

**Code of Practice on
Access to Government Information**



**Isle of Man
Government**

Reiltys Ellan Vannin

Approved and issued by the Council of Ministers

Amended with effect from 1 February 2016

Introduction

This revised version of the Code of Practice on Access to Government Information has been developed in response to changes in the legislation of the Isle of Man (and further afield) since this document was first issued, by the Council of Ministers, in September 1996. The most notable of these changes are the enactment of the Public Records Act 1999 ("PRA"), which establishes a Public Record Office and the provision for public records, the Data Protection Act 2002 ("DPA"), which regulates the processing of information relating to individuals and most recently the Freedom of Information Act 2015 ("FOIA"), which makes provision for the disclosure of information held by public authorities.

Taken together with the above legislation, this Code represents the Isle of Man Government's view that citizens must have adequate access to information to promote the public interest but in a way that is balanced with the requirement to maintain privacy of individuals and effective Government. Therefore exceptions to the right of access are detailed within the relevant pieces of legislation and this Code.

In addition, to the legislative changes, the Isle of Man Government is committed to open government and transparency and much of what is done by the Government is detailed on our webpages, which can be found at www.gov.im.

This revised Code takes account of the legislative changes but in all other respects remains the same as the Code issued in 1996. The main difference that will be noted is that this Code cannot be used where the correct route to access information is through the access provisions of the PRA, DPA, FOIA or any other piece of legislation which provides for an application for information to be made. This Code can therefore be used in the following circumstances:

1. To make an application for information created before 11 October 2011 (the date on which FOIA becomes applicable).
2. To make an application, which would be correct to make under the provisions of the Freedom of Information Act 2015 but;
 - a. which is to an area of the Government which is not defined as a public authority for the purposes of FOIA; or
 - b. the applicant for the information does not reside in the Isle of Man.

The other main revision of this Code is that the enactment of FOIA provided for the appointment of the Information Commissioner as an independent regulator of information rights. Part of the function of the Information Commissioner is to regulate the DPA, FOIA and this Code.

To obtain information under the terms of this Code you should make an application, in writing to the relevant Government Department. Should you feel that you have not received an adequate response to your request, a complaints procedure can be found at paragraph 11 of this Code.

Further information and advice can be found by clicking on the following link <https://www.gov.im/about-the-government/accessing-government-information/>.

Code of Practice on Access to Government Information

[Throughout this code references are made to 'Department' and 'Minister'. The code applies:-

1. To information created before 11 October 2011; and
2. To information created on or after 11 October 2011 and held by a Department which is not a public authority for the purposes of FOIA
3. When a request for information is made by a non-Isle of Man resident.

The Code is equally applicable to Statutory Boards, Offices and all parts of the Isle of Man Government. The terms 'Department' and 'Minister' should be read accordingly.]

Part I

Purpose

1. This Code of Practice supports the Government's policy of extending access to official information, and responding to reasonable requests for information, except where disclosure would not be in the public interest as specified in Part II of this Code.
2. The aims of the Code are:
 - to improve policy-making and the democratic process by extending access to information in order to provide the basis for the consideration of proposed policy;
 - to protect the interests of individuals and companies by ensuring that reasons are obtainable for administrative decisions, except where there is statutory authority or established convention to the contrary; and
 - to support and extend the principles of public service.

These aims are balanced by the need:

- to maintain high standards of care in ensuring the privacy of personal and commercially confidential information; and
- to preserve confidentiality where disclosure would not be in the public interest or would breach the provisions of the DPA or the confidences of a third party, in accordance with statutory requirements and Part II of the Code.

Information the Government will release

3. Subject to the exemptions in Part II, the Code commits Government Departments:
 - (i) to publish the facts and analysis of the facts which the Government considers relevant and important in framing major policy proposals and decisions; such information will normally be made available when policies and decisions are announced;
 - (ii) to publish or otherwise make available, as soon as practicable after the Code becomes operational, explanatory material on Departments' dealings with the public (including such rules, procedures, internal guidance to officials and similar administrative manuals as will

assist better understanding of departmental action in dealing with the public) except where publication would prejudice any matter which should properly be kept confidential under Part II of the Code;

- (iii) to give reasons for administrative decisions to those affected;
 - (iv) to make available on request:
 - full information about how public services are run, how much they cost, who is in charge, and what complaints and redress procedures are available; and
 - full information about what services are being provided, what targets are set, what standards of service are expected and the results achieved.
 - (v) to release, in response to specific requests, information relating to their policies, actions and decisions and other matters related to their areas of responsibility.
4. There is no commitment that pre-existing documents, as distinct from information, will be made available in response to requests. The Code does not require Departments to acquire information they do not possess, to provide information which is already published, to provide material which the Government did not consider to be reliable information, or to provide information which is provided as part of an existing charged service other than through that service.

Responses to Requests for Information

5. Information will be provided as soon as practicable. The target for response to simple requests for information is 10 working days from the date of receipt. This target may need to be extended when significant search or collation of material is required. Where information cannot be provided under the terms of the Code, an explanation will be given.

Scope

6. The Code applies to Government Departments, Statutory Boards, Offices and all other bodies comprising the Government. This Code does not apply to information created on or after 11 October 2011 and held by Government Departments, Statutory Boards, Offices and any other bodies defined for the purposes of FOIA as a Public Authority.

Charges

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

Relationship to Statutory Access Rights

8. In addition to the provisions of FOIA and the DPA, there are certain statutory access rights to information. Where access to information is governed by such statutory rights the provisions of that statute should be followed and not the Code. The Information Commissioner is the regulator for the purposes of FOIA and the DPA and it is not envisaged that the Information Commissioner will become involved in supervising other statutory rights, outside of his own remit. Where a statutory right is proposed but has yet to be implemented, access to relevant information may be sought under the Code, but the Code should not be regarded as a means of access to original documents or personal files.

Public Records

9. The Code is not intended to override statutory provisions on access to public records under the terms of the PRA or any other statutory provisions on access to public records.

Jurisdiction of Courts, Tribunals or Inquiries

10. The Code only applies to Government-held information. It does not apply to or affect information held by courts or contained in court documents. 'Court' includes tribunals and inquiries (other than administrative tribunals and inquiries). The present practice covering disclosure of information before, courts, tribunals and inquiries will continue to apply.

Investigation of Complaints

11. Complaints that information which should have been provided under the Code has not been provided, or that unreasonable charges have been demanded, should be made first to the Department or body concerned. If the applicant remains dissatisfied, complaints may be made through a Member of Tynwald to the Information Commissioner. Complaints will be investigated by the Information Commissioner who will advise the complainant of his decision.

Reports to Tynwald

12. The Information Commissioner will present an annual report to Tynwald on his work under the Code, listing the complaints dealt with and the outcome.

Part II

Reasons for Confidentiality

The following categories of information are exempt from the commitments to provide information in this Code.

References to harm or prejudice include both actual harm or prejudice and risk or reasonable expectation of harm or prejudice. In such case, it should be considered whether any harm or prejudice arising from disclosure is outweighed by the public interest in making information available.

The exemptions will not be interpreted in a way which causes injustice to individuals.

1. Security and External Relations

- (a) Information whose disclosure would harm national security or defence.
- (b) Information whose disclosure would harm the conduct of international relations or affairs.
- (c) Information received in confidence from other governments, courts in other jurisdictions or international organisations.

2. Internal discussion and advice

Information whose disclosure would harm the frankness and candour of internal discussion, including:

- proceedings of the Council of Ministers and Council of Ministers' committees;
- internal opinion, advice, recommendation, consultation and deliberation;

- projections and assumptions relating to internal policy analysis; analysis of alternative policy options and information relating to rejected policy options;
- confidential communications between Departments, public bodies and regulatory bodies.

3. **Communications with the Royal Household and the Governor**

Information relating to confidential communications with Her Majesty the Queen or other Members of the Royal Household and Her Majesty's personal representative, or relating to confidential proceedings of the Privy Council.

4. **Law enforcement and legal proceedings**

- (a) Information whose disclosure could prejudice the administration of justice, including fair trial and the enforcement or proper administration of the law.
- (b) Information whose disclosure could prejudice legal proceedings or the proceedings of any tribunal, public inquiry or other formal investigation (whether actual or likely) or whose disclosure is, has been or is likely to be addressed in the context of such proceedings.
- (c) Information relating to proceedings which have been completed or terminated, or relating to investigations which have or might have resulted in proceedings.
- (d) Information covered by legal professional privilege.
- (e) Information whose disclosure could prejudice the prevention, investigation or detection of crime, the apprehension or prosecution of offenders, or the security of any building or penal institution.
- (f) Information whose disclosure could harm public safety or public order.
- (g) Information whose disclosure could endanger the life or physical safety of any person, or identify the source of information or assistance given in confidence for law enforcement or security purposes.
- (h) Information whose disclosure could increase the likelihood of damage to the environment, or rare or endangered species and their habitats.

5. **Immigration and Nationality**

Information relating to immigration, nationality, consular and entry clearance cases.

6. **Effective management of the economy and collection of taxes**

- (a) Information whose disclosure would harm the ability of the Government to manage the economy, or could lead to improper gain or advantage.
- (b) Information whose disclosure would prejudice the assessment or collection of tax, duties or National Insurance contributions, or assist tax avoidance or evasion.

7. **Effective management and operations of the Public Service**

- (a) Information whose disclosure could lead to improper gain or advantage or would prejudice;

- the competitive position of a Department or other public body or authority;
 - negotiations or the effective conduct of personnel management or commercial or contractual activities;
 - the awarding of discretionary grants.
- (b) Information whose disclosure would harm the proper and efficient conduct of the operations of a Department or other public body or authority or of any regulatory body.

8. **Public employment, Public Appointments and Honours**

- (a) Personnel records (relating to public appointments as well as employees of public authorities) including those relating to recruitment, promotion and security vetting.
- (b) Information, opinions and assessments given in confidence in relation to public appointments.
- (c) Information, opinions and assessments given in relation to recommendations for honours.

9. **Voluminous or vexatious requests**

Requests for information which are vexatious or manifestly unreasonable or are formulated in too general a manner, or which (because of the amount of information to be processed or the need to retrieve information from files not in current use) would require unreasonable diversion of resources.

10. **Publication and prematurely in relation to publication**

Information which is or will soon be published, or whose disclosure would be premature in relation to a planned announcement or publication.

11. **Research, statistics and analysis**

- (a) Information relating to incomplete analysis, research or statistics, where disclosure could be misleading or deprive the holder of priority of publication or commercial value.
- (b) Information held only for preparing statistics or carrying out research, or for surveillance for health and safety purposes (including food safety) and which relates to individuals, companies or products which will not be identified in reports or that research or surveillance, or in published statistics.

12. **Personal Information**

Any disclosure of personal data which should be made under the DPA or would otherwise contravene the DPA (in particular the Data Protection Principles) and/or FOIA. .

13. **Third Party's Commercial Confidences**

Information including commercial confidences (including grants and loans), trade secrets or intellectual property whose unwarranted disclosure would harm the competitive position of a third party.

14. **Information given in confidence**

- (a) Information held in consequence of having been supplied in confidence by a person who:
 - gave the information under a statutory guarantee that its confidentiality would be

protected; or

- was not under any legal obligation, whether actual or implied, to supply it, and has not consented to its disclosure.

(b) Information whose disclosure without the consent of the supplier would prejudice the future supply of such information.

15. **Statutory and other restrictions**

(a) Information whose disclosure is prohibited by or under any enactment, regulation, European Community law or international agreement.

(b) Information whose release would constitute a breach of Parliamentary Privilege.

Approved and issued by the Council of Ministers

15 May 1996

Amended by the Council of Ministers

[insert date]



**Isle of Man
Government**

Reiltys Ellan Vannin

Code of Practice on Access to Government Information

**Guidance on Interpretation issued
By the Chief Secretary
with the authority of
the Council of Ministers**

Issued: September 1996

(Revised with effect from 1 February 2016)

Code of Practice on Access to Government Information

Guidance on Interpretation

This guidance is issued with the authority of the Council of Ministers to provide a general interpretation of the Code of Practice on Access to Government Information, following the enactment of the Freedom of Information Act 2015 ("FOIA") and other significant pieces of legislation which have come into force since the Council of Ministers issued this Code of Practice, namely the Public Records Act 1999 ("PRA") and the Data Protection Act 2002 ("DPA"). It cannot cover all the circumstances that may arise, nor can it deal with all issues which are specific to particular Departments. Departments should, therefore, consider the issue of additional guidance on any issues which are specific to their own activities.

The code applies:-

1. To information created before 11 October 2011; and
2. To information created on or after 11 October 2011 and held by a Department which is not a public authority for the purposes of FOIA.
3. When a request for information is made by a non-Isle of Man resident.

The Code itself is reproduced in heavy type within this guidance.

Departments will need to decide on the administrative arrangements they need to put in place to process requests for information and should, in particular, identify the staff who are to have the authority to make decisions. Ideally, a senior manager should have an overall responsibility for co-ordinating the Department's responses.

Departmental arrangements should include a review facility under which a person seeking information who is aggrieved:

- at a refusal to supply information;
- at the cost charged for the supply of information;

may make representations to the Department. As a further refusal, at review, may result in a complaint being made to the Information Commissioner, under the Code, the review arrangement should involve the Minister.

A record should be kept of all initial refusals and review decisions in respect of written requests for information made under this Code. This record should include the exemption(s) cited by the Department in respect of each refusal. The recorded data are to be the subject of a return to be made to the Chief Secretary for inclusion in an annual report to Tynwald.

Throughout the Guidance (and the Code), reference is made to "Department" and to "Minister". The Code and Guidance apply equally to Statutory Boards and Offices and in relation to Statutory Boards and Offices, the Code and the Guidance should be read accordingly.

Chief Secretary

Guidance on Part I

Code Paragraph 1: Purpose

"1. This Code of Practice supports the Government's policy of extending access to official information, and responding to reasonable requests for information, except where disclosure would not be in the public interest as specified in Part II of this Code."

- 1.1 The approach to the release of information under the Code should be positive. When dealing with any request, the presumption should be that information should be made available unless it is exempt under Part II. It would be at odds with the Code and the objectives behind the Code if Departments were to approach requests for information on the basis of seeking to identify an exemption that could be used to justify a refusal.

Code Paragraph 2: Aims of the Code

"2. The aims of the Code are:

- **to improve policy-making and the democratic process by extending access to information in order to provide the basis for the consideration of proposed policy;**
- **to protect the interests of individuals and companies by ensuring that reasons are obtainable for administrative decisions, except where there is statutory authority or established convention to the contrary; and**
- **to support and extend the principles of public service.**

These aims are balanced by the need:

- **to maintain high standards of care in ensuring the privacy of personal and commercially confidential information; and**
- **to preserve confidentiality where disclosure would not be in the public interest or would breach the provisions of the DPA or the confidences of a third party, in accordance with statutory requirements and Part II of the Code."**

- 2.1 The public interest in disclosure is particularly strong where the information in question would assist public understanding of an issue subject to current debate, or improve the transparency and accountability of a particular function of Government.
- 2.2 The emphasis is on assisting understanding, consideration and analysis of existing and proposed policy. The Code does not provide access to the details of the process underlying the Government's preparation of proposals: the ability to think in private is protected.
- 2.3 Facts and analyses should not be unnecessarily secret at any stage, but it is especially important that the reasoning underlying the Government's proposals and preferred course of action should be clear, properly prepared, and made available when decisions are announced. (This does not, of course preclude putting the issues out for consultation before the Government's preferred course is decided, but it will be for Departments to decide case by case whether consultative documents are to be issued at an early stage of the decision making process.) Departments should consider from the earliest stages of

policy preparation which factual and analytical information is to be made available when the policy is announced.

- 2.4 The aim of giving reasons with decisions affecting individuals and companies is consistent with well-established practice in most areas of government. There are some exceptions to this rule, explained in paragraph 3.17 of this Part.
- 2.5 The Government's approach to open government also recognises the duty of all those who have access to Government information to protect information which is properly exempt from release, including personal data and commercially sensitive information.
- 2.6 Prior classification of documents and information will help to ensure the physical security of information which is exempt from disclosure under the Code. Separate guidance on the classification of documents will be issued.

Code Paragraph 3: Information the Government will release

"3. Subject to the exemptions in Part II, the Code commits Government Departments:

- i. to publish the facts and analysis of the facts which the Government considers relevant and important in framing major policy proposals and decisions; such information will normally be made available when policies and decisions are announced;**
- ii. to publish or otherwise make available, as soon as practicable after the Code becomes operational, explanatory material on Departments' dealings with the public (including such rules, procedures, internal guidance to officials and similar administrative manuals as will assist better understanding of departmental action in dealing with the public) except where publication would prejudice any matter which should properly be kept confidential under Part II of the Code;**
- iii. to give reasons for administrative decisions to those affected;**
- iv. to make available on request:**
 - full information about how public services are run, how much they cost, who is in charge, and what complaints and redress procedures are available;**
 - full information about what services are being provided, what targets are set, what standards of service are expected and the results achieved.**
- v. to release, in response to specific requests, information relating to their policies, actions and decisions and other matters related to their areas of responsibility."**

- 3.1 Paragraph 3 of the Code commits the Government, subject to the exemptions in Part II of the Code, to make certain information available as a matter of course, and to release other information in response to specific requests. The way that information is made public is a matter to be judged case by case. If there is very limited demand for information on a particular topic it may be wasteful to produce a priced publication. More limited availability may satisfy demand, but it is good practice to have some means of letting those who are likely to be interested know what is available.

Paragraph 3 (i)

- 3.2 Departments are expected to volunteer certain information rather than wait for a request to be submitted. Providing background material with major policy announcements may help to reduce the volume of subsequent information requests. Such planned information flows should generally be easier to manage.
- 3.3 The increasing presumption in favour of open government, spurred by the process of Tynwald scrutiny and challenge has led to a progressive increase in the amount of factual and analytical information produced with decisions and policy documents. The intention of the Code of Practice is to ensure that this practice becomes more widespread and consistent. The assumption is that the factual and evaluative information, which formed the basis for Departmental decisions, including expert analysis and scientific appraisal where relevant, should be shared with Tynwald and the public. This should not entail the disclosure of policy advice, or information which is covered by the exemptions dealing with other sensitive matters.
- 3.4 It is not necessary to swamp Tynwald and the public by an indiscriminate approach to this requirement of the Code. Material should concentrate on the key facts. Those who wish to probe detail can use the opportunities under the Code for requesting further information.
- 3.5 Where a policy affects several Departments or has been developed with input provided by several Departments, it may be appropriate for each Department separately to make available the background information relating to its own activities, co-ordinated if necessary by the lead Department (or by the Council of Ministers).
- 3.6 The way that information is made available can vary. The requirement could be satisfied by printing the background information as an appendix to the document setting out the Department's decision or proposal as a separate publication (priced or otherwise) by issuing it with press notices or by announcing in press notices that further information packs are available from the Department.
- 3.7 Departments should continue with whatever special arrangements are currently used to keep the most relevant special interest groups or bodies informed of their decisions and announcements.

Paragraph 3 (ii)

- 3.8 The aim of this part of the Code is to clarify for those who have dealings with a Department the reasons for the Department's approach.
- 3.9 A continuing priority under this part of the Code should be given to making available concise explanatory material for each activity or service operated, which gives a fair account of the requirements and criteria. These simplified versions should - to the greatest extent possible - be written in plain language, avoiding administrative jargon. Such shortened and explanatory versions of the operations of the schemes will be sufficient for most applicants. Departments should also progressively prepare for release any internal guidelines used by staff in dealing with the public.
- 3.10 The Code of Practice promises that such internal guidelines should be made available "as soon as practicable". This recognises that this will be a major task in some areas, and should not displace other more urgent work, Departments should prepare plans for the progressive release of all the guidelines and other material used in taking decisions affecting members of the public. This need not mean publication where a Department

considers the level of interest would not justify it, or where the guidelines in question are voluminous, but eventually the aim should be to make all guidelines available for purchase or inspection on request. It will be important to ensure that any shortened explanatory material does not misrepresent the original documents.

- 3.11 In some areas of work, the schemes in operation may change rapidly, and a Department may feel that work done preparing outdated or obsolescent material for publication would not be a sensible use of resources. The priority should be to make available the guidelines currently in use. Any request concerning previous versions of the guidelines, or the rules for discontinued schemes should have a lesser priority.
- 3.12 The decision as to whether or not to make guidelines available hinges on whether the public interest is best served by disclosure or retention. In some cases, it may be necessary to withhold parts of the internal guidelines where for example, there is a risk that knowledge of them might lead to improper personal gain, subversion of the purpose of the scheme or distortion of the decision-making process. Released versions of guidelines should make it clear that certain sections have been removed and cite the relevant exemptions.

Paragraph 3 (iii)

- 3.13 Reasons for administrative decisions are required to be given to those affected so that those administrative decisions are seen to be made fairly and according to clear rules. Absence of reasons can suggest that decisions do not have a rational basis and exposes the decision taker to allegations of unfair or improper administration.
- 3.14 Giving reasons can benefit both the public and the Department as it will usually reassure those affected that the decision has been given adequate consideration and that all the relevant factors have been taken into account.
- 3.15 Reasons given with decisions need not always be full - particularly where explanatory material on the scheme or benefit involved has been or can be made available.
- 3.16 Reasons for refusing or restricting access to information under the Code of Practice should make clear which exemption has been applied and why.
- 3.17 There are some justifiable exceptions to the practice of giving reasons. For example, reasons need not be given for decisions whether to take enforcement action, or where there is a well-established convention or legal authority not to give reasons for decisions, as for example with decisions on citizenship applications. Where refusal to give reasons is challenged, Departments should be ready to explain either why it is in the public interest not to give reasons, or to show what conventions or legal authority governs the case. In providing reasons with decisions, no information need be supplied which is covered by one of the exemptions under the Code.

Paragraph 3 (iv)

- 3.18 The requirement to provide full information about services restates what is or should become good practice within Departments.

Paragraph 3 (v)

- 3.19 Many requests for information will not specifically mention the Code, but if the requester is not satisfied with the information provided, the procedures for review should be available whether or not the original application invoked the Code, and the requester should be informed accordingly.

- 3.20 Departments have discretion to decide how to adapt their existing information systems to meet the requirements of the Code. However, each Department should designate a contact point from which requesters can obtain information on such matters as how to make a request, whether a charge is applicable and how to seek internal review of unsatisfactory or delayed responses.

Code paragraph 4

"4. There is no commitment that pre-existing documents, as distinct from information, will be made available in response to requests. The Code does not require Departments to acquire information they do not possess, to provide information which is already published, to provide material which the Government did not consider to be reliable information, or to provide information which is provided as part of an existing charged service other than through that service."

- 4.1 Paragraph 4 sets out some limits to the information that will be provided on request under the Code.
- 4.2 The Code is a commitment to provide information relating to the policies, actions and decisions of Departments, and other matters within their area of responsibility. It does not constitute a right of access to original documents or records and there is certainly no right given to an enquirer to access an original file and trawl for information. The emphasis is on factual and analytical information, and the reasoning behind decisions and policies. Basing the Code on information rather than documents reflects the increasing variety of forms in which information is held, both electronically and in hard copy. It also emphasises the substance of what is in documents or other records, rather than the form in which they are written.
- 4.3 There is no objection to copying pre-existing documents where it is the most straightforward way of providing the information. However, copies of documents relating to internal deliberative processes - advice, submissions, meeting notes, correspondence between Ministers or between officials or bodies - should not be provided.
- 4.4 Reasonable efforts must be made to locate information, and this may involve contacting the requester to specify more exactly what information he is seeking. Where information is not possessed by the Department, there is no obligation to acquire or create it. A reasonable search should be made before denying that a Department holds information it might be expected to possess.
- 4.5 Where the information is not available because a request has been directed to the wrong Department, the request should be redirected, with the agreement of the receiving Department, and the person requesting the information should be notified. (The receiving Department should then regard the request as one that was directed to it in the first place.)
- 4.6 The Code does not oblige Departments to form an opinion on a particular matter unless there would be a reasonable expectation that it should do so in the normal course of business.
- 4.7 The Code does not require answers to be given to hypothetical questions unless this would be a normal part of advice on, for example, a regulatory requirement. Departments may be asked the legal basis for their actions and requirements, but cannot give definitive

interpretations of the law, and may need to say that advice should be sought from a legal adviser.

- 4.8 Where information is in the public domain - because it is covered in a published report or in a reply given in Tynwald, there is no requirement on a Department to provide that information. However, Departments should be as helpful as possible in referring requests to a source, and can without breach of copyright provide short extracts or copies of relevant material. Similarly, where information sought is available in standard text books or publications, there is no obligation to undertake research on behalf of the requester.
- 4.9 Where a Department has given a summary of the facts and analysis underlying a decision or policy, and has excluded information on the basis that it did not consider the information to be reliable, there is no obligation to supply it on request. Information which is wrong or misleading should not be given, or if it is given, a disclaimer should be included to the effect that the Department takes no responsibility for its accuracy.
- 4.10 Where information is available as part of a charged service, nothing in the Code creates an entitlement to free access to the products of that service. Requesters should be told what is available and how to apply.

Code paragraph 5: Responses to requests for information

"5. Information will be provided as soon as practicable. The target for response to simple requests for information is 10 working days from the date of receipt. This target may need to be extended when significant search or collation of material is required. Where information cannot be provided under the terms of the Code, an explanation will be given."

- 5.1 A target of 10 working days is set for "simple requests". Simple is not defined but should include most requests that do not require extended search or consideration not normally taking longer than two hours. An interim response, explaining the nature of any difficulties, should be sent if a response is behind time.
- 5.2 Information should be provided as soon as it can be made available - there is no need to wait until the target date arrives. However, from time to time it may not be possible to meet the target. Where the reason for delay is not the difficulty with the request itself, but general pressure of work, for example when staff who are busy dealing with a matter in the news receive a lot of requests for information relating to it, an acknowledgement, and perhaps a summary information sheet might be sent, together with an explanation if more time is needed to reply to a detailed query.
- 5.3 Applicants should be notified if it is going to take more than 10 working days to respond to their request. No fixed extended period for responding to requests that are not simple is set. This will depend on the amount of work to be done. Care should be taken to reply as soon as practicable. Undue or unexplained delay is likely to attract criticism.
- 5.4 If the information requested falls under an exemption, the response should explain which exemption the Department considers relevant, with any additional explanation which might be helpful.

Code paragraph 6: Scope

“6. The Code applies to Government Departments, Statutory Boards, Offices and all other bodies comprising the Government. This Code does not apply to information created on or after 11 October 2011 and held by Government Departments, Statutory Boards, Offices and any other bodies defined for the purposes of the Freedom of Information Act 2015 as a Public Authority.”

- 6.1 Although the Code and the Guidance Note apply to the whole of Government, offices serving the Judiciary and the Legislature are not included. The Code applies to the General Registry, except in relation to court matters.
- 6.2 The availability of information about Government functions should not be reduced because they are undertaken by a contractor or agent. Departments faced with enquiries should treat them, so far as possible, as though the function was provided "in house".

Code paragraph 7: Charges

“7. 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.”

- 7.1 Departments should not charge for the provision of information which it is necessary for the public to have as part of fair and accountable performance of their functions. Information explaining:
- benefits, grants, rights and entitlements;
 - the standards and availability of services;
 - the reasons for administrative decisions made in the applicant's case;
 - the ways in which people exercise rights to appeal or complain about a decision;
 - regulatory requirements affecting the affairs of a business, or common interests;
 - the main points of existing Departmental policies or initiatives;

should usually be available free of charge.

- 7.2 Simple requests for information (i.e. those answered within 10 working days) are to be free of charge, except where extensive copying is required in which case a copying charge may be levied. Where a request for information will incur substantial cost for the Department, a charge may be levied which does not exceed the cost to the Department, and the person making the request should be advised of the cost and should agree to meet that cost before the work is undertaken. Some flexibility on what constitutes a substantial cost must be allowed, taking into account the nature of the inquiry. A cost borne by the public purse is more justified in relation to an enquiry about a serious issue than a trivial one, but 2 hours of staff time would be a reasonable limit for a simple enquiry.
- 7.3 A charge for the provision of information under the Code by a Government Department is not subject to VAT.
- 7.4 There should be arrangements for internal review of proposed charges if the requester queries them. Unreasonable charges is one of the matters on which the public may complain, through a Member of Tynwald, to the Information Commissioner.

- 7.5 When a Department has received several requests for information relating to a particular matter, it may be possible to respond by preparing a general note for publication as soon as possible. This will usually be less expensive for the applicant than charging the work in full to a single requester. The position should be explained to those who have requested information, and care should be taken to avoid undue delay.

Code paragraph 8: Relationship to Statutory Access Rights

"8. In addition to the provisions of FOIA and the DPA, there are certain statutory access rights to information. Where access to information is governed by such statutory rights the provisions of that statute should be followed and not the Code. The Information Commissioner is the regulator for the purposes of FOIA and the DPA and it is not envisaged that the Information Commissioner will become involved in supervising other statutory rights, outside of his own remit. Where a statutory right is proposed but has yet to be implemented, access to relevant information may be sought under the Code, but the Code should not be regarded as a means of access to original documents or personal files.

"

- 8.1 Where the information requested could be sought under an existing statutory right of access to information or records, the terms of that right of access take precedence over the Code.

Code paragraph 9: Public Records

"9. The Code is not intended to override statutory provisions on access to public records under the terms of the PRA or any other statutory provisions on access to public records"

- 9.1 Where the information is subject to the PRA or any other statute which provides for public access, the provisions of the statute overrides anything in this Code.

Code paragraph 10: Jurisdiction of Courts, Tribunals or Inquiries

"10. The Code only applies to Government-held information. It does not apply to or affect information held by courts or contained in court documents. "Court" includes tribunals and inquiries (other than administrative tribunals and inquiries). The present practice covering disclosure of information before courts, tribunals and inquiries will continue to apply."

- 10.1 Paragraph 10 of the Code is intended to ensure that the Code does not override or disturb arrangements for disclosure of documents in legal proceedings of various kinds.
- 10.2 Where there is actual or likely litigation, it will be for the Court to decide what disclosure is required in the interests of justice. Departments should alert their legal advisers when requests are made for information which is or is likely to be disclosed, relevant to or otherwise dealt with in proceedings before a Court, Tribunal or Inquiry.

Code paragraph 11: Investigation of Complaints

"11. Complaints that information which should have been provided under the Code has not been provided, or that unreasonable charges have been demanded, should be made first to the Department or body concerned. If the applicant remains dissatisfied, complaints may be made through a Member of Tynwald to the Information Commissioner. Complaints will be investigated by the Information Commissioner who will advise the complainant of his decision."

- 11.1 The Code provides for both internal and external complaints procedures.
- 11.2 Departments should make their own arrangements for review of complaints that they have failed to comply with the Code. The aim should be to ensure that the applicant has been fairly treated under the provisions of the Code, that any exemptions have been properly applied, and that charges are reasonably and consistently applied.
- 11.3 The Information Commissioner's procedures for investigating complaints may include access to papers and records, and it should be noted that he should be allowed to see all papers relevant to a request.
- 11.4 The decision of the Information Commissioner is not binding on the Department. However, in the event of an adverse decision from the Information Commissioner, it is expected that a Department would normally seek to implement the decision.

Code Paragraph 12

"12. The Information Commissioner will present an annual report to Tynwald on his work under the Code, listing the complaints dealt with and the outcome."

Guidance on Part II

Preamble to exemptions - Reasons for Confidentiality

“The following categories of information are exempt from the commitments to provide information in this Code.

References to harm or prejudice include both actual harm or prejudice and risk or reasonable expectation of harm or prejudice. In such cases, it should be considered whether any harm or prejudice arising from disclosure is outweighed by the public interest in making information available.

The exemptions will not be interpreted in a way which causes injustice to individuals.”

- 0.1 The preamble governs interpretation of all the exemptions in the Code. Because the Code is not statutory, it cannot set aside restrictions on disclosure which are based in law.
- 0.2 Subject to these statutory constraints, decisions on disclosure will require judgment and discretion. As with other functions, decisions may be made by officials acting in accordance with the general policy and instructions of a Minister, or of the Council of Ministers, as expressed in this Code. It is for Ministers to arrange with their Departments how far they wish decisions to disclose or not disclose information to be referred to them or brought to their attention. Civil servants have no duty independent of such Ministerial instructions, except in so far as they must comply with legal requirements, and should not mislead.
- 0.3 Where an exemption refers to harm or prejudice, it is not necessary to prove that actual harm or prejudice is certain to result from disclosure. Risk or reasonable expectation of harm can be taken into account. But where a risk is neither likely nor grave, that risk should be given less weight. The public interest in making information available should also be taken into account.

Exemption 1: Security and External Relations

- “(a) Information whose disclosure would harm national security or defence.**
- (b) Information whose disclosure would harm the conduct of international relations or affairs**
- (c) Information received in confidence from other governments, courts in other jurisdictions or international organisations.”**

- 1.1 Defence, security and external relations are legitimate subjects for public information and debate. This exemption is not intended to protect information necessary to inform debate in these areas, including the factual and analytical basis of policy. However, there are various matters concerning which it will be generally accepted that it would not be in the public interest for information to be disclosed. Information on war plans, defence related installations or military exercises are examples.

Defence

- 1.2 The purpose of the exemption is to protect:
- information whose disclosure would adversely affect the operational effectiveness of armed forces and their capacity to protect the Island or the United Kingdom from external aggression.
 - information whose disclosure would put at risk servicemen and their civilian support staff.

Security

- 1.3 The purpose of the exemption is to protect information whose disclosure would put security at risk, particularly in respect of terrorism. This includes the protection of individuals and sites which may be at risk, and the protection of information whose disclosure would prejudice the operations, sources and methods of the police, security or intelligence services.

Conduct of external relations or affairs

- 1.4 The purpose of the exemption is to protect information which would impair the effectiveness of the conduct of external relations. The harm or risk of harm which arises will need to be demonstrated. It includes:
- disclosure which would impede negotiations, for example by revealing a negotiating or fallback position, or weakening the Government's bargaining position.
 - disclosure which would impair confidential communications and candour between Governments.

The External Relations Division within the Cabinet Office should be consulted in any cases of doubt.

Information received in confidence from other governments, courts in other jurisdictions or international bodies

- 1.5 Whether or not harm would be caused by the release of the particular information in question, account should be taken of the possible effect on the maintenance of good working relations between the Isle of Man and other governments and the need to continue to offer effective guarantees that information received in confidence will not be released. The requirement is especially important in respect of international co-operation on such matters as law enforcement (including action against fraud and drug trafficking).
- 1.6 Not all information provided by another government will necessarily fall into this category. The factors to look for are:
- the circumstances in which the information was supplied (covering letters or associated papers may reveal whether it was "in confidence");
 - whether the information is in the public domain in the country of origin.

Giving reasons for refusal

- 1.7 Where prejudice to security, defence or external relations could arise from confirming that information relevant to a request exists, responses to requests may say that if the information sought were held, it would be exempt under the Code. The justification for non-disclosure, specifying the harm or risk of harm arising from disclosure, will nevertheless need to be explained to the Commissioner in the event of a complaint.

Exemption 2: Internal discussion and advice

“Information whose disclosure would harm the frankness and candour of internal discussion, including:

- **proceedings of the Council of Ministers and Council of Ministers’ committees;**
- **internal opinion, advice, recommendation, consultation and deliberation;**
- **projections and assumptions relating to internal policy analysis; analysis of alternative policy options and information relating to rejected policy options;**
- **confidential communications between Departments, public bodies and regulatory bodies.”**

- 2.1 The Code commits Departments to give full information on the factual and analytical background to new policies, but there is an important distinction between the process by which a decision or policy has been reached, which remains confidential, and an explanation of the basis of the decision once reached, which should be as full and open as possible.
- 2.2 This need not inhibit consultation on policy options and proposals, although the form and timing of consultation will continue to be for Departmental decision.
- 2.3 It is not the intention to change or undermine the long-established conventions protecting the internal decision-making process. It is the process by which the Government reaches a collective view, and takes account of the advice of officials, which requires protection.

Proceedings of the Council of Ministers and Council of Ministers Committees

- 2.4 The confidentiality of the proceedings of the Council of Ministers and of Council of Ministers Committees is protected statutorily (see Section 6(2) of the Council of Ministers Act 1990) The Chief Secretary should be consulted on any question relating to the Council of Ministers process or papers.

Internal opinion, advice, recommendation, consultation and deliberation

- 2.5 The justification for protecting the internal opinion, advice, recommendation and deliberation is the need to ensure that matters can be discussed candidly and frankly within Government, and a full record kept.
- 2.6 The exemption turns on class rather than content. It is not the intention to withhold this class of information only if it reveals internal differences and disagreements, or deals with matters of particular sensitivity. It is important that reasonable expectations of confidentiality are preserved when opinion, advice and deliberation are put on record.
- 2.7 It is not intended that internal opinion, etc., can be published once a decision has been taken. Exposure of differences between Ministers, between Ministers and their civil servants or between civil servants, could prejudice working relationships and effective discussion of policy, especially if it led to dissenting or different views being quoted in political argument to attack the policy or action which had eventually been decided. Disclosure could undermine frankness and candour, the adequacy for their purpose of record keeping, it

could undermine collective responsibility and, in certain circumstances, the political neutrality of the civil service.

- 2.8 Advice includes opinion and recommendations on possible courses of action. It need not necessarily include a firm expression of view, and may sometimes consist of the evaluation of the political, administrative or financial aspects of an issue for decision, or an assessment of presentational or handling options.
- 2.9 The Code commits the Government to publish the facts and analysis of the facts which were considered important and relevant in framing policies, and to give reasons with decisions. It does not, through this exemption, commit the Government to the disclosure of all internal analysis, projections and assumptions.
- 2.10 There is a presumption in favour of disclosing the material which the Government has acted on. Whilst in some circumstances it may be in the public interest to publish analysis of alternative and rejected options, it would not in the Government's view be in the public interest to create an invariable obligation to do so.
- 2.11 The civil service is accountable to Ministers and serves the elected Government of the day. It may, from time to time, need to assess options or proposals which are not the Government's preferred options and to do so objectively and dispassionately. Ministers and their officials will also need to explore unpopular and difficult options, or to prepare plans for reacting to possible events. Governments might have a legitimate wish not to disclose that a particular analysis had been conducted, or what conclusions had been reached. Wide disclosure may, in practice, limit analysis of policy options within government. This could cause certain possibilities to go unexplored, put undue pressure on officials to take account of the Government's political interests and intentions, or cause the Government to rely on private or political sources of advice.
- 2.12 Whilst this exemption preserves the possibility of confidentiality, it is not obligatory. Where it is judged that publication or analysis of alternative possibilities or policies would assist public debate or understanding, Departments have discretion to authorise publication. The exemption would not justify withholding information about the expected effects of policies which are being implemented, nor would it justify withholding facts which those outside Government need in order to produce their own analysis.

The Code does not commit Government to publish advice and opinions. But this exemption does not prevent the disclosure of factual information and other data which happens to be included within a document which contains some advice or opinion.

- 2.13 Communications between Departments may properly be confidential for a range of reasons including the following:
- because they are part of the deliberative process;
 - because they relate to plans of action and premature disclosure would impair their effectiveness;
 - because a facility for confidential exchange of views is justifiable in relation to a need for candid and effective communication.
- 2.14 There is less need for confidentiality in respect of advice from expert advisory committees, especially where the members of committees are not civil servants, where the availability of the assessment will enhance public debate and understanding of an issue, and it is important that there should be opportunities for scientific assessment and analysis to be contested or made available for peer group review.

Exemption 3: Communications with the Royal Household and the Governor

“Information relating to confidential communications with Her Majesty the Queen or other Members of the Royal Household and Her Majesty’s personal representative, or relating to confidential proceedings of the Privy Council.”

- 3.1 The purpose of the exemption is to preserve confidential communications with the Queen and the Governor where this is appropriate.

Exemption 4: Law enforcement and legal proceedings

“(a) Information whose disclosure could prejudice the administration of justice, including fair trial and the enforcement or proper administration of the law.

(b) Information whose disclosure could prejudice legal proceedings or the proceedings of any tribunal, public inquiry or other formal investigation (whether actual or likely) or whose disclosure is, has been or is likely to be addressed in the context of such proceedings.

(c) Information relating to proceedings which have been completed or terminated, or relating to investigations which have or might have resulted in proceedings.

(d) Information covered by legal professional privilege.

(e) Information whose disclosure could prejudice the prevention, investigation or detection of crime, the apprehension or prosecution of offenders, or the security of any building or penal institution.

(f) Information whose disclosure could harm public safety or public order.

(g) Information whose disclosure could endanger the life or physical safety of any person, or identify the source of information or assistance given in confidence for law enforcement or security purposes.

(h) Information whose disclosure could increase the likelihood of damage to the environment, or rare or endangered species and their habitats.”

[In the case of any doubt about applying this exemption, advice should be sought from the Attorney General.]

- 4.1 References to proper administration of the law apply to both criminal and civil law. Reference to law enforcement, therefore, includes, as well as policing, regulatory functions and related investigations, all proceedings that could lead to prosecutions, penalties, sanctions, disqualification or loss of licence.
- 4.2 The Code is not intended to circumvent or modify the existing rules or practices of disclosure in legal proceedings. [See notes on paragraph 10 of Part I of the Code.]
- 4.3 **Exemption 4 (a)** applies, inter alia, to information which would prejudice regulatory and enforcement procedures; the confidentiality of information received in such process may have statutory protection.
- 4.4 Particular care should be taken when considering a request for disclosure of information which falls within a category which it is in the public interest to protect from disclosure regardless of the nature of the specific information requested. Even if the information is itself innocuous, repeated disclosures or a policy of disclosure will weaken the strength of

the argument against disclosure of information or documents in that category, no matter how strong those arguments may be in principle. It may be right that disclosure should be made, but the implications should be fully considered first. In all such cases, legal advisers should be consulted.

- 4.5 **Exemption 4 (b)** is designed to protect the integrity and effectiveness of legal proceedings including those in the civil and criminal courts, proceedings before tribunals, and certain other formal proceedings of inquiry or investigative hearings - including planning inquiries, investigations in regulatory areas or accident and disaster inquiries. To establish that information is covered by the exemption, it would be necessary to show a link to specified proceedings, or where it is claimed that proceedings are likely there must be reasonable grounds for expecting that they will take place.
- 4.6 When prospective proceedings seem likely to be at issue, information which is not otherwise exempt under the Code should not be denied solely on the grounds that it relates to a matter which might in future become the subject of proceedings. It would not be right, for example, to withhold reasons for decisions on the grounds that they might be challenged, with a view to disclosing them only as required by a court. On the other hand, Departments need not necessarily regard the Code as obliging them to co-operate with trawling for information in advance of possible proceedings.
- 4.7 The exemption also covers information whose disclosure is at issue in legal proceedings during and after the proceedings. It would be inappropriate, and in some cases a contempt, to disclose information when its disclosure was at issue in a court, tribunal or inquiry, and once such proceedings have determined an issue of disclosure, it will not normally be appropriate for applications under the Code to reopen the question.
- 4.8 **Exemption 4 (c)** refers to the situation where, in the course of investigations, a large amount of information may be gathered and evaluated. Some of this will turn out to be unsubstantiated or irrelevant, and it may become apparent that there are no grounds for proceeding. Releasing information other than in court or as part of other appropriate proceedings could prejudice the effective operation of the body conducting operations, and cause unjustified harm to the subject of an investigation.
- 4.9 **Exemption 4 (d)** deals with legal professional privilege. The right of Government and public authorities to receive legal advice in confidence is usually protected in access legislation. There will be occasions when such advice can and will be published, but Government and public authorities would be significantly handicapped both in litigation and in their day to day conduct if they were unable to seek and obtain legal advice in confidence. Legal advice may come from the Attorney General, Advocates, or more rarely solicitors or barristers.
- 4.10 The exemption may be applied whether or not litigation is involved or foreseen. It is particularly important where the disclosure of information could:
- circumvent the normal processes of discovery in cases presently before the courts;
 - prejudice the Government's legal position in present or future litigation or negotiations;
 - impede the ability of Government's legal advisers to communicate fully and frankly with their clients.
- 4.11 Three criteria must be satisfied:
- the communication must be between a lawyer and client;
 - it must entail the seeking or giving of legal advice;

- it must be intended to be confidential to the parties.
- 4.12 There is a long established convention that neither the fact of consultation nor opinions or advice given by the Attorney General may be disclosed outside Government without his express approval.
- 4.13 Indirect references to the source of legal advice, such as "advice has been given at the very highest level" would also fall foul of the convention. Should there be pressure to disclose the source or content of advice, or to confirm that the Attorney General has been consulted, the advice of the Attorney General should be sought.
- 4.14 **Exemption 4 (e)** deals with information whose disclosure would prejudice law enforcement. There should be no commitment to disclose information which would help potential lawbreakers and criminals, put life, safety or the environment in danger, or prejudice the security of penal institutions. This means, for example, that information about addresses or other matters of interest to terrorists or information about the location of some rare species or habitats should not be disclosed. Investigation of suspected crime including fraud must normally be kept secret from the suspect and others. Witness statements, names and addresses of witnesses and reports from the police and others to prosecutors could, if disclosed, other than as required by the courts, jeopardise law enforcement or the prevention or prosecution of crime, or be extremely unfair to a temporary suspect against whom (in the event) no real evidence existed. It is in the interest of both the individuals concerned and the integrity of the prosecution process that material relating to both live and completed prosecutions and to prosecutions which do not go ahead can be kept confidential.
- 4.15 Information which might fall to be protected under this exemption could include:
- the existence, nature or details of plans or investigative techniques for tackling crime or fraud, where disclosure could assist suspects or criminals to counter lawful methods of crime prevention or detection;
 - information obtained or prepared in the course of such investigations;
 - information whose disclosure could reasonably be expected to injure an enforcement process, although not obtained or prepared as part of that process;
 - information obtained in confidence as part of an investigation, for example to determine the cause of an accident, but not to lay charges or assess blame for the purpose of civil remedy, where it is likely that disclosure could prejudice co-operation with such inquiries in future cases; [See also exemption 14 below]
 - information which could be useful in an escape attempt from or disruption of a penal institution, police cells, court buildings or other place of detention;
 - any information which could facilitate the commission of an offence - for example, information on criminal methods or techniques;
 - information which might reveal points of vulnerability or potential vulnerability in particular buildings, structures or systems, or methods to protect the same from interference or attack; this might include, for example, floor plans of government buildings, computer security systems.
- 4.16 There should be a reasonable expectation that disclosure could undermine the effectiveness of law enforcement processes or facilitate the commission of an offence. This need not amount to a probability, but absurd or highly speculative claims should be avoided.

- 4.17 **Exemption 4 (f)** is necessary to protect from disclosure information about the formulation and implementation of counter terrorist policies, where disclosure would assist those organisations against which the policies are directed.
- 4.18 **Exemption 4 (g)** deals with information which could endanger life, safety or information sources. Information withheld under this section might include any information which would assist terrorist or other hostile or criminal parties to locate or attack a target, for example, the address (or, in some cases, the identity) of a witness. It would include information about persons giving information or assistance to the police.
- 4.19 **Exemption 4 (h)** is concerned with environmental protection. The need for this exemption arises where there is reason to believe that disclosure of information might lead to damage, whether malicious or inadvertent. The damage feared need not necessarily be criminal. Where the disclosure of information would, in the circumstances, increase the likelihood of damage to the environment, that information must be withheld. In some cases, the dissemination of environmental information could, in fact, harm or pollute the environment. For example, information about nesting sites, rare habitats or endangered/protected species should be withheld to avoid the risk of damage. And information about possible areas of Special Scientific Interest should not be made available until a formal notice is served; making information available prematurely could run the risk of pre-emptive damage being caused to the site before it was protected.

Exemption 5: Immigration and Nationality

“Information relating to immigration, nationality, consular and entry clearance cases.”

This exemption is of relevance only to the Cabinet Office and may be subject to internal guidance within that Office.

Exemption 6: Effective management of the economy and collection of taxes

“(a) Information whose disclosure would harm the ability of the Government to manage the economy, or could lead to improper gain or advantage.

(b) Information whose disclosure would prejudice the assessment or collection of tax, duties or National Insurance contributions, or assist tax avoidance or evasion.”

- 6.1 Disclosure of information about some types of proposals, or even the admission that certain possibilities are being considered, can lead to speculation, damage to the economy, and even improper gain. It will, therefore, be necessary to consider the harm test set out in the exemption before releasing information regarding such matters as:
- proposals for expenditure;
 - a contemplated change in tariff rates, taxes, duties or any other revenue raising services, including methods of collection;
 - a contemplated change in the conditions of operation of financial institutions;
 - a contemplated sale or acquisition of land or property.

- 6.2 The above is not an exhaustive list and is intended only to provide examples of the type of information which might be covered. Treasury should be consulted in cases of doubt.
- 6.3 It is possible that the exemptions relating to internal discussion and advice and prematurity in relation to publication will also be relevant to information protected here. [See exemptions 2 and 10]
- 6.4 Most information about the tax system can be made available to the public. However, exploitation of the tax system through determined avoidance or evasion can rapidly cost the Government very large sums. Revenue compliance operates on the basis that a small proportion of the information about the working of the system is kept confidential. The Code would not require this information to be released.
- 6.5 Where disclosure could lead to a loss of tax, duties or national insurance contributions, this exemption protects information about matters such as:
- loopholes and weaknesses in the system;
 - Departments' sources of information and investigation procedures;
 - ways of escaping or delaying enforcement action.
- 6.6 This exemption applies to factual information as well as to policies and plans.
- 6.7 In cases of doubt, Departments should consult:
- Income Tax Division on direct tax matters;
 - Customs and Excise Division on indirect tax matters;
 - Treasury on national insurance contributions.

Exemption 7: Effective Management and Operations of the Public Service

“(a) Information whose disclosure could lead to improper gain or advantage or would prejudice:

- **the competitive position of a Department or other public body or authority;**
- **negotiations or the effective conduct of personnel management or commercial or contractual activities;**
- **the awarding of discretionary grants.**

“(b) Information whose disclosure would harm the proper and efficient conduct of the operations of a Department or other public body or authority or of any regulatory body.”

- 7.1 This exemption is intended to cover information about proposals for grant schemes or other payments where advance knowledge could unfairly advance the applicant. The prematurity exemption might also be used in these instances. In cases where there would be a general public interest in information being released, Departments may wish to consider issuing it generally rather than only to the individual who makes the request.
- 7.2 Examples would include much market sensitive information, including announcements which, if they become known in advance, may assist speculation. Government plans for the acquisition of land (other than by compulsory purchase) could fall within this exemption if advance knowledge might encourage speculation or raise prices.

- 7.3 Where a Department is involved in commercial or trading activities, information may be withheld which would damage the Department's competitive position. But the need for commercial confidentiality should be assessed stringently, and balanced against the general presumption of openness when public money is at stake. Transparency as to costs and performance specifications is important. It serves to expose the costs of particular functions and services so that value for money can be assessed, to promote improvements in management, to keep the risk of fraud and corruption to a minimum, and to enhance accountability.
- 7.4 Information which is relevant to negotiations - for example, internally agreed limits for payments - can be withheld if disclosure would prejudice the position of the Department, or undermine effective management or dealing with contractors.
- 7.5 The management and assessment of personnel will entail holding information, some of which should not be released. The test should be whether disclosure would breach the provisions of the Data Protection Act 2002 or otherwise prejudice effectiveness and efficiency, or breach proper undertakings of confidentiality.
- 7.6 The exemption relating to discretionary grants is available where Departments can show that disclosure of information would prejudice the successful operation of the grant scheme, and undermine its operation or purpose. Discretionary grant includes ex-gratia payments.
- 7.7 The exemption in respect of proper and efficient conduct of operations is intended to prevent the disclosure of information where disclosure would be damaging to the work of the Department concerned. The exemption could, for example, be used to protect information relating to the conduct of tests, examinations or audits conducted by a Department, where disclosure of the methods used might prejudice the effectiveness of the tests or the attainment of their objectives.
- 7.8 The protection given by the exemption need not be limited to those cases where disclosure would adversely affect the conduct of a particular review, or prejudice the supply of information in one particular case. It would be sufficient to show that the disclosure of information relating to, or gained in the course of, a particular review would make it more difficult to obtain similar information or conduct other reviews in the future, or that disclosure might have a negative effect on the ability of other Departments to conduct similar operations.

Exemption 8: Public employment. Public Appointments and Honours

“(a) Personnel records (relating to public appointments as well as employees of public authorities) including those relating to recruitment, promotion and security vetting.

(b) Information, opinions and assessments given in confidence in relation to public appointments.

(c) Information, opinions and assessments given in relation to recommendations for honours.”

Personnel Records

- 8.1 Information held by Departments in their capacity as employers is exempt if to disclose it would breach the terms of the DPA.

8.2 Although personnel records are exempt under the terms of the Code, this does not, in any way, exclude good management practices such as the disclosure of annual performance reports to staff and openness and transparency in the processes of recruitment and promotion. Nor does the exemption exclude access being made available to third parties in exceptional circumstances where the balance of the public interest or natural justice requires it. Examples would include:

- access to information with implications for health and safety;
- access to accident reports, and in particular access by next of kin to reports of fatal accidents;
- provision of information or documents as appropriate in connection with court or tribunal proceedings;
- provision of information, usually in anonymised or statistical form, for the purposes of monitoring or reviewing non-discrimination policies.

Public Appointments

8.3 The exemption applies in respect of individuals holding, or being considered for, other appointments for which the Governor, Tynwald or Departments are responsible.

Honours

8.4 The purpose of this exemption is to ensure that recommendations, opinions and assessments of individuals for the award of an honour can be made with frankness and candour, and in the knowledge that honest opinions will not become available to the person commented on. It is a necessary condition, for the effective operation of the honours system, that recommendations made in confidence, and the confidential expert opinions sought in the selection process, should not be seen by the subject.

8.5 Honours are neither a right nor an entitlement. It follows that arguments for access (more particularly, subject access) based on the premises that incorrect or incomplete information might affect the individual's rights, do not apply in this context. This is not to say, of course, that there are not careful checks and balances within the honours system to ensure that factual information is correct, and that a proper balance of opinion is sought.

8.6 There is no public interest argument for disclosure in this area; and confidentiality can indeed be seen as being in individuals' best interests. Nominees are generally not aware that they are being considered for an honour, nor have they given their consent to be considered. Of necessity, many nominations fail and in the great majority of cases, this in no way reflects on the quality of the individual's contribution. A clear rule of confidentiality for all honours under consideration avoids problems of individual expectations being disappointed or of public perceptions of failure.

Exemption 9: Voluminous or Vexatious Requests

“Requests for information which are vexatious or manifestly unreasonable or are formulated in too general a manner, or which (because of the amount of information to be processed or the need to retrieve information from files not in current use) would require unreasonable diversion of resources.”

9.1 There are two strands to this exemption, the first related to the amount of information sought in an application, and the second to difficulties in identifying, locating or collating the information requested. In each case, the test is whether these factors would mean that meeting an access request would require an unreasonable diversion of resources or

otherwise undermine the work of the Department (because files are kept out of circulation for extended periods, for example, or staff have to be diverted for a considerable amount of time from other more urgent work).

- 9.2 Even where an applicant is prepared to cover in full the costs of dealing with a voluminous application, it might still be reasonable to reject it on the grounds that the opportunity cost of responding, in terms of diversion of staff resources from other work, was unreasonable. The same consideration might apply where repeated requests were made by the same person, which in total amounted to an unreasonable diversion of resources.
- 9.3 Manifestly unreasonable requests would include those which are framed in such a way as to request access to a very large volume of information or so generally as to make it difficult to identify the information sought.
- 9.4 Where a request is framed in very general terms because an applicant is unsure of what information is held and where. Departments should attempt to help the applicant to focus their request more narrowly on the specific information which they require.
- 9.5 It may on occasion, be necessary to refuse access where the information requested is difficult to identify or to locate. This may be because finding it would require extensive searches in historic files, or because the information is physically not easily accessible, or because it would require a significant amount of processing before it could be released. However, this exemption is not meant to apply where the difficulties are caused by the Department's errors in record keeping.
- 9.6 A related problem arises when an unreasonable degree of effort would be required to collate the information requested. Departments are not required to carry out what would amount to research work on the applicant's behalf. In some cases Departments will be able to give access to raw research data, if this can be done without risk of exposing exempt material.

Exemption 10: Publication and Prematurity in relation to Publication

“Information which is or will soon be published, or whose disclosure would be premature in relation to a planned announcement or publication.”

- 10.1 The Code of Practice commits the Government to provide information on its own account, without waiting for access requests. The general purpose of this exemption is to avoid damaging the existing mechanisms for providing information, which are often the most cost effective way of meeting a regular demand for particular types of information.
- 10.2 The exemption can be applied when information requested is already published and available:
 - on payment of a fee or other charge, on any statutory public register or otherwise
 - in a document normally available for purchase from a Government Department.
- 10.3 If an applicant's information request can be answered by reference to an existing publication, the response need only be to refer the applicant to it, with full details of title, price and availability. If a particular query can be answered by reference to a few pages of a published document, Departments may want to provide photocopies of those pages subject to any copyright restrictions.
- 10.4 Information which is soon to be published need not be provided under the Code of Practice. The applicant should be informed of the position, and given an indication of the

expected publication date. Pointers supporting the use of the exemption would be a planned publication date and evidence that release of certain information before that date would damage the impact of the planned publication and would not therefore be in the public interest. How far ahead a publication is planned should not be decisive.

- 10.5 Departments are allowed to withhold certain information on the grounds that it is shortly to be announced or published. When responding to an information request. Departments need not give full details of the nature or timing of a planned announcement, where little is otherwise known, if to do so would diminish its impact.

Exemption 11: Research, Statistics and Analysis

“(a) Information relating to incomplete analysis, research or statistics, where disclosure could be misleading or deprive the holder of priority of publication or commercial value.

(b) Information held only for preparing statistics or carrying out research, or for surveillance for health and safety purposes (including food safety) and which relates to individuals, companies or products which will not be identified in reports of that research or surveillance, or in published statistics.”

- 11.1 In general, analysis, research information and statistics should be available under the Code. Indeed, such information will often be volunteered with major policy announcements. This exemption, however, recognise the difficulties of releasing incomplete information, particularly when it could give a misleading impression. It also recognises that some information, though gathered in the course of research, should not be released at all, because it might reveal facts about individuals, companies or products which could be interpreted as being damaging to them.
- 11.2 Departments may withhold information relating to incomplete analysis, research or statistics, but only where incompleteness could produce a misleading impression (see below).
- 11.3 Departments may withhold information which could be misleading for reasons which could include the following:
- the information would give a one-sided version of the case;
 - because the research had been carried out in an unconventional way.

For example, unexpected results of a survey might have revealed flaws in the questions used or the sample interviewed.

Departments may, however, release information of this type on a discretionary basis where it is possible for the information to be accompanied by an explanatory statement explaining in what ways it is defective.

- 11.4 Departments need not do this if they consider that even with an explanatory statement, the information could still be misinterpreted in a way which would be against the public interest.
- 11.5 It is preferable that access to the documents and data should await the completion of the study or report so that analysis and interpretation can proceed unhindered.
- 11.6 Certain information is collected for the purposes of a report or study but would not be released in its raw form. One example of this type would be information collected for the

Census. This would, however, also be exempt under the personal information exemption 12 and because there is a statutory prohibition on disclosure (exemption 15). The exemption is designed to ensure the continuance of Government surveys – where disclosure of the information gathered in the course of completing them might reveal sensitive commercial or personal information. The argument is that it is in the public interest to collect this information which may be used in anonymised form to inform policy making or in reports for the public, and nothing should be done which might put at risk the willingness of those surveyed to take part.

- 11.7 It may sometimes be appropriate for the Government to choose to identify particular individuals, companies or products in a final report, or where surveillance leads to public health warnings or action. These decisions, however, need to be taken on their own merits and such specific information should not be released in response to a Code request without very careful consideration.

Exemption 12: Privacy of an Individual

“Any disclosure of personal data which should be made under the DPA or would otherwise contravene the DPA (in particular the Data Protection Principles) and/or the Act.”

- 12.1 This exemption relates to individual privacy and the provisions of the DPA. It is separate from considerations of confidentiality (commercial or otherwise) of firms, institutions and organisations.
- 12.2 Information may be provided where the subject of the information has given consent to its disclosure.
- 12.3 The exemption also applies where the person seeking access is the sole subject of the information and in such case the person seeking access to the information should be advised to make a subject access request under the provisions of the DPA.

Exemption 13: Third Party's Commercial Confidences

“Information including commercial confidences (including grants and loans), trade secrets or intellectual property whose unwarranted disclosure would harm the competitive position of a third party.”

- 13.1 Particular care is needed in the treatment of commercially confidential information because the Code does not set aside statutory and other restrictions on disclosure. Departments will need to ensure that disclosure would not be an offence, and would not found an action for breach of confidence.
- 13.2 This exemption concerns the need to protect sensitive commercial information from disclosure which would adversely affect those to whom the information relates. This applies regardless of whether the information was provided under a statutory obligation or voluntarily. Companies will need to be confident that the Government will apply its general commitment to openness in a way which does not damage their legitimate interests or undermine the trust they have placed in Government.
- 13.3 The scope of this exemption is defined in terms of the effect of disclosure. The shortest way of expressing the intention is to ask **“Would this information be useful to a competitor, and be otherwise unobtainable by them?”** Three questions are relevant:

- (a) Is this information of the relevant type, i.e. a trade secret, a commercial confidence or intellectual property? and
- (b) Would its disclosure be likely to harm the competitive position of the subject or source of the information?
- (c) If not, would its disclosure be likely to prejudice the future supply of information to the Government organisation in question? In this case, see the discussion under exemption 14 (Information given in confidence)

If the answer to both (a) and (b) is yes, disclosure will normally be unwarranted, unless the answer to the following question is also affirmative:

- (d) Might there nonetheless be an overriding public interest in disclosure?

13.4 The following broad definitions may be useful. Legal advice may be needed in difficult cases.

Trade secrets

13.5 Trade secrets include information (including but not limited to a formula, pattern, compilation, programme, method, technique, or process or information contained or embodied in a product, device or mechanism) which (i) is or may be used in a trade or business, (ii) is not generally known in that trade or business, (iii) has economic value from not being generally known, and (iv) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

Commercial confidences

13.6 This category goes wider than trade secrets since the information does not need to be capable of industrial or commercial application or use. It applies regardless of whether or not information was provided to Government pursuant to a statutory obligation or on a voluntary basis.

13.7 There are two basic types of commercial information:

- information which has an intrinsic commercial value where that value depends upon the ability of the person to whom the information relates to maintain its confidentiality;
- information which might not have intrinsic commercial value but whose disclosure might unreasonably disadvantage the person to whom it relates in the conduct of their lawful business, commercial, financial or professional affairs

13.8 The essential criteria for the first category are that the information is both commercial (including financial, scientific and technical information), and confidential (i.e. it has been consistently treated as such by the provider). The following considerations apply:

- the information is of value to its original possessor;
- it was entrusted to the Government in circumstances which made its confidentiality clear, whether be express or implied understanding;
- so far as the Department is aware, the information must be treated consistently in a confidential manner by the third party.

13.9 The sort of information which has been withheld in other places in this category includes information on proposed projects, tenders, details of an organisation's decision-making processes, its cost structures, and its development plans.

13.10 The second category identified in paragraph 13.7 above is information which is not intrinsically of commercial value, but whose disclosure might disadvantage the person or organisation to which it relates in the conduct of their business, commercial or financial affairs, or, in the case of a person practising a profession, in respect of his professional affairs.

Intellectual Property

13.11 Intellectual property is of a different nature to the previous two categories since it is often published or publicly available. The issue here is not confidentiality, but the fact that the information is recognised by law as a third party's commercially valuable property.

13.12 Intellectual property can be found in many different forms: inventions, written works, software, images, trade marks, designs or plant varieties. Ownership of intellectual property rights (IPR) is essentially a right to stop others doing something, not a positive right to do something oneself. There are two types:

- those which require official registration, such as patents. In these cases, the law confers a limited monopoly on the owner which means that no-one else is entitled to exploit the subject matter of the rights, not even someone else who develops the same idea independently.

Where registered IPR already exists, it will not be of great concern for Code requests since exploitation rather than content is at stake, and exploitation is protected independently of the Code. However, Departments will need to ensure that disclosure by them does not prejudice an application for registration of this type.

- those which do not require official registration such as copyright. In these cases, the law gives protection only against copying. If someone else develops the same thing independently, they are free to exploit it.

Where a third party has entrusted a Department with information in which they own IPR, its disclosure could be a breach of the law as well as of confidence.

13.13 The various rights to which the originator is entitled have been developed to meet the needs of the particular sector of the marketplace to which each term applies. Departments should therefore consult their legal advisers in cases of doubt.

13.14 The exemption may be set aside where there is a clear public interest in making information available which outweighs considerations of commercial confidentiality. For example, while the public interest will rarely justify disclosure of a trade secret, there will be circumstances where commercial sensitivity is not a sufficient justification for non-disclosure. Where disclosure is necessary or conducive to the protection of public health, public safety or the environment, such considerations may clearly outweigh financial loss or prejudice to the competitive position of a third party.

13.15 The third party whose interests may be adversely affected should normally be consulted in advance of such disclosure, although this may not be practicable where a public health or other warning must be issued as a matter of urgency. Disclosure without consent will usually be appropriate only where the risk to public health, public safety or the environment is substantial and specific, and the public interest in disclosure clearly overrides the interest in preserving confidentiality.

13.16 A decision to refuse requested information may be made without consultation with the supplier of information where the case for confidentiality is obvious and overwhelming.

- 13.17 Where a request is received for information which includes commercial material provided by a third party, and there is a case in favour of disclosure, the following steps should be considered:
- if the information was received via another Department, they should be contacted for initial advice;
 - the information provider should be informed of the request and told what information the Department is minded to release in response, unless:
 - it is obvious that the information provider would not need or want to be consulted;
 - it is not reasonable, practicable or possible to consult them (e.g. they have gone out of business or cannot be traced);
 - there is an overwhelming and urgent public interest which overrides the obligation to consult (e.g. a public health emergency).
- 13.18 It will not normally be appropriate to disclose who is making the request for information. The identity of requesters is not a relevant consideration in requests under the Code, and decisions on what to release are in any case made as if the information was to be released to a competitor. A commercial competitor may, in any case, be likely to make a request through an intermediary.
- 13.19 Businesses who are consulted about a proposed release will obviously need to be given a reasonable amount of time to consider their response. This will largely be dependent on the size of the request. Where such consultation is required, the normal response time of 10 working days for a simple request is likely to be exceeded.
- 13.20 The applicant for information should normally be informed that the company concerned is being consulted and told roughly how long this is likely to add to the normal time for responding to a request.

Exemption 14: Information given in Confidence

- “(a) Information held in consequence of having been supplied in confidence by a person who:**
- **gave the information under a statutory guarantee that its confidentiality would be protected; or**
 - **was not under any legal obligation, whether actual or implied, to supply it, and has not consented to its disclosure.**
- (b) Information whose disclosure without the consent of the supplier would prejudice the future supply of such information.”**

- 14.1 Many Departments are in possession of information which has been given to them by members of the public - whether individuals, companies or organisations - in the expectation that the information so supplied will be kept confidential. Much of this will be personal information or commercially sensitive material, in which case the relevant exemptions will apply (see exemptions 12 and 13 respectively).
- 14.2 There may, however, be other circumstances where an obligation of confidentiality exists. For example, a Department might seek the views of outside experts, who would normally only oblige on the understanding that their views are kept confidential. It is no less important in these cases that the public can have confidence that the Government will

apply its general commitment to openness in a way which does not damage their legitimate interests or undermine the trust they have placed in Government.

- 14.3 References to information are intended to be read as including references to the giving of opinion or advice.
- 14.4 The most straightforward cases are those where the information is supplied under the provisions of a statute which guarantees that it will be kept confidential. Unless the supplier consents, the material must be exempted from disclosure.
- 14.5 Since the Government has no powers to compel the supply of volunteered information, such information is, in effect, the private property of the supplier. Where it has been supplied in confidence, it will therefore not be proper to disclose it without permission. This is aside from any harm or embarrassment that may be caused to the supplier by the disclosure. (It should be noted that Tynwald can call anyone to the Bar to compel the giving of information requested.)
- 14.6 For information to have been supplied in confidence, it must be understood on both sides that the information is being supplied and received on the understanding that it will be kept confidential. It is therefore not enough for a supplier of information to ask that it be kept confidential if the recipient makes clear that it is not being received on that basis. This mutual understanding may be explicit, particularly where a contract is involved. Often it will be implied from the circumstances, without either party expressly referring to the matter. Examples of situations where confidence may often be implied are:
- **Particular relationships** - a professional relationship may often imply confidentiality, for example, those between doctors and patients, lawyers and clients and social workers and clients.
 - **Information communicated for a particular purpose** – where information is communicated by a member of the public for a particular purpose (i.e. a one-off situation as opposed to routine collection of regulatory or monitoring information), a duty of confidence will often be implied. This will usually arise in situations where the Government takes the initiative in seeking information on a particular matter.
- 14.7 Problems will be minimised if, as far as possible, the basis of supply of the information is explicit at the time it is supplied.
- 14.8 The exemption cannot be used where the information is, in fact, generally known, or where it is contained in a public register or other document open to inspection by the public. Likewise, a duty of confidence will cease to exist where information originally confidential has since become widely known.
- 14.9 The exemption also applies where it can be shown that the effective operation of the Department's business depends on the opinions or assessments of others, which would not be given without the assurance of confidentiality. Such information is a valuable supplement to compulsory information gathering powers, and may be indispensable in areas where no such powers exist. The exemption could apply either to the information itself or to its source.
- 14.10 Care will be needed in cases where the information was provided in connection with some benefit to the provider, for example in connection with a grant, permit or concession or to plead a special interest in consultation on a matter of public interest. It is unlikely that disclosure in such circumstances would prejudice future supply, because of the provider's interest in making the information available.

- 14.11 There may sometimes be a public interest in disclosure which clearly outweighs the potential detriment to the supplier of the information. The existence of such an interest is the only consideration other than the consent of the supplier which would warrant the release of information disclosed in confidence.
- 14.12 It is important to stress that the public interest in disclosure must clearly override the interest in preserving confidentiality. Situations where this might be envisaged would be where disclosure would reveal some breach of the law or other wrong-doing, or would expose a significant risk to public health or safety or to the environment.
- 14.13 If time permits, the person or body concerned should be consulted, or at least informed.

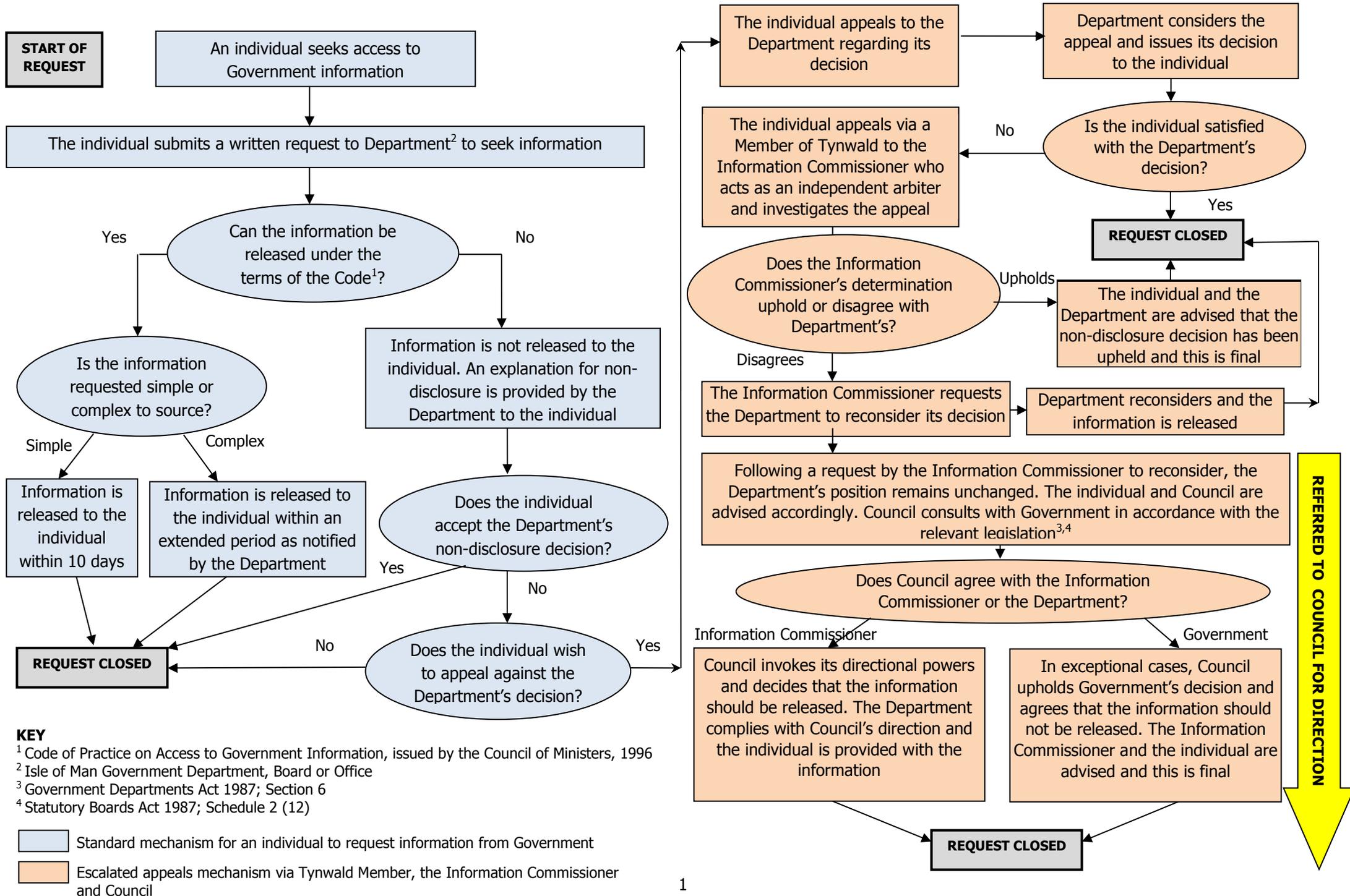
Exemption 15: Statutory and other Restrictions

“(a) Information whose disclosure is prohibited by or under any enactment, regulation, European Community law or international agreement.

(b) Information whose release would constitute a breach of Parliamentary Privilege.”

- 15.1 When information has been supplied by a third party, it will be wise to check whether it is covered by a statutory restriction before it is released.
- 15.2 Parliamentary privilege may be a consideration when a request for disclosure anticipates an announcement or publication about to be made or laid before Tynwald. Care is also needed where information has been given to a Tynwald Committee in a memorandum or evidence, but the Committee has not yet published its report. In general, there should be no difficulty about disclosing the substance of the memorandum if this is properly in the public domain, but it may be a breach of privilege to publish the report or evidence given in full before the Committee has published it.
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APPENDIX 1 - MECHANISM FOR AN INDIVIDUAL SEEKING ACCESS TO GOVERNMENT INFORMATION UNDER THE 1996 CODE¹ OF PRACTICE



KEY
¹ Code of Practice on Access to Government Information, issued by the Council of Ministers, 1996
² Isle of Man Government Department, Board or Office
³ Government Departments Act 1987; Section 6
⁴ Statutory Boards Act 1987; Schedule 2 (12)

Standard mechanism for an individual to request information from Government
 Escalated appeals mechanism via Tynwald Member, the Information Commissioner and Council