



Comptroller and Auditor General

Arrangements for Freedom of Information

17 March 2016



JERSEY AUDIT OFFICE

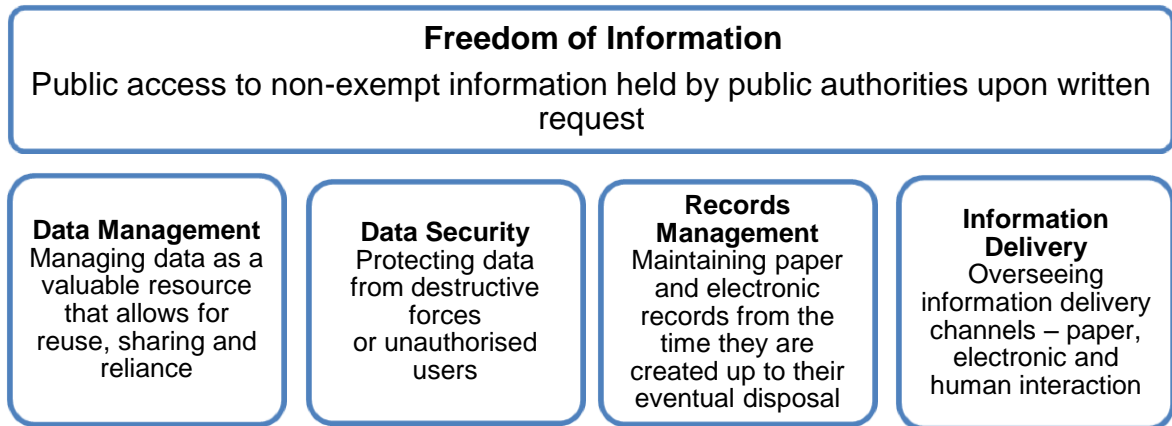
Arrangements for Freedom of Information

Introduction

- 1.1 Freedom of Information (Fol) legislation has been introduced by many governments to:
 - increase transparency and openness;
 - make public authorities more accountable;
 - improve decision making; and
 - enable people to get involved in decisions that may affect them.
- 1.2 The Freedom of Information (Jersey) Law 2011 (the Law) came into force on 1 January 2015 replacing the previous Code of Practice on Public Access to Official Information.
- 1.3 The Law:
 - grants a general right of access to information recorded and held by a scheduled public authority in any form, subject to certain conditions and exemptions;
 - grants absolute exemptions (such as information available by other means, personal information and court information) and qualified exemptions (relating, for example, to trade secrets and information intended for publication); and
 - imposes a requirement for requests to be acknowledged within five working days and information to be provided as soon as practicable and in any event within 20 working days.
- 1.4 The Law extends to 'scheduled public authorities', a term that includes the States Assembly, States departments, the States of Jersey Police and Andium Homes but does not extend to the other strategic investments of the States. From September 2015, Jersey's parishes were also subject to the requirements of the Law.
- 1.5 Up to the end of December 2015:
 - 691 valid Fol requests had been received;
 - over 60% of requests have been granted in full;
 - the average time to respond to requests has generally fallen;
 - the number of requests to which a response was not provided within the 20 day target had progressively fallen although performance slipped in November and December 2015; and
 - less than 4% were subject to the internal review process following a request by a dissatisfied applicant.

- 1.6 Compliance with FoI legislation is one aspect of information governance and effective arrangements for FoI build upon effective arrangements for information governance overall (see Exhibit 1). Where there are effective information governance arrangements the administrative burden of the introduction of FoI legislation should be comparatively small.

Exhibit 1: FoI within information governance



Scope and objectives of this review

- 1.7 The review covers arrangements for departments and non-ministerial bodies of the States of Jersey.
- 1.8 The objectives of the review were to assess:
- the structure and roles and responsibilities in place to support the FoI process;
 - the arrangements for FoI request handling, including appropriate policies and procedures;
 - records management standards;
 - whether staff have had appropriate training and hence awareness to meet their obligations before and after implementation of the Law;
 - the efficiency and effectiveness of request handling within departments; and
 - the adequacy of arrangements for mainstreaming FoI across the States.

Each of these areas are considered in turn below.

Structure, roles and responsibilities

- 2.1 Effective implementation of any legislative change requires appropriate structures, roles and responsibilities.
- 2.2 The States of Jersey includes Fol as part of its integrated Information Governance framework that also covers data management, data security, records management and information delivery. The ultimate legal responsibility for the Fol process within the States lies with the Chief Executive who is responsible for ensuring the legally compliant enactment of Fol legislation within the States, request handling and any appeals.
- 2.3 The States put in place a structure that combines a centralised Fol unit with decentralised departmental arrangements (see Exhibit 2).

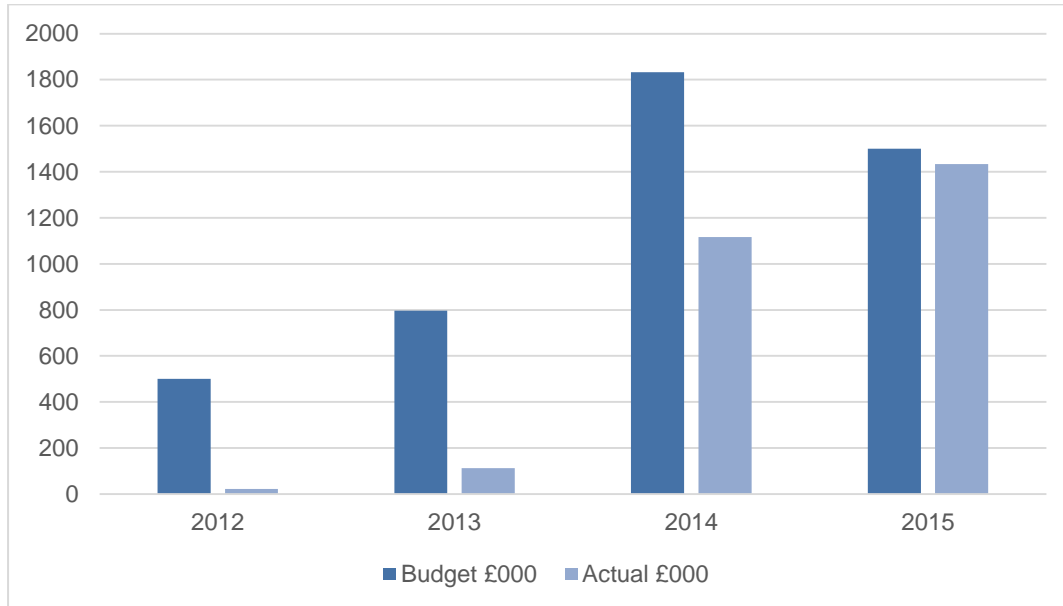
Exhibit 2: Fol arrangements

Central Fol Unit	Departments	Information Commissioner
<ul style="list-style-type: none"> • development of corporate policies and guidance • guidance on the Law • support on handling complex Fol requests, fees and exemptions • issue of refusal letters • monitoring compliance with the timescales • maintenance of records for recording requests • management programmes for training, awareness and cultural change • monitoring of Fol implementation project • liaison with Information Commissioner's Office • production of statistics relating to request handling • maintenance of the publication scheme, including liaison with Communications Unit and operational functions 	<ul style="list-style-type: none"> • designation of a member of staff responsible for handling Fol requests (in practice also Public Record Officers under the Public Records (Jersey) Law 2002) • answering individual requests 	<ul style="list-style-type: none"> • encouraging public authorities to follow good practice • supplying the public with information about Fol • issuing a Code of Practice which covers: <ul style="list-style-type: none"> • the provision of advice and assistance to persons making requests for information • responding to an Fol request and time limits • transferring requests for information • consultation with third parties • Fol and confidentiality obligations • complaints procedures • appeals to the Information Commissioner

- 2.4 The majority of funding for Fol ceased from December 2015 with the functions of the central Fol unit transferred to the Communications Unit of the Chief Minister's Department. This includes two members of staff dedicated to Fol. At the time of the audit a detailed plan had not been developed that set out where roles and responsibilities will lie in the future. This increases the risk of non-compliance with the requirements of the Law.

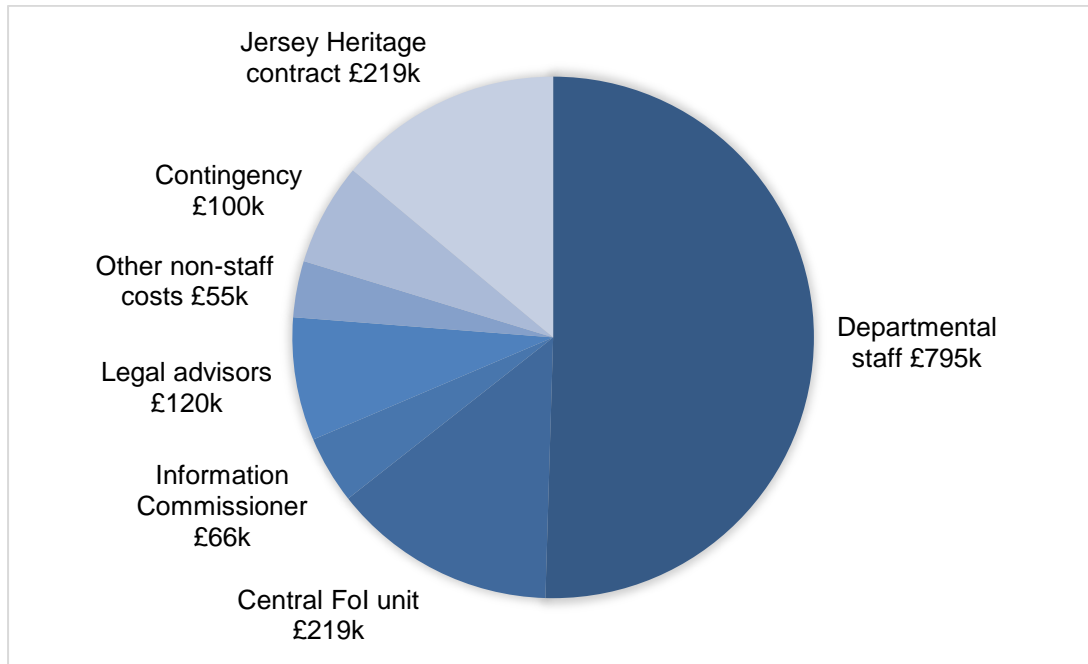
2.5 The initial budget for implementing FoI was £4.7m and the outturn is £2.68m. The variance arose mainly as a result of delays to project initiation, recruitment delays and a desire to reduce costs. As a result, a total of approximately £2.0 million was available to return to contingencies (see Exhibit 3).

Exhibit 3: Expenditure on FoI implementation



2.6 76% of of the original budget for 2015 related to staff costs, including staffing within the FoI unit, Information Commissioner’s office and departments. The largest component of non-staff expenditure has been a contract with Jersey Heritage Trust to clear a backlog of archiving (see Exhibit 4).

Exhibit 4: Analysis of Fol budgeted costs in 2015



- 2.7 There has been limited investment in Information Technology (IT) solutions for storage of electronic records or for securing a means by which archived electronic material will remain accessible in the future. Such investment might reduce the cost of responding to Fol requests in the future and provide wider internal operational benefits.

Recommendations

- R1** Clearly document responsibilities for Fol following the transfer of functions to the Chief Minister's Department.
- R2** Within the context of the overall information governance strategy, undertake a cost benefit analysis to identify whether an IT solution is needed for electronic records management.

Arrangements for request handling

- 3.1 Effective arrangements for request handling are dependent on appropriate guidance and procedures for the staff involved.

Guidance

- 3.2 The central Fol unit has developed guidance for staff on Fol that is available on the States' intranet, 'MyStates'. Areas covered in the guidance include:
- Preparations for Fol;
 - Types of Fol request;
 - Fol points of contact;
 - What is Fol?;
 - Fol and Data Protection: What's the difference?;
 - Frequently Asked Questions; and
 - Fol operating manual.
- 3.3 In addition an operating manual and mailbox protocol were distributed to Fol contacts. The manual has, however, not been updated to reflect some changes in handling Fol enquiries relating to receipt of requests, logging enquiries, appeals, how to deal with multi-department requests, and what to do when an exemption applies.

Procedures

- 3.4 The States uses two systems for Fol handling, SharePoint and Livelink, a case handling system. Neither system is capable of supporting end to end Fol case handling. The use of the two systems results in inefficiency and increased risk of error: information is input into the two different systems.
- 3.5 The SharePoint system assists in management of the Fol process: a unique identifier is allocated to each request and, at set intervals, standard reminders are generated setting out the time remaining for request handling.
- 3.6 The initial Fol implementation project included consideration of a comprehensive IT solution. However, the Project Board took the decision not to invest in such a solution.
- 3.7 Management reporting from the system is not generated automatically and labour-intensive manual extraction is needed to produce reports for management.
- 3.8 A disclosure log containing details of all the Fol queries submitted and responses provided is maintained and available on the gov.je website. In addition the Fol queries relating to the police are available on the States of Jersey Police website.

Recommendations

- R3** Update the operating manual to reflect the changes to handling FoI enquiries that cover receipt of requests, logging enquiries, appeals, how to deal with multi-department requests, and what to do when an exemption applies.

- R4** In the context of wider decisions on information management investment, review the information systems used for managing FoI and undertake a cost benefit analysis to consider whether investment in an IT solution for managing FoI workflows is justified.

Records management standards

4.0 Fol is one component of information management. Efficient Fol handling relies upon effective records management, another dimension of information governance. The States recognised the importance of records management in supporting the implementation of Fol legislation. Key activities undertaken have been:

- **Jersey Archive and information management programme of work:** a significant programme of activity undertaken between the Jersey Archive and States departments is now nearing completion. This has included:
 - an appraisal and audit of files held by the States (including advice on records management and file plans);
 - review and creation of retention schedules (over 140 have now been signed off, with others nearing completion);
 - transfer and cataloguing of archival records to the Jersey Archive; and
 - drafting a generic retention schedule covering records of Ministers and senior officials to facilitate continuity of government.
- **the Information Management intranet sub-site:** different information management pages on MyStates have been co-ordinated into a single resource for Information Managers. This directly supports the delivery of Fol as the content relates to information management activity and policy; and
- **the appointment of a Corporate Records Manager:** in September 2014 a Corporate Records Manager was appointed to develop States-wide records management strategy and related policy.

4.1 Although significant progress has been made on updating records management schedules and cataloguing and archiving of information to the Jersey Archive, records management arrangements are in their infancy and progress on implementation is slow:

- even though a records management policy was approved in April 2015, supporting policies on information classification and email records management remained in draft;
- a draft records management strategy has been developed but is in the early stages of implementation;
- a delivery plan, with clearly identified actions, responsibilities and timescales is being developed; and
- a programme of work for some aspects of records management is in place, particularly focusing on the development of retention schedules.

Recommendation

- R5** Ensure that the records management delivery plan contains clearly identified actions, responsibilities and timescales and that there is effective monitoring of its implementation and corrective action is taken where necessary.

Training and awareness

- 5.0 Effective implementation of arrangements for Fol requires not just provision of appropriate guidance and procedures but also training of the staff involved.
- 5.1 The types of training provided to staff have included:
- Introduction to Fol and Data Protection (118 attendees);
 - Introduction to Records Management (72 attendees);
 - Data security (55 attendees);
 - Fol legal workshops based on Q & A case studies tailored to departments and one Applying Exemptions 'open' workshop (482 attendees);
 - Fol and minute taking (124 attendees);
 - Fol briefing by a UK journalist (164 attendees).
- 5.2 Although ad-hoc training on Livelink, the electronic document management system has been provided to staff, this only covers document management and does not cover records management.
- 5.3 The provision of comprehensive training for all relevant staff on records management as well as Fol would enhance understanding of responsibilities for and the tools available to support all stages of records management rather than just responding to Fol requests received.

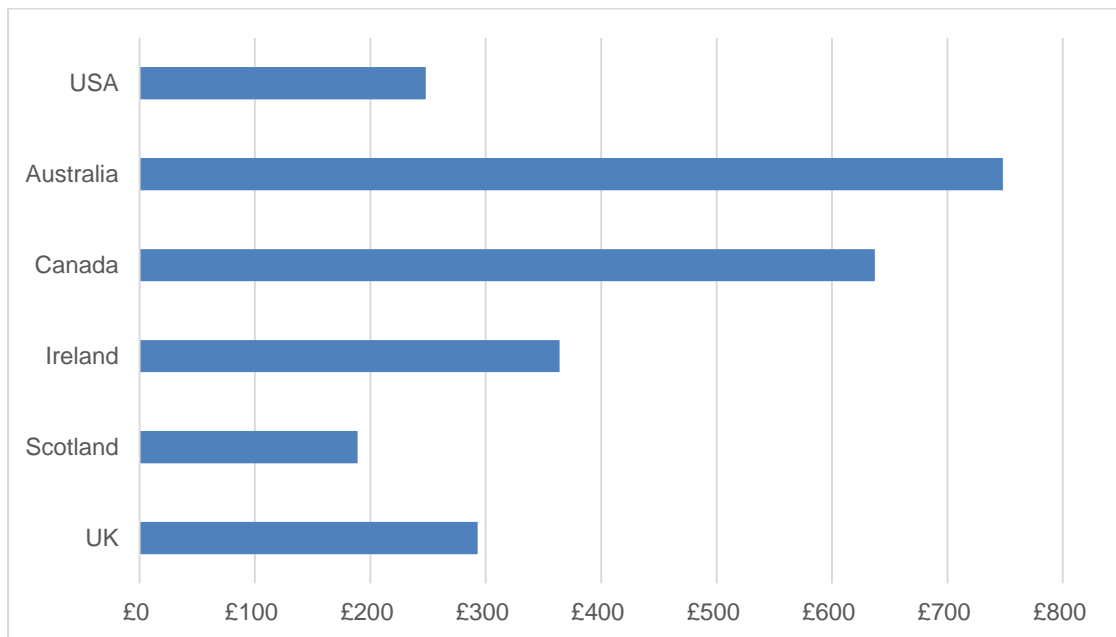
Recommendation

- R6** Develop, deliver and monitor the impact of a States-wide training programme on corporate records management including Fol.

Efficiency and effectiveness of request handling within departments

- 6.1 No corporate information is held on the time and cost of responding to FoI requests. Such information is valuable both in assisting in the preparation of budgets and in helping to evaluate the cost effectiveness of and identify the cost drivers for FoI handling.
- 6.2 The central FoI unit is undertaking an initial costing exercise and the following departments had agreed to participate in the exercise:
- Department of the Environment;
 - Treasury & Resources;
 - Education, Sport and Culture; and
 - Economic Development.
- 6.3 Information from such an exercise can be used to compare the cost of FoI handling between departments. It also facilitates comparisons of costs with other jurisdictions, while recognising the difficulties in obtaining comparable information on a consistent basis (see Exhibit 5).

Exhibit 5: Average cost per FoI request



Source: Colquhoun, Anna. *The Cost of Freedom of Information, 2010*, London: Constitution Unit

Recommendations

- R7** Encourage departmental participation in the costing exercise to identify the cost of FoI handling.
- R8** Use the results of the costing exercise to improve the effectiveness of FoI handling processes and identify any wider management issues.

Adequacy of arrangements for mainstreaming Fol across the States

7.1 Everyone who works for the States is required to manage information within a complex legal framework. There is an interplay between the legislation on securing public records (the Public Records (Jersey) Law 2002), data protection (the Data Protection (Jersey) Law 2005) and Fol (the Freedom of Information (Jersey) Law 2011). For the Fol process to run smoothly:

- records should be created, kept and managed adequately; and
- personal information needs to be protected.

7.2 With the transfer of the functions of the central Fol unit, it is important that there is a clear vision for:

- effective arrangements for responding to Fol requests; and
- the linkage between Fol and other elements of information governance.

Recommendation

R9 Reflect the arrangements for Fol handling and its linkage to other elements of information governance in the information governance strategy.

Conclusion

- 8.1 The States has established arrangements that allowed substantial compliance with statutory responsibilities under the 2011 Law and has improved document archiving.
- 8.2 Fol is one element of information management and cannot be seen independently of the other elements. Essential preconditions for effective Fol handling include good data and records management. In some of these areas the States has much work to do.
- 8.3 Effective Fol handling also requires appropriate policies, procedures, systems, guidance and training. In some areas, such as information systems, training and understanding costs, there is significant work to do. The reduction in the resources for the central Fol team, and therefore the support for departmental staff, means that:
 - there is a need for a clear and documented understanding of the split of responsibilities between ‘the centre’ and the departments;
 - clarity in processes, good guidance and effective training are even more important; and
 - there is a risk that corporate learning from Fol handling is lost.

Appendix 1: Summary of recommendations

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Arrangements for request handling

- R3** Update the operating manual to reflect the changes to handling Fol enquiries that cover receipt of requests, logging enquiries, appeals, how to deal with multi-department requests, and what to do when an exemption applies.
- R4** In the context of wider decisions on information management investment, review the information systems used for managing Fol and undertake a cost benefit analysis to consider whether investment in an IT solution for managing Fol workflows is justified.

Records management standards

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Training and awareness

- R6** Develop, deliver and monitor the impact of a States-wide training programme on corporate records management including Fol.

Efficiency and effectiveness of request handling within departments

- R7** Encourage departmental participation in the costing exercise to identify the cost of Fol handling.
- R8** Use the results of the costing exercise to improve the effectiveness of Fol handling processes and identify any wider management issues.

Adequacy of arrangements for mainstreaming Fol across the States

- R9** Reflect the arrangements for Fol handling and its linkage to other elements of information governance in the information governance strategy.



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