

STATES OF JERSEY



FREEDOM OF INFORMATION: PROPOSED LEGISLATION (P.72/2005) – AMENDMENT

**Lodged au Greffe on 21st June 2005
by the Privileges and Procedures Committee**

STATES GREFFE

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In paragraph (b), after the words “to agree that”, insert the words –

“, subject to further consultation,”.

and in paragraph (b), delete the word “incorporate” and insert the following words –

“be broadly based upon”.

PRIVILEGES AND PROCEDURES COMMITTEE

REPORT

Background

The Privileges and Procedures Committee is pleased to note that the Policy and Resources Committee is now both supportive in principle that there should be a Freedom of Information Law and that law drafting should commence as soon as practicable. It was always hoped that a common position could be reached and it now appears that this has been achieved, at least regarding parts (a) and (c) of the original Proposition. However, differences remain as to certain parts of specific policies as identified in part (b).

Legal advice

The advice from the Law Officers' Department is that the way in which part (b) is written at present, the Privileges and Procedures Committee would, if the States approve the Proposition, be bound to produce a draft law that precisely implemented every one of the policy statements made in section 17 of the Report.

As the Law Draftsman has not yet commenced work or formally advised on the structure of a draft law, precisely how the finished product might look is bound to be open to some uncertainty. The Committee would prefer to be able to respond to issues that arise either in debate or in further consultation, so as to produce the best law possible. The amendment would make this possible without weakening the policy direction outlined in the Report.

Consultation

Consultation with the Policy and Resources Committee and others has identified 4 policy issues which may need further refinement. These are –

Whether requests for information should be in writing. The Privileges and Procedures Committee continues to hold that making this a legal requirement for readily available information and which is already in the public domain, would be a nonsense. However, it accepts that the wording of the provision should not allow the uncontrolled and wholesale use of oral requests. It is not intended that those on the receiving end should be swamped or unable to prove how they dealt with a contentious request. It may be necessary to give officers the explicit authority to require a request to be in writing, when it is reasonable to do so.

Exemption regarding employer/employee relations. It has been suggested that the exemption should be widened so as to be able to refuse requests for information that would prejudice not only the resolution of a dispute but also the successful completion of other negotiations. The Privileges and Procedures Committee accepts that some change in wording may be necessary to achieve this.

Exemption concerning the premature release of a draft policy. Whether the proposed wording is now too restrictive is open to further discussion. Providing the proposal of the Privileges and Procedures Committee is not substantively undermined, the Committee is open to consider changes which clarify what is meant here.

The scope of the offences and penalties. There are concerns that at least one of the proposed offences (that of an unreasonable failure to provide the information requested) could lead too easily to a prosecution. The Committee intends that the draft law and associated guidance will provide clarification as to what constitutes an unreasonable failure. This may mean a change in wording is required. The penalties will of course be subject to advice from the Attorney General in the normal way once law drafting is underway.

Members will appreciate from these 4 points that the Committee needs some scope for refining the draft Law. Very recent additional communications from the Jersey Financial Services Commission and the Judicial Greffe have also raised issues that may need to be resolved at officer level during law drafting.

As would be expected, there will be further consultation when the draft law is substantially complete.

Resources

Whether or not the operation of the Law will demand more resources has already been addressed in the original projet. However, it is only fair to recognise that differences of opinion remain. All States departments were written to once more so as to get as good a picture as possible. The results are mixed with some believing that no extra staff will be needed because of this law by itself but others seek an additional part or full-time post. Clearly Chief Officers just do not know for certain. The Law Officers' Department would also like a further look at the training requirements.

The Privileges and Procedures Committee will continue to work with all concerned during law drafting and will of course address the matter afresh when the substantive law is debated. Some of the devices to manage the number of requests, such as charging, can be modified in the light of this further consultation. Whilst the Committee believes in the principle that as far as possible information should be free it will be of course up to others to bring an amendment to this position.

Conclusions

The Committee would like to assure Members of its continuing commitment to a robust draft Law which will still hold to the principles in the original projet.

Nevertheless, for the reasons given above the amendment is necessary. Some flexibility in the final outcome must be possible.

There are no financial or human resource implications arising from this amendment.