

PRIVILEGES AND PROCEDURES COMMITTEE

(56th Meeting)

22nd March 2010**PART A**

All members were present, with the exception of Senator B.I. Le Marquand and Deputy M. Tadier, from whom apologies had been received.

Connétable J. Gallichan of St. Mary, Chairman
 Deputy J.B. Fox
 Deputy J.A. Martin (for a time)
 Deputy C.H. Egré
 Deputy M.R. Higgins

In attendance -

M.N. de la Haye, Greffier of the States (item No. A1 only)
 Mrs. A.H. Harris, Deputy Greffier of the States (item No. A1 only)
 Miss A-C. Heuston, Clerk to the Privileges and Procedures Committee

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

Draft Freedom of
 Information
 (Jersey) Law
 201-
 670/1(23)

A1. The Committee, with reference to its Minute No. A4 of 16th March 2010, welcomed Mrs. J. Dilbert, M.B.E., J.P., Information Commissioner, Cayman Islands, in connexion with the Draft Freedom of Information (Jersey) Law 201-.

DGOS

The Committee received a presentation from Mrs. Dilbert regarding the implementation of the Freedom of Information Law in the Cayman Islands. The Law had been passed in 2007 and had come into effect on 1st January 2009. The Committee received copies of the Cayman Islands Freedom of Information Law (2007); the Freedom of Information (General) Regulations (2008); and the Freedom of Information (Information Commissioner) Regulations 2008. Discussion focused on the following areas:

Implementation

An implementation exercise had taken place in Cayman prior to the introduction of freedom of information legislation and a detailed implementation plan had been produced. The plan had not, however, been properly implemented. Mrs. Dilbert stressed the requirement for preparation and the early appointment of an Information Commissioner in advance of the legislation coming into force.

Purpose of legislation

Mrs. Dilbert advised that freedom of information was based on the principle that government should not possess more information than the citizens. Mrs. Dilbert considered that under Jersey's Code of Practice on Public Access to Official Information the government retained discretion as to whether or not to disclose information. A law would remove this discretion and replace it with a set of rules and timeframes that had to be followed. At the same time, it would strike a balance between the public's legitimate right to know and the need for government to keep some of its information confidential.

Provision of information

All public authorities in the Cayman Islands had been required to publish a publication scheme within the first year of the law coming into force, and were expected to proactively publish information on an ongoing basis. Applicants who requested information were not required to identify themselves, or give a reason for their request. It was noted that not being able to identify the applicant did have drawbacks as it made the gathering of statistics and monitoring difficult. A tracking system was required to track the number of requests for information which had been made and Mrs. Dilbert recommended that a system already in use be adapted for this task. To date, 800 requests for information had been logged.

Exemptions

Access to information could only be refused in 11 circumstances, all but one of which was subject to review by the Information Commissioner. The only exception was if the Governor made an order that a document was exempt.

Appeals process

An applicant's first request would be to the information manager. If an applicant was not satisfied with the response, an internal review of the decision could then be requested, in which case the request would be referred to the Chief Officer or the Minister. If the applicant remained dissatisfied with the response, an appeal could be made to the independent Office of the Information Commissioner. The Office of the Information Commissioner had dealt with 28 appeals in the first year, 22 of which had been resolved through mediation. In total, 4 hearings had taken place.

Records management

Mrs. Dilbert advised that records management had been key to the implementation of the law, as public authorities now had to ensure that they had effective record keeping. The National Archive had played a significant role and had worked with the public authorities to help to bring their records in line with record management laws. Mrs. Dilbert advised that departments had not, however, set their records fully in order during the 2-year lead-in time.

Freedom of Information Unit

The Freedom of Information Unit had been formed as a government department to oversee the implementation of the Law. The Unit was responsible for training the information managers and worked alongside the Freedom of Information Steering Committee, which had developed the implementation plan. The Unit initially employed 5 members of staff; this had since been reduced to 2.5. The Unit continued to train and assist the public authorities with the Law, and to monitor statistics regarding the number of requests made.

Costs

The combined implementation cost of the Office of the Information Commissioner and the Freedom of Information Unit was just £937,000. This spanned a period of approximately 2 years, and included: salaries; professional fees; a request tracking system at a cost of £73,000; and fixed asset acquisition. There were also implementation costs to the National Archive to assist public authorities with records management at a cost of £175,000. Mrs. Dilbert advised that a considerable amount had been spent on raising public awareness, but that this had not been very effective.

Staff training

Staff training was considered to be pivotal in order to ensure that sensible decisions were made in respect of applications for information. The Committee noted that, of the 88 public authorities in Cayman, 5 had staff employed solely as information

managers. There were concerns, however, that the internal review system was being used by public authorities as a delaying tool with authorities taking the maximum of 60 days to process a request. It was considered essential that information managers should be confident enough to answer applicants themselves in the first instance, without referring the matter to the Chief Officer.

Role of the Information Commissioner

The main duties of the Information Commissioner were identified as being to hear, investigate and rule on appeals; to monitor and report on compliance; to make recommendations for reform; and to publicise the requirements of the Law and the rights of individuals under the Law.

Office of the Information Commissioner

The Committee considered the organisational structure of the Office of the Information Commissioner, which consisted: Information Commissioner; appeals and policy analyst; intake analyst; office manager; and executive assistant. The intake analyst would determine whether the office had jurisdiction, then, if accepted as an appeal, the application would be referred to the appeals and policy analyst and a negotiation process would be initiated. This process would remain confidential from the Information Commissioner. If the matter remained unresolved, a hearing would be held, after which the Information Commissioner would have 30 days to make a decision, to which an extension of a further 30 days could be added. Mrs. Dilbert emphasised the need for independence and for a common sense approach to dealing with requests for information, appeals, and interpreting the Law.

Fees and Charges

The Committee referred to the Freedom of Information (General) Regulations (2008) and noted the relevant charges. Mrs. Dilbert advised that no appeals for fees had been received. Most requests were dealt with electronically so charges were minimal. The Committee noted that, in the United Kingdom, limiting factors had been applied at £450 for local government and £600 for central government. No such measure applied in the Cayman Islands, and guidelines had not been issued with regard to what would constitute an unreasonable diversion of resources. The Committee had regard for Regulation 10(4) of the Cayman Islands Freedom of Information Law, and noted that time spent by an authority in search of or collating a record did not include time spent searching for a mislaid file.

Public authorities

The Committee discussed the definition of the term 'public authority'. Mrs. Dilbert advised that it was defined in Law, and any authority that was owned by government or significantly funded by government was deemed to be a public authority. With regard to public/private partnerships, it was noted that confidentiality clauses in contracts might not be applicable under the Freedom of Information Law as they would be subject to the public interest test. The Committee noted that Section 51 of the Cayman Islands Monetary Authority Law created an offence for any director, officer, employee, agent or advisor of the authority to disclose information relating to the affairs of the authority that had been acquired in the course of his or her duties, and that this section applied under the Freedom of Information Law. Mrs. Dilbert expressed the view that the Monetary Authority had, to date, taken a sensible approach in responding to requests for information, but that the carve out should not have been applied. Mrs. Dilbert emphasised the distinction between administrative and operational records.

Data Protection

Mrs. Dilbert felt that the dual-role of Data Protection Commissioner and Freedom of Information Commissioner was a practical and effective way forward, as a close

liaison between the 2 offices would be required. It was noted that the Cayman Islands did not have data protection legislation at present, and that this was currently dealt with under the Freedom of Information Law. The Committee noted that the Commissioner was only permitted 2 sessions (10 years) within the role, due to the need for independence and impartiality.

Cabinet Minutes

The Committee noted that the Cabinet did not publish their Minutes at present, although Cabinet Minutes could be released in the public interest. Concern had been expressed that their release would inhibit free and frank exchange, although Mrs. Dilbert advised that names could be redacted and factual Minutes and decisions be released.

Legal advice

Consideration was given to the difference between legal advice and advice on how to approach a particular matter provided by a legal entity. In Cayman information could be exempt from disclosure because it contained opinions, advice or recommendations prepared for proceedings of Cabinet, or a record of consultations of deliberations arising in the courts.

Disclosure log

A long-term goal was for each public authority to have a disclosure log. As and when a department had dealt with a request for a record, this would be published on the internet, alongside the information which had been disclosed.

Clearing house

Consideration had been given to the establishment of a central clearing house from within the Office of the Information Commissioner to receive all requests and pass them to the relevant department. The Committee noted that, if there were to be a clearing house established, it would fall under the Office of the Information Commissioner, in order to ensure its independence.

Mrs. Dilbert advised that she was pleased with the progress being made in Cayman, and was working to ensure that responsibility for freedom of information was understood. It was the responsibility of the public authority to have their records in order and to respond to requests; the responsibility of the public to research their requests and not to make vexatious or frivolous requests; and the responsibility of the press to ensure accurate reporting. The Committee noted that further information was available on the website of the Information Commissioner: www.infocom.ky, and recalled that Mrs. Dilbert would give a presentation to all States members at 1 p.m. on Tuesday 23rd March 2010.

Mrs. Dilbert, having been thanked by the Chairman for her attendance, withdrew from the meeting.

States of Jersey
Complaints
Board: findings.
1386/2/1/2
(295)

A2. The Committee received a report by electronic mail which had been prepared by the States of Jersey Complaints Board and detailed its findings in connexion with a complaint against a decision of the Minister for Planning and Environment.

The Committee **noted** that, in accordance with Article 9(9) of the Administrative Decisions (Review) (Jersey) Law 1982, as amended, it was required to present the report entitled: 'Complaint against a decision of the Minister for Planning and Environment regarding the refusal of permission to change a single 3-bedroom dwelling into 2 one-bedroom units' to the States.

The Committee Clerk was requested to take the necessary action.

