

PRIVILEGES AND PROCEDURES COMMITTEE

(34th Meeting)

1st September 2009PART A

All members were present, with the exception of Senator B.I. Le Marquand, from whom apologies had been received.

Connétable J. Gallichan of St. Mary, Chairman
 Deputy J.B. Fox
 Deputy J.A. Martin
 Deputy C.H. Egré
 Deputy M. Tadier
 Deputy M.R. Higgins (not present for item Nos. A2 and A3)

In attendance -

M.N. de la Haye, Greffier of the States
 Mrs. A.H. Harris, Deputy Greffier of the States
 Ms. B. Lewis, Head of Information Policy, Ministry of Justice
 (Item No. A1 only)
 Mr. C. Borrowman, Assistant Law Draftsman
 (Item No. A1 only)
 Mrs. E. Martins, Data Protection Commissioner
 (Item No. A1 only)
 Mr. P. Vane, Deputy Data Protection Commissioner
 (Item No. A1 only)
 Mrs. L. Romeril, Head of Archives and Collections
 (Item No. A1 only)
 Miss A-C. 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
 200-: Ministry of
 Justice.
 670/1(8)

A1. The Committee, with reference to its Minute No. A1 of 28th August 2009, welcomed Ms. Belinda Lewis, Head of Information Policy, Ministry of Justice, in connexion with the draft Freedom of Information (Jersey) Law 200-.

The Chairman thanked Ms. Lewis for attending to discuss the draft Law and the operation of the United Kingdom (U.K.) Freedom of Information Act 2000. The Committee noted that Mr. C. Borrowman, Assistant Law Draftsman; Mrs. E. Martins, Data Protection Commissioner; Mr. P. Vane, Deputy Data Protection Commissioner and Mrs. L. Romeril, Head of Archives and Collections, were also present. A representative of the Chief Minister's Department had been invited but was unable to attend.

Cost

Ms. Lewis advised the Committee in respect of the cost limit for freedom of information applications in the U.K. The limit was £600 for central government and £400 for local government, or 3½ days worth of work for one officer. Should a department be unable to provide the information requested within that time limit, it

would be obliged under Section 16 of the Freedom of Information Act 2000 to provide advice and assistance to the requester, encouraging them to refine the terms of their request by date, event or theme.

Clearing House

The Committee was advised of the U.K. clearing house system and noted that, if a request for information concerned national security issues, the royal household, or the papers of a previous administration; or was thought to be relevant to a number of departments; it would be referred to the clearing house. Ms. Lewis agreed to advise the Committee of the triggers which would result in a request being referred.

Staffing

The Committee noted that departments in the U.K. employed dedicated freedom of information officers, who would usually be part of the records management team and would also deal with information sharing; subject access requests; publication schemes and raising the department's awareness about what should be proactively released. The U.K. did not use means testing in respect of dealing with requests and appeals against decisions, and departments had to meet their own litigation costs in respect of appeals. Ms. Lewis agreed to advise the Committee of the number of requests received since 2005, and how many of those had reached the tribunal.

Timescales

Ms. Lewis advised the Committee of a 20-working-day statutory deadline for responding to an initial request for information under the U.K. Act, although it was possible to write to the applicant to advise them of a public interest test extension. It was noted that there was no provision for a public interest test extension under the draft Jersey legislation. In the U.K. the public interest test would be applied at the end of the research process and the time taken to apply this test would not be measured under the cost limit. It was agreed that systems and policies needed to be in place in Jersey in order to enable efficient location of data, thereby enabling cost and time limits to be met.

The Committee noted an amending order to the U.K. Freedom of Information Act, under section 10(3), to allow schools and certain other educational establishments to extend beyond the 20-working-day timeline if they were closed. Consideration was also being given to enabling the removal of statutory bars in other legislation to prevent the release of information under freedom of information; as well as updating the list of bodies covered by freedom of information following public consultation.

It was agreed that the requirement under Article 19(1) of the draft Jersey legislation, for departments to supply information which had been held for longer than 30 years, could be amended so that the time limit related to the age of the information, rather than the length of time it had been held by a department. In respect of Article 29 it was noted that the exemption no longer applied after 30 years had passed, and that the U.K. may amend its equivalent exemption following a review of the 30 year rule. It was agreed that this time limit should be amendable by regulation under the draft Jersey legislation, to enable it to be promptly adjusted in line with the U.K. where appropriate.

Appeals

In the U.K., if an applicant was not content with the decision received from the department, the application would be subject to an internal review which would be expected to be complete within 20 working days. It was noted that no deadline existed within the U.K. Act for the completion of an internal review; for dealing with requests referred to the Information Commissioner's Office; or for dealing with requests referred to the tribunal. Ms. Lewis agreed to advise the Committee whether,

at present, there were more outstanding appeals as a result of departments refusing to release information following a review of the Information Commissioner, or as a result of applicants appealing against a decision of the Information Commissioner not to release information.

Public Interest Test

The current wording of Article 12(4)(b) of the draft Freedom of Information (Jersey) Law was thought to indicate that the requester should assume the outcome of the public interest test if they did not receive a response from a department within 20 days, and consideration was given to the possible revision of the wording. The Committee also discussed the possible introduction of an extension period of a given number of days should a department fail to respond to a request within 20 days.

Non U.K. Residents

In accordance with the U.K. Act, applications for access to information could be made from outside the U.K. and applicants did not have to appear at the Information Tribunal stage, so the entire process could be carried out remotely. The Committee discussed the format in which information could be distributed to applicants and noted that any fees for the provision of services such as photocopying would be dealt with by way of regulation under the draft Jersey legislation. Ms. Lewis explained that refusal letters outlining why applications for information had been turned down in the U.K. were now being drafted in a more informal way, although they continued to detail whether the information was held or not, what the exemptions were, and how they had been applied.

Neither Confirm nor Deny

The Committee noted that the U.K. Act included a clause which allowed an authority to neither confirm nor deny that it held information, as the confirmation itself could be damaging and result in the release of information that should be exempt. With reference to its meeting of 28th August 2009, the Committee noted that correspondence had been sent to the States of Jersey Police in respect of the possible introduction into the draft Jersey legislation of a 'neither confirm nor deny clause'.

U.K. Information Tribunal

The Committee discussed the make-up of the U.K. Information Tribunal and whether it may be necessary, in certain instances, for some members to have security clearance. With regard to the progression of an application for information in Jersey, it was considered that an initial decision could be made by departmental information officers, allowing the first stage of appeal to be an internal review by a Chief Officer. The Committee discussed parallels with the operation of the Island's Data Protection legislation and agreed that it would wish to discuss this with the Data Protection Commissioner at a future date.

Ms. Lewis, having been thanked by the Chairman for her attendance, withdrew from the meeting, along with Mr. C. Borrowman, Mrs. E. Martins, Mr. P. Vane and Mrs. L. Romeril.

Proposed media
working party.
1240/10(36)

A2. The Committee received a report in connexion with a proposal to establish a media working party.

The Committee noted that, following a meeting between the Chairman of the Privileges and Procedures Committee and the President of the Chairmen's Committee on 27th July 2009, it had been suggested that a media working party be established to consider the following topics -

- access to government, executive and non-executive meetings by the public;
- the use of recording equipment in respect of States related matters;
- the distinction, if any, between ‘bloggers’ and the ‘official’ press;
- audio recording of States meetings;
- visual recording of States meetings;
- the provision of information to the public;
- timely communication of information to politicians;
- the use of ‘blog’ sites by politicians and the possible regulation thereof;
- the application of Standing Orders and standards to websites/weblogs run by politicians;
- the right of redress;
- the rights of the public and/or witnesses to refuse to be filmed;
- the rights of the public and/or witnesses to refuse to be recorded.

It was agreed that the working party should consist of the Chairman of the Privileges and Procedures Committee, the Chairman of the Chairmen’s Committee and a representative from the Council of Ministers.

Composition and election of the States: revised structure (P.72/2009).
1240/22/1(49)

A3. The Committee, with reference to its Minute No. A1 of 14th July 2009, considered a comment and a series of amendments which had been presented/lodged “au Greffe” in response to its report and proposition entitled “Composition and election of the States: revised structure” (P.72/2009).

The Committee recalled that the above proposition sought to amend the current composition of the States. The Committee considered a comment on the proposition which had been presented in the name of the Minister for Treasury and Resources, as well as amendments which had been lodged “au Greffe” in the names of the Deputy of St. Martin, the Connétable of St. Clement and Deputy T.M. Pitman of St. Helier.

The Committee felt that each amendment had merit and came some way towards addressing the issues which had given rise to its reform proposals. It was agreed that there were many possible combinations and permutations for reform that appeared workable on paper, but the Committee did not consider all of them to be politically achievable. The direction set out in the Committee’s proposition was what it considered to be the best workable solution, whilst going as far as possible to meet public expectation.

The Committee directed that a comment to this effect should be drafted for approval and subsequent presentation to the States.

The Committee noted that the proposition P.72/2009 was scheduled for debate on

11th September 2009, and it was agreed that the Committee would oppose any move to defer the debate.

The Committee Clerk was directed to take the necessary action.