Positive ActionGroup (PAG)

Submission of Positive Action Group (P A G) to the Freedom of Information Bill 2014 Consultation

A) Introduction

1. Positive Action Group (P A G) is a political lobby group, not a political party. It is a not for profit Association the objectives being to promote an awareness and understanding of politics and citizenship. We encourage members of the public to participate actively in politics by taking part in discussions, making their views known, voting, standing for office and holding public office.(Appendix 1)

2. We are pleased to be one of the bodies consulted regarding this Bill.

3. P A G regularly makes consultation submissions as well as contacting government departments with proposals outwith the formal process.

4. There are 67 Clauses in the Bill and the comments are, in the main, directed towards many of them.

5. PAG concludes that the Isle of Man Freedom of Information Bill 2014 (Bill), as published for consultation, appears to be based on the UK Freedom of Information Act 2000 (UK Act).

6. In our consultation submission we shall therefore refer to the UK Act, and also to the Freedom of Information (Scotland) Act 2002

B) Summary Conclusions

In key respects the Bill is weaker and more restricted than the UK Act , in particular:

a) The Bill only applies to information recorded on or after 11th October 2011. It is not fully retrospective.

b) The Bill's rights would only be available to Isle of Man residents.

c) Requesters would have to consent to their names being published. Certain requests could indirectly reveal the requester's personal circumstances. PAG considers this provision is a coercive invasion of privacy and not appropriate for a small Island community.

d) The administrative grounds for refusing requests are broad and in some cases unnecessary.

e) Fees may be charged in a broad range circumstances, including making a complaint to the Information Commissioner.

f) The Bill contains no power to amend or repeal unnecessary statutory restrictions on disclosure which will otherwise limit the Act's operation, such as that in the The Health and Safety at Work etc Act 1974

g) Most of the Bill's exemptions are identical to the equivalent UK exemptions. However:

(i) the exemption for information that is otherwise accessible to the applicant is more restrictive.

(ii) the exemption for investigations and legal proceedings is significantly broader.

(iii) a provision on the disclosure of the factual background to policy decisions is narrower.

h) There is no strong right of access to environmental information within the Bill. (We note that the IOM is the only country in Europe not signed up to the Aarhus Convention on access to information about environmental matters).

i) The Information Commissioner will not have the power to investigate disputes about the disclosure of legal advice.

j) The Information Commissioner's independence is undermined by a requirement that he or she must comply with a government code of practice on critical matters such as determining the public interest.

k) The Chief Minister would have an extraordinarily broad power of veto over any requirement that the government disclose information.

l) The range of Public Authorities to which the Bill will apply is extremely limited and no date is set for it to be extended to Local Authorities etc.

C) Detailed comment on Clauses

PART 1 - Introductory
Clause 4 - Application

The Act will not apply to information created before October 2011, though that information will continue to be subject to the Code of Practice on Access to Government Information *[Clause 4(2)].*

This is said to be a means of reducing the burden on public authorities. However, it means that requests for information which span the 'start' date would have to be considered under two different regimes, at least for Government, with different exemptions and enforcement mechanisms. This may itself be costly.

The UK and Scottish Acts are fully retrospective, and join up with the Public Record Acts.
Thus a record which at one time would only have become available after 30 years can now be requested under FOI and will be disclosed regardless of its age, unless an exemption applies.

One option might be to provide a fixed programme of phased-in retrospection, but

PAG strongly urges that, from the outset, the IOM Act ought to coincide with the start date of the Code i.e.1st September 1996

Clause 6 - Meaning of public authority

The definition of a public authority, as listed in Schedule 1, is very limited. Further it is qualified in stating that *this Schedule is indicative of the public authorities to which the Act will first apply.*

This is critical to the scope of the Act and so we list numerous public authorities which it is intended to exclude. (The list is not exhaustive.)

Manx Utilities Authority
Post Office
Various other Statutory Boards (estimate 6)
Manx Museum & National Trust
Road Transport Licensing Committee
Manx Radio
Police
4 Town authorities
2 District authorities
3 Village authorities
15 Parish authorities
2 Civic amenity site committees
1 Civic amenity site board
The Northern parishes refuse board
3 Swimming pool boards
7 Sheltered housing authorities
10 Housing authorities
17 Burial authorities
Educational establishments

The indicative Schedule 1 as proposed is too limited and at the very least ought to include, from the outset, the Manx Utilities Authority and Post Office.
A phased introduction of other public authorities, to broaden the scope of the IOM Act, ought to be indicated.

Schedule 1 Part 3 refers to publicly-owned companies but none are determined.

The definition of a public authority *clause 6(8)* applies to a company performing functions or exercising powers under an enactment.
This definition does not seem to cover contractors providing public services under a contract with a public authority.
Page 19 of the Overview document accompanying the draft Bill implies that this is the intention, and that companies providing prison transfer services and certain social care services would be covered.

The definition in *clause 6(8)(b)* causes concern:

(8) In this Act, "publicly-owned company" means —

(a) a company in which one or more public authorities owns, whether directly or indirectly, shares or other interests which, when taken together, enable them to exercise more than half the number of votes in a general or other meeting of the company on any matter; or

(b) a company to the extent that it performs functions or exercises powers under an enactment.

Contractors providing public services are not normally performing functions or exercising powers *under an enactment*. It is the public authority which is performing functions under the statute, not a body which it has contracted with to provide these services. If there is a failure to provide the necessary services it is the public authority, not the contractor, which has failed to comply with the legislation (the contractor has merely failed to comply with the contract).

PAG suggests to adopt the definition in section *5(1)(b)* of the UK Act, so as to state that the Bill applies to any person who:

"is providing under a contract made with a public authority any service whose provision is a function of that authority."

It is noted that The UK Act contains a provision *[s.5(1)(b)]* allowing such contractors to be designated as public authorities in their own right.

PART 2 - Access to Information held by Public Authorities
Clause 7 - Right of access to information held by public authorities

The reason for limiting the right of access to Isle of Man residents is said to be necessary to prevent round robin requests from private companies interested in selling the information.
This would of course not prevent private companies in the Isle of Man making such requests and combining them with requests under the UK Act.
The restriction would also exclude other non-residents with valid reasons for seeking information, e.g. ex-pats, temporary workers, visitors who are injured while on the Island, those contemplating opening businesses, etc.
Attempts to restrict requests by non residents may not be easy to achieve, since any external company which wants to the use the Act could hire an Isle of Man resident to make requests on its behalf.
A non resident would continue to be able to use the Code of Practice on Access to Information to obtain government information which may now become more heavily used than it has in the past.
The UK, Scottish and Irish FOI laws allow requests to be made by any person and do not restrict them to citizens or residents.
PAG considers that Clause 7 is too restrictive and strongly urges that it be re-written to be fully comprehensive.

Clause 8 - Requests for information

Clause 8(3) may imply that requests will have to be made on a prescribed form, which is unnecessary and may deter requesters.

Clause8(2)(a) states that requests must *be in the form prescribed by regulations*

PAG suggests: *be in writing, give the applicant's name and an address for correspondence, and describe the requested informatio*n [as does clause *8(3*)]

Clause 8(3)(b) proposes that applicants be asked for consent to disclose their names so they can be published in a disclosure log. Anyone refusing consent can have their request refused (see *clause 10(4)).*

This is coercive and unacceptable
Many requests will indirectly reveal information about the applicant's personal circumstances, even though not specifically asking for their own personal information.
Someone who asks for information about the benefits available to people with a particular disability or the support available to someone with a particular problem is likely to be revealing that they, or a family member, have that disability or problem.
They are likely to be deterred from making such requests by this proposal.
This is particularly so in a small community like the Isle of Man

Note: The UK government has recently expressly rejected a proposal of this kind, made by the House of Commons Justice select committee:

"25. The Government does not share the view that publishing the names of requesters in disclosure logs would be beneficial in terms of burdens. Such a move would have implications for the data protection of requesters, and there is no evidence that it would have any positive impact either on transparency or on reducing the burdens of FOIA. As such, the Government is not minded to accept that recommendation at this time."

Clause 9 - Requests taken to relate to information held at the time of request

Clauses 9(1) and 9(2) grants, that where the authority intended to amend or delete the information before receiving the request, it can do so regardless of the request.

PAG suggests that a safeguard is essential, requiring an authority not to delete, or even destroy, the information unless that is impracticable.

The clauses in the FoI Scotland Act has such a provision at Section 1(4) & (5) as a template.

(4) The information to be given by the authority is that held by it at the time the request is received, except that, subject to subsection (5), any amendment or deletion which would have been made, regardless of the receipt of the request, between that time and the time it gives the information may be made before the information is given.
(5) The requested information is not, by virtue of subsection (4), to be destroyed before it can be given (unless the circumstances are such that it is not reasonably practicable to prevent such destruction from occurring).

Clause 10 - Grant of requests for information

Clause 10(3) envisages that fees may be charged. It should be noted that there are no fees payable in the UK, other than incidental charges.

A fee may be levied whenever a *practical refusal reason* under *10(4)* applies.

As the Bill is written, a public authority could thus charge for providing information:
• that it claims not to be able to find *[10(4)(a)]*
• in response to a request which it cannot read *[10(4)(b)(i)]*
• which the applicant has not properly identified *[10(4)(c)* together with *12(1)(a)(i)]*
• to someone who does not consent to being publicly identified as the requester *[10(4)(c)* with *12(4)(d)]*
• to someone who has made a vexatious or malicious request *[10(4)(c)* with *12(4)(e)]*

PAG considers this not to be fair as it is possible that anyone paying for information in these circumstances would have no right to complain to the Information Commissioner about the wrong use of exemptions to withhold some paid for information. This is because clause *10(2)(b)* states that the Act does not require an authority to provide information where a practical refusal reason applies.
A complaint to the Information Commissioner about a discretionary disclosure, which the authority is not required to make, may not fall within the matters about which a complaint to the Information Commissioner can be made under clause *42(1).*

The basis of any charging ought to be made clear. Is it the intention for an application fee to be charged, or a fee for the number of hours that staff work on a request?

The charging 'framework', as it is described in the explanatory notes, needs to be carefully reconsidered and *Clause 10* revised accordingly.

PAG does not agree with the intention to charge a fee for complaining to the Information Commissioner *[clause 66(1)(b)]* as that it would deter people from challenging refusals.

Clause 10(4)(b)(iii) - refers to the cost of searching for and preparing information, which is difficult to evaluate without knowing what the expected limit is likely to be and how it is calculated.

It should be noted that the intention is for the IOM Act to function in parallel with the existing Code of Practice on Access to Government Information which in *Part 1.7 Charges* states:

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 of records or processing or collation of Information, a charge, reflecting reasonable costs, may be made if notified in advance

Clause 10(4)(b)(ii) allows a request to be refused if would require 'substantial collation or research'. This is unnecessary and not in the spirit of FoI legislation - it is not found under either the UK or Scottish FOI Acts.

Further:

Clause 10(4)(b)(iii) permits a request to be refused if the cost of searching for and preparing the information exceeds a prescribed limit. The costs of collation and research will already be counted under this heading.

Clause 10(4)(b)(ii) would allow requests to be refused on workload grounds even if the prescribed limit had not been reached. It undermines the whole point of 10(4)(b)(ii), which seeks to establish an objective test for deciding when requests should be refused on workload grounds. It would allow the costs of collating and finding the information to count towards *two alternative* grounds for refusal.
Moreover, if "research" implies collecting information which the authority does not already hold, the provision is unnecessary.
Clause 9(1) makes clear that authorities are only required to give access to information which they hold at the time of the request.

10(4)(d) is unacceptable - see comments above on *Clause 8(3)(b)*

10(4)(e) goes beyond the UK provision, which only applies where a request is vexatious.
The UK's Upper Tribunal ruled that the term 'vexatious' now covers requests that are 'malicious', 'frivolous' or 'lacking in substance' - but only if the impact on the authority of answering them would be disproportionate.
The Upper Tribunal has made clear that a request would not be vexatious if the burden to the public authority was justified by the public interest in the disclosure.
This subsection in the Bill attempts to be all embracing, imprecise and unnecessary.
PAG suggests the UK interpretation is adopted.

Clause 10(4)(b) - refers to the public interest test in the definition of 'qualified exempt information'. It is noted that it it the same as in the UK Act.
It is helpful in that where the public interest for and against disclosure is equal, the information will have to be disclosed.

Clause 11- Time for deciding request

The wording of clause *11(1)(a)* requires amendment to read:
A public authority must make a decision on a request for information promptly and, in any event
(a) not later than the end of the period of 20 working days starting on the day on which the public authority received the revue

The Bill allows a public authority 20 working day response time *(11(1)(a)*, but extending this for an unspecified 'reasonable' period for qualified exemptions *(11(2)(b)*.

PAG considers this to be overly generous towards public authorities.

The Scottish FOI Act permits no extension to the standard 20 working day response on any grounds, including the need to consider the public interest test.
The UK Information Commissioner has suggested that authorities should never require more than a single extension of 20 working days, meaning that no request ever requires more than a total of 40 working days for a response. PAG recommends

that the Bill be amended to adopt this proposal.

Clause 11(6)(b) allows 20 working day limit to be extended where complying with the request would *substantially or unreasonably interfere with the day to day operations of the public authority.*
This in itself is likely to be the cause of substantial delays.
It is questionable why this should be needed at all, since the Bill already allows requests to be refused altogether where the time needed to search for the information exceeds a specified limit, or where the request involves substantial collation or research.

There is no precedent for this in either the UK or Scottish FOI laws and PAG strongly recommends this sub clause be withdrawn.

Clause 12 - Public authority may request additional information and fees

12(1)(a)(ii) refers to *ordinarily resident* but we have been unable to find a legal definition of the phrase within Manx Law.

Clause 13 - Duty to provide advice and assistance

The duty is unnecessarily limited.
The *and* between paragraphs *(a)* and *(b)* suggests that advice will only be provided when both paragraphs are satisfied. The *and* should be replaced by *or.*

Clause 14 - Duty to advise applicant about progress of request

This clause refers throughout to *the decision period*.
That term is defined in clause *11(5)* as meaning any of the time limits set out in clauses *11(1)* or *(2)*. For a qualified exemption, the *decision period* therefore means the unspecified *reasonable* period referred to in clause *11(2)(b)*.

This produces an absurd result. Where a request involves a qualified exemption, the authority is not required to tell the applicant this within 20 working days. Instead it must, within the *decision period* (i.e. within an unspecified *reasonable* period) tell the applicant that it cannot make a decision within the *decision period.* That is, within a *reasonable* period it must notify that applicant that it is unable to make a decision within a *reasonable* period

To avoid this, the definition of *decision period* should be limited to the period set out in clause *11(1)*. It should not include the period referred to in clause *11(2)*.

The duty to advise about progress of a request should also include a duty to acknowledge receipt of a request within a set period (e.g. within 5 working days of receipt of the request).

Clause 15 - manner of compliance

Clause 15(3), provides for 3 options for expressing a preference as to the means of communication.

PAG strongly urges that it should be extended to include a fourth in that the applicant should be able to express a preference for receiving the information in the form of a copy of a record containing the information (i.e. a photocopy of an original document).

This is important as it would allow people to see the information in its context. If exempt information has been withheld, the applicant would be able to see where it appeared (as indicated by any blacked out passages) and how much had been withheld.

Where giving access via photocopies is not reasonably practicable, the authority can in any case give access by any other reasonable means - under clauses *15(1)* and *(2)*.

Clause 18 - Content of refusal notice

Clause *18(1)(c)* and *18(1)(d)* are linked with *and,* thus implying that the requirements of *18(1)(d)* only apply where *18(1)(c)* applies (i.e. where information which has been withheld under clause *20* because it is accessible by other means). We do not believe that is the intention.

18(d)(i) requires the authority to set out the steps that the applicant could take to obtain the *information* which has been refused for a *practical refusal reason*.
But if the refusal is justified there may be no other way of obtaining all the refused information, only a way of obtaining some of it (e.g. by asking for less information).
It is preferred for *18(d)(i)* to refer *to …any steps the applicant might take to be given the information, or as much of the information as it may be possible for him/her to obtain, despite the application of a practical refusal reason.*

18(d)(ii) requires the authority to explain the procedure for complaining to a public authority about a refusal or applying to the Information Commissioner.
The authority should explain both procedures, not just one or the other. The *or* should be *and,* thus:

A refusal notice must….contain particulars…(ii) of the procedure for complaining to the public authority about the handling of the request for information or applying to the Information Commissioner under section 42; and

Clause 19 - Confirming or denying existence of particular information.

Under the UK Act, there is a duty to confirm whether requested information is held and if it is held, to disclose it, subject to the exemptions.
The duty to confirm is set aside in certain cases, where confirming or denying would itself be harmful.
The Bill contains no duty to confirm that information is held - only a right to refuse to confirm or deny in certain circumstances *(clause 19(1))*.
It is not clear why there should be a right to refuse to say whether information is held, but no obligation to confirm that it is.
Such a duty may be essential. It would help ensure that an applicant knew whether information was being refused because it was not held or because an exemption was claimed.

Clause 19(3)(b) allows authorities to refuse or confirm whether they hold information without stating the specific ground on which they are doing so.

Such obfuscation is not in the interest of the applicant or the public authority as it engenders mistrust.

For example, if an applicant asks whether information exists to suggest that person X is suspected of committing an offence all the authority needs to do is reply:

"it is not our practice to confirm or deny whether an individual is or is not suspected of committing an offence because to do would involve the release of information that is exempt under clause *32* (prevention or detection of crime or the apprehension or prosecution of offenders) and under clause *25* (personal information) and for that reason we cannot confirm or deny whether we hold the information you seek"

PART 3 - Absolutely Exempt Information
Clause 20 - Information accessible to applicant by other means

This exemption only applies where the individual applicant (not applicants in general) can obtain the information in other ways.

However, the purpose of the exemption - to take account of the applicant's actual circumstances - is undermined by *Clause 20(2)*.
These define some of the circumstances in which information is to be treated as exempt under this clause. They take no account of the applicant's individual circumstances.

For example, *clause 20(1)* should allow information which is available on the internet to be withheld from an applicant who has or can reasonably obtain internet access but not from an applicant who does not. *Clause 20(2)(b)* overrides this distinction.

Similarly, the fact that information is available in public libraries may mean that although it is reasonably accessible to <u>most</u> applicants, it is not accessible to someone who, because of disability or illness cannot visit the library.

PAG suggests that this clause is amended to conform with the UK Information Commissioner's guidance on the exemption in stating:

"19. Even if the requested information is fully in the public domain, this does not mean that it is automatically exempt under section 21. Public authorities should consider an applicant's particular circumstances (if and when they become aware of them) when deciding whether publicly available information is in fact reasonably accessible to that individual. For example, the applicant may not have reasonable access to the internet or there may be special circumstances that mean that the applicant cannot access the information from the public source."

Clause 23 - Conduct of Parliamentary business

This is similar to the UK Act exemption. It has been abused.
The equivalent Scottish exemption is a qualified exemption and PAG recommends that it be treated as such in the Bill.
This would ensure that the public interest test would have to be applied in

considering such requests.

Clause 26 - Information provided in confidence

PAG suggests that information supplied by a contractor to a public authority be regarded as a product of negotiation under this provision and ought to be included as an exemption in *sub- clause (a)*

Clause 27 - Information the disclosure of which is restricted by law

Further careful consideration must be given to this clause which prohibits disclosure. The IOM government ought to review statutory bars on disclosure, with a view to repealing or amending those that could be considered to unjustifiably interfere FOI right of access.
As an example we cite the *IOM Health and Safety at Work Etc Act 1974 Clause 28, Restrictions on disclosure of information*, which restricts access to information about health and safety problems affecting the public and the workforce on the Island.
It is likely that there are other similar restrictions in place.
PAG urges that a review is undertaken to identify these and for the Bill to include a power to repeal or amend them.

PART 4 - Qualified Exempt Information
Clause 31 - Investigations and legal proceedings

31(1)(b) could be applied to a circumstance where any public authority, having conducted an investigation*,* might have uncovered a possible offence.
This applies even if the investigation is not carried out for that purpose, even if no evidence of an offence is actually found and even if it is not part of the authority's statutory functions to investigate such matters. The exemption would continue to apply long after the investigation was over (because it applies to information which *has at any time been held*).

It is noted that any information held by prosecuting authorities that might have led them to bring proceedings is already exempt under *clause 31(1)(c)* and information that is held for the purpose of any authority's regulatory function which could prejudice that function is exempt under *31(2)*

PAG considers *clause 31* to be excessive, not least because it applies to information even after it has been decided not to prosecute or after any prosecution is over, although again subject to the public interest test.

Clause 37 - Research and natural resources

Clause 37(1) relates to disclosure of information relating to the environment.
Although Isle of Man is already voluntarily complying with some EU Directives, it does not apply Environmental Information Regulations (EIRs) which provide greater rights to environmental information.

PAG urges that IOM comply with *EU Directive 2003/4/EC on Public Access to*

Environmental Information and repealing Council Directive 90/313/EEC.
Failing that incorporation of some of the individual provisions of the EIR e.g. about environmental emissions, should be included in the Bill
Further we strongly suggest that the Isle of Man becomes a signatory party to the Aarhus Convention

Note: *The IoM Public Records Act 1999* provides for the release of public records after 25 years.
However, the Bill provides no mechanism for accessing old records which are not available in the Records Office once they reach this age.
This presumably is because the Bill currently provides no right of access to pre-11th October 2011 records at all.

PART 5 - Review and Enforcement
Clause 42 - review of decisions by the Information Commissioner

Clause 42(4) prevents the Information Commissioner from challenging a certificate issued in connection with the exemptions for parliamentary privilege parliamentary business or national security and defence. Similar certificate provisions apply under the UK.
However, the UK Act expressly allows a national security certificate to be challenged by appeal to the Tribunal, which can overturn (under s.60) it if it finds, applying judicial review principles, that the minister did not have reasonable grounds for concluding that it related to the work of the security services or that exemption was not required for national security. This means that although Information Commissioner cannot see such certificates, the Tribunal can. In any event, the issue of any of the UK Act's conclusive certificates is challengeable in the courts by judicial review.
A tribunal is not provided for under the Bill, and it ought to be made clear whether this type of challenge is available under existing IOM Court procedures.

Clause 45 - Information notices

Clause 45(6) - The Information Commissioner will be able obtain information from a public authority by use of *an* **information notice** [clause 45(2)].
Inexplicably, the information notice procedure could not be used to obtain any information for which legal professional privilege (LPP) could be claimed. This means that if there is a dispute about whether the LPP exemption in *clause 40* has been improperly claimed, the Information Commissioner can be denied access to the disputed information and will not be able to rule.
The UK Act contains a far more limited restriction. The only material which can be withheld from the UK Commissioner is legal advice which relates to the authority's obligations under the Act. That is, if an authority takes legal advice about whether an exemption applies, or whether it is required to comply with a decision of the Information Commissioner, that advice can be withheld from the Information Commissioner. No other legal advice can be withheld. So if an authority says it has taken, say, a planning decision on legal advice, and a request for the advice is made, the UK Information Commissioner can see that legal advice. The Isle of Man Information Commissioner could not. This should be amended to conform to the *UK Act section 51(5)*

Clause 47 - Exemption from duty to comply with certain notices

The Chief Minister would have the power to veto any decision of the Information Commissioner which finds that information is not exempt.
This effectively means that any decision requiring disclosure of information which the government claims is exempt under a qualified or absolute exemption could be vetoed.
PAG recommends that close and careful consideration be given modifying this power to reflect the UK Act and Scottish Act

PART 6 - The Information Commissioner
Clause 53

Although *clause 52* clearly states that the Information Commissioner is independent and not subject to the direction of the Council or Ministers, *clause 53(2)* requires the Commissioner to comply with a code of practice produced by the Council of Ministers. This could fundamentally undermine his or her independence.
Under *clause 59* the code of practice can address a number of fundamental questions, such as how public interest is to be determined *(clause 53(2)(c))* and when information is *held (53(2)(a)*.
Obliging the Information Commissioner to comply with a binding Code of Practice, which the Council of Ministers can amend at their discretion, is not consistent with the Information Commissioner's independent role.
This clause is not within the spirit of the Bill and PAG urges revision by deleting at *53(1) …. and observance of the code of practice.* and also deleting *53(2)*

PART 8 - Supplemental Provisions
Clause 61 - Record Tampering

Footnote 6 on page 46 of the Overview document accompanying the draft Bill states:

> [6] The offences created by clauses 61 and 62 are subject to the limitation of time provisions in section 75 of the Summary Jurisdiction Act 1989. As such, a court of summary jurisdiction shall not hear a complaint unless the complaint was made within 6 months from the time when the offence was committed or the matter of complaint arose.

PAG considers this to be an unrealistically short time
Proceedings for the offence of deliberately destroying or altering etc a requested record to prevent its disclosure must be brought within 6 months of the offence occurring (see footnote 6 on page 46 of the consultation document).
Delays in responding to a request, coupled with the length of time needed for an investigation by the Information Commissioner mean that it is unlikely that deliberate record tampering will come to light within 6 months of it occurring.

PAG suggests that the Bill be drafted to allow proceedings to be brought within 6 months of the offence coming to the Information Commissioner's attention.

D) Principle Conclusions

1. The Bill allows for statutory FoI requests to be made for information held only on or after 11th October 2011, by a limited number of public authorities.

PAG recommends that the retrospective date be extended to coincide with the start date of the Code of Practice on Access to Government Information i.e.1st September 1996, and that the number of public authorities be increased. The Code is fully retrospective and applies to all government departments and all parts of of the Isle of Man Government, Offices and Statutory Boards. It is also fully retrospective.

2. In order to implement a FoI Act, staff will have to undergo training to ensure that it is interpreted and applied lawfully. The Bill determines that the Code is operated in parallel. Doing so may well cause confusion and misunderstanding of interpretation. Having invested in staff training it seems logical to implement FoI as broadly as possible.

3. The provision for requesters to allow publication of their name could, in our small community, dissuade use of the legislation and should be withdrawn.

4. The provision to charge a fee for complaining to the Information Commissioner, following a refusal by a public authority, ought to be dropped.

5. The Bill is weak in the application of provision for access to environmental information and needs strengthening.

6. The requirement for the Information Commissioner to comply with a code of practice on certain matters may undermine the independence of the post.

7. The restriction in not allowing the Information Commissioner to investigate disputes about disclosure of legal advice ought to be relaxed.

8. The role of Chief Minister, as ultimate arbiter in disputes, may be perceived as not being impartial. An alternative independent resolution body may need to be created, with considerate power limited to only qualified exemptions in relation to the public interest test.

Positive Action Group (PAG)
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Appendix 1

Positive Action Group (PAG)
Objectives

To promote awareness and understanding of politics and citizenship

To encourage members of the public to participate actively in politics by taking part indiscussions, making their views known, voting, standing for office and holding public office.

To encourage an increase in the percentage turnout of the electorate, by raising awareness of the importance to the electorate of exercising their democratic right to vote - a consequence of which will be that they can help to shape and secure the future of the Isle of Man.

To bring to the attention of Tynwald Members, the Government of the Isle of Man, or any other appropriate bodies, issues or matters of public interest raised by members of P A G; and which may include submissions in response to public consultation exercises.