

## 5.1 Freedom of Information Bill 2014 – Clauses considered

**The Speaker:** We turn now to Item 5, the consideration of clauses of the Freedom of Information Bill.

I call on the mover, Mr Robertshaw, to move clause 1.

**Mr Robertshaw:** Thank you, Mr Speaker.

Clause 1: 'Short title'.

The clause gives the Bill its short title.

Mr Speaker, I beg to move that clause 1 do stand part of the Bill.

**The Speaker:** Mr Watterson.

**Mr Watterson:** I beg to second and reserve my remarks, sir.

**The Speaker:** I put the question that clause 1 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 2.

**Mr Robertshaw:** Thank you, Mr Speaker.

Clause 2: 'Commencement'.

Under this clause, the Council of Ministers, by order, can introduce different parts of the Act at different dates for different purposes. Such an Order may make such consequential, incidental, supplemental, transitional and saving provisions as the Council of Ministers considers necessary or expedient.

Mr Speaker, I beg to move that clause 2 do stand part of the Bill.

**The Speaker:** Mr Watterson.

**Mr Watterson:** I beg to second and reserve my remarks.

**The Speaker:** I put the motion that clause 2 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 3, Mr Robertshaw.

**Mr Robertshaw:** Thank you, Mr Speaker.

Clause 3: 'Purpose'.

The Council of Ministers desire to provide a balance in the Act between providing a legally enforceable right of access and the potential impact of so doing is reflected in this purpose clause.

Mr Speaker, I beg to move that clause 3 do stand part of the Bill.

**The Speaker:** Mr Watterson.

**Mr Watterson:** I beg to second and reserve my remarks.

**The Speaker:** I put the motion that clause 3 do stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 4.

**Mr Robertshaw:** Thank you, Mr Speaker.

Clause 4: 'Application'.

This clause states the Bill will apply to information created on or after 11th October 2011, the start of the current administration as marked by the election of the Chief Minister. This date can be moved back to an earlier date by the Council of Ministers by order, subject to Tynwald approval.

The clause confirms that the Act will operate in addition to the Code of Practice on Access to Information and that it will not amend of the operation of the Public Records Act 1999 or the access rights created by it.

Mr Speaker, I beg to move that clause 4 do stand part of the Bill.

**The Speaker:** Mr Watterson.

**Mr Watterson:** I beg to second and reserve my remarks, sir.

**The Speaker:** Mrs Beecroft.

**Mrs Beecroft:** Thank you, Mr Speaker.

I am just wondering if the Minister could clarify this bit about the date where it is 11th October 2011, when he states that CoMin can ask for Tynwald approval to change that date. Is it only CoMin who can ask for approval of the date, or is it backbenchers or any other Member of Tynwald who could ask for this approval, obviously subject to Tynwald gaining sufficient votes within Tynwald?

**The Speaker:** Mover to reply. Mr Robertshaw.

**Mr Robertshaw:** Thank you, Mr Speaker.

I thank the Hon. Member for South Douglas for her question.

The intention and purpose behind this clause is to ensure that the Freedom of Information Act comes in progressively, so that as it emerges on 11th October alongside the Code of Access to Information it permits Government Departments initially identified to ensure that they are functioning well, and that that knowledge and information will then spread out to other Departments as they are progressively embraced within the Freedom of Information Act, and therefore the Government does not become overwhelmed.

So the correct process is, from a management point of view, for Council of Ministers to continue to appraise this process and then come to Tynwald at the appropriate time for further extension.

**The Speaker:** Hon. Members, I put the motion that clause 4 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 5, 6 and 7 together, Mr Robertshaw.

**Mr Robertshaw:** Thank you, Mr Speaker.

Clause 5 is 'Interpretation'.

Clause 6 is 'Meaning of public authority'.

Clause 7 is 'Meaning of public authority: supplementary'.

I shall be grouping the following three clauses – 5, 6 and 7 – as they have natural links and all deal with the definitions and meanings within the Bill.

The Act will encompass a number of specialist and specific terms which are given clarity in the interpretation clause – clause 5.

Clause 6 gives meaning to the term 'public authority'. As only public authorities listed in schedule 1 of the Act fall within its scope, adding public authorities to the schedule is the main mechanism through which the Council of Ministers will phase the Act's introduction.

This clause defines a public authority as any of the following as listed in schedule 1: a person, a body, a publicly owned company, or the holder of any office.

A publicly owned company is defined as a company in which one or more public authorities owns, whether directly or indirectly, shares or other interests which, when taken together, enable them to exercise more than half the number of votes in a general or other meeting of the company on any matter; or a company to the extent that it performs functions or exercises powers conferred on a public authority under an enactment.

The definition of a public authority can be subject to any qualifications set out in schedule 1.

I outlined at Second Reading the Council of Ministers' thinking behind the phased implementation of the Act, with the two public authorities listed in schedule 1 – the Cabinet Office and the Department of Environment, Food and Agriculture – forming the pilot for this phased implementation.

Further clarity on the meaning of a 'public authority' is given by clause 7, which confirms that schedule 1 has effect of defining 'public authority' and that the schedule may specify that the Act only applies to information of a specified description. In such cases, nothing in the Act applies to any other information held by the authority.

The Council of Ministers, with the exception of adding the Lieutenant Governor, may by order amend schedule 1, and that Order may modify any provision of this Act that Council considers necessary or expedient to modify the operation of this Act in relation to those whom the amendment to schedule 1 relates; and make such consequential, incidental, supplemental and saving provisions as Council considers necessary or expedient.

Before making an Order to amend the schedule, Council must consult every person to whom the amendment relates and any other appropriate person.

Mr Speaker, I beg to move that clauses 5, 6, 7 and schedule 1 do stand part of the Bill.

**The Speaker:** Mr Watterson.

**Mr Watterson:** I beg to second and reserve my remarks.

**The Speaker:** Hon. Members, I put the motion that clauses 5, 6 and 7 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 8, Mr Robertshaw.

**Mr Robertshaw:** Thank you, Mr Speaker.

We move to part 2, which is 'Access to Information held by public authorities'.

Clause 8: 'Right of access to information held by public authorities'.

The main access point into the statutory FOI regime is through this clause, which provides that, subject to this Act and in accordance with its provisions, every person who is resident in the Island has a legally enforceable right of access to information held by a public authority.

Information is so held if it is held by a public authority, otherwise than on behalf of another person, or if it is held by another person on behalf of the public authority.

Under this clause there is no requirement for a public authority to create or derive information, undertake research into or analysis of information, or undertake substantial research or collation.

Public authorities can lawfully disclose any information which they hold, even if there are grounds to refuse a request under the Act.

Mr Speaker, I beg to move that clause 8 do stand part of the Bill.

**The Speaker:** Mr Watterson.

**Mr Watterson:** I beg to second and reserve my remarks.

**The Speaker:** I put the question that clause 8 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 9.

**Mr Robertshaw:** Thank you, Mr Speaker.

Clause 9: 'Requests for information'.

The clause states that an Island resident wishing to obtain access to information held by a public authority may request the information.

The request must be in the form prescribed by the Chief Secretary, who may specify different forms for different public authorities, and be accompanied by a fee, as prescribed by the regulations, if any such fee is prescribed. The form may be transmitted by electronic means.

An applicant is required to provide their name; an address for correspondence; and an adequate description of the information requested, in a legible manner which is capable of subsequent reference.

Mr Speaker, I beg to move that clause 9 do stand part of the Bill.

**The Speaker:** Mr Watterson.

**Mr Watterson:** I beg to second and reserve my remarks.

**The Speaker:** The Hon. Member, Mr Quirk.

**Mr Quirk:** Mr Speaker, I just wanted to clarify, if a fee is required, who will make that interpretation, and will it be seen as a public document on the decision that is made?

**The Speaker:** The mover to reply.

**Mr Robertshaw:** Mr Speaker, we will be dealing with fees a little bit later; but to clarify the situation, it is not necessarily the case that a fee will come in. As discussed at a previous reading, it is very important that the level of fees – when set and if set – ensure that those on low incomes can afford to take part in the process. But the matter of fees will need further deliberation and will come before the House in due course, if it is deemed appropriate, Mr Speaker.

**The Speaker:** I put the question that clause 9 do stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 10, Mr Robertshaw.

**Mr Robertshaw:** Thank you, Mr Speaker.

Clause 10: 'Requests taken to relate to information held at time of request'.

The clause states that a request for information is taken to relate to information held at the time when the request is received. A public authority can take account of any amendment or deletion to that information *but only* if that amendment or deletion would have occurred regardless of the request.

Mr Speaker, I beg to move that clause 10 do stand part of the Bill.

**The Speaker:** Mr Watterson.

**Mr Watterson:** I beg to second and reserve my remarks.

**The Speaker:** Mr Quirk.

**Mr Quirk:** Mr Speaker, I just wondered, when a Bill actually goes through its passages, when its structures... Will there be a guidance note that goes out to make sure there is not wholesale destruction of documentation or the date?

**The Speaker:** Mr Robertshaw to reply.

**Mr Robertshaw:** Thank you, Mr Speaker.

The holding of data is a matter for each Department and authority to consider as appropriate for its needs. It is not a question of Government issuing some sort of diktat in that regard.

Thank you, Mr Speaker.

**The Speaker:** I put the question that clause 10 do stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 11, Mr Robertshaw.

**Mr Robertshaw:** Thank you, Mr Speaker.

Clause 11: 'Grant of requests for information'.

The clause states that a public authority must give an applicant the information which they request in accordance with the Act.

A public authority may refuse to give the applicant the requested information if it is absolutely exempt information covered by a provision in part 3 of the Act; or it is qualified exempt information covered by a provision in part 4 and, crucially, where the public interest in maintaining the exemption outweighs the public interest in disclosing the information. To be clear, and to pick up on a point raised at the Second Reading by the Hon. Member for Onchan, Mr Hall, if public interest considerations are in balance, the information will be disclosed.

Information can also be refused if the applicant has not, upon request, provided additional information or fees within 28 days, as required under clause 14, and if a practical refusal reason applies. These are mechanical reasons for refusing a request, and include if the public authority does not hold or cannot find the requested information after taking reasonable steps to do so, and if the request is vexatious, malicious, frivolous, misconceived or lacking in substance.

Mr Speaker, I want to say a few words about the provisions in respect of vexatious requests. The Bill includes more descriptions around this term than, for example, the UK Act does. However, given that there is now a lot of case law around the use of 'vexatious' in the UK, it is important to have a little bit more flexibility and discretion in a jurisdiction of the Isle of Man's relative size.

Our public authorities do not have the same resources as those in neighbouring jurisdictions, so it is important that there are mechanisms in place to achieve the balance which the purpose clause of the Bill enshrines, namely exceptions to the right of access to maintaining a balance with effective government and value to the taxpayer.

There is nothing unusual about terms around 'vexatious' not being defined on the face of the Act. Instead, the code of practice under clause 60, to be drawn up in consultation with the Information Commissioner, will have to make provision in respect of the matters which a public authority may have regard to when determining whether a request for information falls into these categories. Whilst it is anticipated that the ordinary definition of the words will be used, it is important to note that this definition may be of only limited use, as determining whether or not one of these factors is relevant depends upon the circumstances of the case.

Public authorities will not be able to pluck out of the air their interpretation of the terms if seeking to refuse on these grounds, and there are opportunities within the Act for a public authority's decision in this regard to be reviewed.

These provisions are primarily about the request, not the requester, but we have to recognise that dealing with unreasonable requests can place a strain on the limited resources that we have,

diverting them from day-to-day business or from responding to legitimate requests, and it is the minimisation of this strain which we are seeking to address here.

Mr Speaker, I beg to move that clause 11 do stand part of the Bill.

**The Speaker:** Mr Watterson.

**Mr Watterson:** I beg to second and reserve my remarks.

**The Speaker:** Mr Quirk.

**Mr Quirk:** Mr Speaker, the Minister has used the term 'may' at least twice in there. I just wonder why we have never considered 'shall' on that, where it is a positive request.

Also, if I could ask about the guidance notes that are to be issued. I wonder whether, when the Minister in responding... what is going to be in those guidance notes? One would have thought you would have had a set of guidance notes, a preamble one, that would be given to Members to approve this. I am unhappy to approve something that may come later on, and the guidance notes may not suit me.

**The Speaker:** Mover to reply. Mr Robertshaw.

**Mr Robertshaw:** Thank you, Mr Speaker.

The code of practice will come out in due course, once this Bill has taken its passage through both Houses. The concept of guidance notes we are happy to build up over time as our understanding and appreciation of the Bill develops, particularly at its pilot stage.

Mr Speaker, I beg to move.

**The Speaker:** I put the question that clause 11 do stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 12, Mr Robertshaw.

**Mr Robertshaw:** Thank you, Mr Speaker.

Clause 12: 'Standard processing period for responding to requests'.

The clause states that a public authority must respond to a request for information *promptly* and in any event within the 'standard processing period', defined as ending on the day that is 20 working days after the day on which the public authority receives the request. Another period can be prescribed by regulations with Tynwald approval.

The clause also defines 'respond to a request for information'.

I beg to move that clause 12 do stand part of the Bill.

**The Speaker:** Mr Watterson.

**Mr Watterson:** I beg to second and reserve my remarks.

**The Speaker:** I put the question that clause 12 do stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 13.

**Mr Robertshaw:** Thank you, Mr Speaker.

Clause 13: 'Extended processing period for responding to requests involving qualified exempt information'.

The clause applies if, in responding to a request during the standard processing period, the public authority is considering whether it may refuse to give the applicant the information requested because the information is qualified exempt information. This clause recognises the potentially complex and time-consuming processes involved in determining whether or not a qualified exemption should be engaged.

There are safeguards for the applicant. For example, if the extended processing period is applicable, the public authority must give reasonable notice to the applicant about the progress of the request to ensure that requests are not forgotten about.

Also, authorities have to respond as soon as is reasonable in all the circumstances, and the clause sets parameters for determining this period, including whether responding would substantially or unreasonably interfere with the day-to-day operations of the public authority.

Mr Speaker, I beg to move that clause 13 do stand part of the Bill.

**The Speaker:** Mr Watterson.

**Mr Watterson:** I beg to second and reserve my remarks.

**The Speaker:** I put the question that clause 13 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 14, please.

**Mr Robertshaw:** Thank you, Mr Speaker.

Clause 14: 'Public authority may request additional information and fees'.

The clause states that a public authority may request information from an applicant that it reasonably requires in order to clarify the exact nature of the request.

It can also request information to prove residency if it believes on reasonable grounds that the applicant is not resident on the Isle of Man. To be clear on this point, it is not intended that this will involve complex processes or expensive bureaucracy, and could be as simple as supplying a utility bill.

An authority is able to require that the applicant pays fees, in addition to any fees that may be payable with the initial request, calculated in accordance with regulations, in order to comply with the request. The level of fees will be subject to Tynwald approval and could be charged in circumstances where the work involved in complying with the request is more than an initial fee, if charged, but less than the overall cost limit above which the request could be refused.

The additional information and/or fees have to be provided within 28 days of the notice; otherwise, it constitutes a reason for which a public authority may refuse to give the applicant the information requested.

Mr Speaker, I beg to move that clause 14 do stand part of the Bill.

**Mr Watterson:** I beg to second and reserve my remarks.

**The Speaker:** The Hon. Member for Michael.

**Mr Cannan:** Thank you, Mr Speaker.

I am just seeking some further clarification on this business of fees because, listening to a previous clause, I understood from the Minister that fees regulations *may* come to Tynwald if appropriate, and now he says they *will* come to Tynwald. Is that in fact the case? Can I just seek clarification on whether fees under these new regulations will be brought to Tynwald for approval? I note that, further on in the legislation, it states that Council of Ministers *may* make the regulations, so I am just seeking the absolute clarity as to what is happening in that respect, and indeed that under the regulations there will be proper clarity in respect of these fees, particularly in this clause

here, where we are looking at further requests under the information and that these will be detailed quite firmly so that people are fully aware and this process is very transparent.

Also, just seeking a view as to whether the regulations in terms of media applications from official media sources for fees may look at whether media requests, which perhaps are on an official basis rather than general public requests would be treated differently, for transparency purposes.

**The Speaker:** Mr Robertshaw.

**Mr Robertshaw:** Thank you, Mr Speaker.

I thank the Hon. Member for Michael for his questions because I am pleased to give them appropriate clarity. The clarity is that any fee arrangements, any structures, may very well be originated with the Council of Ministers but must come to the floor of another place to get approval. And yes, I absolutely agree with him that the architecture around the fees must have absolute clarity to them.

The third point he raises, with regard to media – yes, if the media are local. The important issue here is to avoid us being sucked into a process of constructed data across, and thus then being subsequently sold on.

I hope with that, Mr Speaker, I can move the clause.

**The Speaker:** I put the question that clause 14 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 15.

**Mr Robertshaw:** Thank you, Mr Speaker.

Clause 15: 'Duty to provide advice and assistance'.

It is important that public authorities remain in meaningful dialogue with requesters, so under this clause they must give reasonable advice and assistance to persons who wish to make, or who have made, a request for information.

Mr Speaker, I beg to move that clause 15 do stand part of the Bill.

**The Speaker:** Mr Watterson.

**Mr Watterson:** I beg to second and reserve my remarks.

**The Speaker:** Mr Quirk.

**Mr Quirk:** Just on that particular one, I presume that the information officer, who is in Government – which is the Data Protection Registrar, who is getting the role... if there is a delay in that, a complaint could be made to the Registrar to make sure that it is chivvied up?

**The Speaker:** The mover to reply.

**Mr Robertshaw:** Mr Speaker, in broad terms, yes; but that would be the final process – one would hope it would not go that far.

Mr Speaker, I beg to move.

**The Speaker:** I put the question that clause 15 do stand part of the Bill. Those in favour, say aye; against no. The ayes have it. The ayes have it.

Clause 16, please.

**Mr Robertshaw:** Thank you, Mr Speaker.

Clause 16: 'Manner of compliance'.

Under this clause an authority can comply with a request for information by any reasonable means. However, the clause also allows the applicant to express a preference, at the time of making a request, for the manner in which they wish to receive the information, and the authority must, where reasonably practicable and with regard to all the circumstances, including cost, provide it in this preferred manner. The means by which an applicant can express a preference for receiving requested information include the provision of a copy in permanent form, or in another form acceptable to the applicant.

In circumstances where the authority determines that it is not reasonable practice to give effect to a preference, it must notify the applicant of the reason why.

I beg to move that clause 16 do stand part of the Bill.

**Mr Watterson:** I beg to second and reserve my remarks.

**The Speaker:** I put the motion that clause 16 do stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clauses 17 and 18 taken together, Mr Robertshaw.

**Mr Robertshaw:** Thank you, Mr Speaker.

Clause 17: 'Refusal of requests'.

Clause 18: 'Content of refusal notice'.

As indicated, Mr Speaker, I am grateful that I can group clauses 17 and 18, as they both relate to situations when information requests are refused.

When refusing a request for any of the reasons set out in clause 11, a public authority must give the applicant a refusal notice under clause 17. An authority is not obliged to give a refusal notice in relation to a request for information if it has done so in respect of a previous identical or substantially similar request *and* it would, in all the circumstances, be unreasonable to expect it to serve a further such notice in relation to the current request.

Clause 18 sets out the content of a refusal notice to ensure consistency and clarity for requesters. There are a number of matters which such notices have to incorporate, including the reason why an authority is not required by the Act to provide the applicant with the requested information and, if the information is absolutely exempt information or qualified exempt information, it must state, if not otherwise apparent, why the exemption applies.

Refusal notices also have to provide details of the next steps that applicants can take if they do not agree with the decision of the public authority. The first step is to complain to the authority and seek an internal review of the decision.

I beg to move that clauses 17 and 18 do stand part of the Bill.

**The Speaker:** Mr Watterson.

**Mr Watterson:** I beg to second and reserve my remarks.

**The Speaker:** I put the question that clauses 17 and 18 do stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 19.

**Mr Robertshaw:** Thank you, Mr Speaker.

Clause 19: 'Confirming or denying existence of particular information'.

The clause states that nothing in the Act requires a public authority to confirm or deny whether it holds information of the description specified in the request if the confirmation or denial would itself be absolutely exempt information, or qualified exempt information, other than if the only

reason for refusing to confirm or deny whether it holds information is that the information is accessible by other means.

If an authority refuses to confirm or deny whether it holds information, it must give the applicant a refusal notice. In such circumstances, the refusal notice does not need to state the other means by which the information may be accessible or, if an authority's claim is in respect of a qualified exemption, state the reasons for claiming that such an exemption applies in respect of the balance of public interest.

Mr Speaker, I beg to move that clause 19 do stand part of the Bill.

**The Speaker:** Mr Watterson.

**Mr Watterson:** I beg to second and reserve my remarks.

**The Speaker:** Mr Quirk.

**Mr Quirk:** Mr Speaker, can I just ask the mover of the Bill, the interpretation of 'public interest' – I presume if there is a conflict between an applicant and a public authority, the Registrar actually could examine the case and interpret the public interest?

**The Speaker:** Mr Robertshaw.

**Mr Robertshaw:** Mr Speaker, I think I did actually touch on that a little bit earlier. I am happy to repeat it, that there will be a process to go through for a requester of information to be satisfied that they have been treated fairly and reasonably, and that the ultimate arbiter would be the Information Commissioner, but it would not be the first port of call.

I beg to move, Mr Speaker.

**The Speaker:** I put the question that clause 19 stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 20.

**Mr Robertshaw:** Thank you, Mr Speaker.

Part 3: 'Absolutely Exempt Information'.

Clause 20: 'Information accessible to applicant by other means'.

The Act is designed to supplement, not duplicate, the usual flow of information to the public. As such, the clause places an absolute exemption on information that is reasonably accessible, free of charge or on payment, other than by requesting the information under the Act.

The clause sets out the circumstances under which information is taken to be reasonably accessible, including if it is available in public libraries or archives, or if it is available on the internet or from any other reasonably accessible source.

Information is *not* reasonably accessible merely because it is made available voluntarily by a public authority, otherwise than under a publication scheme, if any.

I beg to move that clause 20 do stand part of the Bill.

**Mr Watterson:** I beg to second and reserve my remarks.

**The Speaker:** I put the question that clause 20 do stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 21.

**Mr Robertshaw:** Thank you, Mr Speaker.

Clause 21: 'Court information'.

This clause places an absolute exemption on court records and similar documents. This exemption contains three branches and covers information held by a public authority only because it is contained in a document (1) filed with or otherwise placed in the custody of a court, or served upon or by a public authority for the purposes of legal proceedings; (2) created by a court or a member of the administrative staff of a court for the purposes of legal proceedings; or (3) placed in the custody of, or created by, a person conducting an inquiry or arbitration for the purposes of the inquiry or arbitration. This clause contains interpretive provisions to explain the meaning of terms contained within it.

Mr Speaker, I beg to move that clause 21 do stand part of the Bill.

**The Speaker:** Mr Watterson.

**Mr Watterson:** I beg to second and reserve my remarks.

**The Speaker:** I put the question that clause 21 stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 22.

**Mr Robertshaw:** Clause 22 – of particular interest to Hon. Members, Mr Speaker: 'Parliamentary privilege and business'.

This clause places an absolute exemption on parliamentary privilege and business information. As a result, information is absolutely exempt if exemption from the obligation to disclose under the Act is required to avoid an infringement of the privileges of Tynwald, the House of Keys or the Legislative Council.

Likewise, information is absolutely exempt if its disclosure would, or would be likely to, in the reasonable opinion of the appropriate person, for non-statistical information, prejudice the effective conduct of parliamentary business.

A certificate, signed by the appropriate person – the President, in relation to Tynwald and the Legislative Council; and Mr Speaker, in relation to the House of Keys – is conclusive evidence that the exemption is required to avoid an infringement of privilege or prejudice, or likely prejudice, to the effective conduct of parliamentary business.

I beg to move that clause 22 do stand part of the Bill.

**The Speaker:** Mr Watterson.

**Mr Watterson:** I beg to second and reserve my remarks.

**The Speaker:** The Hon. Member for Michael, Mr Cannan.

**Mr Cannan:** Thank you, Mr Speaker.

I seek some clarification from the Minister here in terms of the actual obligations of Members, and I have reserved these comments for this particular clause but I expand this out across various clauses where obligations are placed maybe on *individuals* to disclose specific correspondence.

So, for example, the notes attached to this refer to the fact that personal constituency matters are exempt information, and of course we would not be expected to disclose such information, but were we being asked as Members, or a freedom of information request is applied in respect of a particular policy, for example, which may have evolved or been brought into law, and the freedom of information request involves revealing written correspondence, how is that actually therefore, in practice, resolved?

So, for example, the freedom of information request has materialised, an individual or organisation wishes to, as part of that process, access correspondence between a Minister, say, and his Department, and that correspondence is by e-mail: how is that information actually then given? Is that the process of informing the individual that such e-mails will be removed and processed, or is the request directly to the individual concerned that they are required by this law to forward all relevant e-mails involved with that particular request?

Of course I am asking this not just, obviously, as somebody who would be potentially affected by this clause, but also in respect of other public servants who may be within Departments as well, who will have similar responsibilities under some of the clauses we have already talked about.

**The Speaker:** Mr Robertshaw.

**Mr Robertshaw:** Thank you, Mr Speaker.

I will do my best to answer that question. If in some regard I fail, I will perhaps come back with further clarity later on, in the Third Reading. But in terms of the process of policy-making, may I draw the Hon. Member's attention to the fact that we will be dealing with that concept a little bit further down in the clauses – and perhaps he might want to come back to me again at that stage.

With regard to constituency issues, of course the intention is that the Data Protection Supervisor and the Commissioner of Information will be one and the same person and will be constantly aware of the point at which freedom of information ends and data protection starts. So perhaps he would bear with me on the issue of the whole concept of policy formation?

Mr Speaker, I beg to move.

**The Speaker:** Hon. Members, I put the question that clause 22 do stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 23.

**Mr Robertshaw:** Thank you, Mr Speaker.

Clause 23: 'Absolutely exempt communications with the Crown'.

This clause is one of two exemptions covering communications with the Crown; the other one being qualified exempt communications with the Crown, in clause 38.

This clause focuses the absolute exemption on information which relates to communications with the Queen, the heir to, or the person who is for the time being second in line of succession to, the throne.

The exemption also covers communications with the Lieutenant Governor, who is not a public authority under the Act.

Mr Speaker, I beg to move that clause 23 do stand part of the Bill.

**The Speaker:** Mr Watterson.

**Mr Watterson:** I beg to second and reserve my remarks.

**The Speaker:** The motion is clause 23. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 24.

**Mr Robertshaw:** Thank you, Mr Speaker.

Clause 24: 'Absolute exempt information relating to exchange of information under international agreements'.

This clause places an absolute exemption on information if it is confidential information obtained under the provisions of an international agreement about the exchange of information for a purpose

mentioned in clause 32(3). Those purposes include to ascertain whether a person has failed to comply with the law, and to ascertain whether a person is responsible for conduct that is improper.

Information is only considered confidential while the terms on which the information was obtained require it to be held in confidence, or the circumstances in which the information was obtained make it reasonable for the state, organisation or court to expect that it will be held in confidence.

Mr Speaker, I beg to move that clause 24 do stand part of the Bill.

**The Speaker:** Mr Watterson.

**Mr Watterson:** I beg to second and reserve my remarks.

**The Speaker:** I put the question. Clause 24: those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 25.

**Mr Robertshaw:** Thank you, Mr Speaker.

Clause 25: 'Absolutely exempt personal information'.

This clause seeks to prevent the unreasonable disclosure of personal information, and in order to be compatible with the Data Protection Act 2002, amendments to that Act, including to the definition of data, have to be made.

A person cannot use freedom of information to request personal information about themselves, and therefore such requests are subject to an absolute exemption through this clause. This clause also places an absolute exemption on personal census information and on deceased persons' health records.

In respect of third-party personal information, i.e. personal information which is not the requester's own, the clause places an absolute exemption in three circumstances, including when the disclosure of third-party personal information held in a relevant filing system would contravene any of the data protection principles – for example, fair and lawful processing.

The new definition of 'data' in the Data Protection Act allows protection, through this clause, of personal information about third parties in an unrelated manual file. However, the amendments to the Data Protection Act do not extend all the rights of that Act to unstructured or manual data held by public authorities.

This clause also ensures that third-party personal information cannot be released to a requester if that third party was unable to request their information through the access rights in the Data Protection Act.

The right to information under freedom of information does not trump the rights to privacy under the Data Protection Act.

Mr Speaker, I beg to move that clause 25 do stand part of the Bill.

**The Speaker:** Mr Watterson.

**Mr Watterson:** I beg to second and reserve my remarks.

**The Speaker:** I put the question. Clause 25: those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 26.

**Mr Robertshaw:** Thank you, Mr Speaker.

Clause 26: 'Information provided in confidence'.

This clause places an absolute exemption on information if it was obtained by an authority from another person, including another public authority, and, crucially, its disclosure would constitute a breach of confidence actionable by that or any other person.

Mr Speaker, I beg to move that clause 26 do stand part of the Bill.

**The Speaker:** Mr Watterson.

**Mr Watterson:** I beg to second and reserve my remarks.

**The Speaker:** I put the question. Clause 26: those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 27.

**Mr Robertshaw:** Thank you, Mr Speaker.

Clause 27: 'Information the disclosure of which is restricted by law'.

The Act is not an alternative route to bypass disclosure restrictions provided by other statutes, so this clause places an absolute exemption on information if its disclosure by the public authority holding it is prohibited by or under any other statutory provision.

Information is also absolutely exempt if its disclosure is incompatible with an EU obligation that applies to the Island, or if disclosure would constitute a contempt of court.

Mr Speaker, I beg to move that clause 27 do stand part of the Bill.

**The Speaker:** Mr Watterson.

**Mr Watterson:** I beg to second.

**The Speaker:** I put the question. Clause 27: those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 28.

**Mr Robertshaw:** Thank you, Mr Speaker.

We move to part 4, which covers qualified exempt information.

Clause 28: 'National security and defence'.

This clause contains two limbs: the first prevents the disclosure of information which is required to safeguard national security; the second protects information where the disclosure of which would, or would be likely to, prejudice the defence of the British Islands or the capability, effectiveness, or security of any relevant forces.

The national security limb of this exemption differs from other qualified exemptions, as it allows the Chief Minister or the Minister for Home Affairs to certify that the exemption applies, and certification is conclusive evidence of that fact, which means there is no automatic right of review by the Information Commissioner.

The certification can describe information in a general way and may be expressed to have a prospective effect, i.e. it can be prepared in the expectation of future requests.

Unlike the national security element of the exemption, which is class based – i.e. information just has to fall within the criteria of the exemption – the defence limb of this exemption is prejudice based. As a result, in order for the defence qualified exemption to be engaged, a public authority has to demonstrate that release of the requested information will either cause prejudice or be likely to cause prejudice, the latter being set at a lower threshold than the former.

Only after a public authority is satisfied in this regard can it begin the public interest test to assess whether the public interest in maintaining the exemption outweighs the public interest in disclosing the information. The same process has to be followed for all prejudice-causing exemptions.

Mr Speaker, I beg to move that clause 28 do stand part of the Bill.

**The Speaker:** Mr Watterson.

**Mr Watterson:** I beg to second and reserve my remarks.

**The Speaker:** I put the question that clause 28 do stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 29.

**Mr Robertshaw:** Thank you, Mr Speaker.

Clause 29: 'International relations'.

This clause places a qualified exemption in respect of international relations. It has three interlinked branches which seek to protect information, the disclosure of which may detrimentally affect the Island's international relations.

The first two branches are prejudice based and cover information which would or would be likely to prejudice relations between the Island and the United Kingdom or any other state, or an international organisation or court; or the interests of the Island abroad, or the promotion or protection of any such interest.

The third branch covers confidential information if it is obtained from the same categories as in the first branch. The information contained from a state organisation or court is confidential while the terms on which it was obtained require it to be held in confidence, or the circumstances on which it was obtained make it reasonable for the state etc to expect that it would be so held.

Mr Speaker, I beg to move that clause 29 do stand part of the Bill.

**Mr Watterson:** I beg to second and reserve my remarks.

**The Speaker:** I put the question that clause 29 stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 30.

**Mr Robertshaw:** Clause 30, Mr Speaker: 'Economy and commercial interests'.

Growing the economy is one of the Government's national priorities, so it is vital that the Act does not undermine efforts to deliver on this national priority. This clause covers two related subjects and provides that information is qualified exempt if its disclosure would or would be likely to prejudice the economic interests of the Island, the financial interests of the Island, or the ability of the Government to manage the national economy.

Information is also qualified exempt information if it constitutes a trade secret, or its disclosure would or would be likely to prejudice the commercial interests of a person, including the public authority holding it.

Commercial interests are not defined in the clause, but it is intended that they will be interpreted broadly and will be dependent upon the circumstances of the particular context.

Mr Speaker, I beg to move that clause 30 do stand part of the Bill.

**The Speaker:** Mr Watterson.

**Mr Watterson:** I beg to second and reserve my remarks.

**The Speaker:** The Hon. Member for Douglas South, Mrs Beecroft.

**Mrs Beecroft:** Thank you, Mr Speaker.

Could the Minister just clarify, particularly for this clause, who is actually making the decision and is there any appeals process against that? It seems very wide-reaching, without any sort of backstop, any sort of appeal – what one person would decide is in the economic interests of the Island is not necessarily what somebody else would regard in the same light. It just seems very wide.

**The Speaker:** The mover to reply.

**Mr Robertshaw:** Thank you, Mr Speaker.

The Member for South Douglas raises an interesting point – and pertinent to a number of exchanges on the floor of the House in recent months.

I think the best way to answer this would be to explain that these decisions *can* be tested and *must* be tested, and decisions of the nature made as to whether they sit within any of the categories stated really do stand up to inspection. It is not in the interests of anyone to loosely or unreasonably interpret the guidelines – if found out, that would become a serious matter.

Perhaps I can just go on a little bit more about this particular point. If I can perhaps give an advice note on the Jacksons concert, which I think is a matter of interest to a number of Members. The short answer to what is potentially a complex area is that there are exemptions in freedom of information which serve to protect confidential information, commercial interests, including the Departments involved and trade secrets. There is also a broader exemption protecting the economic and financial interests of the Island. So, a confidentiality clause which covers truly confidential information or which relates to commercially sensitive information, would in principle prevent the release of the connected information. However, a fundamental characteristic about release under freedom of information is that many deciding factors are case specific, so it is hard to give a definitive answer to cover all circumstances. Issues to consider include the nature of the information, the circumstances in which it was supplied, when it was supplied and, where relevant, public interest considerations.

In principle, any information held by a Department, including that provided by another person, is potentially disclosable to a request under freedom of information. Many public authorities elsewhere design their contracts so that generic information is contained in their main body, and the truly confidential or commercially sensitive information is set out in schedules with all parties being clear, in freedom of information terms, why that information should not be released.

The whole or parts of any contract could be disclosed, even if it contains confidentiality clauses. Such clauses assist the assessment of factors favouring disclosure, but they would not in themselves guarantee that the information would be withheld. Information covered by them has to be confidential or commercially sensitive. The test is the information itself, not how it is labelled.

In order to determine whether or not information will be released, Departments will have to assess contracts against the freedom of information exemptions, and information will generally have to fall within exemptions, rather than just assumed to be or be labelled as so being, for the exemption to be engaged.

The most relevant exemptions are likely to be information provided in confidence – and I will not go into the details of that; information which is clearly a trade secret; and disclosures which would or would be likely to prejudice commercial interests of a person.

I hope that is guidance for the Hon. Member, Mr Speaker, and I beg to move.

**The Speaker:** Hon. Members, I put the motion that clause 30 do stand part of the Bill. Those in favour, say aye; against, no. The ayes have it.

*A division was called for and electronic voting resulted as follows:*

**FOR**

Mr Anderson  
Mr Cannan  
Mr Cregeen  
Mr Cretney  
Mr Crookall  
Mr Hall  
Mr Henderson  
Mr Houghton  
Mr Robertshaw  
Mr Ronan  
Mr Shimmin  
Mr Skelly  
Mr Teare  
The Speaker  
Mr Watterson

**AGAINST**

Mrs Beecroft  
Mr Quirk

**The Speaker:** With 15 votes for and 2 against, the motion therefore carries.  
Clause 31, Mr Robertshaw.

**Mr Robertshaw:** Thank you, Mr Speaker.

Clause 31: 'Investigations and legal proceedings'.

This exemption serves to ensure that the Act cannot be used to circumvent the rules of disclosure governing criminal investigations and proceedings. It covers information in two separate branches. First, information is qualified exempt if it has at any time been held by the authority for the purpose of an investigation which it has a duty to conduct to ascertain whether a person should be charged with an offence, or a person charged with an offence is guilty of it; an investigation conducted by the authority that in the circumstances may lead to criminal proceedings being instituted; or any criminal proceedings that the authority has the power to conduct.

Second, the exemption covers information if it was obtained or recorded by the authority from confidential sources for the purpose of its functions relating to the investigations set out above; criminal proceedings that it has the power to conduct; investigations, other than those set out above, that are conducted by the authority under other legal powers for purposes set out in clause 32(2); or civil proceedings that are brought by or on behalf of an authority, which arise out of investigations mentioned within the exemption.

Mr Speaker, I beg to move that clause 31 do stand part of the Bill.

**Mr Watterson:** I beg to second and reserve my remarks.

**The Speaker:** Hon. Members, I put the question. Clause 31: those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 32.

**Mr Robertshaw:** Thank you, Mr Speaker.

Clause 32 is 'Law enforcement'.

This exemption turns on the likely effects of disclosure, rather than the source of the information or the purpose for which it is held, which are covered by the previous clause.

The exemption will be available to a wider range of authorities, as it is not limited to those which have a duty or a power to conduct criminal investigations or prosecutions. It is also broader than the exemption above, as it is relevant to information which authorities hold for the law-enforcement purposes of other bodies, not only their own purposes.

Information is qualified exempt information if its disclosure would or would be likely to prejudice a number of matters, including the prevention and detection of crime and the apprehension or prosecution of offenders.

Information is also qualified exempt if its disclosure would or would be likely to prejudice the exercise by any authority of its functions for any of the purposes listed in the clause or any civil proceedings brought about as a result of the exercise of such functions.

The purposes include to ascertain whether a person has failed to comply with the law and to ascertain whether regulatory action under an enactment is justified.

Mr Speaker, I beg to move that clause 32 do stand part of the Bill.

**The Speaker:** Mr Watterson.

**Mr Watterson:** I beg to second and reserve my remarks.

**The Speaker:** I put the question. Clause 32: those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 33.

**Mr Robertshaw:** Mr Speaker, clause 33 is 'Audit functions'.

This exemption is intended to protect the effectiveness of the audit functions of certain public authorities, but it is not likely to be one that is engaged regularly.

This clause provides for information to be qualified exempt if it is held by a public authority which has functions in relation to the audit of the accounts of other public authorities, or in relation to the examination of the economy, efficiency and effectiveness with which other public authorities use their resources in discharging their functions, and its disclosure would prejudice, or be likely to prejudice, any of the matters mentioned above.

Mr Speaker, I beg to move that clause 33 do stand part of the Bill.

**Mr Watterson:** I beg to second, sir.

**The Speaker:** Mr Quirk.

**Mr Quirk:** Mr Speaker, I just wonder whether, on the audit function... would the Minister then say it is of public interest when the loss of public funds takes place – that is, taxpayers' funds – so that should be part of it? And, as he mentioned the Jacksons earlier, isn't that one of the cases?

**The Speaker:** Mr Robertshaw.

**Mr Robertshaw:** Mr Speaker, if I can just give you some clarity, this is the process of the audit function. Audits normally produce outcomes and reports, and that is the point at which freedom of information comes into being. So it is the report from the audit. The audit itself must be a confidential process.

Thank you, Mr Speaker.

**The Speaker:** I put the question. Clause 33: those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 34.

**Mr Robertshaw:** Thank you, Mr Speaker.

This is 'Formulation of policy' and covers the item which the Hon. Member for Michael raised a little earlier.

This purpose clause of the Bill recognises that exceptions to the right of access are necessary to maintain a balance with effective government. This exemption is designed to retain what has been referred to as a 'safe space' for the Government to formulate and develop policy and for Ministers to collectively engage in the policy-making process in the knowledge that these discussions are protected from unjustified disclosure.

This clause provides that information is qualified exempt information if it is held by a Government Department or the Cabinet Office and it relates to the formulation or development of government policy; communication between Ministers, including the proceedings of the Council of Ministers and its committees; the provision of legal advice or the request for such; and the operation of a ministerial private office.

This exemption does not extend to statistical information used to provide an informed background to a policy decision once that decision has been made.

In determining whether or not to engage this exemption, regard must be had to the public interest in disclosing factual information used to provide an informed background to decision-making.

Mr Speaker, I beg to move that clause 34 do stand part of the Bill.

**The Speaker:** Mr Watterson.

**Mr Watterson:** I beg to second and reserve my remarks.

**The Speaker:** Hon. Member, Mr Cannan.

**Mr Cannan:** Thank you, Mr Speaker.

I just want to again pick up on points that I raised earlier, but specifically in this clause here the clause refers to communications between Ministers in reference to public policy-making decisions. Clearly, there may well be other communications between Ministers and departmental colleagues or potentially Statutory Boards or other Offices or other Departments; but more specifically, the term 'Ministers' – is that referring to Tynwald and MHKs, or is that referring just specifically to Ministers?

**The Speaker:** Hon. Member, Mr Quirk.

**Mr Quirk:** Thank you, Mr Speaker.

The same thing, really, and I put it then as chairmen of statutory authorities as well. Does that protect the Statutory Board members when communications are taken by e-mail and so forth? In a similar vein to Mr Cannan's.

**The Speaker:** The mover to reply.

**Mr Robertshaw:** Mr Speaker, I am going to take a little bit of advice from the officer in a second on part of that. I have got it, thank you.

This clause specifically concerns itself with formulation of policy. It does not cover engagement and communications between Ministers outwith the process of policy-making. I hope that gives some clarity to the Member.

**Mr Quirk:** Policies made elsewhere.

**Mr Robertshaw:** And other authorities would be entitled to retain a degree of discretion and a safe space when they are formulating policy, whether it is a local authority or central Government.

The question as to who it covers: it covers Ministers; it does not extend beyond that.

Mr Speaker, I beg to move.

**The Speaker:** I put the question that clause 34 do stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 35, Mr Robertshaw.

**Mr Robertshaw:** Thank you, Mr Speaker.

Clause 35: 'Conduct of public business'.

This is the exemption which all public authorities can use in relation to the similar types of information which are covered by the previous exemption. This exemption recognises that all authorities need a safe space for internal discussion, thinking and policy development. It is a prejudice-based exemption, unlike the previous exemption, which is class based.

This clause creates a qualified exemption on information if its disclosure would or would be likely to prejudice the work of the Council of Ministers, inhibit the free and frank provision of advice, inhibit the free and frank exchange of views for the purposes of deliberation, or otherwise prejudice the effective conduct of public business.

Mr Speaker, I beg to move that clause 35 do stand part of the Bill.

**Mr Watterson:** I beg to second and reserve my remarks.

**The Speaker:** I put the question. Clause 35: those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 36.

**Mr Robertshaw:** Thank you, Mr Speaker.

Clause 36 relates to health and safety.

This clause creates a qualified exemption if the disclosure of information would or would be likely to endanger the physical or mental health of an individual or the safety of an individual.

The use of the term 'endanger' is more relevant to the subject matter of this exemption than 'prejudice', although the use of the term does not represent a significant departure from the test of prejudice integral to the assessment of other exemptions.

In spite of its title, the exemption is not aimed at information in relation to what might commonly be thought of as health and safety matters, such as establishing the cause of an accident, which could be covered elsewhere. The exemption is more focused on protecting the health or safety of an individual and could cover, for example, information that would allow individuals to be located or identified and consequently targeted for their beliefs or practices.

Mr Speaker, I beg to move that clause 36 do stand part of the Bill.

**Mr Watterson:** I beg to second and reserve my remarks.

**The Speaker:** I put the question. Clause 36: those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 37.

**Mr Robertshaw:** Mr Speaker, clause 37: 'Research and natural resources'.

This clause exemption contains two limbs. Subsection (1) covers information relating to ongoing research by an authority, or on behalf of an authority, when disclosure would or would be likely to prejudice the authority, or the person carrying out the research, or the subject matter of the research.

Subsection (2) provides for a qualified exemption if disclosure would or would be likely to prejudice the well-being of a cultural, heritage or natural resource, a species of flora or fauna, or a habitat of a species of flora or fauna.

I beg to move that clause 37 do stand part of the Bill.

**The Speaker:** Mr Watterson.

**Mr Watterson:** I beg to second and reserve my remarks.

**The Speaker:** I put the question. Clause 37: those in favour, say aye; against, no. The ayes have it.  
The ayes have it.  
Clause 38.

**Mr Robertshaw:** Mr Speaker, this covers qualified exempt communications with the Crown.  
This clause is the partner to clause 24, the absolute exemption communication with the Crown.  
Under this clause, information is qualified exempt if it relates to communications with a member of the Royal Family or the Royal Household, other than communications covered by the linked absolute exemption.  
The exemption also covers information relating to the conferring by the Crown of any honour or dignity.  
Mr Speaker, I beg to move that clause 38 do stand part of the Bill.

**Mr Watterson:** I beg to second and reserve my remarks.

**The Speaker:** I put the question that clause 38 do stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.  
Clause 39.

**Mr Robertshaw:** Mr Speaker, this covers qualified exempt personal information.  
This clause is the partner to clause 25, the absolute exemption on personal information.  
Under this clause, information is qualified exempt if it constitutes personal data of which the applicant is not the data subject and disclosure of the information, if not requested under this Act, would contravene section 8 of the Data Protection Act 2002 – the right to prevent processing likely to cause damage or distress.  
The terminology defined in the Data Protection Act 2002 has the same meaning in this clause as they have in that Act.  
Mr Speaker, I beg to move that clause 39 do stand part of the Bill.

**The Speaker:** Mr Watterson.

**Mr Watterson:** I beg to second and reserve my remarks.

**The Speaker:** I put the question. Clause 39: those in favour, say aye; against, no. The ayes have it.  
The ayes have it.  
Clause 40.

**Mr Robertshaw:** Thank you, Mr Speaker.  
This covers legal professional privilege.  
This clause creates a qualified exemption for information in respect of which a claim to legal professional privilege could be maintained in legal proceedings.  
Mr Speaker, I beg to move that clause 40 do stand part of the Bill.

**Mr Watterson:** I beg to second and reserve my remarks.

**The Speaker:** I put the question. Clause 40: those in favour, say aye; against, no. The ayes have it.  
The ayes have it.

Clause 41.

**Mr Robertshaw:** Thank you, Mr Speaker.

Clause 41: 'Information for future publication'.

It is not the intention of the Act to undermine an authority's routine publication policy. This exemption provides a qualified exemption for information which will be published at a future point by a public authority or someone else, whether or not a date for publication has been determined.

There are, understandably, safeguards in the clause – for example, information has to be held with a view to future publication when the request is made and it has to be reasonable in all the circumstances that the information be withheld from disclosure until the future date of intended publication.

Mr Speaker, I beg to move that clause 41 do stand part of the Bill.

**Mr Watterson:** I beg to second and reserve my remarks.

**The Speaker:** Mr Quirk;

**Mr Quirk:** Just for clarification, if I could, Minister, could I just ask what the statutory obligation is for Government, Statutory Boards, local authorities and public bodies to actually keep their data? Are we talking about seven years, 12 years, 25 years?

**Mr Watterson:** It depends on the data.

**The Speaker:** Mover to reply.

**Mr Watterson:** It depends on the data.

**Mr Robertshaw:** There is, to my knowledge, no specific... and I will qualify this answer at Third Reading if I am proved to be wrong. There is no statutory requirement to maintain data, but there are many circumstances where it is appropriate and fitting that it should happen.

Mr Speaker, I beg to move.

**The Speaker:** I put the question: those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clauses 42 and 43 together.

**Mr Robertshaw:** Thank you, Mr Speaker, for allowing me to group these two.

Clause 42: 'Review of decisions by the Information Commissioner'.

Clause 43: 'Review of decisions originally made by the Commissioner'.

I am grouping the next two clauses, 42 and 43, as their effect is identical but for the public authority to which they relate.

A core feature of the Act is the right for requesters to seek an independent review of a public authority's decision in respect of a request for information or whether it has acted in accordance with the Act's requirements.

Clause 42 gives effect to this right and creates the concept of a review applicant for those who seek redress through the Information Commissioner.

The Commissioner must make a decision as soon as practicable, although there are criteria which have to be met without which the case need not be reviewed. These include whether the review applicant submitted a valid request or whether the review applicant has not exhausted the complaints procedure provided by a public authority who is responding to the requests for information.

Linking to clauses that have already been considered, the Commissioner must not make a decision if satisfied that the applicant would require him or her to challenge the conclusiveness of a parliamentary or national security certificate.

The Commissioner has to explain to the review applicant the reasons for not making a decision in the above circumstances, and in any other case the Commissioner must notify their decision via a decision notice, the contents of which are specified in the clause and include the right of appeal to which the timeframes in the notice have to be aligned.

The Information Commissioner will be a public authority under the Act once it is fully implemented, and so an alternative review mechanism is required for review applicants seeking redress for decisions on disclosure taken by the Commissioner.

Clause 43 proposes that, in these circumstances, the Tynwald Commissioner for Administration would undertake the role of the Information Commissioner as set out in clause 42.

I beg to move that clauses 42 and 43 do stand part of the Bill, Mr Speaker.

**The Speaker:** Mr Watterson.

**Mr Watterson:** I beg to second and reserve my remarks.

**The Speaker:** Mr Quirk.

**Mr Quirk:** Just on the Commissioner, could I seek an assurance from the hon. mover of the Bill that funds are available for that office; and, regarding an appeal, if sent to the Commissioner, that the fees for the appeal... although Tynwald is going to set some earlier part of the Bill, does this include an obligation for the Commissioner to say, 'If this appeal goes forward, because of its complex nature, it will cost x amount of money'?

**The Speaker:** Mr Robertshaw.

**Mr Robertshaw:** Thank you, Mr Speaker.

The funds for the Information Commissioner were discussed at an earlier reading and have been identified, and the fees relating to application to the Information Commissioner must be decided by Hon. Members in another place.

I beg to move, Mr Speaker.

**The Speaker:** I put the question that clauses 42 and 43 stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 44, please.

**Mr Robertshaw:** Thank you, Mr Speaker.

This covers alternative dispute resolution.

Reducing the potential for an adversarial situation to arise in respect of decisions on disclosure under the Act is a key aim of the Council of Ministers.

This clause provides for the Commissioner, at any time, to attempt to resolve a referred matter by negotiation, conciliation, mediation or other form of alternative dispute resolution, termed in the Bill an 'ADR process'. If, after an ADR process has been conducted, the Commissioner makes a decision under formal processes, regard must be had to the outcome of the ADR process.

Mr Speaker, I beg to move that clause 44 do stand part of the Bill.

**Mr Watterson:** I beg to second and reserve my remarks.

**The Speaker:** Mr Quirk.

**Mr Quirk:** Just on that, I presume that both parties have to agree to that mediation.

**Mr Robertshaw:** Mr Speaker, I think it is reasonable to assume that if there is a possibility, in the view of the Information Commissioner, that negotiation, conciliation or mediation would assist, it would be in the interest of the applicant to comply with that process.

I beg to move.

**The Speaker:** I put the question. Clause 44: those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 45.

**Mr Robertshaw:** Thank you, Mr Speaker.

This covers information notices.

This clause sets out powers for the Commissioner in circumstances where he or she has received an application for a decision, or reasonably requires information for the purpose of determining whether an authority has complied with, or is complying with, part 2 of the Act, or for determining whether the practice of the authority conforms with the code of practice.

In such circumstances, the Commissioner may serve an information notice on an authority. The clause specifies the content and scope of these notices, and the timescales therein must align with the right to appeal. The Commissioner can cancel a notice at any time.

An authority is not required to provide information that is a communication between advocate and client in connection with the giving of legal advice to the client in respect to their obligations, liabilities or rights under this Act, or in respect of potential proceedings under the Act.

Mr Speaker, I beg to move that clause 45 do stand part of the Bill.

**Mr Watterson:** I beg to second and reserve my remarks.

**The Speaker:** Mr Quirk.

**Mr Quirk:** If I could just ask, regarding the information notices, if the Commissioner does give a notice, how would members of the public see that? Is there to be, say, an interactive website where information notices have been requested either to public authorities or Government Departments?

**Mr Robertshaw:** Mr Speaker, I have not got that information, but I would expect that it will be publicly available. I will answer that in more detail at the Third Reading.

Mr Speaker, I beg to move.

**The Speaker:** I put the question. Clause 45: those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 46.

**Mr Robertshaw:** Clause 46: 'Enforcement notices'.

This clause provides that in circumstances where the Commissioner is satisfied that an authority has failed to comply with a requirement under part 2 of the Act, they may serve an enforcement notice on the authority requiring it to take the steps specified therein in order to so comply.

The notice must set out the provision with which the Commissioner is satisfied that the authority has failed to comply and the reasons why, and the timescales therein must align with the right to appeal. The Commissioner may cancel a notice by informing the public authority.

An enforcement notice is a legal order the Information Commissioner can make to require a public authority to address its failure to comply with part 2 of the Act. In practice, this is most likely to be used where there is systemic or repeated non-compliance. An enforcement notice cannot be issued purely in relation to a breach of the code of practice which is unrelated to a breach of the Act.

Mr Speaker, I beg to move that clause 46 do stand part of the Bill.

**Mr Watterson:** I beg to second and reserve my remarks.

**The Speaker:** I put the question. Clause 47: those in favour, say aye; against, no. The ayes have it.  
The ayes have it.  
Clause 47.

**Mr Robertshaw:** Thank you, Mr Speaker.

This relates to exception from the duty to comply with certain notices.

This clause allows for a decision or enforcement notice served on a Government Department or the Cabinet Office, which relates to a failure of a request for information to comply with clause 8 in respect of absolutely exempt information or qualified exempt information, to cease to have effect if the Chief Minister, after consulting the Council of Ministers and the Attorney General, signs a certificate that he or she has, on reasonable grounds, formed the view that there was no failure.

This is a long-stop power with necessary safeguards attached to it. For example, the Chief Minister must give the certificate to the Commissioner no later than the 30th working day following the effective date, lay a copy of it before Tynwald at the next available sitting, and notify the applicants of the reasons for his opinion as soon as reasonably practical after signing the certificate.

The Council of Ministers has undertaken to publish a policy on the use of the power in this clause and there is an expectation that its use will be in exceptional cases, rather than on a routine basis.

Mr Speaker, I beg to move that clause 47 do stand part of the Bill.

**Mr Watterson:** I beg to second and reserve my remarks.

**The Speaker:** Mr Quirk.

**Mr Quirk:** Sorry, Mr Speaker, but 'reasonably practical' – what is that term? (*Interjection by Mr Watterson*)

**The Speaker:** Mrs Beecroft.

**Mrs Beecroft:** Yes, thank you, Mr Speaker.

Again, it just seems quite wide powers that the Chief Minister and the Council of Ministers have in regard to this. I am just wondering why it is the Chief Minister and not the Information Commissioner, or maybe going to the Deemster to make this decision. Should it have political influence in this case?

**The Speaker:** The mover to reply.

**Mr Robertshaw:** Thank you, Mr Speaker.

I think it is terribly important here to make it absolutely clear that this is what I said it was, which is a long-stop in special and exceptional circumstances, and it is typical of – as far as I am aware – most, if not all, Freedom of Information Acts where there is a requirement for the senior executive to make a final decision on something of extreme sensitivity.

But I would draw Hon. Members to the point that the Council of Ministers has, because of the sensitivity of this one, undertaken to publish the policy and the use of this power and it is going to be in exceptional circumstances only.

Mr Speaker, I beg to move.

**The Speaker:** I put the question. Clause 47: those in favour, say aye; against, no. The ayes have it.  
The ayes have it.  
Clause 48.

**Mr Robertshaw:** Thank you, Mr Speaker.  
'Failure to comply with notices', clause 48.

The clause provides for the Commissioner, in most circumstances, to certify in writing to the High Court that a public authority has failed to comply with a decision notice, an information notice or an enforcement notice once the timeframe for appealing the notice has expired.

The Court must enquire into the matter and may deal with the public authority as if it had committed a contempt of court.

Mr Speaker, I beg to move that clause 48 do stand part of the Bill.

**Mr Watterson:** I beg to second and reserve my remarks.

**The Speaker:** Mr Quirk.

**Mr Quirk:** Mr Speaker, just on the failure to comply, what would happen then if it goes to the court? How does a public utility or a Government Department... How do we know that data is then protected and not destroyed?

**Mr Robertshaw:** Mr Speaker, I am afraid I do not understand that question.

**The Speaker:** Sorry, could you repeat the –

**Mr Robertshaw:** I am afraid I do not understand the question. Could he repeat his question? I did not get that at all.

**The Speaker:** Mr Quirk.

**Mr Quirk:** Mr Speaker, yes.

Obviously, if there is a failure to comply with a notice and the court engages in that, and then it engages with a utility or a Government Department, or whatever public body, how does the registrar or the court then go to seek to protect the data?

**Mr Watterson:** Clause 63.

**The Speaker:** Mr Robertshaw.

**Mr Robertshaw:** I am still not really clear about the question. I will ask the Member outside of this Hon. House and try to come back with a clarity of answer at the Third Reading, but the process here is that where a public authority has failed to comply, ultimately it is in the hands of the Commissioner to place the matter before the courts, and the courts then deem whether a contempt of court has taken place – and that is a matter for the courts, not for the Commissioner or the authority.

If, in some way, I have not answered his question and he wants to articulate it again later, I will be happy to come back with further information.

Mr Speaker, I beg to move.

**The Speaker:** I put the question. Clause 48: those in favour, say aye; against, no. The ayes have it.  
The ayes have it.

Clause 49 and schedule 3.

**Mr Robertshaw:** Thank you, Mr Speaker.

'Powers of entry and inspection', clause 49.

The clause provides that schedule 3 has effect in relation to the Commissioner's powers of entry and inspection.

The schedule sets out the Information Commissioner's powers of entry and inspection and the issuing of warrants in three parts: part 1, 'Issue of warrants', sets out the power to grant warrants by a judge, the matters that must be satisfied and the requirement to issue certified copies thereof; part 2, 'Execution of warrants', sets out the power in relation to the use of reasonable force, the requirement for a warrant to be executed at a reasonable hour, requirements in relation to occupied premises and receipts for items seized; part 3, 'Matters exempt from inspection and seizure', sets out the information that is excluded from the schedule and details the position in respect of communications between advocate and client and information consisting partly of matters in respect of which powers under the schedule are not exercisable; and part 4, 'Supplementary', in respect of the return of warrants, offences and interpretation of the schedule.

Mr Speaker, I beg to move that clause 49 and schedule 3 do stand part of the Bill.

**The Speaker:** Mr Watterson.

**Mr Watterson:** I beg to second and reserve my remarks.

**The Speaker:** I put the question: those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 50.

**Mr Robertshaw:** Thank you, Mr Speaker.

This covers rights of appeal against notices.

This clause provides for a review applicant or a public authority to appeal to the High Court on a point of law against a decision notice. A public authority can also appeal on the same basis against information or enforcement notices.

All appeals must be made in accordance with rules of the court.

Mr Speaker, I beg to move that clause 50 do stand part of the Bill.

**Mr Watterson:** I beg to second and reserve my remarks.

**The Speaker:** I put the question. Clause 50: those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 51.

**Mr Robertshaw:** Thank you, Mr Speaker.

Clause 51: 'Public authority may claim late exemption'.

From time to time, the issues that public authorities have to consider in relation to whether or not an exemption applies, particularly a qualified exemption, will be highly complex. It is unlikely therefore that, despite best efforts, all public authorities will get the decision on which exemption applies right first time, every time.

This clause entitles a public authority to claim that requested information, which is the subject of proceedings under clauses 42, 43 and 50, is absolutely exempt or qualified exempt whether or not the authority made that claim at an earlier point in the process.

As with many other aspects of the Bill, this clause contains safeguards to balance out its potential effects. These safeguards include, for example, the ability of the Commissioner or the High Court to

refuse the claim if satisfied on reasonable grounds that there has been undue delay by the public authority in making the claim.

Mr Speaker, I beg to move that clause 51 do stand part of the Bill.

**Mr Watterson:** I beg to second and reserve my remarks.

**The Speaker:** I put the question. Clause 51: those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clauses 52, 53 and 54 taken together.

**Mr Robertshaw:** Yes, please, Mr Speaker. Thank you.

This moves us into part 6: 'The Information Commissioner'.

Clause 52 is 'The Isle of Man Information Commissioner'.

Clause 53 is 'Independence'.

Clause 54 is 'General functions of the Information Commissioner'.

I would like to group these together because they all deal with... [*Inaudible*]

Clause 52 provides that the Isle of Man Data Protection Supervisor, appointed under section 4 of the Data Protection Act 2002, is appointed and is to be known as 'the Isle of Man Information Commissioner ("the Commissioner")'.

During Second Reading, I was asked about the additional costs that are to be incurred by the establishment of the new post of Information Commissioner. In this regard, I can advise that the Office of the Data Protection Supervisor's business case has been accepted by Treasury and provides for a total increase in budget for the three years from 2015-16 of up to £116,000 to cover staff costs and meet training needs.

Schedule 2 has effect and sets out further details of the Commissioner's appointment. The schedule proposes that the Commissioner is appointed by the Council of Ministers, with the approval of Tynwald, for a term of up to five years, automatically eligible for re-appointment for a second term of up to five years. He or she is eligible for re-appointment for a third time if the Council of Ministers is satisfied that it is in the public interest to do so. The Commissioner can only be removed from office following a Tynwald resolution, which itself is subject to certain criteria.

The schedule sets out in further detail a range of other matters, including the terms and conditions, resignation and removal, and general powers.

Finally, to be clear about a point on powers raised at Second Reading, the Act does not give the Information Commissioner any additional regulatory powers under the Data Protection Act 2002. This Bill is concerned with regulating the new statutory freedom of information regime, not the augmentation or otherwise of data protection regulation.

Turning to clause 53, this states that the Commissioner is to perform his or her functions and exercise his or her powers independently, and in so doing is not subject to the direction of Tynwald, its Branches or the Council of Ministers.

Clause 54 sets out the general functions of the Information Commissioner. It is the duty of the Commissioner to perform these functions under the Act and to promote good practice.

The Commissioner must conform with the code of practice, in addition to the requirements under the Act, in the performance of their functions and the exercise of their powers.

The Commissioner must also provide the public with such information as he or she considers appropriate, and may give advice to any person in respect a number of matters, including the operation of the Act.

In order to maximise the potential for the smooth operation of the Act, the Commissioner may, with the consent of a public authority, assess whether it is following good practice.

Mr Speaker, I beg to move that clauses 52, 53 and 54 and schedule 2 do stand part of the Bill.

**Mr Watterson:** I beg to second and reserve my remarks.

**The Speaker:** Hon. Member, Mr Cregeen.

**Mr Cregeen:** Thank you, Mr Speaker.

I do have a concern when the Minister says that it is a five-year period and then automatic renewal after five years. Is this not a continual contract anyway, if it is actually going to be a 10-year contract instead of a five-year contract? Would he like to clarify that position – because I do have concerns about this employment.

**The Speaker:** Hon. Member, Mr Anderson.

**Mr Anderson:** Yes, thank you, Mr Speaker.

My clarification is just on the costs basis. The Minister mentioned costs of, I think, £115,000 or £116,000: is that an annual cost, please?

**A Member:** Three years.

**The Speaker:** Mover to reply.

**Mr Robertshaw:** Thank you, Mr Speaker.

The terms of the contract: it is five years, reviewable and renewable at that stage for a further five years.

**Mr Cregeen:** You said 'automatically'.

**Mr Robertshaw:** I said it is automatic? Let's just have a look at that... My view on this, Mr Speaker, is that the five-year contract term of office stands on its own and is reviewable at that point for a further five years. I am not aware I have given the impression it is *automatically* reviewed for a further five years. Did I give that impression?

**Mr Anderson:** You did to Mr Cregeen.

**Mr Cregeen:** As soon as you said 'automatic'!

**Mr Robertshaw:** For clarity, the position is that the term of office is for five years, and thereafter it is reviewable and the person carrying out the role can change at that point. It is possible to go for a third period of five years, but that is perhaps completely a matter of careful review as to whether it is appropriate or safe to have somebody in the same office for such a period of time.

I am not sure, with regard to the cost, as to whether it is per annum or... No, I am now given the guidance that it is for the three-year period.

**Mr Singer:** You said that.

**Mr Robertshaw:** Thank you.

**The Speaker:** I put the question that clauses 52, 53 and 54 do stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.  
Clause 55.

**Mr Robertshaw:** Thank you, Mr Speaker.

Clause 55: 'Recommendations as to good practice'.

Under the clause, the Commissioner may make recommendations to a public authority – in writing, specifying the provisions of the code of practice which they believe the authority is not conforming to, together with the steps required to confirm – if it appears to the Commissioner that an authority’s practice in relation to its functions under the Act does not conform to the code of practice.

Mr Speaker, I beg to move that clause 55 do stand part of the Bill.

**Mr Watterson:** I beg to second and reserve my remarks.

**The Speaker:** Mr Quirk.

**Mr Quirk:** Just on the notifications to public authorities, in the case of a local authority, would that be to the clerk and the chairman and members of that particular board?

**The Speaker:** Mover to reply.

**Mr Robertshaw:** Yes, Mr Speaker.

**The Speaker:** I put the question. Clause 55: those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clauses 56 and 57, taken together.

**Mr Robertshaw:** Thank you, Mr Speaker.

I am grouping these two clauses – clause 56, ‘Advice’; and clause 57, ‘Advice panel’ – because of their natural linkages.

As the Act touches upon many public law and other legal concepts, clause 56 provides for the Commissioner to secure appropriate legal support from an advice panel to assist with their functions under the Act.

Clause 57 states that the Chief Secretary must prepare and maintain a panel of legal practitioners – advocates, barristers or solicitors – willing to give advice and assistance to the Commissioner.

Mr Speaker, I beg to move that clauses 56 and 57 do stand part of the Bill.

**Mr Watterson:** I beg to second and reserve my remarks.

**The Speaker:** Mr Quirk.

**Mr Quirk:** I just want him to clarify that, when answering to Mr Anderson that the costs over the three or five-year period were only £116,000... I just wonder, if you appoint the panel, what the potential costs would be there.

**The Speaker:** Reply, sir.

**A Member:** Modest.

**Mr Robertshaw:** Mr Speaker, I think somebody just said ‘modest’. It is not going to be possible to define the costs on a given situation. Each situation stands in its own right.

Mr Speaker, I beg to move.

**The Speaker:** I put the question. Clauses 56 and 57: those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 58.

**Mr Robertshaw:** Mr Speaker, clause 58: 'Annual report of the Information Commissioner'.

This clause requires the Commissioner to lay an annual report – more often, if appropriate – before Tynwald on the exercise of their functions under the Act.

Mr Speaker, I beg to move that clause 58 do stand part of the Bill.

**Mr Watterson:** I beg to second and reserve my remarks.

**The Speaker:** I put the question. Clause 58: those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 59.

**Mr Robertshaw:** Thank you, Mr Speaker.

We move to part 7: 'Publication Schemes and Code of Practice'.

Clause 59: 'Publication schemes'.

The introduction of a freedom of information regime is an important milestone in increasing openness and transparency in the Isle of Man, but public authorities should be encouraged to proactively publish as much information as possible. Proactive publication automatically takes information out of the Act's scope under clause 21. This clause makes publication schemes optional for public authorities, but it also provides an order-making power for the Council of Ministers to require an authority to adopt and implement such a scheme.

The clause sets some parameters for publication schemes, should they be adopted, whilst retaining as much flexibility as possible.

Mr Speaker, I beg to move that clause 59 do stand part of the Bill.

**Mr Watterson:** I beg to second and reserve my remarks.

**The Speaker:** Mr Quirk.

**Mr Quirk:** Just on the issue that the Council of Ministers would give guidance or give orders to public authorities, I wonder would the Minister... and I am quite happy to have this in writing... On what form of authority will that take place? What Act are you using to do that?

**Mr Robertshaw:** Mr Speaker, this clause.

**The Speaker:** I beg your pardon?

**Mr Robertshaw:** This clause gives the authority.

**The Speaker:** This clause gives the authority.

I put the question. Clause 59: those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clauses 60 and 61, taken together.

**Mr Robertshaw:** Thank you, Mr Speaker.

Clause 60 is 'Code of practice' and clause 61 is 'Compliance with code of practice'.

Clause 60 requires the Council of Ministers to issue a code of practice, providing guidance to public authorities on various administrative matters, in order to spread good practice and provide certainty and clarity. It is not to be confused with the current Code of Practice on Access to Information.

The clause sets out a number of issues in relation to which the code must make provision, including: determination of when information is held by an authority for the purposes of the

definition of 'held'; determination of matters to which a public authority may have regard in determining whether a request for information is vexatious, malicious, frivolous, misconceived or lacking in substance; and determination of the public interest when considering requests concerning qualified exempt information.

Before issuing or revising the code, the Council of Ministers must consult the Information Commissioner and the code must be laid before Tynwald.

Turning to clause 61, this states that if a public authority complies with its obligations under the code of practice, it is taken to have complied with the requirements, if any, under the Act.

Mr Speaker, I beg to move that clauses 60 and 61 do stand part of the Bill.

**Mr Watterson:** I beg to second and reserve my remarks.

**The Speaker:** Mrs Beecroft.

**Mrs Beecroft:** Thank you, Mr Speaker.

I just want some clarity: when the Minister says the code of practice must be laid before Tynwald, does this mean that there will be no input from any Tynwald Members, no debate on it? Do we have no input or influence whatsoever in the code?

**The Speaker:** Reply, sir.

**Mr Robertshaw:** Mr Speaker, the code of practice will come from the Council of Ministers; but, like anything, over a period of time it must be something that will be subject to review and experience, and that would be the opportunity for Members to make contribution for ultimate changes later on.

**The Speaker:** Just for my clarity, Minister, the clause does say:

'The code of practice must be laid before Tynwald'

and not 'approved'. You are saying indeed that is the case – it is to be laid before without debate?

**Mr Robertshaw:** Yes, Mr Speaker.

**The Speaker:** Thank you.

I put the question that clauses 60 and 61 be accepted. Those in favour, say aye; against, no. The ayes have it.

*A division was called for and electronic voting resulted as follows:*

**FOR**

Mr Bell  
Mr Cannan  
Mr Cregeen  
Mr Cretney  
Mr Crookall  
Mr Gawne  
Mr Henderson  
Mr Houghton  
Mr Quayle  
Mr Robertshaw  
Mr Singer  
Mr Skelly

**AGAINST**

Mrs Beecroft  
Mr Hall  
Mr Quirk  
The Speaker  
Mr Thomas

Mr Teare  
Mr Watterson

The Speaker: With 14 for and 5 against, the motion therefore carries.  
We turn to clause 62.

Mr Robertshaw: Thank you, Mr Speaker.

This is part 8, 'Supplemental provisions'.

Clause 61: 'No civil proceedings arise for non-compliance'.

This clause states that no right of action arises in civil proceedings by reason only of the failure by a public authority to comply with a request for information.

The clause does not affect the powers of the Information Commissioner under clause 48, 'Failure to comply with notices'.

Mr Speaker, I beg to move that clause 62 do stand part of the Bill.

**The Speaker:** Mr Watterson.

**Mr Watterson:** I beg to second and reserve my remarks.

**The Speaker:** I put the question. Clause 62: those in favour, say aye; against, no. The ayes have it.  
The ayes have it.

Clause 63.

**Mr Robertshaw:** Thank you, Mr Speaker.

Clause 63: 'Record tampering'.

This clause deals with record tampering by a person in a public authority, relevant only after a request for information has been received.

If the applicant is entitled to be supplied with the information under this Act or the Data Protection Act 2002, and the member of the public authority alters, defaces, erases, destroys or conceals information held by the authority, with the intention of preventing the authority from supplying the information, they are guilty of an offence liable on summary conviction to a fine not exceeding £5,000.

Mr Speaker, I beg to move that clause 63 do stand part of the Bill.

**Mr Watterson:** I beg to second and reserve my remarks.

**The Speaker:** Mr Singer.

**Mr Singer:** Just a comment that I made before: where does the Minister in fact get this figure of £5,000 from? It seems to me that somebody tampering with official information is a really serious offence and should be subject to a maximum fine much higher than £5,000.

**The Speaker:** Hon. Member, Mr Quirk.

**Mr Quirk:** In the same vein, Mr Speaker, considering that, in the Landlord and Tenants Bill, which the Member was moving, there was £20,00, and here we are tampering with official records and we are only £5,000... But anyway, we will wait and see what happens.

Could I also thank the Minister – sorry, the... well, he is a Minister – Mr Watterson, for helping out too. Actually, that issue I had before, 63, covers that.

Can I ask the Minister, regarding when the Information Commissioner has an issue and he has to seek the consent of the Attorney General – I just wonder what would be the case if there was some

friction. I am not saying there would be, but just say, in the public interest, the public Information Commissioner wanted something done, but the Attorney General did not.

**The Speaker:** Mover to reply.

**Mr Robertshaw:** I do not think I could visit a judgement on something so obscure.

**Mr Quirk:** It could happen.

**Mr Robertshaw:** In terms of the £5,000, I am given to understand that this is a typical figure that parallels similar fines in other jurisdictions, Mr Speaker.

I beg to move.

**The Speaker:** I put the question that clause 63 stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 64.

**Mr Robertshaw:** I thank you, Mr Speaker.

The clause sets out confidentiality provisions for the Information Commissioner and their staff for both this Act and the Data Protection Act.

In such circumstances, a person commits an offence if, without lawful authority, they knowingly or recklessly disclose information obtained in the course of performing their functions which relates to an identified or identifiable individual or business and is not, before or at the time of the disclosure, otherwise publicly available.

This clause also sets out the circumstances under which disclosure is made with lawful authority, including if it is made with the consent of the individual or the person for the time being carrying on the business.

Mr Speaker, I beg to move that clause 64 do stand part of the Bill.

**Mr Watterson:** I beg to second and reserve my remarks.

**The Speaker:** Mr Quirk.

**Mr Quirk:** Mr Speaker, just to make the point again – and my hon. colleague from Ramsey, Mr Singer, has pointed it out – the offence there is £5,000. Nonsense!

**The Speaker:** I put the question that clause 64 do stand part of the Bill. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 65.

**Mr Robertshaw:** Thank you, Mr Speaker.

This is 'Defamation'.

This clause states that if information supplied by a public authority to an applicant under this Act was supplied by a third person, the publication to the applicant of defamatory matter contained in the information is privileged unless the publication is shown to have been made with malice.

Mr Speaker, I beg to move that clause 65 do stand part of the Bill.

**Mr Watterson:** I beg to second and reserve my remarks.

**The Speaker:** I put the question. Clause 65: those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 66.

**Mr Robertshaw:** 'Notices', Mr Speaker.

The clause stipulates that notices under this Act have to be made in writing, which is taken as being so if it is transmitted by electronic means, is received in legible form and is capable of being used for subsequent reference.

Mr Speaker, I beg to move that clause 66 do stand part of the Bill.

**Mr Watterson:** I beg to second and reserve my remarks.

**The Speaker:** I put the question. Clause 66: those in favour, say aye; against, no. The ayes have it. The ayes have it.

Clause 67.

**Mr Robertshaw:** Thank you, Mr Speaker.

This covers subordinate legislation.

The clause allows the Council of Ministers to make orders and regulations in accordance with this Act, or otherwise as are necessary or expedient to give effect to this Act.

Orders and regulations, other than those covered by subsection (4), must be laid before Tynwald as soon as practicable after they are made; and, if Tynwald, at the sitting at which they are laid or at the next following sitting, resolves that they be annulled, they cease to have effect.

The exceptions to this general provision – those which require Tynwald approval – include orders under clause 4(4), providing for an earlier application date, and regulations prescribing fees for the purpose of clause 68.

Mr Speaker, I beg to move that clause 67 do stand part of the Bill.

**Mr Watterson:** I beg to second and reserve my remarks.

**The Speaker:** Mrs Beecroft.

**Mrs Beecroft:** Thank you, Mr Speaker.

Again, my concern is that they are being *laid* before Tynwald. It would appear that there is no debate, no approval by Tynwald needed, and it says that if at the sitting afterwards Tynwald resolves... then they are annulled and they cease to have effect. So does this mean that they come into effect as soon as the Council of Ministers produce them, and then they are just laid before Tynwald, even though they are already in effect? There is no debate, there is no input from any Tynwald Member prior to that?

**The Speaker:** Mr Robertshaw.

**Mr Robertshaw:** Mr Speaker, my understanding is that, once laid before, once the sitting is concluded, effectively the regulations come into effect; but it does state there that, if the Court is uncomfortable, there is an opportunity for an annulment, in which case, of course, that is where the opportunity arises to amend the regulations.

I beg to move, Mr Speaker.

**The Speaker:** I put the question. Clause 67: those in favour, say aye; against, no. The ayes have it.

*A division was called for and electronic voting resulted as follows:*

**FOR**

Mr Bell  
Mr Cannan  
Mr Cregeen  
Mr Cretney  
Mr Crookall  
Mr Gawne  
Mr Hall  
Mr Henderson  
Mr Houghton  
Mr Quayle  
Mr Robertshaw  
Mr Shimmin  
Mr Skelly  
Mr Teare  
The Speaker  
Mr Watterson

**AGAINST**

Mrs Beecroft  
Mr Quirk  
Mr Thomas

**The Speaker:** The motion carries: 16 votes for, with 3 against.  
Clause 68.

**Mr Robertshaw:** Clause 68, Mr Speaker, is 'Fees'.

This clause sets out the framework for fees chargeable under the Act. The power to charge fees is a recognition that the financial and administrative burden placed on public authorities by information requests is not the sole responsibility of the taxpayer and that this burden should be shared, to some degree, by the person or persons making the request.

The Bill contains a flexible fees-making power, but it has a power which has clear parameters. As I stressed at Second Reading, although the fees are not yet set – the introduction of the Act is over a year away – it is very important that the level of fees does not in any way inhibit the poorest in our community from making a reasonable application.

This clause sets out the framework for fees chargeable under the Act and permits the Council of Ministers to make regulations prescribing the fees payable to public authorities in respect of requests for information and giving access to information in accordance with this Act, or in respect of applications to the Information Commissioner.

The clause also allows regulations to provide for fees by fixing a fee, or a rate, process or formula by which a fee may be calculated; different fees for different cases and circumstances; and the process for making reasonable estimates of fees and notifying the applicant of the estimates.

There are other aspects of the clause which I think are important, including that the regulations may also provide that no fee is payable in certain cases and that a fee must not exceed a maximum amount.

Public authorities will also, if they consider it appropriate, waive the whole or any part of a fee, or refund the whole or any part of the fee.

Finally, the fees regulations will be subject to Tynwald approval, so Hon. Members will have a chance to fully consider the issue of fees at a future date.

Mr Speaker, I beg to move that clause 68 do stand part of the Bill.

**Mr Watterson:** I beg to second and reserve my remarks.

**The Speaker:** I put the question. Clause 68: those in favour, say aye; against, no. The ayes have it. The ayes have it.

Finally, clause 69 with schedule 4.

**Mr Robertshaw:** Thank you, Mr Speaker, and can I thank very much my seconder for his patience in seconding throughout.

Clause 69: 'Amendment and repeal of enactments etc'.

The clause provides that schedule 4 has effect in relation to the consequential amendments to existing legislation, including the Data Protection Act 2002 and the Council of Ministers Act 1990.

The most significant amendment to existing enactments is in respect of the Data Protection Act 2002, which I touched upon during consideration of clause 25.

Paragraph 1 broadens the definition of data within the Data Protection Act to include unstructured, manual personal data held by public authorities.

Paragraph 6 removes a public authority's obligation to comply with a data subject's right to access in respect of unstructured personal data, unless a subject access request contains a description of the data, and then only if the cost of compliance is below the prescribed limit.

Paragraph 7 removes from the extension of the new definition of data all the substantive effects of the Data Protection Act except those relating to subject access and accuracy, as the general application of that Act to all personal information held by public authorities is not an intended by-product of the Act.

The schedule also contains a transitional provision so that, without limiting the provisions of the schedule, a reference, in any enactment or document in force or created before the date on which this schedule commences, to the 'Data Protection Supervisor' is to be taken as reference to the 'Information Commissioner'.

Mr Speaker, finally, I beg to move that clause 69 and schedule 4 do stand part of the Bill.

**Mr Watterson:** I beg to second, sir, and thank my friend for Douglas East for the opportunity of some exercise this morning!

**The Speaker:** I put the question. Clause 69 and schedule 4: those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Hon. Member, you made good time.

That concludes the business of the House today.

### **Christmas and New Year wishes**

**The Speaker:** May I take this opportunity to wish you and your families a very happy Christmas and a prosperous New Year. I hope that you are able to have some peace and relaxation over the festive period.

I take the opportunity also, on your behalf, to wish the same to the Clerk of Tynwald and the members of the Clerk of Tynwald's Office; and the messengers, who serve us so well. (**Members:** Hear, hear.)

The House will now stand adjourned until the next sitting, which will take place at 10.30 a.m. on 20th January in Tynwald Court.