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Handling requests for information under the Freedom of Information Act 2000

1.0 Purpose and summary of issues

1.1 This paper seeks the views of the Assembly Commission on possible improvements to the way we handle requests for information under the Freedom of Information Act 2000. The intention is to find ways to streamline our approach in order to make better use of Assembly resources.

2.0 Recommendations

2.1 That:

- we review the extent of the information that we publish proactively, with a view to ensuring that the kind of information likely to be the subject of requests is already in, or will in due course be put into, the public domain;
- we make full use of the relevant exemptions (“information accessible to applicant by other means” and “information intended for future publication”) which proactive publication will make available, when responding to relevant requests;
- where the estimated cost of compliance with a request exceeds the “appropriate limit”:
 - a) we will maintain our current policy, in accordance with Principle 8 of the Assembly's Code of Practice on Public Access to Information, of not imposing the charge authorised by the Act as a condition of providing the information requested; but
 - b) in exceptional cases (for example where the amount of work involved in compliance would be disruptive) the Chief Executive will have discretion to apply the exemption (section 12 of the Act) from complying with the request.

3.0 Background

3.1 The Freedom of Information Act 2000 requires the Assembly Commission (on behalf of the Assembly) to provide certain information on request (Annex A). It allows us 20 working days in which to respond to such requests, although there is no sanction (other than to appeal to the Information Commissioner) where this limit is exceeded and extensions are almost always agreed by applicants where the information requested is complex. While many responses are relatively straightforward, some can take a considerable amount of time and effort to assemble and in exceptional cases can disrupt the on-going work of staff. Compliance with the Act is a legal requirement, but our approach is also buttressed by the Assembly's Code of Conduct on Public Access to Information and, in line with the principles of the Act and the Code, our general approach has always been to be as helpful as possible to enquirers. Annex B provides further detail on the way we handle these requests.

4.0 Our general approach

4.1 Where necessary we enter into a dialogue with enquirers in order to make sure that we understand the information they are seeking and to present it in the format most suitable for their needs. This approach is one which we are required to take by section 16 of the Act (duty to provide advice and assistance) as well as being in line with the Assembly's own Code. It has stood the Assembly in good stead. Our Fol team usually establishes an excellent rapport with enquirers and generates confidence on their part that we are dealing with their requests honestly and to the best of our ability. The accuracy and completeness of our responses, and the proportionality with which we apply exemptions, are rarely challenged and there has only ever been one appeal to the Information Commissioner against the application by us of an exemption, and that appeal was dismissed.

5.0 The administrative burden

5.1 Whilst most requests can be answered relatively easily, there is a small number which generate a disproportionate amount of work. Recent examples have been a request, received in 2010, relating to purchases using the Commission's credit card. This required a significant number of hours work (approximately 60 hours) for the Finance area. Another was a request relating to the Commission's decision, in 2009, to change the arrangements for translating the record of proceedings.

5.2 Although our dedicated FoI unit collates information needed to respond to requests, the burden of retrieving information falls on staff generally and is in addition to their continuing duties. In some cases it can therefore be disruptive of the on-going work of the Assembly and the Commission. It is legitimate, therefore, to examine ways of mitigating the burden, whilst still respecting our statutory duty and clear commitment to openness and of engagement with the people of Wales.

6.0 Increased use of published information in responding to requests

6.1 One way both to reduce the burden on Assembly staff, and, in some cases, to improve our response times, would be by reviewing and expanding the amount of information we publish proactively. Increasing the amount of routinely published information would further demonstrate our commitment to openness and transparency.

6.2 In selecting the further information to be published we would draw on our experience of the kind of information which would otherwise be the subject of FoI requests. For example some requests have necessitated the collation and analysis of staff salary bands, which we do not routinely publish. Similarly, detailed information on Commission spending is not routinely published but attracts a steady stream of requests.

6.3 We can also learn from approaches taken by local authorities and other public bodies, who, in some regards, already routinely publish classes of information which we do not, such as staff salary bands. Salaries and special responsibility payments received by Members are all already publicly available but could be presented in a more accessible way. Many requests ask for breakdowns of particular heads of Commission spending and the detail which we provide when publishing our annual accounts could reduce this kind of request.

6.4 Pro-active publishing of information enables enquirers to be referred to that information instead of requiring a specific response. The Act also allows information to be with-held if there is an intention to publish it, for example on a quarterly or annual basis. As well as reducing the burden of responding to individual requests, proactive publishing also results in more balanced media reporting. Major one-off releases of information enable the media to “cherry-pick” particular unrepresentative pieces of information whereas, as has been demonstrated in the case of Members’ allowances monthly routine

publication means that the level of media interest has reduced significantly and is only able to focus on genuinely significant items.

7.0 Exemptions relating to the cost of providing information

- 7.1 The Freedom of Information Act 2000 contains special rules in relation to requests where the *estimated* cost of complying with the request exceeds the “appropriate limit” which is currently £600 , calculated at £25 per hour per person (regardless of actual rate of pay), and which is therefore equivalent to a total of 24 hours’ work.
- 7.2 If the estimated total number of hours involved in complying with a request exceeds the limit, we are not required by the Act to provide the information requested. Examples of requests involving considerable effort are described in paragraph 5.1above. It should not be assumed, however, that these would necessarily have exceeded the “appropriate limit” since the time which we are allowed to count when doing the calculation is limited to retrieving the information and does not include considering the application of exemptions, redacting personal information etc. which are often the most time consuming part of the response. We have reviewed all 71 requests received in 2011 and assess that none of them would have exceeded the exemption limit.
- 7.3 Although the number of requests to which this limit would apply is therefore likely to be very small, the amount of work involved in responding to them would be substantial and relying on this exemption would be likely therefore lead to a significant reduction in the workload involved in responding to requests.
- 7.3 Refusing to respond is not the only option. Where the estimated cost of responding exceeds the “appropriate limit” the Act permits a body, instead of refusing to comply, to require the person who is making the request to pay, in advance, a fee for disclosure equal to that estimated cost. The Assembly’s Code of Practice only permits charging for information in exceptional circumstances and this avoids any suggestion that access to information depends on the means of the enquirer, whilst preserving, as a long stop, the power to charge where the system is being abused for commercial purposes.
- 7.4 The use of these provisions is not without its difficulties. Our calculations of estimated costs would have to be capable of withstanding scrutiny by the Information Commissioner or even the courts.

There are also risks to the Assembly's reputation for openness associated with applying these provisions, particularly in view of the fact that we have not done so in the past.

- 7.5 Neither are the provisions in question totally water-tight. The maker of a request may, for example, succeed in sub-dividing it into separate requests, each of which falls under the "appropriate limit". Whilst separate requests can be "aggregated" when estimating the cost of responding, this can only be done where they request "the same or similar" information and this will not cover all cases of sub-division.
- 7.6 On balance, we recommend that we do not make a major change to current practice and that we should not (other than in very exceptional circumstances) impose charges for responding to FOI requests. We should, however, be prepared, in appropriate circumstances, to exercise the discretion to refuse to respond altogether. This would be consistent with the Assembly's Code of Practice on Public Access to Information. For example, a refusal to allow substantial resources to be diverted to responding to a request where there is no genuine public interest in the information and where the consequence would be to disrupt the on-going work of the Assembly, would satisfy the "exceptional circumstances" requirement of the Code.

8.0 Promotion of awareness of the Freedom of Information Act

- 8.1 One of the factors in ensuring a rapid turnaround of requests for information is ensuring that all those involved in this work are aware of the requirements of the Freedom of Information Act. Our experience shows that this is not always the case and we therefore propose running a programme to improve awareness amongst staff. This might also encompass Members and their staff, since one source of delay is the need to consult Members when requests to the Commission relate to individual Members. Greater understanding of the requirement of the Act to ensure their inputs are focused as efficiently as possible and that these requests are given appropriate priority would therefore help. We have already started to offer such support to Assembly staff and Members (for example with sessions at party group meetings that included a presentation by Anne Jones (Assistant Information Commissioner)).

10.1 Conclusions

- 10.1 The Assembly Commission is invited to consider the issues discussed and agree that we should make every effort to increase the amount of information we publish routinely and also to increase our use of references to published information in our responses to requests.
- 10.2 The Commission is also invited to indicate its views on the options relating to the application of the “appropriate limit” provisions in the Act, namely that, in appropriate circumstances only, we should exercise our right not to provide the information requested, where the estimated cost of doing so exceeds the “appropriate limit” *and* there are circumstances (such as the disruptive effect on the other duties of staff) which justify doing so. We should, on the other hand, maintain our policy of not charging for information (other than in very exceptional cases).

Annex 1 – Freedom of Information Act responsibilities of the Assembly and Assembly Members

The Assembly's Obligations

1. The National Assembly for Wales, as a public authority, has a legal obligation to respond to requests for information made under the Freedom of Information Act (2000). This Act gives the public a general right of access to recorded information held by the Assembly. The Assembly also has a separate duty, as a data controller, to respond to subject access requests made under the Data Protection Act 1998.
2. Compliance with the Acts is regulated by the Information Commissioner, a UK independent supervisory body reporting directly to Parliament. Anne Jones is Assistant Information Commissioner for Wales and heads the Wales Office of the Information Commissioner. Her role is to advise, assist, oversee and enforce the requirements of the:
 - Data Protection Act 1998
 - Privacy and Electronic Communications Regulations 2003 (& 2011)
 - Freedom of Information Act 2005; and the
 - Environmental Information Regulations 2004
3. We have a strong working relationship with Anne and she has made a number of presentations to both staff and AMs to help raise awareness of the Assembly's obligations under the different legislation and on the role of the Information Commissioner. Her office also provides advice and guidance to Assembly Members on an individual basis.
4. The requirements of the Data Protection Act 1998 can have a bearing on freedom of information requests where they involve third party personal data.
5. Under the Freedom of Information Act the National Assembly for Wales is expected to:
 - Proactively disclose information where appropriate;
 - Consider relevant exemptions and final decisions on whether to disclose;
 - Consult with third parties when necessary; and

- Comply with practicalities such as time constraints (we generally have 20 working days to respond to a request)

Obligations for Assembly Members.

6. Freedom of Information Act: Assembly Members are not themselves public authorities and cannot be required to disclose information under the Freedom of Information Act. However, the Act could require the Assembly Commission to disclose information it holds about an Assembly Member and this includes information passed to the Assembly Commission by an AM.
7. Data Protection Act: Assembly Members are ‘Data Controllers’ under the Data Protection Act and they may come into contact with personal data in a number of guises: as employers, through constituency work and Assembly business. Their obligations include:
 - Obtaining consent to use personal data in a different context to how it was acquired;
 - Keeping information secure;
 - Dealing with subject access requests;
 - Ensuring constituents know how their data is being used.

Annex B – Procedures for dealing with Requests under the Freedom of Information Act

1. The Assembly receives around 50 requests a year under the Freedom of Information Act and these can cover almost any aspect of its activities. Table 1 gives the number received over the last five years. It shows two ‘step’ increases: one when the MP’s expenses disclosures were made; the other in the lead up to the 2011 election.

Table 1

Year	Total number of requests	Number of requests relating to Members
2007	24	07
2008	45	25
2009	52	12
2010	52	15
2011	71	14

2. The majority of requests concerned:
 - Assembly Members expenses and allowances;
 - Assembly staffing and;
 - Assembly expenditure

Managing the process

3. The Assembly’s Code of Practice on Access to Information sets out the Assembly’s commitment to openness and the principles it will follow in responding to requests They are:
 - Maximising openness (but subject to legitimate constraints such as the various exemptions in the 2000 Act);
 - Using clear language;
 - Maintaining a Publication Scheme;
 - Publishing on the internet;
 - Respecting privacy, confidentiality and the law;
 - Prompt and comprehensive responses;
 - Right of complaint, and
 - Providing information free of charge (except in exceptional circumstances).
4. The time and resources required to respond to each request vary considerably. In some cases we can simply refer applicants to information which is already in the public domain; in others we have to

having to undertake a significant exercise to gather information. Alongside these the process also involves:

- liaising with colleagues in the Legal Service about issues such as data protection and possible exemptions;
- the redaction (where required) of documents so as to remove information by which individuals can be identified and other data protection matters;
- consulting Members and staff in respect of information about them that could be released.
- prior clearance of all responses by the Chief Legal Advisor and Chief Executive; and subsequent publication on the Disclosure Log on the Assembly's website.