

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 19th August 2003
by the Privileges and Procedures Committee**

STATES GREFFE

COMMENTS

The Privileges and Procedures Committee has given careful 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) as the Committee’s own terms of reference, agreed by the States on 26th March 2003, give it responsibility for this issue.

The Committee would firstly remind members that when the Code of Practice on Public Access to Official Information was approved in 1999 the States agreed that the provisions of the Code should be incorporated into legislation, as stated in the proposition. Deputy Breckon’s call for legislation is simply therefore in line with an existing States’ decision. The Privileges and Procedures Committee, having already set out its preliminary views on the need for legislation in its consultation document presented to the States on 25th March 2003 (R.C.15/2003), is keen to press on with the introduction of such legislation as speedily as possible in line with the existing States’ decision.

Paragraph (a)(i) of the proposition focuses on access to records relating to financial information and refers to a period of 20 working days of access rights, a provision which the Deputy’s report points out is borrowed from the U.K. position regarding accounts and audit legislation. The Committee is not convinced that a short annual period of this nature would meet the overall objective of providing access and it would not, of course, be of use to a person seeking access outside the relatively short annual period. It should also be remembered that the question of value for money on public expenditure will be the task of the proposed Public Accounts Committee under the future ministerial system.

Throughout the proposition there is reference to a right of access rather than a right to receive copies. It is unclear whether a right to obtain copies was also intended. The proposition does not appear to follow the U.K. position regarding “publication schemes” and the provision of “core” material for public access.

The Committee is not convinced that the restriction of the right of access to those on the electoral roll is the correct approach. Although this is one possible approach (and it mirrors the U.K. provisions referred to above) the Committee’s view is that information should be publicly available and, with the current statutory provisions on the electoral roll, the right of access would not, with this restriction, extend to anyone arriving in the Island unless they had been resident for at least 2 years. This would seem to be an unnecessary restriction. The rule would also of course, prevent persons such as U.K. journalists from accessing information and this may be undesirable in the interests of openness and transparency.

The principle of right of access to materials/meetings except where a justification is provided may be a sound one. However, great care will be needed to strike a proper balance, acknowledging that there will be numerous instances where disclosure is inappropriate. Rights to attend meetings where personal data is disclosed may have implications on the data protection and human rights fronts. Transparency and openness are laudable aims, but they fit within a framework of other competing aims and are not absolute concepts. There will need to be a balancing exercise, e.g. where financial information includes personal data.

The Committee notes that any subsequent legislation will need to incorporate exemptions (probably divided into absolute and non-absolute categories). These may include information which is to be published in the future, information accessible by other means, national security, international relations (the last two to avoid any potential conflict with Official Secrets legislation), information pertaining to investigations, certain data relating to the economy, law enforcement information, certain health and safety and environmental data, commercially sensitive information, legally privileged information, audit functions, information which if released would constitute an actionable breach of confidence etc. In the case of “non-absolute” exemptions, careful consideration will need to be given to the public interest.

Members will appreciate that these are complex issues and it is for that reason that the Privileges and Procedures Committee and the Legislation Committee have set up a joint Working Party to address the interaction between access to information, data protection and official secrets matters. The Working Party has made very positive progress at its first meetings and is keen to pursue a dual approach to the issues it is addressing. Firstly it is recommending to the Privileges and Procedures Committee that steps should be taken to improve the operation of

the existing Code of Practice on Public Access to Official Information so that, for example, greater consistency is achieved between Committees. Secondly the Working Party is already considering examples of legislation on freedom of information that may be suitable for a small jurisdiction such as Jersey and is hopeful that this issue can be progressed rapidly.

The Committee commends P.34/2003 as a useful contribution to the on-going debate. However, the Committee urges caution and the need to avoid over-simplification. References to “all meetings” and “all papers” are understandable, but great care is demanded where competing and legitimate aims need to be balanced. There will be merits in the Working Party consulting widely, giving close consideration to the U.K. experience (where late 2005 is the critical timeline) and other overseas jurisdictions, and ensuring detailed discussion with the Office of the Data Protection Registrar and other interested parties.

The proposition suggests that there may be no significant financial/manpower implications. The Committee rejects this assumption, noting that the provision of proper public access to information requires resources.

The proposition risks a piecemeal approach. The Committee believes it would be preferable for Deputy Breckon to withdraw the proposition so that these issues can be considered in their overall context in a measured and orderly way by the Privileges and Procedures Committee in consultation with all members. The Committee would remind members that, as stated above, responsibility for the issue of access to information rests with the Privileges and Procedures Committee.