

PRIVILEGES AND PROCEDURES COMMITTEE

(51st Meeting)

15th June 2005PART A

All members were present, with the exception of Senator P.V.F. Le Claire and Deputy J.A. Bernstein, from whom apologies had been received.

Deputy R.G. Le Hérisssier
 Connétable D.F. Gray
 Deputy P.N. Troy
 Deputy C.J. Scott Warren
 Deputy J-A. Bridge

In attendance -

P. Baker, Instructing Officer
 I. Clarkson, Committee Clerk

Note: The Minutes of this meeting comprise Part A only.

Freedom of
 information:
 P.72/2005.
 955(37)

A1. The Committee, with reference to its Act No. A3 of 12th April 2005, recalled that it had lodged 'au Greffe' the report and proposition entitled, 'Freedom of Information: proposed legislation'. It further recalled that the Policy and Resources Committee, in its Act No. A10 of 20th January 2005, had indicated its opposition to a freedom of information law.

A.G.
 Clerk
 G.O.S.
 P.R.C.C.
 P.R.E.O.
 Pub.Ed.
 S.G.
 States (2)

The Committee received a delegation consisting of Senator F.H. Walker, President of the Policy and Resources Committee, and Mr. J.M.E. Harris, Policy Advisor, Policy and Resources Department.

Senator F.H. Walker advised the Committee that the Policy and Resources Committee was not philosophically opposed to the concept of enshrining the principles of the Code in law. In fact it was prepared to support the proposal that the existing Code of Practice on Public Access to Official Information should be replaced by a law, and that the Committee should be charged with bringing forward for approval the necessary draft legislation. The Policy and Resources Committee nevertheless held the view that Part (b) of the proposition was unduly restrictive in that it effectively bound the Committee to bring forward a draft Law which gave effect to all 22 key policy outcomes in precisely the terms outlined in the accompanying report. Senator F.H. Walker contended that further analysis of the issues associated with the implementation of the proposed Law was required. He acknowledged that there were conflicting views across States departments as to the resource implications, particularly in the event that any person, irrespective of whether he or she was an Island resident, was granted a right of access to information. The proposed criminal sanctions had also caused concern, particularly as it was understood that offences could be complete at an early stage in the application process. In the event P.72/2005 became enshrined in law, an applicant could claim to have made a valid application by telephone. In the event that the supposed applicant complained that they had been denied access to a particular item of information, an officer might be subjected to a criminal investigation

notwithstanding the absence of a formal record of the detail of the request. Senator Walker contended that, having received legal advice, the Policy and Resources Committee had formed the view that the proposition as currently drafted did not allow for the introduction of technical amendments during law drafting, so as to mitigate the impact of any issues identified at a later stage.

It was explained that the Policy and Resources Committee was minded to lodge an amendment to the proposition recommending that a joint working party, involving representatives of the Executive, non-Executive and Parishes, be established to give specific consideration to the foregoing areas of concern.

The Committee acknowledged the existence of differing views as to the likely resource implications arising from its proposals. It nevertheless maintained the view that the Policy and Resources Committee had tended to take an excessively cautious approach in this regard and had therefore tended to overestimate the implications. The introduction of the Public Records (Jersey) Law 2002 had already created a requirement for States departments to implement effective records management systems and the forthcoming introduction of the 'Livelink' IT system was expected to allow for comprehensive tracking of multiple requests for related information across departments. On the matter of limiting rights of access to Island residents, the Committee was clear that an additional layer of unnecessary bureaucracy would be required to police such a restriction. Finally, and on the matter of criminal sanctions, the Committee took issue with the suggestion of the Policy and Resources Committee that the criminal sanctions proposed were excessive. It noted that clear proof of unreasonable behaviour on the part of the officer was required before an offence would be complete. However, the Committee maintained that it had always intended to consult further on its proposals and that it would be prepared to reconfirm its intention by way of an amendment to its proposition.

Senator F.H. Walker, President of the Policy and Resources Committee, and Mr. J. Harris, Policy Advisor, Policy and Resources Department, having been thanked by the Committee for their attendance, withdrew from the meeting.

The Committee welcomed Miss. S.C. Nicolle Q.C., H.M. Solicitor General.

H.M. Solicitor General confirmed that she concurred with the views previously expressed by H.M. Attorney General in connexion with the Committee's proposals for a law on freedom of information and the matter of whether the Law Officers' Department should be exempted from the obligations contained within such a law. In addition, she invited the Committee to consider whether a 'culture of secrecy' truly existed in the civil service. It was suggested that an applicant whose request was prioritized by an officer with a particularly heavy workload might feel sufficiently aggrieved to complain of a 'culture of secrecy', when the real issue was one of resources. Referring to the report which accompanied P.72/2005, H.M. Solicitor General noted that the Committee had referred to the fact that staff training costs arising from the introduction of the Employment (Jersey) Law 2003 had been well managed. It was clarified that the costs incurred through the engagement of an external law firm had, in fact, been mitigated heavily by the Law Officers' Department, which had produced a detailed and complex implementation plan. Further observations were made in connexion with the existing obligations placed upon departments following the introduction of the Public Records (Jersey) Law 2002 and potential difficulties arising from the Committee's decision not to require applicants to submit requests in writing. Finally, H.M. Solicitor General gave advice on the matter of whether the report and proposition, as drafted, would indeed require the Committee to bring forward a law that complied precisely with the key policy outcomes as drafted.

H.M. Solicitor General, having been thanked by the Committee for her attendance, withdrew from the meeting.

The Committee agreed that it would lodge an amendment to its proposition clarifying that the proposed Freedom of Information (Jersey) Law 200- would be broadly based upon the 22 key policy principles as outlined, and that the Committee would consult further with interested parties prior to lodging the draft Law.

The Greffier of the States was requested to take the necessary action.