

Written by PAG
Thursday, 28 February 2008 16:19

PAG has made a submission to the government on Freedom of Information.

Chief Secretary's Office
Government Office
Buck's Road
Douglas
IM1 3PG

28th February 2007

Dear Sir

Access to Government Information – Preliminary Public Consultation

Positive Action Group's formal response to the above is attached. Our submission is framed around the consultation document's 'Issues for Consideration'.

We note that at Annex 2 reference is made to the United Kingdom F O I Act. We therefore assume that the intention is for the UK Act to be the basic model for future I O M legislation.

However, we suggest that elements of the Scottish F O I Act are also relevant. In particular the Scottish concept of 'substantial prejudice', which can be interpreted as 'substantial harm', ought to be used in drafting the Act, rather than U K Act test of 'harm'.

The incorporation of exemptions from public scrutiny is the most controversial and critical aspect of any FOI legislation. It goes to the heart of whether the legislation is truly open and fair. 'Substantial prejudice' is a far more robust test in allowing qualified exemptions and more clearly benefits the safeguarding of public interest whenever access to information is requested.

Successive Island administrations have stated their commitment to open government. The existing Code is a worthwhile stepping-stone to more openness in government.

However, the lack of access to information in all governmental areas needs redressing urgently, so that all bodies involved in the provision of services at public expense (local authorities, public boards, statutory entitiesetc.,) require to be covered by the legislation.

P A G strongly believes that a F O I Act will send out the clearest of messages from the government to the public that there is now adequate legislation to substantiate that claim and applauds the current consultation process.

In the event that further developments regarding FOI come to light during your consideration of this matter, we will write to again.

Please regard this letter as part of our submission.

Yours faithfully

W Roger Tomlinson
Chair

‘Access to Government Information – Public Consultation’ The Submission of POSITIVE ACTION GROUP to Preliminary Public Consultation.

A. Introduction

1) Positive Action Group (P A G) fully supports the introduction of an effective Freedom of Information Act in the Isle of Man.

2) The Consultation Document’s opening paragraph states that the existing Code of Practice ‘should be revised and updated prior to it being placed on a statutory basis’. This could be a sensible interim option, providing it does not extend the time-scale necessary to introduce a proper F.O.I. Act to establish a statutory right to information. However, P A G considers that certain revisions to the Code are necessary.

B. Issues for Consideration

1) Exemptions (Para 2.1)

a) The over-riding principle of public interest should be explained and adopted i.e. the general public interest is in the disclosure, not the withholding, of information.

b) A distinction between absolute and qualified exemptions is required. At present the Code's public interest test applies only to those exemptions that expressly incorporate a reference to the harm or prejudice which might be caused by disclosure.

c) Absolute exemptions should be scrutinised in order to reduce the number Examples :

- Exemption 4(c) could be qualified, as per U K Act
- Exemption 5 – no equivalent in U K Act
- Exemption 10 : In the Code, Exemption 10 has no explicit harm test (and is therefore not subject to the public interest test). The equivalent exemption in the UK FOI Act is subject to a public interest test.
- Exemption 11 : It is not clear whether the reference to disclosure which could be 'misleading' in Exemption 11a constitutes a harm test or not.

d) The test applied under the Scottish F O I Act is one that would 'prejudice substantially'. PA G proposes that a test of substantial prejudice equivalent to 'substantial harm' is a more appropriate test rather than 'harm'

2) CoMin Minutes / Internal Papers (Para 2.2)

a) Keeping proceedings of CoMin confidential indefinitely is not justifiable. The U K automatically releases Cabinet papers after 30 years and will release upon an F O I request dependent on the balance of public interest. CoMin papers are a source of historical heritage and it is not reasonable to withhold them from scrutiny indefinitely. With a F O I Act the statutory prohibition could be removed and CoMin proceedings made subject to that Act, in the same way as other material.

b) P A G welcomes the proposal for government internal information to be made public

c) Internal Agendas and Minutes should be made available under a F O I Act, unless the public interest in withholding them outweighs the public interest in disclosure.

3) Retrospection (Para 2.3)

- a) The existing Code of Practice is fully retrospective. Any legislation should provide for this, as otherwise it would remove an existing right.
- b) The principle of retrospection should apply to all government information. However, a scheme of phased-in retrospection may be acceptable for local authorities and similar bodies. This would enable them to adapt to the requirements of the legislation over a number of years.

4) Information Commissioner (Para 2.4)

The appointment of an independent Information Commissioner is essential. Initially, PAG believes that this role could be combined with that of Data Protection Supervisor in the Isle of Man. However, a review of the effectiveness of the initial structure should take place within 5 years.

5) Timescales (Para 2.5)

Immediately upon receiving a FOI request, the public authority should acknowledge receipt of the request in writing. It should also indicate when a full response will be issued. The maximum response time should be 15 working days. The Scottish FOI Act does not allow extensions to this period and this is desirable.

6) Charges (Para 2.6)

- a) No charge should be made for simple requests. A clear charging structure should be established for more complex requests. Charging must not be used to create a barrier to discourage requests from ordinary citizens. There should be no additional costs.
- b) The charging structure should be unambiguous and transparent and not prohibitive. Charges should not reflect the full cost of providing the information, as PAG believe this would deter people of modest means from protection under the Act.
- c) Refusal of vexatious requests is reasonable but not any other category. The U K Act does not allow the refusal of unreasonable requests.

7) Scope (Para 2.7)

P A G believes strongly that any F O I Act should apply to:

- All public authorities within both central and local government
- Other public bodies and agencies carrying out a public function
- Other agencies and organisations contracted to undertake public service provision

8) Parliamentary Issues (Para 2.8)

PAG believe that politicians should be able to make FOI requests and should not be in a worse position than any other requester. Where parliamentary questions are asked, information should not be withheld unless it can be justified under provisions of the FOI Act.

9) 'Who' can make requests (Para 2.9)

Access should be allowed to anyone, anywhere to request and receive information.

C. Conclusion

P A G recommends the early introduction of a Freedom of Information Act in the Isle of Man. We understand that 66 other jurisdictions have such legislation. We believe that the 'right to know' is an integral part of a modern democracy and a sign of a strong, self-confident nation. We believe it a contradiction to extol the concept of 'Freedom to Flourish' and yet not have 'Freedom of Information'.

Many practical obstacles will have to be overcome and these will require a committed approach in order to reap the subsequent long term benefits. P A G supports and welcomes the public consultation exercise. We believe it will positively contribute to the introduction of sound, effective legislation.

W ROGER TOMLINSON

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Chair P A G