

STATES OF JERSEY



PUBLIC RIGHT OF ACCESS TO INFORMATION, FINANCIAL AND OTHER RECORDS OF THE STATES OF JERSEY

Lodged au Greffe on 1st April 2003
by Deputy A. Breckon of St. Saviour

STATES GREFFE

PROPOSITION

THE STATES are asked to decide whether they are of opinion –

to refer to their Act dated 15th March 1994 in which they appointed a Special Committee to investigate the issues involved in establishing by law a general right of access to official information for members of the public and to report back to the States with recommendations; and to their Act dated 26th July 2000 in which they approved, with amendments, the Code of Practice on Public Access to Official Information and agreed that the provisions of the Code, amended as appropriate in the light of practical experience, should be incorporated into legislation which would establish a general right of access to official information for members of the public, and –

- (a) to agree that a general right of the public to access official information should be established by law as soon as practicable, and that, subject to any exemptions that may be included in the legislation –
 - (i) all records and documents relating to the expenditure of public monies, including all account books, contracts, invoices, vouchers, receipts and other financial records shall, on an annual basis, be made available by each Committee and Department of the States for public inspection, during a period of 20 working days, by any person whose name is on an electoral register kept for the purposes of public elections to the States, on condition that any such person wishing to access the records shall be obliged to give at least one clear working day's notice to the Committee or Department concerned of his or her intention to exercise the right of access,
 - (ii) there shall be a general right to attend all meetings of Committees of the States (including any Joint and Sub-Committee meetings) and that, after the introduction of a ministerial system, this right shall extend to meetings of the Council of Ministers, any sub-committees of the Council, Scrutiny Committees and the Public Accounts Committee,
 - (iii) there shall be a general right of access to all minutes, agendas, and accompanying papers of the bodies mentioned in sub-paragraph (a)(ii) above;
- (b) to request the Privileges and Procedures Committee, in consultation with the Policy and Resources Committee, the Finance and Economics Committee, and any other Committees as appropriate, to bring forward for approval by the States at the earliest possible opportunity the necessary legislation, compliant with all relevant provisions relating to human rights and data protection, to give effect to the proposals, based on a presumption that all official information should be freely available unless there is justifiable reason for withholding it in accordance with exemptions to be set out in the legislation.

DEPUTY A. BRECKON OF ST. SAVIOUR

REPORT

Rather than make an entirely new case for the general right to access of official information in Jersey, I have set out below a few details of the background to the existing situation, including –

States Minutes of 26th July 1999

“Public Access to Official information: Code of practice – P38/99; comments P.38/99 Com.; P.38/99 Com (2)

THE STATES resumed consideration of a proposition of the Special Committee on Freedom of Information concerning Public Access to Official Information: Code of Practice, which had been discontinued at the meeting on 20th July 1999, and adopted sub-paragraphs (c) to (f).

THE STATES, adopting a proposition, as amended, of the Special Committee on Freedom of Information referred to their Act dated 15th March 1994 appointing a Special Committee to investigate the issues involved in establishing by law, a general right of access to official information for members of the public, having regard to the practice and experience of other countries and the particular circumstances of the Island, and to report back to the States with recommendations, and –

- (a) approved the principle that the public should have access, wherever reasonably possible, to information held by the States, Committees and Departments of the States in accordance with a Code of Practice approved by the States;
- (b) approved, with amendments, the draft Code of Practice on Access to Information held by the States, Committees and Departments of the States as set out in Appendix A of the Special Committee’s report dated 11th March 1999;
- (c) agreed that the Code should be brought into operation not later than 6 months after the date of its approval by the States, and with respect to information created after that date;
- (d) charged the House Committee to prepare for the introduction of the Code, to monitor its implementation, to keep it under review and to report to the States 12 months after it had been brought into operation, and annually thereafter;
- (e) agreed that the provisions of the Code, amended as appropriate in the light of practical experience, should be incorporated into legislation which would establish a general right of access to official information for members of the public, and charged the House Committee to take the necessary steps to enable the legislation to be assessed for priority for inclusion in the States legislation programme;
- (f) agreed to dissolve the Special Committee on Freedom of Information.

The Code of Practice, as amended, is set out and consolidated in the Appendix to these Minutes.”

Note: (For convenience I have attached the Code of Practice at the end of this Report).

I believe that it would be fair to say that the above matters have not been actively pursued.

Clothier

The panel would be aware of the above information, and extracts from the Review Panel on the Machinery of Government (Clothier) – appointed by the States on 2nd March 1999 and presenting its final Report on 15th January 2001, have leanings towards more openness and perhaps even challenge to Jersey’s system of government based on sharing information.

One of the Panel's terms of reference was –

“whether the machinery of government is presently subject to checks and balances sufficient to safeguard the public good and the rights of the individuals”

This is combined with the above information showing that there is in place an outdated freedom of information situation, which has led to some inertia in the system – I believe that a fresh outlook is required to serve a modern democracy if that is what we are?

“Clothier” at Chapter 10 “Towards a more Open Democracy”

It is of the greatest importance that the moves we recommend towards a clearer distinction between “executive” and “parliamentary” responsibility should not have as a consequence a reduction in the democratic influence of individual citizens and voters. We have already noted fears about creating an “elective dictatorship” under which an assembly and the public during the lifetime of a government surrender to the members of that government undue power and influence. This is, perhaps, an extreme view, since as we have remarked Scrutiny Committees (and in particular a Public Accounts Committee) can be effective forums for accountability, particularly where members have no rigid party positions and can consider issues on their merits. Nevertheless we believe that if a Council of Ministers is to be constituted in Jersey, composed of men and women in whom the States have confidence, we need to ensure the members of the States occupying executive office enable and encourage “back-benchers” and the public not merely to scrutinise and if necessary criticise policy and executive action after the event, but also to be partners with Jersey’s Ministers in developing policies serving the best interests of the Island and commanding the confidence of its citizens. *(my emphasis)*

For this pattern of democratic partnership to flourish, there must be a preference for transparency and dialogue as opposed to secrecy and governmental dogmatism. One mechanism increasingly used in other jurisdictions around the world is a Freedom of Information Act, and no doubt the Jersey institutions will wish to consider the extent to which they rely upon this device.” *(my emphasis)*

.....”If consideration of a particular issue is conducted in total secrecy until the announcement of the firm government decision, other opinions can only be expressed after the die is cast. It is an observable characteristic of governments everywhere that they are extremely reluctant to be diverted from firm policy already announced” *(my emphasis)*

.....”As for Scrutiny Committees of the States themselves, we are firmly of the view that the conduct of proceedings should normally be in public. Having said this, it would no doubt be necessary on rare occasions to meet in private, but this should be done most sparingly”

Why shouldn't this apply to all Committees?

.....” In their turn, the States need to accept an obligation to keep citizens of the Island much better informed about their activities “

Virtually open access will help to do this !

.....” We believe that Jersey, small in size and population but endowed with much wholesome tradition, could become a shining example of a true modern democracy, in which the issues vital to the Island's future are honestly presented, widely debated and clearly understood. That special responsibility we recommend for members of the Council of Ministers can and should be exercised in a true partnership with the people of Jersey and those they choose to represent”

At the moment we are already light years behind other “Authorities”

Access to information, data protection and democracy

As part of the “modernisation” of many political and related systems, people are being given freedom and rights

of access to much more of the business, workings and deliberations of local and national government and encouraged to contribute and participate in an informed manner.

Most Authorities allow virtually unlimited access to meetings at ALL levels and encourage public involvement and participation – some even have practices and procedures which allow the public to ask questions – even in the “Chamber” – a redundant Deputy of St. John – perhaps not yet!

Jersey, to date has talked about some of the principles in various debates and discussions about “transparency” but not yet translated them into meaningful action, this is perhaps the opportune moment.

Right to attend Meetings

Some jurisdictions now have Information Commissioners (including the Data Protection Service), and Democratic Services who are responsible for promoting access to information, including the public right to attend ALL meetings, access ALL papers, including Agendas and Minutes, unless there is good reason to withhold – the emphasis is on openness and accountability, whilst respecting matters of genuine privacy.

Many Public Authorities have copies of up-to-date relevant Committee papers freely available for inspection by the public – an outbreak of “Glasnost” – is Jersey ready for this?

Rather than severely restrict people, the above have addressed some of the issues in a positive manner, human rights, data protection and freedom of information are dealt with appropriately and not flagged up as an excuse.

I believe in Jersey, this role could also be combined and extended to include ensuring the public are better informed and consulted on issues.

Access to facts and figures

For many years the general public have had very little or no detailed access to the general day-to-day financial affairs of the States of Jersey its Committees and Departments.

Despite the fact that it is public money being spent on public services there is only very limited information generally available, detail is scarce and on occasions very secretive, indeed politicians themselves never know expenditure in any detail.

More recently the public have been given selective information at the discretion of a Committee(s), in order to convince them that certain measures must or must not be taken.

Sometimes the information is in such general nature or terms e.g. overall budget information, that it is difficult if not impossible to make a meaningful assessment or judgement on, say, value for money issues.

However there is no automatic public right of access, to this or any other meaningful information, and on occasions States Members themselves can be denied easy access and resort, (on some occasions), to high profile questioning to seek answers to some fairly trivial matters, however they do not always obtain meaningful answers.

I believe the public should be given full access to all financial information, unless the case can be made why they should not have access, the Parishes (and system), do respond to reasonable requests and answer parishioners questions – the States of Jersey should, I believe, do likewise and more, and be truly more accountable and open.

Any access should be mindful of privacy issues, the respect of individual circumstances, together with human rights and data protection issues, however the aforementioned should be borne in mind and access should be given unless there are compelling reasons not to do so.

I do not believe it is generally adequate or sufficient to continue to approve Committee and Departmental budgets without much more rigorous scrutiny including full public access – the subject is too important to be delegated to a

few trusted worthies.

Those who think otherwise should make the case why the public should not have access – why shouldn't they know?

For reference I have looked at how public access to a variety of government matters does happen elsewhere, obviously those who seek to advise and inform us have not reached that chapter yet! Also, I do feel that in Jersey those who have been given the task are not being very robust in enabling a progressive system for the free flow of information and the ability to challenge and question the "Authority" if and when appropriate – this apparently will come later.

What happens elsewhere?

Under the Audit Commission Act 1998 and Accounts and Audit Regulations 1996; as part of the "Audit of Accounts" the general public have a stipulated 21 or 28-day period to view, inspect, copy etc. –

- this would include all books, deeds, contracts, bills, vouchers, receipts etc relating to the expenditure of public monies;
- documents (as above) will be made available for inspection etc (as above), at the offices at which they are normally kept or otherwise by arrangement;
- following the "public inspection period", any person on the electoral role or his or her representative, shall be given the opportunity within the following 21 or 28-day period to question any auditor, political representative, or departmental officer responsible, in a public or private place;
- this request would normally be writing or (electronic) recorded form;
- written records where there have been produced or generated by the above enquiries will normally be generally available.

Conclusion

Giving true and unfettered access to all citizens of Jersey is a radical departure from the cloak of secrecy shrouding existing procedures, however, I believe as it is the public's money for public services the system must be more accountable with full access, with only limited exceptions, and greater access to scrutiny for all.

Should any Committee, Minister or Department not agree then they should show why this information should not be made available, in general terms, or in a specific area, rather than retaining a veil of secrecy.

I believe making this information available to the public, whose money it is, could and should give a much greater degree of accountability and lead to savings in the short medium and longer terms, as the process becomes truly "transparent".

It should also engage and involve people – they can become more involved with the process of Government if they so wish – we can have many scrutineers – and there is safety in numbers!

Financial and manpower implications

I do not believe that there would be any significant effect – in fact giving the public access to much of this information could lead to savings in the medium to longer term.

A CODE OF PRACTICE ON ACCESS TO INFORMATION HELD BY THE STATES, COMMITTEES OF THE STATES AND DEPARTMENTS OF THE STATE

(Adopted by Act of the States dated 20th July 1999)

PART I: Description

1. Purpose

1.1 The purpose of this Code is to establish a minimum standard of openness and accountability by the States of Jersey, its Committees and departments, through –

- (a) increasing public access to information;
- (b) supplying the reasons for administrative decisions to those affected, except where there is statutory authority to the contrary;
- (c) giving individuals the right of access to personal information held about them and to require the correction of inaccurate or misleading information,

while, at the same time –

- (i) safeguarding an individual's right to privacy; and
- (ii) safeguarding the confidentiality of information classified as exempt under the Code.

1.2 Interpretation and scope

1.2.1 For the purposes of this Code –

- (a) “authority” means the States of Jersey, Committees of the States, their sub-committees, and their departments;
- (b) “information” means any information or official record held by an authority;
- (c) “personal information” means information about an identifiable individual.

1.2.2 In the application of this Code –

- (a) there shall be a presumption of openness;
- (b) information shall remain confidential if it is classified as exempt in Part III of this Code.

1.2.3 Nothing contained in this Code shall affect statutory provisions, or the provisions of customary law with respect to confidence.

1.2.4 This Code applies to information created after the date on which the Code is brought into operation and, in the case of personal information, to information created before that date.

PART II: Operation

2. Obligations of an authority

2.1 Subject to the exemptions listed in paragraph 3, an authority shall –

- (a) keep a general record of all information that it holds;

- (b) take all reasonable steps to assist applicants in making applications for information;
- (c) acknowledge the receipt of an application for information and endeavour to supply the information requested (unless exempt) within 21 days;
- (d) take all reasonable steps to provide requested information that they hold;
- (e) notify an applicant if the information requested is not known to the authority or, if the information requested is held by another authority, refer the applicant to that other authority;
- (f) make available information free of charge except in the case of a request that is complex, or would require extensive searches of records, when a charge reflecting the reasonable costs of providing the information may be made;
- (g) if it refuses to disclose requested information, inform the applicant of its reasons for doing so;
- (h) the authority shall correct any personal information held about an individual that is shown to be incomplete, inaccurate or misleading, except that expressions of opinion given conscientiously and without malice will be unaffected;
- (i) the authority shall inform applicants of their rights under this Code;
- (j) the authority shall not deny the existence of information which is not classified as exempt which it knows to exist;
- (k) the authority shall undertake the drafting of documents so as to allow maximum disclosure.

2.2 Responsibility of an applicant

The applicant shall –

- (a) apply in writing to the relevant authority having identified himself to the authority's satisfaction;
- (b) identify with reasonable clarity the information that he requires;
- (c) be responsible and reasonable when exercising his rights under this Code.

2.3 Appeals

- 2.3.1 If an applicant is aggrieved by an authority's decision to refuse to disclose requested information or to correct personal information in a record, he will have the right of appeal set out in Part IV of this Code.

PART III: Access and exemptions

3.1 Access

Subject to paragraph 1.2.3 and the exemptions described in paragraph 3.2 –

- (a) an authority shall grant access to all information in its possession, except that Committees of the States, and their sub-committees, shall grant access to the agendas and minutes of their meetings, but not to agenda support papers;
- (b) an authority shall grant –
 - (i) applicants over the age of 18 access to personal information held about them; and

- (ii) parents or guardians access to personal information held about any of their children under the age of 18.

3.2 Exemptions

Information shall be exempt from disclosure, if –

- (a) such disclosure would, or might be liable to –
 - (i) constitute an unwarranted invasion of the privacy of an individual;
 - (ii) prejudice the administration of justice, including fair trial, and the enforcement or proper administration of the law;
 - (iii) prejudice legal proceedings or the proceedings of any tribunal, public enquiry, Board of Administrative Appeal or other formal investigation;
 - (iv) prejudice the duty of care owed by the Education Committee to a person who is in full-time education;
 - (v) infringe legal professional privilege or lead to the disclosure of legal advice to an authority, or infringe medical confidentiality;
 - (vi) prejudice the prevention, investigation or detection of crime, the apprehension or prosecution of offenders, or the security of any property;
 - (vii) harm the conduct of national or international affairs or the Island's relations with other jurisdictions;
 - (viii) prejudice the defence of the Island or any of the other British Islands or the capability, effectiveness or security of the armed forces of the Crown or any forces co-operating with those forces;
 - (ix) cause damage to the economic interests of the Island;
 - (x) prejudice the financial interests of an authority by giving an unreasonable advantage to a third party in relation to a contract or commercial transaction which the third party is seeking to enter into with the authority;
 - (xi) prejudice the competitive position of a third party, if and so long as its disclosure would, by revealing commercial information supplied by a third party, be likely to cause significant damage to the lawful commercial or professional activities of the third party;
 - (xii) prejudice the competitive position of an authority;
 - (xiii) prejudice employer/employee relationships or the effective conduct of personnel management;
 - (xiv) constitute a premature release of a draft policy which is in the course of development;
 - (xv) cause harm to the physical or mental health, or emotional condition, of the applicant whose information is held for the purposes of health or social care, including child care;
 - (xvi) prejudice the provision of health care or carrying out of social work, including child care, by disclosing the identity of a person (other than a health or social services professional)

who has not consented to such disclosure;

- (xvii) prejudice the proper supervision or regulation of financial services;
 - (xviii) prejudice the consideration of any matter relative to immigration, nationality, consular or entry clearance cases;
- (b) the information concerned was given to the authority concerned in confidence on the understanding that it would be treated by it as confidential, unless the provider of the information agrees to its disclosure; or
- (c) the application is frivolous or vexatious or is made in bad faith.

PART IV: Appeal procedure

- 4.1 An applicant who is aggrieved by a decision by an officer of a States department under this Code may in first instance appeal in writing to the President of the Committee concerned.
- 4.2 An applicant who is aggrieved by the decision of an authority under this Code, or by the President of a Committee under paragraph 4.1, may apply for his complaint to be reviewed under the Administrative Decisions (Review) (Jersey) Law 1982, as amended.