

FREEDOM TO FLOURISH? WHAT FREEDOM OF INFORMATION WILL MEAN FOR THE ISLE OF MAN

by Andrew Newton

On 16 June 2015 the Freedom of Information Act 2015 (an Act of Tynwald)(the Act) received Royal Assent. Although not passed in time to receive promulgation on Tynwald Day this year, the Act will see incremental introduction over the next three years and will, on the one hand, introduce a fundamental freedom for Island residents, whilst on the other, place an uncertain burden on public institutions.

Advocates for the transparency of freedom of information for the Island may draw significance from 2015 being the 800th anniversary of the signing of Magna Carta; whilst other observers may highlight the potentially penal costs, estimated at £500,000 a year in hansard, and associated complexity of compliance with this new regime for public institutions.

In fact, 2015 will only be a symbolic year for the passing of the Act as the substantive introduction of its provisions will not actually commence until the spring of 2016: under Schedule 1 of the Act at present, information is initially only obtainable from the Council of Ministers and from the Department of Environment, Food and Agriculture. Following this pilot introduction, 2017 will see the regime extended to other Government Departments, Statutory Boards and Tynwald; before finally extending to local authorities and other applicable bodies in 2018.

The Act confers on Isle of Man residents (to be defined in codes of practice) a legally enforceable right to request access to information from a public authority. The limitation to Isle of Man residents is intended to obviate the exposure to frivolous and vexatious external requests that have been apparent in other jurisdictions. A significant carve out under the Act can be found at section 4, where the right to request

information is limited to information that has been created on or after 11 October 2011, being the election date of the current Chief Minister.

Both of the above limitations have found introduction on the grounds of reducing the financial and compliance burden of freedom of information. Although advocates may resent such limits, precluded requests for information can still be considered under the old regime of the 1996 Code of Practice on Access to Government Information.

Once a request is received a public authority will have 20 days to respond with a decision. The Act also allows a fee to be levied on requests, although the applicable fee is yet to be defined. In the UK an hourly charge of £25 is applied, with a cap of £600 for Government and £450 for public authorities. If the cap is estimated to be achieved a request may be denied. It is likely that a similar policy will be introduced with the Act.

The Act will not confer any obligations on public bodies to hold information for mandatory periods. Retention of certain information is governed by various other statutes, internal procedures, and applicable professional standards.

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