

DP 701/03-07

Rt Hon Rhodri Morgan AM  
First Minister/Prif Weinidog Cymru

DEBATE ON THE CODE OF PRACTICE ON PUBLIC ACCESS  
TO INFORMATION

8 DECEMBER 2004



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Our ref/Ein cyf: MB/FM/0720/04

Mike German AM  
National Assembly for Wales  
Cardiff Bay

16<sup>th</sup> December 2004

Dear Mike

During the debate on 8 December 2004 on the *Code of Practice on Public Access to Information – Third Edition (December 2004)*, I said that I would write to you about the comparison of the implementation of freedom of information in Scotland and Wales. Having carefully considered to the points you made, I can respond as follows.

The Scottish Parliament made its own Freedom of Information Act in 2002. It applies only to Scottish public authorities. The most significant effect of the Scottish Act, as compared with the UK Act, is that Scottish public authorities must show that disclosure would substantially prejudice a specified interest. This can be contrasted with the simple prejudice test in the UK Act. However, our substantial harm test, which is a key feature of our Code of Practice on Public Access to Information, establishes a platform for openness within the Assembly and Assembly Sponsored Public Bodies which is similar to that in place in Scotland. This is because Scotland's substantial prejudice test and Wales' substantial harm test ask the same question.

You pointed out during the debate that the Scottish Act established Scotland's own Information Commissioner and you suggested that there may be a case for having a Welsh Information Commissioner who would, perhaps, be more in touch with our approach. The UK Information Commissioner supports our desire to create greater openness in Wales. He has appointed an Assistant Information Commissioner for Wales. She has an office in Cardiff and is particularly well placed to make informed decisions within the framework created by our Code. Also, the UK Information Commissioner is independent of government: this puts our relationship with his office on a par with the UK Government's.

As I explained in my closing comments to the debate, the power to issue a certificate to override a decision by the Information Commissioner in Wales falls to me as First Minister in the same way as it falls to the First Minister in Scotland. I would only take such a

decision after consulting with my Cabinet colleague who holds the portfolio to which the information relates. This, again, aligns our approach with Scotland's.

In view of the ability we have via our Code to create the desired degree of openness and the extent to which the UK Commissioner is sensitive to Wales' position, I do not consider obtaining separate primary legislation provisions to be a priority.

Yours & Compliments of the Season

Rhodri