STATES OF JERSEY

FREEDOM OF INFORMATION: POSITION PAPER

Presented to the States on 21st December 2004
by the Privileges and Procedures Committee

STATES GREFFE

FREEDOM OF INFORMATION – POSITION PAPER

Foreword

States Members will appreciate that as the sponsoring Committee, Privileges and Procedures are keen to progress this matter but equally wants to inform Members and the public of progress, in order that they may comment should they so wish.

Key matters are highlighted in boxed paragraphs within the report. The Committee would be grateful to receive comments from States Members and the public so that refinements may be made prior to lodging of a Report and Proposition in February. This proposition will include the detailed law drafting brief and allow members and the public another opportunity to comment.

Comments should be received by 21st January 2005 and can be sent to Deputy Jennifer Bridge, Vice-President, the Privileges and Procedures Committee at Morier House, Halkett Place, St. Helier, Jersey, JE1 1DD. Please mark the envelope "Freedom of Information". Alternatively, comments may be sent by e-mail to i.clarkson@gov.je.

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1. Introduction

Freedom of Information legislation has now been under consideration in Jersey for more than a decade. In March 1994 a Special Committee was tasked 'to investigate the issues involved in establishing, *by law*, a general right of access to official information by members of the public'.

The States of Jersey introduced the Code of Practice on Public Access to Official Information in 1999. The intention was that the Code would naturally precede a Law[1]. It was initially considered to be experimental and, because it was limited in scope, the administrative costs were absorbed in existing departmental budgets. The Code was updated in June 2004 after the States unanimously approved a proposition entitled 'Measures to Improve Implementation' (P.80/2004) by 47 votes to 0. Additional to this unanimous support for the enhanced Code, many Members expressed frustration that a Law had not yet been brought forward and urged the Privileges and Procedures Committee to progress FOI as a matter of urgency. There is clearly a strong political mandate in favour of legislation. However, this must be weighed against a prevailing climate that presumes against unnecessary new laws or expenditure.

Over 50 countries world-wide have already established a law. There is also a Commonwealth model law for use by small jurisdictions so that they may introduce their own legislation without over-burdensome preparation. Those countries that have not introduced a law are largely to be found in the Middle and Far East and in Central and Northern Africa. Virtually all of what we might call Western modern-style democracies have a law in place already.

None of this, however, should prevent Jersey making its own decision and the presumption of moving from a code to a law needs analysis.

2. Administrative arrangements and individual rights

Freedom of Information law may be seen as forming part of a body of law designed to give an administrative framework to government. Examples would include the States of Jersey and Public Finances Laws, the Public Employees (Retirement) Law, other Pensions enactments and the Administrative Decisions (Review) Law.

However, Freedom of Information also falls naturally into the category of laws occupied by Human Rights, Public Records and Data Protection in that all of these are part of the concept of balancing individual rights against the increasing pervasiveness of the State and other public bodies.

In both these categories it has been historically accepted in Jersey[2] and elsewhere that a clear framework is best laid down in legislation rather than in a non-enforceable code. If Freedom of Information remains outside formal legislation it seems as if it is the 'odd one out'. Indeed, on the assumption that the public right of access to information is no less important than these other laws, this fact may be persuasive in its own right. However, it does not by itself mean that Freedom of Information should become embedded in law.

In introducing a law, governments have signalled to the public that they are making a commitment to openness and that they seek to improve public knowledge of how government works. Public engagement in the political process is seen as a hallmark of the modern democracy. If the choice is made to leave the matter of Freedom of Information as a Code it will remain essentially an administrative guideline and no more.

The Committee believes that the force of law is required to precipitate a culture change in the public sector and move the balance in favour of ordinary citizens, giving them a legal right of access to government information. Despite good intentions at the inception of the code it has not caused a culture change in the States hitherto.

3. The rationalisation process

In other jurisdictions Freedom of Information legislation was regarded at the outset not as a standalone law but an integral part of reform and as absolutely fundamental to the maturation of democracy.

In Jersey, the separate development of data protection and public records laws inevitably overlaps with and impinges on the concept Freedom of Information. Currently the Committees responsible are Finance and Economics for data protection, Education, Sport and Culture for public records and Privileges and Procedures for Freedom of Information.

Logically the three should be looked at as a coherent whole. The drafting of a Freedom of Information Law presents the Assembly with that opportunity. Very careful consideration will be given to all relevant existing legislation to ensure that the new law occupies a complementary position.

The Public Records (Jersey) law 2002 came into force on 1st August 2003. The Privileges and Procedures Committee is aware of inconsistencies of approach between Committees in giving public access to information that is not yet in the open access period (normally 30 years) and is not exempt for other reasons. The proposed law will need to offer more specific guidance and to achieve this, the Committee is taking advice from the Jersey Archive Service.

The Committee propose that it should clarify within the draft law access rules to govern information which was created before the code came into force but which is not yet in the Open Access period.

Furthermore, the Committee will undertake further consultation with a view to recommending whether the Privileges and Procedures Committee should in future be responsible for all 3 laws. The aim of such a possible approach would be to ensure rationalisation and coherence are maintained for the future. This would prevent further divergence and unnecessary expansion of legislation and would be very much consistent with the regulatory reform initiative.

4. Reinforcing States aims

From the above it can be seen that a law would be consistent with other public policy matters which have already been addressed through legislation. It would create a framework that could be seen to be apolitical. It would also define clear statutory responsibilities, duties and rights and be enforceable in a way a code can never be.

The States have recently approved 2 high-profile policy documents – the Strategic Plan 2005 to 2010 (P.81/2004) and the Public Sector Reorganisation: Five Year Vision for the Public Sector (P.58/2004) – that set out aims for the next 5 years and make a commitment to greater transparency and accountability. Creating legally enforceable Freedom of Information rights for the people of Jersey would, in a single emphatic act, explicitly reinforce these aims.

For example, Aim Number Eight of the Strategic Plan approved by the States on 30th June 2004 sought to 'reconnect the public and the States and promote community involvement in Island affairs'. The document recognised Jersey's low levels of voter turnout – regularly less than 30% – as evidence of a democratic deficit in the Island and disenchantment with government.

Aim 6.2.1 sets out to "Promote a better understanding of the issues facing the Island today and encourage debate and aid informed choices." Aim 8.2.4 states that we should "ensure appropriate transparency and openness in Government," whilst Aim 8.3.3 states that we should "develop a more consultative approach to governance and encourage public participation in policy making." All these will be aided directly by the proposed law.

The £9.4 million Visioning Project asserted– 'The need for change in the public sector is being driven by major external changes and a general political unease generated by poor public perception of the States of Jersey and the public sector. There is a disconnection between the electorate, politicians and the public sector in Jersey that is unhealthy and breeds frustration and mistrust throughout the community.'

The recent publicity surrounding the JCRA Audit Report, which included serious allegations of mismanagement, served to reinforce negative public perceptions.[3] Under a Freedom of Information Law the title of that report would have been included on the Information Asset Register and much, if not all, of it would have been available

for release without the public being dependent on a leak.

From the public perspective, the force of law carries great weight and offers a legal right that simply cannot be offered in a policy or Code. Under the current system an individual seeking information relies, to an extent, on goodwill of the officers involved. This can be a deterrent for researchers who assume there is a culture of secrecy. A law would replace this element of chance with a system where there were a statutory duty to assist.

The success of a culture change will be difficult to quantify but only a Freedom of Information law provides concrete proof that the States is serious about putting the benefit of the public above the convenience of politicians and civil servants.

5. The demand for information

Since the Code came into force, on 20th January 2000, the recorded number of requests for information may seem low. However, recorded requests do not tell the whole story and anecdotal evidence indicates that quite a number of informal and unrecorded requests are being dealt with on a daily basis. Additionally, the analogy with a road that is claimed to be very dangerous is apposite: Imagine such a road which also produces very low accident statistics. The low accident rate is not proof that the road is actually quite safe but evidence that drivers avoid it and find another route! The question must be asked whether a number of members of the public have been put off and either gone away disgruntled or found an alternative, unofficial, access to information.

Historically, the record of applications where the Code has been specifically mentioned is as follows –

Jersey

Year	*Number of recorded requests*	*Number of initial refusals*
2000	36	5
2001	15	3
2002	37	2
2003	62	2

Comparison with other jurisdictions is not easy and equivalent information from England and Wales has not yet been obtained. However, the Scottish Executive publish comparable data.

Scotland

Year	*Number of recorded requests*	*Number of initial refusals*
2000	44	7
2001	17	6
2002	253	3
2003	n/a	n/a

Considering the largest of these, a per capita comparison of the 253 requests made in 2002, in a Scottish population of over 5 million would represent just 4.4 requests per annum in Jersey.

Relative to Scotland's experience, the number of requests in Jersey is significant. However, for those who seek information, having a right to access is the issue, not the number of applicants.

6. Deficiencies of the Code

The deficiencies of the existing Code were highlighted by several States Members during the recent debate on the improvements.[4] The rapporteur, Constable Derek Gray, stated: 'This Code established a minimum standard and committees, in accordance with States policies, should meet these standards. Unfortunately in some cases the

minimum has also become the maximum, and this was never the intention of the Code.'

As a testing ground, the Jersey Code has served a valuable purpose in dispelling myths that allowing public access to data is unworkable, over-burdensome to States Departments or diverts attention from core work.

If the Code remains voluntary, politicians and public servants know that they can in effect sidestep the publication of embarrassing or difficult information. Experience in the U.K. has shown that this is not a hypothetical scenario. U.K. Ministers have refused to comply with 3 rulings of the Parliamentary Ombudsman under the existing Oper Government Code[5], which has been in operation since 1994. The Labour government simply ignored the decisions that it did not like, most notably regarding a list of gifts given to Cabinet Ministers. The lack of sanctions means there is always an alternative to compliance. It tells politicians and civil servants they never really have to change.

7. Other benefits of a Law

The introduction of a Freedom of Information law raises the same issues about effective record-keeping as the Data Protection Law, with which there are important parallels. In the long term it will be healthy for politicians, civil servants and the public alike to be able to access documents easily. There is an argument that this will improve the quality of both debates and decision-making.

U.K. experience[6] shows that organisations who manage their data efficiently will find the transition to a law relatively painless, while those that are less well-organised will experience some difficulty and greater manpower implications. The benefits of improved records management should not be underestimated.

In this regard, it should be noted that the Education, Sport and Culture Department engaged a records management specialist from the U.K. in order to aspire to best practice with regard to data protection and Freedom of Information. The study has produced a number of recommendations that could be valuable corporately and the department will continue to take the lead.

Within the law the Committee will propose a power to make Regulations to vary exemptions and to vary which public authorities are covered. There will be a power to introduce a publication scheme and to modify the role of the Commissioner if increased monitoring or enforcement were needed. This makes the law a flexible instrument capable of evolving with time.

Consistency with other jurisdictions is not just about keeping up with other modern states. It is also about recognising that a considerable part of Jersey's professional workforce is trained at least in part or has worked in other western countries. Proceeding with the law will prevent a growing disparity of standards between Jersey and other democracies.

The current code is followed by Committees and departments. Being a code it cannot be made a requirement for any other group. The draft law will propose a list of public authorities which can be wider than that narrow definition should the Assembly so wish it. If official information is held by others such as a States owned company or the JCRA for example, it can be argued that, providing the information is not exempt in accordance with the agreed list of exemptions, then it should not be withheld. It is only through enacting a law that the States will gain the power to put such information into the public domain.

The proposal is for the scope of the draft Law to be wider than the existing code so as to provide for the release of public information held by other authorities as well as the States and government departments.

8. International perspective

As already stated more than 50 countries have some form of Freedom of Information legislation. This of course varies in quality and effectiveness. In the U.K., public rights of access under the Freedom of Information Act (2000) come fully into force in January 2005 following a long implementation period designed to enable U.K.

authorities to set up publication schemes and comply with the new legal requirements.

The U.K. Freedom of Information Act is not regarded as a good model for Jersey to follow. It has been widely criticised as cumbersome and ineffective, principally because of the range of exemptions and inclusion of a ministerial veto. Nevertheless, the British public's right to information is enshrined in the statute book.

If the States decides not to proceed with a law, it would be extremely difficult to justify why Jersey residents should be less legally entitled to government information than their counterparts in the U.K. or a range of other countries.

Conversely, the introduction of a sensible, balanced and workable law could bring public relations advantages for Jersey on the international stage. This could help counter some of the adverse criticism that the island can attract.

In addition, adoption of a Freedom of Information law, and more particularly the publication scheme that could follow, could enable Jersey to comply with the Aarhus Convention on Access to Environmental Information and Directive 2003/35/EC of the European Parliament[7], which guarantees public access to environmental information and participation in decision-making. The Environmental Services Unit is currently researching the matter but has advised that Jersey could not currently meet the criteria, which include free access to government-held data that would be possible under a Freedom of Information law.

A gap exists in Jersey that is covered in the U.K. by other statutory instruments governing access to information. These include the Environmental Information Regulations 1992, which put into effect E.C. Directive 90/313/EEC, and the U.K. Local Government (Access to Information) Act 1985. Nothing similar exists in Jersey.

9. Costs and disadvantages of a Law

There are of course disadvantages in progressing the matter and there are benefits in maintaining the code. It has already been established that a Freedom of Information law, by its very nature, will generate cost rather than income.

It has been argued that a disadvantage of putting the code into law is that there will be an increase in bureaucracy just at a time when the initiative has been taken to look at 'red tape' and reduce it. Bearing this in mind, the proposed law has been designed to keep bureaucracy to an absolute minimum by its 'light touch' approach.

The Committee propose enhancing the role of the Data Protection Registrar to take on Freedom of Information. The intention is to limit the enhancement only to what is absolutely essential. As a result, to fulfil the additional role a reallocation of resources may be needed.

It is claimed that the number of requests for information that may get as far as the Commissioner could create a bureaucratic burden. In fact the number is estimated to be extremely small and most likely will not exceed 2 or 3 cases a year, as illustrated in the table above.

If a comprehensive publication scheme were being recommended at this stage then it would be true that new costs and more work were being imposed on individual departments too. It is not. It would also be true that extra work would be involved if all pre-existing data were being opened up to access simultaneously. This process would entail classifying all information and perhaps imposing a standard computer hierarchy of all future and historic data. Whilst it is not recommended to do this yet, the issue should be kept alive and further work will be done.

So, the law will not actually give the public any more 'red tape' whatsoever. It will provide a statutory framework for the individuals who make up the public service and other public authorities to comply with but it will not add to the procedures that the public have to go through at all.

There are concerns amongst some professional bodies within the public service. For example the release of magistrate's court records must be carefully considered where they may contain information that is personal. Mental health records would also need to be appropriately protected. However, the issue is certainly not

insurmountable and can be covered within the exemption rules.

Another concern is that a law may encourage evasion techniques such as holding unrecorded meetings. The answer must be to encourage the highest standard of professionalism and openness amongst public authorities and for States Members to lead by example. Little else can be done as there will always be attempts to avoid what is feared.

A further issue is that there may be a cost to the individual who wishes to access information. The Committee's view is that information that would be free should include all agendas, 'A' agenda Minutes, all associated papers and annual business plans. Where a department publishes additional material it should as far as possible be available on the appropriate website or by e-mail, although in some cases it may be necessary to provide hard copies[8]. That would be a decision for the department concerned.

Guidelines for the coming into force of the Freedom of Information Act in England and Wales are that most information should be free. However, this will not apply where retrieval costs may exceed £450 for local government material and £600 for central government material.

The Committee's intended policy within the draft law will be that requests for information that is easily available should not incur any charge whatsoever.

10. Information Assets Register, Publication Schemes and Records Management Policy

Under the U.K. Freedom of Information Act, authorities were required to produce publication schemes describing the range of information they publish. Evidence shows that they have done so with varying degrees of success and reluctance – but usually at great cost.

The smaller scale of public administration in Jersey means that separate schemes for each department may be cumbersome and prohibitively expensive at the outset of the law. The Information Asset Register (www.gov.je/statesreports) provides the starting point for a more user-friendly option tailored specifically for Jersey. The public already have the ability to download and print copies of many of the non-exempt reports straight from the list. This could be enhanced in due course to provide a publications scheme.

This is a small-community manageable initiative. It clearly complements other major initiatives underway such as the production of all States departments' Business Plans in a standard format which will then be collated and made available to all. There is also the new call centre project and the regulatory reform initiative.

It may be that a more comprehensive publication scheme should be developed in the future. Whilst such a scheme could be introduced under an amended Code, there is an advantage in the formality of using a law to do this and it gives extra authority to what is being required. The proposed Freedom of Information Law would enable the States to introduce this by Regulation.

A legal duty of records management already exists, as clearly stated in Article 38(1) of the Public Records (Jersey) Law 2002. Further provisions can be made formally by States Regulation under Article 38(2) Responsibility for this rests with the Jersey Archive Service. However, publication schemes and records management are 2 sides of the same coin.

It is therefore proposed that the Privileges and Procedures Committee should continue to monitor and review the need for a publication scheme. Both records management and publication schemes should be looked at together to ensure a commonsense and manageable process.

11. Monitoring

The issue of how to secure effective and low-cost monitoring is never easy to resolve but effective monitoring is surely a necessary goal whether Freedom of Information is written in law or a code.

The Committee proposes that a 'light touch' process of minimal official monitoring would place such a role in the hands of an independent Information Commissioner who would be given a statutory duty to report annually on the practical working of the law. There is logic and convenience if that person is also the Data Protection Registrar.

The importance of placing Freedom of Information into a legal framework is that it shifts ownership clearly to the individual member of public and away from a purely administrative procedure. This shift allows the individual to become part of the monitoring of effectiveness, in that once the code becomes law he or she then has new rights and can insist on them. A code leaves the onus on the shoulders of the administration alone.

The Committee propose that the process of official monitoring and oversight should be carried out by an independent Commissioner with statutory powers. The recommendation is that the Commissioner should also be the Data Protection Registrar and thus avoid a new bureaucracy being set up.

12. Enforcement

One of the absolutely central reasons for deciding on whether a matter should be left as an administrative code or a matter of public law is that of enforcement. It is by definition only through law that one can provide statutory enforcement. It is a measure of the importance placed on the subject matter that it should be embodied in law.

The comparison with other laws is apposite: In the draft Public Finances Law it has been seen to be necessary to have some penal sanctions to ensure enforcement and it is interesting to quote directly from the projet: "The existing Law is lacking in this area as compared with other jurisdictions, with virtually no sanctions and no penalties for non compliance with its provisions. The new Law has been given "teeth" in that there is set out a number of offences and penalties relating to the Law which have been approved by the Attorney General."

Three examples from the draft Public Finances Law are of interest: Firstly, "*Article 58* makes it an offence to fail to provide a record or information when required to do so by a person acting in accordance with the Law." *Article 64* provides that a person can claim certain privileges against disclosure of information but cannot refuse to disclose information on the grounds that doing so may tend to incriminate the person ……." In Article 65 the Royal Court is given a specific role to order compliance "to produce a record that is in the person's possession or under the person's control; or … to provide any information that the person is able to provide."

These Articles reveal a desire to legislate with regard to information. The need to do so has been with us for a long time and can of course be found in the Island's Official Secrets (Jersey) Law 1952, where national security makes it essential that we guard sensitive information.

Such laws show the obverse to the Freedom of Information concept – on one side there is control of information and on the other there is access. For many, it is natural that a mature and confident democracy should want to make rights of access enforceable in law, in the same way as the duties are.

The Privileges and Procedures Committee propose to introduce specific offences and penalties so that enforcement can be legally binding. These will be detailed in the Appendix to the Report and Proposition.

13. Appeals, the Administrative Decisions (Review) Board and a Tribunal

Currently, because the code is just that, a code for officials to follow, and not enforceable in law, the only appropriate mechanism when an applicant has had access to data refused has been the administrative procedure of taking the matter to the Administrative Decisions (Review) Board. The Board can investigate and find that the original decision should be reconsidered.

This reconsideration may mean that the same decision is reached again. If the Committee does reach the same decision, any Member may then bring a proposition to the States to ask the Committee concerned to reconsider its

decision again but even this is not binding. Furthermore, whilst the Board is entitled to find an administrative decision has been made contrary to law (Article 9(2)(a)) it has no power to enforce the law.

Crucially, it can be seen that such a process is a political and not a legal one and it may well not be resolved satisfactorily.

Furthermore, it is traditional for governments to seek to ensure separation of power between the executive, the courts and the legislature in order achieve a sensible balance and avoid a concentration of power. In Jersey that is achieved in part by the separate and independent functions of the courts and the States Assembly.

As a solution to this difficulty, the Freedom of Information law would introduce a legal appeals process whilst not prohibiting the use of the Administrative Decisions (Review) Law if it were thought appropriate on certain occasions. This process would make full use of the existing Data Protection Tribunal (reincarnated as a new Information Tribunal) and ultimate referral to the Royal Court if necessary.

Apart from other arguments in favour of this route the Court provides an independent and impartial tribunal that fully complies with Article 6 of the European Convention on Human Rights[9].

It is ultimately a decision for Members as to whether an administrative and political process is sought in order to govern Freedom of Information or whether Members would prefer to establish the policy, make the law and leave enforcement to due legal and judicial process.

The Privileges and Procedures Committee propose to modify the Data Protection Tribunal so that it becomes the Information Tribunal with the Royal Court as final arbiter. The Administrative Decisions process would still be available but would not need to be written into the law.

14. Training

The Code has provided a valuable learning experience for the public sector and disproved concerns that it would overburden the administration and divert attention from core government tasks. A system is in place with Information Officers in every department and this will not change significantly. Because the States has operated the nascent Freedom of Information regime since 2000, and because it complements other policy initiatives, the move to a law would be an extension of pre-tested principles not a leap into the unknown. Staff would require some training but would not be starting from the beginning.

15. Political and public support

Political support has been strong. On the matter of a Register of Reports (P.196/2003) the Finance and Economics Committee said "the Committee supports the assertion of the Privileges and Procedures Committee that this issue would be better addressed within the overall context of a Freedom of Information Law." In its comments on a Public Access Proposal brought by Deputy Breckon (P.34/2003) the Policy and Resources Committee stated "The Committee accepts that legislation in this area would be desirable, and provision has been made in the 2004 Legislation Programme ....." That Proposition was debated as recently as 27th April this year and failed largely because neither the Policy and Resources nor Privileges and Procedures Committees believed it offered quite the right way forward. However, the principle of a need to legislate was never in doubt.

The Committee published a detailed Freedom of Information Consultation Paper (R.C.15/2003) in March last year. This addressed the key issues and was received warmly. As a result of that positive response it made a successful law drafting bid and the law drafting time features in the 2004 Resource Plan.

All Committees were written to in August this year and invited to comment on both the adequacy of the exemption list and the principle of a law. Seven gave specific and constructive replies, of which four were confident that a law was needed, one felt it was not a Committee matter and should be left to individual members and one was divided. The seventh, Policy and Resources, is now opposed. This opposition seems to stem from a

belief that the Code is working well and that a desire to pursue Regulatory Reform and in particular reduce 'red tape' should now take precedence. The Committee dispute the efficacy of the Code and have no desire to produce a burdensome system.

The Citizens' Advice Bureau is supportive of a law as a matter of policy. Not surprisingly it has been the Media who have been very supportive on philosophical grounds alone. There is a belief that there is a traditional culture of secrecy which needs to be combated. Removing both this perception and the reality where it exists must be based on how best to benefit the public and not how to protect the politician or civil servant.

A key issue raised by the Media has been whether the net of exemptions has been thrown too wide. The Committee shares the concern yet wishes to tread very carefully. It is noted that section 36 of the Commonwealth model law allows disclosure of exempt material in the public interest. However, the Committee are mindful that alongside such a power to release exempt material there must also be the appropriate protection for the individual against a release which was motivated by malice or was not justified by public interest. The celebrated Naomi Campbell case[10] gives useful guidance on the matter as does the United Kingdom Code of Practice of the Press Complaints Committee. Further guidance on what constitutes public interest has recently been given in the European Court of Human Rights and will need careful analysis[11].

The Committee propose two ways of addressing public interest: firstly that by Regulation the States will be empowered under the Law to alter the exemption list if it is found to be too restrictive and secondly it is proposed to create a public interest power to release particular information that would otherwise be exempt.

16. Further consultation

Consultation will continue. Once the Report and Proposition has been lodged in February, members and the public will have the opportunity to comment on it and amend it if appropriate. If this Report and Proposition is accepted by the Assembly, the Committee will be charged to develop a draft law in-line with it and this draft law will also go out to consultation and will be made available to all States Members, the public and interested groups. This will enable final refinement to take place.

17. Manpower implications

There are no manpower implications at this stage as arrangements are already in place for law drafting and the necessary officer support.

The manpower implications of implementing the law are very much dependent on how far States Members wish to go. In determining precise needs, regard will be given to the review of resource requirements currently underway at the office of the Data Protection Registrar.

Given the reduction in Committees and the rationalisation that will result from the MOGR programme (which comes into full effect in January 2006), the Privileges and Procedures Committee hope that resource requirements can be met, without increasing the overall number of States employees.

18. Financial implications

There will be no financial implications until 2006 at the earliest. Members should be mindful that from the public point of view the existing Code is still deficient in several major aspects. Even if the States decides not to proceed with a law these shortcomings, such as the lack of a power to release information in the public interest and an inadequate monitoring provision, have to be addressed. So, the measures required to strengthen the Code adequately will involve additional expenditure as well.

The Committee undertakes to ensure there is an independent review of financial and manpower requirements after the Law had been in operation for a year.

19. Next steps

The Committee will bring this period of consultation to a close at the end of January and will present Members with a Report and Proposition in February. It will include detailed law drafting instructions. Subject to approval by the States these instructions will be drafted into law and brought back to the States as soon as possible.

20. Conclusions

The case has been spelled out. The issues both for and against a law have been presented.

Rejecting a Freedom of Information law in favour of a voluntary code leaves the balance of power regarding access to information firmly with civil servants rather than the public. This could reinforce the impression that, despite high-level policy pronouncements, that States ultimately values secrecy more than transparency and accountability.

Failure to adopt a law means that the policy objectives identified in the Strategic Plan and Visioning Project will be undermined and public support for government reforms will suffer.

Members of the States and the public are asked to comment on this Report directly to Deputy Bridge, by 21st January 2005 so that all views can be taken into account before the Committee lodges the Report and Proposition containing detailed law drafting instructions.

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[1] *This statement is made on the basis of –*
F&E's comments on Deputy Troy's proposition P.196/2003;
P&R's comments on Deputy Breckon's proposition P.34/2003 (debated April 2004);
PPC's Terms of Reference in Act of the States 26th March 2002;
Public Access to Official Information: Code of Practice P.38/99, approved 26th July 1999.

[2] *This statement is based on the facts of the situation – administrative arrangements and individual rights have historically been put into law and thus have set a precedent.*

[3] *Jersey Evening Post: Page 1, 28/6/04, Pages 8&9 and Editorial 29/6/04.*

[4] *See transcript of States Debate of P.80/2004 on 8/6/2004.*

[5] *Maurice Frankel, Director, Campaign for Freedom of Information, July 2003.*

[6] *Publication Schemes: Examples of Good Practice on www.cfoi.org.uk*

[7] *The Aarhus Convention, website www.unece.org/env/pp/*

[8] *It is already established practice for certain information to be charged for, such as States Propositions, Reports and Laws.*

[9] *The route via Information Commissioner, Tribunal and Royal Court does not preclude the Administrative Review Board method but as explained the latter is political. Politics and the enforcement of the law should be kept separate.*

[10] *See Campbell -v- MGN Ltd. [2004] UKHL 22.*

[11] *Von Hannover -v- Germany [2004] EMLR 21.*