

STATES OF JERSEY



PUBLIC RIGHT OF ACCESS TO INFORMATION, FINANCIAL AND OTHER RECORDS OF THE STATES OF JERSEY (P.34/2003): COMMENTS

**Presented to the States on 14th October 2003
by the Policy and Resources Committee**

STATES GREFFE

COMMENTS

The Policy and Resources Committee has given detailed consideration to the proposition of Deputy Alan Breckon on 'Public right of access to information, financial and other records of the States of Jersey' (P.34/2003).

The Committee supports the general principle that there should be a presumption in favour of public access to information, but would also support the view expressed by the Privileges and Procedures Committee in its comment on P.34/2003, published on 19th August, that there need to be limits on access to information. There will be occasions on which it would be inappropriate to disclose information, e.g. on matters relating to the privacy of the individual, and commercially sensitive matters.

Deputy Breckon's proposition contains 4 main proposals. Taking each of these proposals in turn, the Committee comments as follows –

- '(a) to agree that a general right of access to official information should be established by law as soon as practicable, and that, subject to any exemptions that may be included in the legislation...'***

It will be recalled that access to information is currently regulated by a 'Code of Practice on Access to Information'. The Code of Practice was adopted by the States on 26th July 1999 (not July 2000 as stated in the proposition), and at that time the States 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' (P.38/99).

In March 2002 the States agreed to establish the Privileges and Procedures Committee (P.23/2002) and, in so doing, asked the new Committee –

'to review and keep under review the Code of Practice on Public Access to Official Information adopted by the States on 20th July 1999 and, if necessary, bring forward proposals to the States for amendments to legislation including, if appropriate, the introduction of legislation, taking into account the new system of government'.

The Committee accepts that legislation in this area would be desirable, and provision has been made in the 2004 Legislation Programme for a new law on freedom of information. The 2004 Programme was approved by the States on 18th September 2003 when it adopted the 'States of Jersey Resource Plan 2004-2008' (P.118/2003).

- '(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'***

In the report accompanying his proposition Deputy Breckon claims that the public has little or no detailed access to information. The Committee does not share this view, and it notes that under the Code of Practice there is a general presumption in favour of access to information held by States committees and departments. This general right of access is subject to certain exemptions (e.g. matters relating to the privacy of the individual, and commercially sensitive matters), and it is noted that there would also be exemptions under Deputy Breckon's proposals. Deputy Breckon has not indicated whether he would propose any significant change to the current range of exemptions, and his proposals as they currently stand will not therefore result in any changes to the range of information that is currently available to the public.

Deputy Breckon is proposing that all public records, subject to certain exemptions, should be made available for public inspection, on an annual basis, for a period of 20 working days. In support of this proposal, reference is made on page 6 of his report to the Audit Commission Act 1998 and the Accounts and Audit Regulations 1996. However, it should be pointed out that this legislation relates only to local authorities in England and Wales, and does not apply at a national government level. At a national level there are no 'public inspection periods', nor is there a statutory right of access to financial records.

The U.K. Freedom of Information Act, which is due to come into effect on 1st January 2005, will confer a general right of access to information, including financial information, at both local and national levels of government, although these rights of access will continue to be subject to certain exemptions. The Freedom of Information Act will not, however, extend 'public inspection periods' to government at a national level. Members of the public will nonetheless be able to request financial information on particular subjects, in the same way that they are currently able to do so in Jersey under the Code of Practice.

The introduction of an annual inspection period would place a significant extra demand upon States departments, as they would need to be ready to comply at one working day's notice with requests for access to all financial records. Each department will have literally thousands of individual documents relating to financial matters, including receipts, contracts, and salary records, and these will need to be screened to ensure that the correct material is available for inspection, and that material classified as 'exempt' is not inadvertently released to the public. A significant proportion of financial records will fall within the existing exempt categories, and the filtering of documents would be a major task.

It is worth pointing out that the ministerial system will introduce new methods of control and monitoring on the expenditure of public monies. The States has agreed that there will be a Public Accounts Committee, charged with the scrutiny of public expenditure, as well as an Auditor General who will be accountable directly to the States Assembly.

In summary, therefore, the Committee does not believe that the need for 'public inspection periods' has been demonstrated. The public already has a right of access to information held by the States, including financial records, under the Code of Practice on Access to Information. In addition, the ministerial system will provide further mechanisms for examining and monitoring public expenditure.

'(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'.

In connection with this proposal, the Committee notes that the States has debated the issue of public access to Committee meetings in the recent past. On 12th October 1999 the States rejected paragraph (2) of a proposition of Senator Stuart Syvret that members of the public should have a right of attendance as observers at meetings of the Committees of the States or their sub-committees (P.53/99).

The Committee accepts the principle that the public should have a general right of access to meetings of the scrutiny panels, and believes that this would be appropriate in view of the nature of the scrutiny function in examining the performance of government.

The situation in relation to the Executive is rather different, in that many of the discussions around the table at the Council of Ministers or at ministerial meetings will relate to policies in the course of development, as well as the kind of matters that would be classified as exempt under the Code of Practice. It is almost inevitable that these discussions would be hampered if there were to be a general public right of attendance. The meetings of the Council of Ministers will need to be in private, for they can then provide a forum in the members will be free to express their views.

In this connection it is worth reflecting on the situation that applies in other parts of the world. In the U.K. Cabinet, for example, the meetings of the Cabinet are held in private, and this is general practice in other jurisdictions.

The Policy and Resources Committee has already stated in its report and proposition on the 'Machinery of Government: Proposed Reforms' (P.122/2001) that it favours a culture of openness and transparency, and that one of the changes associated with this culture will be the much greater use of 'green' and 'white' papers. Such changes are highly desirable, but they do not automatically mean that all meetings should be opened to the public. There will be an appropriate time at which the public will be invited to become involved in the debate, and this may often be at an early stage in policy formulation.

Although Deputy Breckon's proposition is understood to refer to the public's right of attendance at meetings, it is perhaps worth commenting on the issue of whether States members should have the right of attendance at meetings of the Council of Ministers. It will be recalled that the States, in considering P.53/99, agreed that States members would have the right of attendance at Committee meetings, except when information that is classified as exempt under the Code of Practice was being discussed. The Policy and Resources Committee would propose that this same right of attendance would be maintained in the ministerial system in relation to the Council of Ministers.

'(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'

The Policy and Resources Committee supports the principle that there should be a presumption in favour of access to the minutes of decisions taken by the Executive in the ministerial system, and it is proposed that these decisions should be recorded and made publicly available. The Committee also considers, however, that there need to be exemptions to this right of access, e.g. in relation to security matters, and matters involving personal privacy.

The position in relation to agenda papers is not so straightforward, as in many cases these will relate to the kind of matters that are currently classified as exempt under the Code of Practice, including policies in the course of development. As with (a)(ii) above, there is a real probability that assigning a general right of public access to agenda papers will hamper the quality of debate, as departmental officers may be reluctant to recommend options that could be unpopular or controversial.

'(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.'

This part of the proposition follows directly on from the recommendations in paragraph (a)(i), (ii) and (iii), and it is recommended that it should be opposed for the reasons given above.

In view of the above, the Policy and Resources Committee recommends that Deputy Breckon's proposition should be rejected.

Alternatively, it is suggested that Deputy Breckon may prefer to withdraw the proposition in order that the issues raised may be discussed with the Policy and Resources Committee, the Privileges and Procedures Committee, and other relevant parties.