

TCA 2025/0010

INFORMATION COMMISSIONER

STATEMENT

(pursuant to Section 14 Tynwald Commissioner for Administration Act 2011)

This Statement is addressed to the Complainant and to the Information Commissioner.

In accordance with the convention established by the TCA's predecessor in office, the late Angela Main Thompson OBE, this Statement is also delivered to Tynwald.

*Preliminary: Section 14 Tynwald Commissioner for Administration Act 2022 –
decision not to investigate*

1. The Tynwald Commissioner for Administration Act 2011 ("2011 Act") in section 14 provides:

14 Decision not to investigate

(1) If the Commissioner, after considering a complaint, decides not to investigate a complaint, the Commissioner must send a statement of the reasons for the decision to the persons specified in subsection (2).

(2) Those persons are — (a) the complainant; (b) the listed authority in question; [...]

2. This Statement is made following the decision of the TCA not to investigate a complaint brought against the Information Commissioner ("IC").

3. The TCA notes that section 14 of the 2011 Act is silent in circumstances where, as with the present complaint, the body complained of is *not prima facie* a listed authority.

4. The IC is a Relevant Investigator for the purposes of the 2011 Act. They (and their staff) cannot be investigated as regards their *relevant functions* (which means that they can only be investigated in relation to the performance of functions which have *not* been conferred on them by or under an Act of Tynwald.)¹

5. The Complainant has however contended that the IC *does* come within the investigative jurisdiction of the TCA (and that in consequence the IC is to be regarded as a listed authority) as the function complained of is alleged *not* to have been conferred on the IC by enactment.

6. Details of the complaint and the reasons for the TCA concluding that it does not come within the investigative jurisdiction of the TCA are contained in the Reasoning and Conclusions, which draw upon the following exchange of e mails between the TCA and the Complainant.

Correspondence between the TCA and the Complainant

7. By e mail to the TCA dated 2 September 2025 18:51 the Complainant wrote:

The e-mail train below might well make its way to you to support a complaint against the Information Commissioner.

By way of background -

1. *I made a Subject Access Request (SAR) to DOI.*
2. *The DOI provided me with my personal data in accordance with my SAR - by way of “Memory Sticks”.*
3. *My laptop was unable to open all of the Memory Sticks and as the “rules” provided that my data must be provided “electronically” or “otherwise”, I chose “otherwise” and requested that my personal data be provided to me in paper form.*
4. *The DOI refused to provide my data in paper form.*

¹ The terms “relevant investigator” and “relevant functions” are defined in section 3(3)(b) and (c) Tynwald Commissioner for Administration Act 2011. “Relevant functions” are defined as: *functions conferred on a relevant supervisor or a relevant investigator by or under an enactment*. Schedule 2 paragraph 3(2) of the 2011 Act provides: *a relevant investigator (and any persons serving on the staff of such an investigator) is only a listed authority in relation to the performance of functions that are not relevant functions*.

5. *I made a complaint the Information Commissioner (“IC”) by e-mail and provided [IC] with sufficient supporting documentation to enable [them] to determine my complain.*
6. *And, that’s when the doors shut.*
7. *The IC refused to process my complaint because I didn’t make it on one [of their] “forms” which, reading between the lines upset the routines operated by [their] staff.*
8. *The IC admitted that there was no legal requirement for me to have to use one of [their] forms and I refused to do so.*
9. *The IC confirmed [their] refusal for the purpose of me making a complaint against [them] to the Data Protection Tribunal which was the next step in the DP procedures.*
10. *Since I couldn’t find any Rules of the Tribunal which dealt with a complaint such as mine, I sought advice from the Chief Registrar who advised me a follows –*

I agree that you have a right to make an application (rather than a complaint) to the Tribunal for it to consider making an order for the ICO to progress your complaint to the Commissioner.

In the absence of any Rules setting out how this is done, I would suggest an email to the Tribunal informing it that you wish to make an application under Regulation 123 and requesting that it takes that email as your application. I am happy for you to add that I have made this suggestion in your email (although as you will appreciate, I have no power or influence over any Tribunal). ”

11. *It wasn’t until I after had submitted my application to the Tribunal on the 6 September 2025 that [named officer] the Clerk to the Tribunals e-mailed me later the same day and said –*

“Under the provisions of the Isle of Man Data Protection Tribunal Rules 2003 (“the Rules”), I am required to provide the following statement as to the Tribunal’s powers to award costs against an appellant:

“Rule 69 of the Rules makes provision that, subject to Rule 8, in any appeal before the Tribunal, including one withdrawn under Rule 57, the Tribunal may make an order awarding costs.”

12. *As a result of this advice, I e-mailed the Chief Registrar on the 13 August and said –*

“If you believe that costs could be awarded against me, then as I’m not prepared to take such risk, I will request that my application to the Tribunal be withdrawn. If this were to happen this

would throw a spanner into the works, as it would deny me my data protection rights under the Implementing Regulations and allow the Information Commissioner to refuse to progress any complaint made to [them].”

13. Since the Chief Registrar has now said in [their] e-mail to me of the 1 September 2025 below that -

“When I offered you my original suggestion on how to proceed procedurally given the impasse that you found yourself in, I did not contemplate the issue of costs.....”

I understand that the Tribunal Chair has confirmed that Rule 8 of the Isle of Man Data Protection Tribunal Rules 2003 applies in your case, therefore confirming that the Tribunal has the power to order costs against you.”

I have requested that my application to the Tribunal be withdrawn.

And, all that over my refusal to complete a “form” which I wasn’t legally required to complete.

Your website explains conduct which you can investigate including –

Procedure:

- Faulty procedures or failing to follow correct procedures
- Arbitrariness

Attitude:

- Bias, unfairness or prejudice
- Perversity

Under the heading “Relevant Investigators” your website states –

The following bodies are known as relevant investigators and they (and their staff) cannot be investigated as regards their relevant functions (which means that they can only be investigated in relation to the performance of functions which have not been conferred on them by an Act of Tynwald.)

- The Isle of Man Information Commissioner

The IC's refusal to process a complaint which I made to [them] simply because I didn't make on one of [their] "forms" and it didn't, therefore, suit [their] office arrangements, but which [they] admitted I wasn't legally required to use, is, in my opinion, a function which has not been conferred on [them] by an Act of Tynwald and, on its face, is something which you can investigate.

Your website states –

The category of relevant investigators is a complex legal issue and the Tynwald Ombudsman will discuss with a complainant whether this limitation applies to their complaint.

8. By e mail to the Complainant dated 3 September 2025 10:47 the TCA replied:

Thank you for your enquiry. You raise a complex issue, which I shall review.

Please bear with me, as my current workload is extremely heavy. I shall revert substantively as soon as I can.

9. By e mail to the TCA dated 3 September 2025 11:29 the Complainant responded:

Thank you for your reply to my e-mail to you below.

The issues which I raise might appear complex but when you break them down they're not really all that complex.

At first base all that you have to do in deciding whether you can investigate a complaint which I might make to you, is to decide whether the decision by the IC to refuse to process my complaint to [them] against the DOI because I didn't make it on one of [their] "forms" – which the IC has admitted that I wasn't legally required to do – was a relevant function or a function which had not been conferred on the IC by an Act of Tynwald.

If you decide in favour of the latter then you could investigate a complaint from me and at that stage I would include relevant correspondence from the IC

The background information which I've provided concerning my approach to the DP Tribunal was for your information only.

You might, however, wish to comment on this statement of mine –

"If you believe that costs could be awarded against me, then as I'm not prepared to take such risk, I will request that my application to the Tribunal be withdrawn. If this were to happen this

would throw a spanner into the works, as it would deny me my data protection rights under the Implementing Regulations and allow the Information Commissioner to refuse to progress any complaint made to [them].”

I look forward to receiving your reply when you are able to.

10. By e mail to the Complainant dated 3 September 2025 11:51 the TCA pointed out that matters before the Data Protection Tribunal do not come within his jurisdiction.² By e mail to the TCA dated 3 September 2025 12:05 the Complainant replied:

Thank you for your reply.

I’m well aware that matters before the DP Tribunal do not come under your jurisdiction.

I included reference to these matters simply by way of background to show that I’ve exhausted the complaints route, which the route that the IC’s website explains I should take.

As Tynwald Ombudsman you are my next port of call.

11. By e mail to the Complainant dated 29 September 2025 14:21 the TCA gave his substantive reply:

Please accept my apologies for the delay in replying to your recent e mail below. My workload since the beginning of this month has been exceptionally heavy.

Having reflected on the point you make concerning the requirement on the part of the Information Commissioner that your complaint to [them] concerning the DOI must be in a prescribed form, I have concluded that the processing of complaints is not extraneous to the functions conferred on the Information Commissioner by Act of Tynwald; it is the very means by which the jurisdiction of the Information Commissioner is invoked. This is a “relevant function” as referred to in the Tynwald Commissioner for Administration Act 2011.

From the perspective of maladministration, whether an insistence on the use of a particular form or online portal may amount to a procedural breach is something which I have considered – the arguments for and against are examined in TCA Report 2024/0008, which you can access in the Reports section of the Tynwald Ombudsman website [Tynwald Commissioner for Administration](#). That case concerned a Listed Authority (the MUA) which, unlike the

² Section 11(2)(k) Tynwald Commissioner for Administration Act 2011.

Information Commissioner, is subject to my powers of investigation. The Information Commissioner, as we have discussed in our earlier correspondence, is a “Relevant Supervisor”³ and therefore not within my jurisdiction.

A complaint against the Information Commissioner [themselves] must therefore be must be directed through the Chief Executive Officer as Secretary to the Council of Ministers, as set out in [Complaints about the Commissioner or staff](#)

12. By e mail to the TCA dated 6 October 2025 11:13 the Complainant wrote:

Thank you for your e-mail.

Although you say –

“The Information Commissioner, as we have discussed in our earlier correspondence, is a ”Relevant Supervisor”⁴ and therefore not within my jurisdiction.”

according to your website that’s not so.

Your website states –

Relevant investigators

The following bodies are known a relevant investigators and they (and their staff) cannot be investigated as regards their relevant functions (which means that they can only be investigated in relation to the performance of functions which have not been conferred on them by an Act of Tynwald.)

- *The Isle of Man Information Commissioner*

Because the decision by the Information Commissioner to refuse process my complaint to [them] was made by [them] arbitrarily without any legal authority so to do, and was, therefore, a relevant function in relation to the performance of functions which had not been conferred on [them] by an Act of Tynwald, as such, according to your website, the Commissioner does fall within your jurisdiction and you can investigate my complaint.

I would be pleased, therefore, if you would re-visit your decision that the Information Commissioner is not within your jurisdiction.

If I have found the paragraph of TCA 004/0008 which you refer me to, it is paragraph 111 –

³ A typographical error. The reference should be to a Relevant Investigator.

⁴ A typographical error on the part of the TCA. The reference should be to a Relevant Investigator.

111. The TCA concludes that in its refusal to acknowledge the Complainant's complaints made by means other than the online customer enquiry form, the MUA has been overly bureaucratic. Whilst the online customer enquiry form is a facility, there is no obvious merit and no reasonable justification, in circumstances where the Complainant and officers of the MUA were already in correspondence, in making it the exclusive portal through which complaints must be made; all the more so given the policy decision of the MUA to limit the wordcount of the customer enquiry form to 100, to which the Complainant has drawn their attention (something which the MUA may wish to review). In the case of the Complainant and the specific circumstances of their interaction with the MUA, the TCA finds that the procedure has proved to be faulty, resulting in an avoidable delay, which evidences maladministration.

I had been in correspondence with the Information Commissioner and made my very simple complaint to [them] by e-mail, but [they] refused to accept my complaint simply because I didn't use the form on [their] online portal, which didn't suit [their] office procedures. It follows that by reference to you conclusions in TCA 004/0008 if you were to make a decision in my case you must conclude that the Information Commissioner had been overly bureaucratic and that "Whilst the online customer enquiry form is a facility, there is no obvious merit and no reasonable justification, in circumstances where the Complainant and officers of the Information Commissioner were already in correspondence, in making it the exclusive portal through which complaints must be made".

I look forward to receiving your reply in due course.

If I haven't already done so, I will be happy to forward copies of my e-mail train with the DOI and the Information Commissioner which led to my complaint to you.

13. By e mail to the Complainant dated 6 October 2025 11:16 the TCA replied:

For the reasons previously given, I have no authority to investigate the Information Commissioner in the circumstances of the present matter.

My file is now closed.

14. By e mail to the TCA dated 6 October 2025 12:15 the Complainant wrote:

Thank you for your reply.

I note that your reply was sent 3 minutes after my e-mail was sent to you, which hardly gave you sufficient time to read the cogent arguments which I put to you.

You say –

I have no authority to investigate the Information Commissioner in the circumstances of the present matter.

*Had you read the contents of my e-mail you would have understood that according to the information on your own website you **do** have authority to investigate the Information Commissioner because the Information Commissioner is a “Relevant Investigator” and they (and their staff) can be investigated in relation to the performance of functions which have not been conferred on them by an Act of Tynwald.”).*

Perhaps it’s the case that I’ve put arguments to you that you simply didn’t want to hear.

What I now have is a situation whereby –

- 1. The Information Commissioner arbitrarily decided to refuse to process my complaint to [them] against [their] DOI, without any legal authority for [the IC] to so to do ; and*
- 2. After the Information Commissioner engaged unlimited free legal representation to defend a complaint which I made against [them] to the Data Protection Tribunal and after having been warned that costs could be made against me, I was forced to withdraw a complaint which I made against the Information Commissioner to that Tribunal; and*
- 3. You have arbitrarily decided to refuse to investigate a complaint against the Information Commissioner; even though your own website explains that the Information Commissioner does come within your jurisdiction and is liable to be investigated by you.*

This situation can’t be right.

You say your file is closed; but my file isn’t.

I have grievances against both you and the Information Commissioner for arbitrarily failing to act in the matter which I raised with you and you can both look forward to me presenting Petitions for Redress (of my grievances) against both of you at the Sitting of Tynwald at St John’s on the 6 July 2026.

The Information Commissioner reads this e-mail in copy and in doing so is aware of my intentions.

- 15.** By e mail to the Complainant dated 8 October 2025 08:17 the TCA replied:

I did read your short e mail, and seeing that you made no points which we had not covered in our earlier exchanges, wanted to let you know at the earliest opportunity that my previous conclusion remained unaltered – in the circumstances which you have set out, there is no exceptional jurisdiction under the Tynwald Commissioner for Administration Act 2011 for an investigation of the Information Commissioner. No discourtesy towards you was intended.

Section 14 of the Act provides:

14 Decision not to investigate

(1) If the Commissioner, after considering a complaint, decides not to investigate a complaint, the Commissioner must send a statement of the reasons for the decision to the persons specified in subsection (2).

(2) Those persons are — (a) the complainant; (b) the listed authority in question; [...]

I shall deliver a Statement under that section to Tynwald, highlighting the specific aspect of interpretation of the Act which you have raised.

Correspondence between the TCA and the Information Commissioner

16. By e mail to the TCA dated 30 September 2025 12:10 the IC wrote:

I've received notice (via the enclosed)⁵ that [the Complainant] has made a complaint to you. My understanding is that you do not investigate complaints against the Commissioner's office, though please let me know if otherwise (and if so, what is needed from my side).

17. By e mail to the IC dated 30 September 2025 12:16 the TCA replied:

Thank you for raising this with me. However, as I have informed the [Complainant] that my jurisdiction to investigate does not encompass the Information Commissioner, I shall not need to trouble you for comments.

⁵ The enclosure is in the public domain. The TCA has noted this, which is not reproduced in this Statement in order to preserve the Complainant's right to anonymity under section 19(3) Tynwald Commissioner for Administration Act 2011.

Reasoning and Conclusions

18. The confusion on the part of the Complainant, who believes that the IC as a *relevant investigator* is subject to investigation by the TCA, when in fact the 2011 Act states the opposite, in all likelihood has come about as a result of the wording in Schedule 2 paragraph 3(2) of the 2011 Act which states that “*a relevant investigator (and any persons serving on the staff of such an investigator) is only a listed authority in relation to the performance of functions that are not relevant functions*”.

19. A “relevant function” is defined in section 3(3)(c) Tynwald Commissioner for Administration Act 2011: “*functions conferred on a relevant supervisor or a relevant investigator by or under an enactment.*”

20. This begs the question, what are the confines of “relevant functions”? Neither Schedule 2 paragraph 3(2) nor the 2011 Act as a whole proposes any answer.

21. Schedule 2 paragraph 3(2) is one of several examples of poor drafting in the Act which often results - as in the present complaint - in ambiguity, leading to confusion and dissatisfaction on the part of a complainant.

22. The IC is a relevant investigator, outside the investigative jurisdiction of the TCA unless performing a function which is not one which has been conferred on it by an enactment. What could such a function be? The chances are vanishingly small that the IC as a relevant investigator examining an issue of data protection could be acting so beyond their powers (*vires*) that they could be said to have acted without authority (*ultra vires*) such that the action was not a relevant function.

23. Must all *administrative* procedures of a relevant investigator be spelled out in the legislation which has created it, or does instead the relevant investigator have the discretion to determine the manner in which it exercises its powers and fulfils the duties placed upon it by Tynwald? The Data

Protection Act 2018 is silent on the point, but the following extract from the website of the IC explains the breadth of their discretion:

*The Commissioner is appointed by the Council of Ministers, subject to the approval of Tynwald. The Commissioner must perform his functions and exercise his powers independently and, in doing so, is not to be subject to the direction of Tynwald, its Branches or the Council of Ministers.*⁶

24. The TCA is satisfied that the reference in Schedule 2 paragraph 3(2) to functions conferred “by or under an enactment” is sufficiently broad to include functions conferred by the Council of Ministers with the approval of Tynwald.

25. In the context of the present complaint, the IC in exercising their discretionary powers has decided that a complaint must be made in a specific manner, using a form they have prescribed. Whether this is “overly bureaucratic” (borrowing a phrase from an earlier investigation by the TCA into a Listed Authority)⁷ is wholly moot, because the IC has in the opinion of the TCA acted within their discretionary powers when prescribing that form. They have therefore performed a “relevant function”.

I have concluded that the processing of complaints is not extraneous to the functions conferred on the Information Commissioner by Act of Tynwald; it is the very means by which the jurisdiction of the Information Commissioner is invoked. This is a “relevant function” as referred to in the Tynwald Commissioner for Administration Act 2011. [paragraph 11 of this Statement]

26. A relevant function does not cease to be a relevant function just because it is alleged (or proven) to have been carried out badly or was the result of a flawed policy decision in the sense that maladministration was present.

⁶ <https://www.inforights.im/complaint-handling/complaints-about-the-commissioner-or-staff/>

⁷ TCA 2024/0008 <https://www.tynwald.org.im/spfile?file=/about/TCA/Documents/2024-TCA-0008.pdf> (noting that no decision of the TCA forms a binding precedent for any subsequent investigation by the TCA)

27. For the reasons set out above, the TCA concludes that the IC in the context of the present complaint (1) has exercised their discretionary powers, (2) has not acted otherwise than within their relevant functions, (3) is not therefore to be regarded as a listed authority under Schedule 2 paragraph 3(2) of the 2011 Act and (4) in consequence does not come within the powers of investigation of the TCA under the 2011 Act.

Advocate Paul R Beckett

Tynwald Commissioner for Administration

10 October 2025