

PRIVILEGES AND PROCEDURES COMMITTEE

(37th Meeting)

8th February 2005PART A

All members were present.

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

In attendance -

Mrs. A.H. Harris, Deputy Greffier of the States  
 Mr. P. Baker, Instructing Officer  
 I. Clarkson, Committee Clerk

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

Freedom of  
 Information:  
 position paper.  
 955(36)

A1. The Committee, with reference to its Act No. A6 of 6th December 2004, recalled that it had presented a report entitled, 'Freedom of Information – Position Paper' to the States (R.C. 55/2004 refers). Responses to the said position paper had been requested on or before 21st January 2005.

Clerk  
 D.G.O.S.  
 L.D.

The Committee received a report, dated 28th January 2005, prepared by the Instructing Officer, in connexion with responses received regarding the aforementioned position paper. It was reported that 24 consultee groups had been approached directly. A total of 13 responses had been received from a variety of sources, including the Policy and Resources Committee, Channel Television Limited, the Data Protection Registrar and H.M. Attorney General.

The Committee noted that a significant number of the responses received were supportive of the principle of a freedom of information law, including those received from the Jersey Financial Services Commission and the Data Protection Registrar. Nevertheless, several concerns had been raised. For example, Jersey Telecom and other States controlled companies had questioned whether their economic competitiveness might be unduly affected by any such legislation, while the Policy and Resources Committee was understood to have reservations concerning the possible resource implications of a law. In addition, H.M. Attorney General was acknowledged to have provided the Committee with a number of important issues for consideration, such as the effectiveness of the existing Code of Practice on Public Access to Official Information and the mechanics of possible administrative procedures.

A discussion took place regarding the possibility of restricting the right of access by nationality or residential status. Whilst the Committee acknowledged that a restriction might serve to limit the number of applications processed, it also questioned whether there were any other grounds for introducing such a limitation.

On the matter of the mechanics of an application, the Committee was of the view that a member of the public should not be required to make a formal application in

writing in order to gain access to information. Although it accepted that there might well be a need to record applications, the Committee considered that departmental officers should be empowered to fill out a record on behalf of the applicant.

The Committee discussed the introduction of a 'public interest' clause and noted that this would function through an application being made to the Information Commissioner who, if satisfied, would order the release of information in the public interest.

The Committee gave consideration to the likely cost of operating a freedom of information law. It was advised that Lord Falconer, United Kingdom Secretary of State for Constitutional Affairs, had announced that local government enquiries in the United Kingdom would cost no more than £450 and that those made of central government departments would cost no more than £600. The Committee considered that costs associated with enquiries made of States departments would often be limited to those associated with sending an e-mail, coupled with the hourly rate of the officer or officers charged with researching the relevant matter. In addition, there would be a cost relating to the establishment of an Information Commissioner under the aegis of the Data Protection Registrar.

With regard to the effect of a law on States owned or controlled companies, the Committee acknowledged that there were sensitive commercial issues to consider. For example, it noted that institutions such as the Jersey Opera House received income from the States of Jersey and a variety of other sources. While the Committee expected that information held by particular institutions concerning their use of States funds would be available to the public, it acknowledged the need to ensure that the law would not be abused by other companies or organizations that sought to obtain a commercial advantage. **It therefore agreed to give further consideration to the matter of commercial sensitivity at a subsequent meeting. Notwithstanding the foregoing, the Committee agreed that any law should affect publicly owned companies and related organizations such as the Jersey Competition Regulatory Authority (JCRA) and the Jersey Financial Services Commission (JFSC) with immediate effect. Such organizations were understood to have been aware, or could reasonably have been expected to have been aware, that freedom of information legislation was being developed. Moreover, the Committee recalled that fears expressed previously by particular departments regarding a possible need to restructure filing systems prior to the application of the Code of Practice on Public Access to Official Information had proved largely unfounded.**

**Further to the foregoing, the Committee approved the following key policy principles in connexion with the production of law drafting instructions for the draft Freedom of Information Law -**

- (a) that all information should be capable of being considered for release on request;**
- (b) that all individuals should have a right to apply, regardless of their nationality or residency;**
- (c) that applications, especially for readily accessible information; should not be restricted by having to be in writing;**
- (d) authorities that were emanations of the state should be bound to release relevant information; the Committee was very reluctant to restrict the law in the long-term to government departments, Ministers and Committees;**
- (e) that application of the law to authorities such as publicly owned companies, the JCRA and JFSC should not be delayed;**

- (f) that authorities should be encouraged to publish as much information about themselves and their activities as possible, although a formal Publication Scheme was not yet proposed;**
- (g) that authorities were to be encouraged to develop records and document management schemes which would facilitate retrieval of requested information;**
- (h) that information should, in general, be released free of charge;**
- (i) that information should be released as soon as practicable, acknowledgements should be within 5 working days and the 15 working day guide was to be seen normally as a maximum;**
- (j) that information created before the introduction of the Code (20 January 2000) should be available for release, although the lack of previous categorization meant that its release might take a little longer than information created since the Code;**
- (k) that, while the existing exemptions were considered to be largely sound, commercial or human resource information should not be exempted unless clear harm was thought to be likely as a result of releasing it; the Committee did not think that the mere suspicion that release might prejudice matters would be sufficient;**
- (l) exemptions must give due consideration to other laws, such as data protection and official secrets;**
- (m) exemptions were to be viewed with caution; there would be a presumption of openness and it was recognized that there might be circumstances when there was an overriding public interest greater than the purported exemption; such an interest would be built into the law;**
- (n) the deliberate release of genuinely exempt material and the refusal to release information that was not exempt should both be punishable offences;**
- (o) there should be one Information Commissioner combining the role of Data Protection Registrar and oversight of Freedom of Information; this office must be effectively resourced;**
- (p) the existing Data Protection Tribunal and appeals system should be adopted and adapted as necessary to also consider Freedom of Information appeals;**
- (q) the combined and independent function of the Information Commissioner should have just one States Committee to oversee it.**

**With regard to the question of whether it was necessary to grant an exemption to allow for the police to be able not to indicate whether or not they held information, where to do otherwise could compromise a criminal investigation, the Committee agreed to defer its decision in order that further information could be obtained from the Chief Officer, States of Jersey Police.**

The Instructing Officer was authorized to take the necessary action.

The Committee also considered a series of draft responses, prepared by the Instructing Officer in consultation with Deputy J-A. Bridge, to the submissions

received from the various respondents.

**The Committee approved the draft responses and requested that they be sent out to the relevant consultees in early course.**

The Committee Clerk was authorized to take the necessary action.