessing the scope of the request, rather than to impose a charge and manage the processing of the disbursements/fees applied (as per iii).</p> <p>The remaining 16hrs would be used to comply with the request for information. Caution should be exercised with the search aspect of a request as it would not be prudent to include ‘locating & retrieving’ information as this may be open to interpretation by any PA with a poor records management regime. Taking into account the search aspect may also prejudice the outcome of the estimate of the time required to deal with this part of the request if there is no effective records management regime in place.</p> <p>Having correct records management practices in place, ensuring any requests are specific and justified (in purpose and manner) and using the provisions within the FoI Act to narrow the scope of the information requested would be the preferred approach to improving the management requests.</p> <p>It would assist if the FoI request form provided more direction in ensuring, as per s9(5) of the FoI Act, that ‘an adequate description of the information requested’ is provided and the request is ‘capable of subsequent reference’, so that specific details can be requested or provided and to steer requestors away from the ‘all information’ request – the form could also include topic, date range, preferred format etc.</p> <p>Also, there is a need to reinforce the purpose and principles of requests, as per s3 of the FoI Act, i.e. (a) the information should be available to the public to promote the public interest; and (b) exceptions to the right of access are necessary to maintain a balance with rights to privacy, effective government, and value for the taxpayer.</p>
IC	If cost limits are introduced then option “b” would seem preferable. In the Commissioner’s opinion, it is likely to limit wide ranging requests which in turn may encourage requests that are better defined and focussed.
IOM Post	Supports option a
DOI	DOI strongly supports the introduction of a cost limit for FOI requests. Either of the cost structure proposals (a) or (b) are acceptable to the Department

Comms Comm	Supports a cost limit by either standard but (a) is preferable. Option (b) is likely to be far more subjective in terms of assessing the expected time to prepare information as there so are many variable to consider. Option (a) still equate to over 3 full day's work for a single officer. Provided that proposal (iv) is implemented (that an authority has the discretion to waive the charge threshold) we feel that these limits strike the balance to protect the authority from wasting resources but undertaking complex requests where it is in the public interest to do so.
PSPA	Supports "b" as do not feel that "a" provides sufficient time and therefore an appropriate cost limit to adequately deal with some queries.
DEFA	<p>Seems complicated. These suggestions mention collation and redaction, although searching, consideration of exemptions, consultation and preparation of the response can take at least equally as long. The general admin of the requests (logging, sending to officers, recording time/actions, making public) also adds significantly to the general FoI workload and can be equally as long as some of the other work, although DEFA does not believe this should take any part in cost calculations for the purposes of refusing a request.</p> <p>DEFA supports option i.a above provided, if the work is to be split, the division of work is along the lines of:</p> <ul style="list-style-type: none"> i. search and collation, 12 hrs. ii. consideration of exemptions, consultation, compiling response and responding (irrespective of how), 12 hrs. <p>All of the above presumes that any time taken to clarify a request would not be included within any time limit calculation. DEFA agrees with this.</p>

MICTA	<p>With this in mind we would <i>strongly</i> object to the imposition of any fixed time or monetary value against FOI requests (proposal (i) and (v) of the consultation) for the following specific reasons:</p> <ul style="list-style-type: none"> • It is unreasonable for the amount of time a request takes to be measured by the body from which the information being requested. This is self-auditing and means that there is no incentive to be efficient in the storage, retrieval, standardisation or organisation of data. It could lead to the unacceptable outcome that different parts of Government could respond at different rates to a similar request and one could legitimately refuse on the basis that they are not very good at doing it. This would create a “Departmental Lottery” (and even more so if you make a distinction between Central and local resources) which could nullify the intent of the Act in that it does allow the possibility of “manufactured” censorship. Imagine if this type of self-managed get out clause were applied to information requests made by the FSA to license holders? • We would much prefer that these requests do put pressure on Government in the short term, but the response to this is to improve the openness and efficiency of data (such as unified data in a single legal entity), as there is a strong and measurable financial incentive to do so. • There is a vast amount of information that is requested by members of Tynwald that could be considered vexatious and occupies similar amounts of time but this is not being curtailed in the same manner. It is not really acceptable that the public is denied access to data at the same time that the same data may be made available in public through Tynwald, as Tynwald, in this sense, is a representation of the people.
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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 purpose of calculating if the prescribed cost limit is exceeded

PAG	<p>The proposed 12 hour search time is so far below the UK's as to invalidate this comparison in real terms. Aggregating two quite small requests to small authorities could lead to them being refused here though they would have to be answered in the UK. The cost limit should either be brought into line with the UK's or the 60 wording days that would have to pass before another related request could be made should be reduced to a substantially shorter period.</p> <p>Furthermore Scotland does not permit any aggregation of requests at all. Each request is dealt with solely on the basis of whether its costs in isolation would exceed the cost limit. The vexatious provision within the Act would be available to protect authorities from those making excessive numbers of similar requests.</p>
Treasury	<p>We recognise the risk that an individual or group of individuals could circumvent a cost limit set out in part i) by splitting a complex question or range of questions into several smaller parts.</p> <p>Treasury does consider that the terms '<i>similar request</i>' and '<i>associated person</i>' would benefit from further definition.</p> <p>In relation to '<i>similar requests</i>', we accept that each case will need to be considered on its own facts but believe that parameters could be applied to this. Guidelines would minimise the risk of a disagreement between a</p>

	<p>requester and a public authority on a decision made under this term.</p> <p>For example, useful guidance might state that requests may be considered similar if:</p> <ul style="list-style-type: none"> • they are expressly linked; and/or • they are linked by theme; and/or • They include two or more of the following: similar subject; similar data source (i.e. meeting note, email); similar document originator (i.e. the Treasury Minister, the Assessor of Income Tax); similar function area (i.e. income tax receipt processing, policy). <p>Treasury considers that the phrase '<i>associated person</i>' infers a wide base of people who know the requester and that this requires clarification. Specifically, section 68(5)(b) of FOIA defines the term as: 'different persons who appear to the public authority to be acting together or with a common aim'.</p> <p>As a final point on this proposed regulation, and whilst not wholly disagreeing with the 60 day aggregation period, there has been some question about whether this period is excessive, with the thought being that a 30 working day period may be more reasonable.</p>
Douglas Borough Council	Supports
Lezayre Commissioners	Supports
DHA	DHA thinks this should be supported to manage the tendency to avoid the cost limit by dividing requests. However we wonder how this would operate given that the initial request should be replied to in 20 days. That gives another 40 days when an additional request could be submitted that would have been subject to this calculation but the two could not be aggregated.
Executive Office - Cabinet Office	<p>Yes, but this should be 3 valid requests from the same person, associated persons or organisation, limited to within 60 calendar days of receipt of each other (on a rolling basis), but not determined by the 'similar' request criteria. This is to (a) prevent any conflicting interpretation of, or assumptions on, what is deemed to be a common theme; (b) to ensure there is clarity and direction for the average requestor; (c) to manage the burden on the PA in respect of dealing with multiple requests; and (d) to ensure the administration process is clear to both requestor and responder.</p> <p>The submission of multiple requests on one or more occasion may be an indicator that they may be vexatious or, if deemed to be valid, the requestor may be more likely to raise an Internal Review or escalate the matter to the Information Commissioner. All these steps increase the burden on the PA and the aim should be to find a balance between managing multiple requests and providing the information requested.</p> <p>A timeline of 60 calendar days should allow for a FoI response to be issued, for an Internal Review to be requested and potentially be conducted. This would of course work better if there could be say a 30 calendar day window within which to lodge an Internal Review, as currently this is open ended. This may also allow time between requests to review what information has been supplied, if there is a better way for</p>

	the PA to publish such details to negate the need for repeat requests, and to review the approach to the request or Internal Review and implement any lessons learnt.
MICTA	The final proposal (ii) is that similar items could be aggregated if they come within 60 days of one another. This does have a slight flaw in that it would be the party meeting the request who would make the call as to what constitutes "similar". Again, if this were being done the requestor should be notified and have the ability to refer to an Ombudsman. One outcome of this could be that the triggers that we have previously mentioned could be implemented.
IC	<ul style="list-style-type: none"> • S68(5) makes provision by Regulation for aggregating the costs for 2 or more requests made to the same public authority by one person or different persons acting together with a common aim. • The Commissioner can see some merit in a public authority being able to combine two or more similar requests if the first request is still in the process of being complied with. However, the Commissioner would not support the proposal that a public authority may do so for requests received over a period of 60 days for the following reasons <ul style="list-style-type: none"> - Requests for information should, in general, be responded to within 20 working days and it seems unnecessary to complicate compliance by aggregating a similar request that may be received up to a further 40 days after the initial request has been responded to. - In any event s11(3) of the Act provides a practical refusal reason when <ul style="list-style-type: none"> "e) both of the following apply <ul style="list-style-type: none"> (i) the request for information relates to information that is identical , or substantially similar, to information previously requested by, and supplied to, the applicant; and (ii) a reasonable period of time has not passed between compliance with the previous request and the making of the current request." <p>Therefore a public authority already has a mechanism to refuse a similar request from the same applicant if a reasonable period of time has not elapsed.</p> <p>A public authority may believe that 2 individuals are associated, however in order to aggregate costs and refuse a request, the public authority would have to be able to reasonable demonstrate that the two individuals are associated. It is difficult to see how a public authority could reliably do so.</p> <p>The information sought by an FOI request is usually published on the public authority's website. Provided the information has been published then it will be available to the applicant of a similar subsequent request, and therefore the absolute exemptions set out in section 20 can be applied and the public authority may, as provided for in s11(2)(a), refuse to give the information to the same or another applicant without having to consider any association.</p>
IOM Post	Supports.
DOI	DOI supports the aggregation of requests and believes that a 60 day timescale is realistic to avoid too great an impact on both the operational business of the Department and its ability to deal equitably with all requests received.

Comms Comm	Supports, provided there is a definition of "similar" set out for Departments and Boards to follow, with examples, as the term is fairly subjective in itself.
DEFA	DEFA would not support this proposal because it introduces more administration.

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)

PAG	Reasonable so long as the charges do not exceed the actual costs, excluding staff time. Photocopying, for example, should not exceed a standard commercial rate.
Treasury	<p>Treasury supports 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).</p> <p>Again, we believe that calculations made under this regulation should be consistent across public authorities to ensure FOIA requests are treated similarly regardless of the public authority to which a question is asked i.e. amounts for photocopying, scanning etc. should be prescribed.</p>
Douglas Borough Council	Supports. DBC would be interested to know what the maximum amount proposed is.
Lezayre Commissioners	Supports
PSPA	Supports. We already have experience in the PSPA of one individual making multiple enquiries around similar matters of us over a period of time in which they had a personal interest and which took us many hours to resolve and therefore I am supportive of being able to limit the time and costs associated with multiple related requests. I do however think we need to define what we mean by similar requests as this may be then open to interpretation and challenge. Who will judge what is regarded as a "similar request" and against what criteria?
DHA	The Department believes that the right is to the information and not the documentation. We believe that production costs should be part of the total request cost but where a production method outside the normal electronic communication is indicated then a cost should be incurred at the commencement of the request. An alternative would be that the information was supplied electronically and the requester arranges for production into their preferred format. What about Braille, large print, written in Manx etc etc etc. Where the cost is specific to necessary access criteria i.e. for those with visual impairment then the Public authority should absorb the additional costs.

Cabinet Office- Executive Office	<p>Not ideally, as we feel it would be better to incorporate this as part of i. i.e. addressed up front as part of the request form which advises that information provided in hardcopy rather than in an electronic format would be likely to increase the burden (both in cost and time) on the PA – unless there was a specific requirement for doing so.</p> <p>Also, taking into account the administrative cost associated with the calculation and collection of the charge it would need to be such that it did not negate the charge levied. The charge for a Data Subject Access Requests is £10; however the actual cost of processing this charge can often outweigh the costs it is intended to cover.</p> <p>What if the request was withdrawn or the charge not paid? This could potentially add a barrier to obtaining the information. The administrative and financial burden would also be exacerbated if there was a requirement for the PA to refund/partially refund any fees.</p>
Comms Comm	The Commission would support this proposal, provided that individuals who request information in a particular format due to a disability is not disadvantaged. For example, should this be implemented we would consider it unreasonable to charge an individual more for printing information in a larger font due to poor eyesight, than printing in the standard size 11 font.
IC	If cost limits are introduced and provided the maximum was reasonable and there was also a reasonable minimum cost below which no charge was made then yes.
IOM Post	Supports.
DOI	Supports the right to make charges to recover any costs incurred for physical supply or formatting work.
DEFA	DEFA would not support this proposal because it introduces more administration in calculating costs, raising invoices etc.
MICTA	On proposals (iii and iv) are about material costs (such as photocopying etc) whilst we understand the need for costs to be restricted in some manner there is a similar problem with this as to the above. For example, if a public authority is unable to create or use an electronic version of a document and has to photocopy an original then that represents an inefficiency in capability that the member of the public should not be made to pay for. If these provisions were to be implemented, then we would expect there to be standardised costs for each item that were consistent across Government and anticipated costs should be notified to the requestor who could choose not to proceed or could refer to the Ombudsman.

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

PAG	It is essential that authorities should be able to waive fees which could be charged otherwise authorities would be obliged to seek to recover trivial photocopying/postage costs even where the cost to them of doing so would exceed the value of the recovered amount. They should be able to provide information where the cost limit has been exceeded Where they do so, it should be clear that the information is still provided under the Act – not voluntarily – thus preserving the right to complain to the Information Commissioner about any unjustified withholding of information.
Treasury	Treasury recognises that public authorities that are not central Government Departments will have fewer resources, but does not accept the proposal that a lower cost limit should be applied to smaller public authorities in responding to FOIA requests. FOIA obliges public authorities to advise and assist a member of the public in their FOIA request, and in the majority of cases, I would expect that the risk of a question being subject to a cost limit could be managed through assisting the requester in narrowing down their question.
Douglas Borough Council	Does not support. DBC feel there would be too many issues around how to exercise discretion and manage appeals against the decision to charge or not.
Comms Comm	The Commission would support such a proposal as we believe that it is possible that Freedom of Information requests could highlight areas of public interest, which should necessarily be carried out, but may exceed a cost limit due to the complexity or resource involved. However, we also believe that where this discretion is to be used, the request should not be subject to the standard time limits for response, notwithstanding the fact that the entity responding to the request should keep the requester informed and provide an expected date for the response to be submitted.
Lezayre Commissioners	Supports
PSPA	Supports but only if the cost was likely to be excessive. For example if we had to photocopy 20 sheets of paper I would not wish to charge for this but if it was 200 sheets then I feel we ought to charge. Also, if we spent considerable man hours putting something in the applicant's preferred format then again, we should be able to charge for this within stated parameters (e.g. cost "per hour" of time spent).
DHA	Supports
Cabinet Office – Executive Office	Does not support.this may expose the PA to challenge and require an explanation of the criteria applied to each decision where charges have been waived, the basis of which could be open to interpretation. Any such directive needs to be definitive and be stipulated as part of i.
DEFA	DEFA would not support this proposal because it is too discretionary and subjective. It allows unnecessary room for inconsistencies and could be discriminatory.
DOI	Does not support the provision for discretion, on the basis that any limits or charges should be fairly and consistently applied across departments.
IOM Post	Supports.

MICTA	On proposals (iii and iv) are about material costs (such as photocopying etc) whilst we understand the need for costs to be restricted in some manner there is a similar problem with this as to the above. For example, if a public authority is unable to create or use an electronic version of a document and has to photocopy an original then that represents and inefficiency in capability that the member of the public should not be made to pay for. If these provisions were to be implemented, then we would expect there to be standardised costs for each item that were consistent across Government and anticipated costs should be notified to the requestor who could choose not to proceed or could refer to the Ombudsman.
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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.

PAG	The costs limits are extremely low as they stand. Any further reduction in the cost limits should be out of the question.
IC	Supports
Douglas Borough Council	Supports
IOM Post	Supports
Lezayre Commissioners	Supports – this should be recognised within the regulations that Local Authorities will have fewer resources and therefore a lower cost limit could be applied. Equally, an extension to the time allowed to complete the request could be applied. This would allow the clerk to spread the research time required around the usual workload.
Comms Comm	The Commission would support the decision to introduce a lower cost limit for those authorities employing fewer than 20 full time officers. Alternatively, it may be fairer to applicants to keep all cost limits the same, but allow smaller entities extended processing times. Taking the Commission as an example, it employs only 4 full time staff and so diverting attention away from its day-to-day work for up to 24 hours or 40 hours as proposed over the course of the processing period described in the Act, would have significant consequences for the Commission and its ability to continue to carry out its functions.
Clerk of Tynwald	Supports as otherwise would be in the embarrassing position of having to refuse a request and later publishing the answer.
PSPA	Supports if considered appropriate but we would wish it making clear that this was a discretion that we could apply to each individual case and therefore if we chose to respond to or charge for one request but not another, this was not "held against us" by an applicant or other party. Discretion should mean exactly that, and therefore if we wished to either apply or override charges or costs, this should not be open to challenge.

DHA	<p>Yes but another solution could be to extend the period that they are given to reply. The Department recognises that in small organisations the staff hours are less flexible and the resilience of their operation is as, if not more, important than the cost. However it should be noted that bigger organisations have wider responsibilities so the demarcation between the two may not be as great as first imagined.</p>
Cabinet Office – Executive Office	<p>No, as due the complexity that it is likely to be cumbersome and inexact, however the correct use of i. and ii. should assist. There is a potential question on how this could be applied given that the range across PAs could be from 0.5 of a person to being as large as a Government Department.</p> <p>Again having correct records management practices in place, ensuring any requests are specific and justified (in purpose and manner) and potentially having a narrower scope defined for the information requested may be a better way to approach this aspect.</p>
IC	<p>The Commissioner recognises that some of the Island’s future public authorities are small and in some cases only have part time staff and as a result FOI requests may place a disproportionate burden on resources. The Commissioner is not in principle against a lower cost limit for such public authorities; however, a small public authority may still hold important information.</p> <p>Perhaps an alternative solution would be to extend the “standard processing period for responding to requests” and guiding such PA’s to effectively use the FOI provisions.</p>
IOM Post	Supports this
DOI	DOI supports a lower cost limit or a longer response period, for smaller public authorities in order to reduce the burden on those authorities that have fewer officers and request that the advice of its Local Government Unit is sought before any application threshold is finalised.
Communications Commission	<p>The commission would support the decision to introduce a lower cost limit for those authorities employing fewer than 20 full time officers. Alternatively it may be fairer to applicants to keep all cost limits the same, but allow smaller entities extended processing times. Taking the Commission as an example it employs 4 full time staff and so diverting attention away from its day-to-day work for up to 24 hours or 40 hours as proposed over the course of the processing period described in the Act, would have significant consequences for the Commission and its ability to continue to carry out its functions.</p>
PSPA	<p>I would agree that smaller authorities outside of the big central Government Departments may require lower cost limits but I would be more accepting of those highlighted in part I option “b”. However, perhaps smaller authorities like ours could have a “midpoint” option between options “a” and “b” which is more than “a” (which I do this is too low) but less than “b”. If we then have the discretion to override a slightly lower limit that the bigger Departments, this would enable us to judge each request individually.</p>

DEFA	<p>DEFA would not support this proposal. How would it be “recognised”? How would this apply to smaller Statutory Boards and Committees? Would it mean administrative officers only? OFT and RTLC have fewer than 20 officers each who sit within a larger department. This seems logical and helpful but again we need to be cautious of creating additional administration or additional areas of subjectivity and potential inconsistencies.</p> <p>Could some form of support be provided for the smaller PAs by central government, as this will be a statutory obligation, of which many will have little knowledge.</p>
MICTA	<p>With this in mind we would <i>strongly</i> object to the imposition of any fixed time or monetary value against FOI requests (proposal (i) and (v) of the consultation) for the following specific reasons:</p> <ul style="list-style-type: none"> • It is unreasonable for the amount of time a request takes to be measured by the body from which the information being requested. This is self-auditing and means that there is no incentive to be efficient in the storage, retrieval, standardisation or organisation of data. It could lead to the unacceptable outcome that different parts of Government could respond at different rates to a similar request and one could legitimately refuse on the basis that they are not very good at doing it. This would create a “Departmental Lottery” (and even more so if you make a distinction between Central and local resources) which could nullify the intent of the Act in that it does allow the possibility of “manufactured” censorship. Imagine if this type of self-managed get out clause were applied to information requests made by the FSA to license holders? • We would much prefer that these requests do put pressure on Government in the short term, but the response to this is to improve the openness and efficiency of data (such as unified data in a single legal entity), as there is a strong and measurable financial incentive to do so. • There is a vast amount of information that is requested by members of Tynwald that could be considered vexatious and occupies similar amounts of time but this is not being curtailed in the same manner. It is not really acceptable that the public is denied access to data at the same time that the same data may be made available in public through Tynwald, as Tynwald, in this sense, is a representation of the people.