

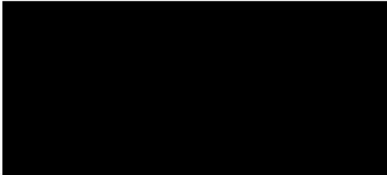


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24 March 2015

Dear Mr Gawne

Code of Practice on Access to Government Information ("the Code")

I refer to your letter of 11 March 2015, by which you have referred to me, in my capacity as Commissioner under the Code, the application of your constituents, [REDACTED] as set out in their correspondence to you of 25 February 2015, a copy of which you have provided to me.

I have considered your letter and the accompanying copy correspondence.

As Commissioner under the Code, my role is as set out in paragraph 11 of Part 1 of the Code. In particular, I may not open an investigation without there first having been an application to the relevant Department for information sought, and an initial refusal and internal review confirming such a refusal have been made by the Department.

I am also, as a matter of law, required to have regard to the criterion of "reasonableness" when determining whether (or in what manner) to exercise my functions under paragraph 11 of the Code.

I note that in their correspondence to you, [REDACTED] state that their most recent application to the relevant Department was in October 2010 (i.e. some four and a half years ago).

Paragraph 11 of Part 1 of the Code cannot reasonably be interpreted as providing for an unlimited, open – ended time frame between the making of a request to a Department under other provisions of the Code and a subsequent reference to the Commissioner under paragraph 11. I am not satisfied that a request to a Department which is described as having been made in October 2010 is a reasonable basis for an investigation to be commenced under paragraph 11 of the Code in March 2015. Accordingly, I have concluded that this is not a matter which I may investigate under the Code.

For your information, I am aware of previous references pursuant to the Code, to previous Commissioners, on behalf of your constituents. Clearly any future new or renewed endeavours to obtain information under the Code cannot be referred to the Commissioner now in the guise of a re – opening of the previous references. If the matter does become the subject of a new reference to the Commissioner, the question of whether I can investigate a matter which has previously been investigated under the Code may also fall to be considered. I leave the point open at this stage so as not to prejudice or prejudice any future reference which may be made to me under the Code.

So that there is no misunderstanding of the powers of the Commissioner, I should also stress that my powers under the Code are limited. The Commissioner does not, for example, have the powers of a Select Committee of Tynwald. In particular, the Commissioner himself has no powers under the Code to release copies of documents. He may only uphold a complaint and make recommendations to the relevant Department or dismiss a complaint.

In the first instance, I can only suggest at this stage that your constituents consider activating the Code by making a fresh direct request under the Code to the Department. As Commissioner, I can indicate that the Commissioner would expect that any request made under the Code would receive proper consideration by a Department, but obviously the Commissioner cannot prejudge or give any intimation as to possible outcomes of any particular or specific request or any review or investigation (if any) which might ensue.

I am afraid that I cannot be of any further assistance as matters presently stand.

Yours sincerely



Commissioner