

PRIVILEGES AND PROCEDURES COMMITTEE

(67th Meeting)

30th January 2008

**PART A**

All members were present.

Connétable D.F. Gray of St. Clement - Chairman  
 Senator M.E. Vibert  
 Connétable K.A. Le Brun of St. Mary  
 Deputy G.C.L. Baudains  
 Deputy S.C. Ferguson  
 Deputy J. Gallichan  
 Deputy I.J. Gorst

In attendance -

Mrs. A.H. Harris, Deputy Greffier of the States  
 I. Clarkson, Clerk to the Privileges and Procedures Committee

Note: The Minutes of this meeting comprise Part A and Part B.

Draft Freedom of  
 Information  
 (Jersey) Law  
 200-  
 670(1)

A1. The Committee, with reference to its Minute No. A2 of 23rd January 2008, recalled that, following the decision of the Corporate Services Scrutiny Panel to decline to review the effectiveness of the existing Code of Practice on Public Access to Information, it had committed to review the draft Freedom of Information (Jersey) Law 200-.

There followed an extended discussion during which the Committee revisited the underlying rationale for introducing a freedom of information law. Although the Committee acknowledged that the States Assembly had charged the Committee with bringing forward a law, there was broad agreement that the Committee had a duty to assess whether demand was sufficiently strong to warrant a decision to proceed in the full knowledge of the key legal issues, administrative difficulties and significant resource implications identified following public consultation. Deputy S.C. Ferguson submitted that the Committee should reconsider whether support among stakeholders was sufficiently broad. The Committee recalled that the concept of a freedom of information law had been promoted actively by several States members in recent years and that media organizations had also expressed strong support. When the report and proposition entitled, 'Freedom of Information: proposed legislation' (P.72/2005 refers) had been debated by the States in July 2005, 32 States members had voted in favour with 12 having voted against. In contrast, the strength of public support was considered to be less clear. The most recent consultation had caused only one member of the public to respond, although the Committee acknowledged that the consultation had been mainly targeted at affected departments and those with access to the Internet, rather than the wider public.

Discussion turned to the question of who could realistically be expected to benefit from the new Law. In fact the Committee concluded that the marked shortage of substantive evidence that States departments were failing to disclose information to

the public in response to an FOI request in accordance with the existing Code of Practice on Public Access to Information, combined with the low number of applications for information recorded in successive annual reports concerning the operation of the Code, indicated that the introduction of the Law might cause Islanders to incur greater bureaucracy and increased cost, particularly if a decision was taken to introduce a tribunal to determine complaints. Neither was it immediately clear that the existing standard of service would be maintained or improved upon.

Regarding the effectiveness of the existing Code of Practice, the Committee was advised that administration in support of the Code had lapsed in recent years as the Committee's finite resources had been redirected to assist with development of a freedom of information law. For example, leaflets to inform the public of the existence and the operation of the Code were no longer being printed and circulated. Neither was there sufficient capacity within the States Greffe to coordinate regular meetings of designated information officers, as had originally been intended. The Committee noted the position.

The Committee was reminded that a series of proposals to reduce the cost of implementing a freedom of information law had been identified in 2005. These had included a plan to operate the system using information technology systems already deployed across the States and to refrain from introducing a publication scheme. Nevertheless, the Information Services Section within the Chief Minister's Department had subsequently concluded that reliance on existing systems would be unrealistic, while other consultees had indicated that the remaining measures identified would not be sufficient to bring the cost of implementation below an estimated £500,000 per annum. The Committee reaffirmed its belief that a significant proportion of the additional costs referred to by individual departments were in fact attributable to, and were symptomatic of the failure of a number of departments to be able to fully comply with, the Public Records (Jersey) Law 2002. In this regard the Committee questioned whether individual Ministers had sought to ensure that their departments complied more fully with the Public Records Law since the issue had been raised during the States debate in July 2005 on Projet No. P.72/2005. Notwithstanding the foregoing, the Committee accepted that some additional cost to the States could be anticipated following the introduction of a freedom of information law.

The Committee revisited the issue of entitlement to apply for public information. It recalled that the law would permit any person to apply for the release of public information. Although the Committee saw merit in restricting entitlement to apply to Island residents only, it acknowledged that it could not be proven that such a restriction would restrict costs to any great degree.

**Ultimately the Committee concluded that it was not prepared to take a freedom of information law to the States Assembly until such time as it was in possession of substantive evidence indicating that the existing Code of Practice on Public Access to Information was failing to prevent the public being refused appropriate access to information to which they were entitled.**

Having made its decision, the Committee considered whether it should engage the services of a suitably qualified consultant to conduct a thorough review of the existing code of practice. It concluded that the Council of Ministers was better placed to conduct such a review.

**The Committee determined that the Chairman should write to the Chief Minister –**

- (a) seeking clarification regarding the extent to which the Council had sought to improve departmental compliance with the Public Records (Jersey) Law since 2005, and**
- (b) inviting the Council to commission, in early course, a comprehensive review of the operation and effectiveness of the Code of Practice on Public Access to Information since its adoption by the States in 1999, and to report its findings to the Privileges and Procedures Committee.**

The Deputy Greffier of the States was authorized to take the necessary action.