

PRIVILEGES AND PROCEDURES COMMITTEE

(50th Meeting)

9th February 2010PART A

All members were present.

Connétable J. Gallichan of St. Mary, Chairman
 Senator B.I. Le Marquand (not present for parts of item A1. Not present for items A2-A7 and B1-B4 inclusive)
 Deputy J.B. Fox
 Deputy J.A. Martin
 Deputy C.H. Egré (not present for item B1)
 Deputy M. Tadier (not present for the conclusion of item A1; not present for items A3-A7 inclusive)
 Deputy M.R. Higgins (not present for the conclusion of item A2; not present for items A3-A7 and B1-B4 inclusive)

In attendance -

M.N. de la Haye, Greffier of the States
 Mrs. A.H. Harris, Deputy Greffier of the States
 Miss A Heuston, Clerk to the Privileges and Procedures Committee

Note: The Minutes of this meeting comprise Part A and Part B.

Draft Freedom of Information (Jersey) Law 201-670/1(14)

A1. The Committee, with reference to its Minute No. A4 of 26th February 2010, gave further consideration to the Draft Freedom of Information (Jersey) Law 201-.

The Committee welcomed Mr. C. Borrowman, Assistant Law Draftsman, and considered the following areas:

DGOS

- a) Response time (R.114/2009 – Articles 11 and 12)
 It was noted that the States might, by Regulations, prescribe different periods for the provision of information for different public authorities or any part of a public authority, such as schools or certain functions of the police. It was therefore **agreed** that no amendment was required in respect of the comments of Education, Sport and Culture, the States of Jersey Police and the Jersey Financial Services Commission in this regard.
- b) Cost thresholds
 It was **noted** that cost thresholds were to be provided for in Regulations. In addition, Article 47(1)(a) would empower the Information Commissioner to consider an appeal relating to fees payable for the provision of information.
- c) Supply of information held for a long time (R.114/2009 – Article 19)
 It was noted that there may be occasions when certain information should not be released even after a long period, and it was **agreed** that some flexibility should be incorporated into this area through the addition of the following paragraph:

(3) *Regulations may exempt any information from the provisions of paragraph (1) or (2)*

d) Court information (R.114/2009 – Article 23)

It was **agreed** that the exemption to allow courts and tribunals to decide what information should or should not be released in respect of proceedings before it should not be amended. The Committee felt that the fact that a matter may be death related was not, of itself, relevant.

e) Personal information (R.114/2009 – Article 24)

The Committee noted the concerns of the Data Protection Commissioner and **agreed** that the Article should be expanded to allow for appropriate interaction with the Data Protection (Jersey) Law 2005.

f) Legal professional privilege (R.114/2009 – Article 30)

The Committee reconsidered whether this should be restricted information. Notwithstanding advice received from the United Kingdom (U.K.) Deputy Information Commissioner that in practice, although qualified in the U.K., this information tended not to be released, the Committee **agreed** to retain this as qualified exempt.

g) Advice from the Bailiff or a Law Officer (R.114/2009 – Article 37)

The Committee reconsidered whether this should be restricted information. Notwithstanding advice received from the United Kingdom (U.K.) Deputy Information Commissioner that in practice, although qualified in the U.K., this information tended not to be released, the Committee **agreed** to retain this as qualified exempt.

h) Information intended for future publication

The Committee **agreed** a provision, as follows –

Information intended for future publication

(1) *Information is qualified information if at the time when the request for the information is made the information is being held by a scheduled public authority with a view to its being published within the next 12 weeks.*

(2) *A scheduled public authority that refuses an application for information on this ground must make reasonable efforts to inform the applicant –*

(a) *of the date when the information will be published;*

(b) *of the manner in which it will be published, and*

(c) *by whom it will be published.*

(3) *In this Article, “published” means published –*

(a) *by a public authority; or*

(b) *by any other person.*

i) Free and frank provision of advice by officers

The Committee **rejected** the insertion of a provision, having noted that, in certain cases, this would be covered by other provisions, such as formulation and

development of policies.

j) Reputational damage

The Committee noted the comment of Jersey Finance which considered there to be a lack of provision to provide protection against reputational damage for the Island, but **rejected** the insertion of a provision.

k) Audit Functions (R.114/2009 – Article 34)

The Committee noted that certain of the key functions of the Comptroller and Auditor General were not covered by the exemption as drafted, and accordingly **agreed** as follows –

Audit functions

(1) *Information is qualified information –*

- (a) *if it is held by a scheduled public authority mentioned in paragraph (2); and*
- (b) *if its disclosure would, or would be likely to, prejudice the exercise of any of the authority's functions in relation to a matter mentioned in paragraph (2)(a) or (b).*

(2) *A scheduled public authority referred to in paragraph (1) is a scheduled public authority that has functions in relation to –*

- (a) *the audit of the accounts of another public authority; or*
- (b) *the examination of the economy, efficiency and effectiveness with which another public authority uses its resources in discharging its functions.*

(3) *Information is also qualified information –*

- (a) *if it is held by the Comptroller and Auditor General; and*
- (b) *if its disclosure would, or would be likely to, prejudice the exercise of any of his or her functions.*

l) Investigations and proceedings conducted by a public authority

The Committee noted that Section 30 of the U.K. Freedom of Information Act included a qualified exemption for investigations and proceedings conducted by Public Authorities. It was **noted** that this was covered by Article 42 of the legislation, as drafted in R.114/2009, and therefore no further action was required.

m) “State” (R.114/2009 – Article 39)

Having noted the comments of the Deputy Bailiff and the Jersey Financial Services Commission regarding the definition of “state”, it was **agreed** that this should be revised, to read as follows –

“‘State’ includes the government of a State and any organ of its government, and references to a States other than Jersey include references to a territory for whose external relations the United Kingdom is formally responsible.”

n) Parallel with the Jersey Competition Regulatory Authority (J.C.R.A.)

It was **agreed** that the parallel drawn with the J.C.R.A. in R.114/2009 regarding the role of the Information Commissioner was not a matter for the Committee and should be dealt with separately.

o) Concern regarding level of detail required for an appeal (R.114/2009 – Article

42)

The Committee noted the concerns raised in submissions in respect of the level of detail required for an appeal, and it was **agreed** that the Article should be amended.

p) Liability for prosecution (R.114/2009 – Article 45)

The Committee discussed the concerns raised in submissions in respect of this Article, and noted that it would be a crime to destroy information. It was accordingly **agreed** that no amendment was required.

q) Regulations Article 49

The Committee noted a comment that this Article was widely drafted, however, it was **accepted** that this was a normal provision and no change was required.

The Committee **requested** the Assistant Law Draftsman to update the draft Freedom of Information (Jersey) Law 201-, for further consideration at the Committee's next scheduled meeting. It was **agreed** that the Committee would also give further consideration to the draft Regulations at a future meeting.

Having been thanked by the Chairman for his attendance, the Assistant Law Draftsman withdrew from the meeting.

The Committee **authorised** the Deputy Greffier of the States to write to those who had made submissions to advise them of the Committee's decisions in the relevant areas.

Information
technology
provision for
States members.
1240/9/1(137)
1240/26(9)

A2. The Committee, with reference to its Minute No. A8 of 26th January 2010, considered whether to forward details of the corporate BlackBerry contract to all States members, as well as the ruling of the Bailiff regarding the use of laptop computers and BlackBerries in the States Chamber.

The Committee discussed whether Scrutiny should consider providing BlackBerries for its members, however, it was noted that this would preclude members who were not part of Scrutiny or the Executive from having the device provided for them. One member expressed the view that the decision on the provision of BlackBerries should rest with the States Members' Remuneration Review Body. It was **agreed** that research should be carried out to establish how the use of BlackBerries was regulated by the Executive.

The Committee also discussed the use of electronic equipment in the States Chamber, with regard to the ruling of the Bailiff on 20th January 2010. Deputy C.H. Egré **agreed** to research the possible use of Apple iPads and to report back to the Committee in early course.

Rôle of un-
elected members
of the States.
1240/6(56)

A3. The Committee, with reference to its Minute No A10 of 9th October 2009, received correspondence, dated 29th January 2010, from Lord R. Carswell, Chairman, Review of the Rôles of the Crown Officers.

The Committee recalled that a review had been established by the States to consider the rôles of the Bailiff, Deputy Bailiff, Attorney General and Solicitor General, and noted that the Panel had requested a submission from the Privileges and Procedures Committee.

The Committee discussed the areas which it might be able to comment upon collectively, and agreed that this would be limited to procedural matters. For instance, should a member of the Assembly be appointed to Chair meetings of the

States, this would result in that member being unable to vote. It was considered that matters such as this were self-evident and it was not felt appropriate to formulate a Committee view in respect of more in-depth consideration of the rôles of Crown Officers.

It was accordingly **agreed** that the Committee did not wish to make a collective submission, as this was a matter for individual members. The Chairman was **requested** to write to Lord Carswell to advise him accordingly.

The Committee Clerk was directed to take the necessary action.

Committee of
inquiry:
suspension of the
Chief Officer of
the States of
Jersey Police.
P.9/2010
1075/4/1(235)

A4. The Committee considered the proposition: Committee of inquiry: suspension of the Chief Officer of the States of Jersey Police, lodged '*au Greffe*' on 2nd February 2010 by the Deputy of St. Martin (P.9/2010 refers).

The Committee noted that paragraph (b) of the proposition asked the States to decide whether they were of opinion to appoint persons detailed therein as members of the proposed Committee of Inquiry. The Committee had regard to the provisions of the Jersey Appointments Commission code of practice for appointments to autonomous and quasi-autonomous public bodies and tribunals, and agreed that the principles set out in the code should be applied.

The Committee noted that the report accompanying the proposition did not detail the appointments process followed by the Deputy of St. Martin to identify the individuals specified. The Committee therefore **agreed** to present a Comment to the States in respect of the proposition, requesting the Deputy of St. Martin to provide information detailing the appointments procedure followed and asking that the proposition be amended, if necessary, to ensure that the correct process could be pursued should the States be minded to adopt paragraph (a) of the proposition.

The Committee Clerk was directed to take the necessary action.

Correspon-dence.

499/3(22)
499/3(26)
465/1(136)

A5. The Committee noted the following correspondence, sent following the meeting of 26th January 2010:

- (a) to Mr. B.R. Cooper dated 27th January 2010 (Minute No. A9 of 26th January 2010 refers);
- (b) to Deputy T.M. Pitman dated 29th January 2010 (Minute No. B2 of 26th January 2010 refers);
- (c) to all States Members from Deputy C.H. Egré dated 29th January 2010 (Minute No. A5 of 26th January 2010 refers).

Work
programme.

A6. The Committee noted its on-going work programme, as follows:

- (1) to continue to develop the draft Freedom of Information (Jersey) Law 201-;
- (2) to discuss the single election day and free mailing for election candidates with Senator P.F.C. Ozouf at the Committee's meeting on 16th March 2010;
- (3) to receive updates from the Public Elections Working Party, the Media

Working Party and the States Business Organisation Sub-Group.

- (4) to await further information from Property Holdings in respect of Standing Order 168 “Land Transactions”;
- (5) to consider responses to its Report: States Members’ Pension Scheme, presented to the States on 30th November 2009 (R.132/2009 refers).

Matters arising.

A7. The Committee noted the following matters arising:

F.A.M.

- (i) concern was expressed in respect of the position of the kettle in the members’ room with regard to health and safety standards;
- (ii) it was agreed that Property Holdings should be contacted to confirm that the 2-way radios in the States Building, to be used in the event of a fire, met the required standards;
- (iii) it was agreed that all non-executive members should receive a presentation in respect of the Comprehensive Spending Review.