Scrutiny Management Committee

FREEDOM OF INFORMATION REVIEW: EVALUATION OF THE STATES OF GUERNSEY'S CODE OF PRACTICE ON ACCESS TO PUBLIC INFORMATION

14 August 2020

Contents

Acronyms, Abbreviations and Terms

Acronym, Abbreviation and Terms	Definition
API	Access to Public Information
FoI	Freedom of Information
GDPR	General Data Protection Regulation
IoM	Isle of Man
Reasonable Request	A request is not irrational, frivolous or vexatious
SAR	Subject Access Request
SSP	States Strategic Plan
The API Code / The Code	Code of Practice on Access to Public Information
The Committee/SMC	Scrutiny Management Committee
The States	The States of Guernsey

1. Executive Summary

The Scrutiny Management Committee launched this review of the Code on Access to Public Information, and the States' commitment to freedom of information (FoI), in 2019. A Review Panel was formed comprising Deputy Green, President of the Scrutiny Management Committee and Chair of the Review Panel, Deputies Merrett and McSwiggan and Advocate Harwood, a call for evidence took place during the third quarter of 2019; research on FoI regimes in Jersey and the Isle of Man was carried out; and a public hearing was organised in January 2020. This report summarises the findings of that work, and sets out the Review Panel's recommendations.

This report sets out the background to Guernsey's current access to information regime, from 2010 to the present (Section 3), including key States' decisions.

It outlines the review process (Section 4) and identifies the key findings arising from the research and evidence presented to the Review Panel, on a thematic basis (Section 5). Additional supporting information is included in the appendices and Hansard Transcript of the Public Hearing[1].

Finally, it sets out the Review Panel's conclusions and recommendations in Section 6. In summary, these are:

1. That a FoI law should be introduced in Guernsey, focusing on the creation of a proportionate independent process for appeals against the application of exemptions; the creation of clear timeframes for responding to information requests; and the introduction of automatic disclosure rules.
2. That the independent appeals function, under any future FoI law, should be attached to an appropriate, existing statutory office or function, rather than being separately established.
3. That responsibility for the development of policy and legislation, in respect of FoI, should be included in the mandate of the Scrutiny Management Committee with immediate effect.
4. That the Scrutiny Management Committee should develop proposals to address recommendations 1 and 2, together with an assessment of the financial impact of their introduction, no later than the end of 2022.
5. That the existing Code should be renamed the 'Freedom of Information Code' with immediate effect, and that an ongoing programme of public awareness raising in respect of the Code, should be carried out.
6. To agree that the CIO should hold the role of an information champion within the States', with responsibility for reviewing and challenging the use of exemptions;

[1] Numbered references to the Hansard Transcript are included throughout the Report

coordinating requests and collating data; and helping to raise awareness of, and improve engagement with, the States' FoI responsibilities, across the public sector.

7. That the CIO should review annually progress made towards greater proactive publication of material by the government.
8. That further consideration should be given to promoting the development of an active and engaged civil society which can articulate interests and elevate individual grievances into broader concerns and to integrating the principles of Open Government across all States' work, in order to support the culture change required for an effective FoI regime.

2. Chairman's Introduction

My Committee's review into the effectiveness of the existing 'Code of Practice on Access to Public Information' (the 'Code') followed a suggestion by made by the States in 2013, when the Code was introduced, that the Code's progress *'could be measured and benchmarked by one of the parliamentary scrutiny committees*.'[2] Our objective was to determine whether the Code has succeeded in creating the intended culture of openness, accountability and good governance and thereby increased trust and confidence in government. If there are weaknesses in the way the Code is operating could they be rectified, or does Guernsey need to go down the statutory route with a full FoI law, as Jersey and the Isle of Man have done?

The Review Panel believes that the current COVID-19 pandemic has highlighted the importance of openness and transparency to the public. At the start of the pandemic, Public Health expressed its desire to be as open and transparent as possible with the public regarding the current health crisis and since then it has provided consistent and timely information including statistics and its decision making rationale on an almost daily basis. My Committee has noted the positive response of the public to its proactive stance and the positive manner in which this engendered public trust and confidence in the authorities.

The Review has considered current guidance, policies & procedures, undertaken its own analysis of requests to date and looked at the workings of FoI arrangements in Jersey and the Isle of Man. The Review Panel has also considered whether the API Code can be improved by the introduction of an appeals mechanism, independent of the civil service.

My Committee is aware of changing expectations regarding FoI and the requirements for openness, transparency and accountability while also balancing public interest alongside rights to personal privacy and protection of information. The implementation of the new General Data Protection Regulations (GDPR) in 2018 introduced yet more complexity with regulators being required to greater understand the interplay between the different rights and responsibilities.

The Review Panel issued a call for evidence through the media followed by a direct approach to specific stakeholders and relevant bodies in other jurisdictions. We were, I am sorry to say, disappointed by the poor response, especially from the media and civil society, both of which we would have assumed to have a major interest in the subject. The lack of engagement could be a sign of satisfaction with the Code's workings but we fear that it is more a reflection of a general apathy and quite the opposite of the public engagement which FoI measures are intended to stimulate.

[2] https://gov.gg/CHttpHandler.ashx?id=83312&p=0 par 9.5

As with any evaluation of a measure it is important to have a vision of what 'success' might look like and, in this case, we took it to be achieving a cultural shift to greater transparency and openness: that means having both an open government and an engaged public. Simply generating a large volume of information requests from individuals which concern only specific grievances, will not by itself create a better-informed citizenry and greater involvement in public affairs. Guernsey lacks the organisations and campaign groups which elsewhere help formulate those specific complaints as broader concerns and this is a part of the picture that we believe needs to be addressed.

Given the lack of explicit calls in the evidence for a FoI law, it will seem surprising that the Review Panel's conclusion is that Guernsey should go down that route. Indeed, it was not what I expected when we began this inquiry. Our reasons are contained in the report, but the crux of the case is that while we accept the need for a system that is proportionate, the present API Code's credibility is undermined by its lack of an independent appeals process and this weakness is widely accepted, not least by the Policy & Resources Committee (P&R).

Where we differ from P&R is in the solution: for an appeal system to have integrity it has to be able, on the grounds of an overriding public interest, to overturn the States' refusal to disclose information. Such a decision can only be exercised by a body or individual with a high level of authority. Once that is accepted then the difference in cost between an appeals body (with the necessary weight) under the API Code and one backed by a FoI law becomes less evident. The other cost objections which were raised by P&R, relate to the costs of operating a system to handle requests and to answer them; these, we consider, will be almost the same irrespective of whether we are talking of a code or a law. With the cost objections largely dispensed with, the case in favour of the clear cultural signal which would be sent by introducing a FoI law becomes much harder to resist.

The Review Panel held a public hearing in January 2020 to obtain additional evidence and to test P&R's written submission. The witnesses were: Deputies Roffey and Gollop, Mr Nick Mann, Guernsey Press News Editor, Ms Emma Martins, Data Protection Commissioner[3], Deputy St Pier, President of the Policy & Resources Committee, Lt Col Colin Vaudin, Chief Information Officer and Mr Rob Moore, Senior Media and PR Officer.

[3] Ms Martins answered questions from her personal perspective only

3. Background

3.1. Guernsey's commitment to open government and transparency, and to freedom of information, has now been in development for a decade. Box 1 recaps the key events that have led to the current position, and which provide the context to this review commissioned by the Scrutiny Management Committee.

Box 1

27 October 2010	**Debate on the States' Strategic Plan**
	A successful amendment from then Deputies Rhoderick Matthews and Sean McManus led the States to direct the Policy Council '*to consult with all States Departments and Committees and then to report to the States of Deliberation by no later than December 2011, setting out options for improving open government and transparency and establishing a corporate policy on freedom of information and open government*.'
2011	**Crowe Report – an Information Strategy for the States of Guernsey**
	The Policy Council commissioned Belinda Crowe, a UK FoI expert, to produce an independent report into all aspects of a FoI regime. The Report, which was published on the States of Guernsey website in September 2011, said that: '*If, when and how to legislate is a matter for the States but much can be done now, without legislation, to make transparency and openness meaningful, and accountability real, by making information available proactively at the earliest possible time'….'Taking the time to put the right information management processes in place and to create the right culture, whilst steadily increasing its proactive release of information, will create a solid foundation for proper consideration of the right statutory framework for Guernsey*.' The first steps recommended by the report included: creating a strategic communications function; publishing information on salaries and expenses; introducing Hansard for the States and parliamentary Committees; allowing public access to Scrutiny hearings and Committee meetings; and putting in place resources to support the Information Strategy. These first steps were envisaged as the foundation of an ongoing process.
30 July 2013	**Policy Council report on a States of Guernsey Policy for Access to Information**
	Following the 2012 General Election, the new Policy Council considered the recommendations of the Information Strategy. They

	proposed introducing a non-statutory Code on Access to Public Information, rather than a FoI Law. The Policy Council considered the '*importance of the bigger picture'* and '*proportionality'* in making this recommendation. They said that: '*It is clear that putting an effective API process in place will create a solid foundation for proper consideration of the right statutory framework for Guernsey, in due course…the Code of Practice does not need to be made on a statutory basis; nor will it need to be assumed that it should lead to statutory framework*.' Their Policy Letter stated that: '*The most important step at this time is to adopt constant good practice across the States and develop the right climate and culture before beginning to consider if a statutory framework is required...The clear lessons from jurisdictions that have adopted statutory FoI frameworks is that, ironically, such frameworks can have a detrimental impact on open government unless consistent good practice to agreed and measurable standards is put in place first*.' The Policy Letter, together with several amendments, was approved by the States, and work began to implement it.
	Relevant to this review, the Policy Letter also recommended that, '*In order to maximise the effectiveness of a phased approach … its [the Code's] progress could be measured and benchmarked by one of the parliamentary scrutiny committees*.'
28 May 2014	**Deadline Missed & Chief Minister's Update**
	In the States' Resolutions of 30 July 2013, the Policy Council was directed to report back within a year with their *'assessment of the feasibility, desirability and potential cost of providing a right of appeal to an independent person'* when a request to access information was refused. In his update in May 2014, Deputy Jonathan Le Tocq (then Chief Minister) explained that this work had not progressed, as priority had been given to implementing the Code itself. He added that: *'The Policy Council's view is that this Code remains a proportionate approach to the maintenance and improvement to the standards of open government within a small jurisdiction. The*

	practical application of the principles in the Code will foster greater transparency across the States.'
Q1 2015	**Deadline Missed**
	In the States' Resolutions of 30 July 2013, the Policy Council was directed to report back in quarter 1 of 2015 on the effectiveness of the Code of Practice, and any recommended changes; and to examine the feasibility of introducing automatic disclosure rules similar to the UK '30 Year Rule'. This work was not brought forward to the States' at that time, or subsequently.
2017	**Internal review by the Policy & Resources Committee**
	The Policy & Resources Committee carried out an internal review of the effectiveness of the Code of Practice, which led to a number of recommendations for change, including: • All questions and responses under the Code being published on gov.gg; • Work being carried out to raise awareness of the Code within the public sector, and the wider public; and • The Chief Information Officer taking responsibility for reviewing all proposed uses of an exemption under the Code.
29 March 2017	**Update from the President of the Policy & Resources Committee**
	Deputy Gavin St Pier, as President of the Policy & Resources Committee, gave an update on his Committee's progress with the implementation of the Code. He said that: '*Given that there has only been one request for review since the agreement of the Code, the Policy & Resources Committee ... does not consider that a single request for review merits the introduction of an appeals mechanism*.' He added that: '*We cannot recommend ... a [FoI] law at this time. The low number of requests, the low refusal rate, the fact that many of those that have been refused would have been refused under a statutory regime in any event, and the amount of work that still needs to be done in the area of document management policy does not evidence the need for a FoI law*.'

3.2. This review was launched by the Scrutiny Management Committee in 2019 in order to assess the effectiveness of the Code of Practice on Access to Information, and to evaluate

the States' progress against its own recommendations for improving transparency and openness.

Overview of the Code of Practice on Access to Public Information

3.3. A link to the Code on Access to Public Information is included at Appendix 9. The Code is based around five guiding principles:

- A presumption of disclosure;
- A corporate approach;
- A culture of openness;
- Proactive publication; and
- Effective record management.

3.4. In summary, the Code suggests that the States' default position should be to publish information, either proactively, or in response to requests. However, it *'acknowledges that the States will need to keep some information confidential'* and that it *'has a duty to protect the proper privacy of those with whom they deal'* and to *'protect Guernsey's legal, commercial, competitive or public interests'*. This is reflected in a set of fifteen exemptions, which outline when information may not be released. These are:

1. Security and external relations
2. Effective management of the economy and collection of taxes
3. Effective management and operations of the public service
4. Internal discussion and policy advice
5. Law enforcement and legal proceedings
6. Immigration and nationality
7. Environmental
8. Public employment
9. Voluminous or vexatious requests
10. Publication and prematurity in relation to publication
11. Research, statistics and analysis
12. Privacy of an individual
13. Third party's commercial confidences
14. Information given in confidence
15. Statutory and other restrictions

3.5. In order to support the principle of '*proactive publication'*, the Code includes guidance for Committees on the kind of information that should be published, from '*information about what services are being provided along with Committee business plans*', to *'any facts and relevant analysis which the Committee considers important in framing major policy proposals and decisions*'.

3.6. In order to support individuals making information requests under the Code, documents entitled *'Guidance on how to use the States of Guernsey Code of Practice for access to*

public information' and a *'Short Guidance note on Operational Implementation of the API Code'* are both published within the public domain on gov.gg. A dedicated email address (information@gov.gg) is also provided for handling Access to Information requests. Individual requests and media requests under the Code are handled on the same basis. Requests under the Code are logged by the Corporate Communications team before being referred to the relevant service area.

3.7. When a Committee or service area believes that an exemption should be applied to restrict the publication of information, the Chief Information Officer (CIO) of the States of Guernsey has a responsibility to review and assess whether that exemption is being used appropriately.

Complaints/Appeals Procedure

3.8. The Code indicates that the initial cause of action for any complaint related to non-release of information is in writing to the Chief Secretary / Principal Officer of the Committee concerned in the first instance.

3.9. The escalation route is to then write to the Committee itself and the Guidance to the Code states that if the requester is still not content then they may refer the matter to P&R[4]. Additionally, any Committee may refer any matter to P&R for their consideration. However, the Guidance document states, '*This is not an appeal process; it is a process of referral to the P&R Committee for advice or political guidance*'[5].

[4] https://gov.gg/CHttpHandler.ashx?id=105845&p=0 para 2.12
[5] https://gov.gg/CHttpHandler.ashx?id=105845&p=0 para 6.62

4. Overview of the Review

4.1. The Scrutiny Management Committee launched its review of the Code of Practice on Access to Public Information in 2019, and a Review Panel was established in July 2019[6]. Full terms of reference for the review are set out in Appendix 1. In brief, the review sought to establish the extent to which the Code of Practice was effective in enhancing government openness and transparency, and public access to information; and the extent to which the States' had delivered on its own resolutions and commitments in respect of this important issue.

4.2. The Review Panel reviewed the available information on the number of requests that had been made, to date, under the Code of Practice, and the reasons why certain requests were declined, in whole, or in part. The Review Panel held an open call for evidence during summer 2019, which attracted responses from most States' Committees; a small number of individuals with experience of using the Code of Practice; and a very small number of journalists responding in their individual capacity. There were no submissions from campaigning groups, or from civil society.

4.3. The Review Panel also collected information from Jersey and the Isle of Man as comparable jurisdictions, both of which have introduced FoI laws, on their experience of operating FoI regimes. The Review Panel sought and received specialist advice from the Data Protection Commissioner on the interaction between freedom of information and data protection regimes; and from the States' Law Officers on the legal interpretation of the public interest test, in respect of freedom of information requests.

4.4. The Review Panel held a public hearing with key witnesses in January 2020, to further test the themes and conclusions which were emerging from its review. A full Hansard Transcript of the public hearing is available at: Public Hearing Hansard Transcript - Access to Public Information Review.

Areas of Focus

4.5. As the review progressed, the Review Panel was able to refine its considerations into a small number of areas of focus. Some of these reflect the questions that were identified at the outset, through the terms of reference of the review; while others were added as themes emerged from the evidence which the Review Panel collected throughout the review process. In drawing this final report together, the Review Panel has focused on the following issues:

a) Is the Code on Access to Public Information operating effectively?

[6] The Review Panel consisted Deputy Green, President of the Scrutiny Management Committee and Chair of the Review Panel, Deputies Merrett and McSwiggan and Advocate Harwood.

b) How far does the role of the Chief Information Officer improve the effectiveness of the Code?
c) Are exemptions fairly applied under the Code?
d) What evidence is there of a need for an Independent Appeals process?
e) What evidence is there of a need for a FoI Law?
f) What evidence is there of a need to codify the 'public interest' test?
g) What are the costs, and what are the benefits, of increased freedom of information?
h) What more can be done to improve proactive publication by the States of Guernsey?
i) How should freedom of information requirements apply to reports or services commissioned, but not delivered, by the States of Guernsey?
j) Should more be done to enhance public awareness and use of the Code?
k) What more may be needed, in addition to the Code, to enhance government openness and transparency?
l) What progress has the States made, to date, in respect of its own resolutions and commitments on freedom of information and open government?

Summary of Evidence

4.6. The next section of the report summarises the evidence that emerged in respect of each of these themes. Wherever possible, evidence from witnesses at the Public Hearing and responses to the Call for Evidence, are quoted verbatim; where necessary, some have been edited or paraphrased for clarity (these are not marked as direct citations). The Review Panel's conclusions and recommendations are then set out in the final section.

Further information to support the findings of this report can be found in the Appendices, and in the Hansard Transcript of the Public Hearing, as follows:

Appendix 2	Summary of the UK Freedom of Information Act
Appendix 3	Summary of the Jersey Freedom of Information Law
Appendix 4	Summary of the Isle of Man Freedom of Information Act
Appendix 5	Extracts from the Review Panel's supporting research on Open Government
Appendix 6	Links to documents cited in this report
Appendix 7	Details of the Call for Evidence
Appendix 8	States Resolutions – 30 July 2013
Hansard Transcript	Public Hearing Hansard Transcript - Access to Public Information Review

5. Review Panel Questions and Themes that Emerged

Is the Code on Access to Public Information operating effectively?

5.1. In their response to the Call for Evidence, P&R stated that: *"The API Code serves to ensure that the States of Guernsey's default position with regard to information, is that it should be proactively published, or at the very least, consideration is given to why it can or cannot be published…".*

5.2. P&R stated that the States of Guernsey had seen a significant rise in the number of requests for information submitted under the API Code. This was described as a "positive trend" which could be a result of increased awareness. They said the Code was regularly used by the local media for news coverage purposes, which in turn raised the profile of the API Code itself.

5.3. P&R said that few complaints have been received regarding the Code. However this *"may not in itself be an indication of the general satisfaction of the responses as the process of receiving and recording complaints is not clearly defined, and there is no formal appeals process"*.

5.4. The majority of States' Committees responding to the Call for Evidence, were similarly of the view that the Code was operating reasonably effectively and that it reflected both the public's right to information and the cost and impact on the States' of providing that information.

5.5. Although responses from within the States' generally endorsed the principle of transparency, there was also an acknowledgment that some stages of the policy development process required a certain amount of privacy in order for ideas to be fully developed. One Committee wrote that "*it's worth stating that participants in any consultation may not be so frank in any given consultation if they know that information may end up in the public domain*", while the need for Committees to have space in which to consider their options, without a running commentary from outside, was discussed by witnesses at the Public Hearing. The importance of a balance between transparency and privacy was agreed by politicians and journalists alike, although there was some disagreement as to whether the current Code struck the balance in the right place.

5.6. The Review Panel received very few responses to the Call for Evidence from journalists or media organisations, and none from civil society groups. This was explored further during the Committee's Public Hearing. Mr Nick Mann, News Editor of the Guernsey Press, said that the Code was not his first port of call, but rather a backstop when he was declined information which he had requested directly *(Hansard: line 110)*. This may be an indication that the existing 'presumption of disclosure', in response to media requests, reduces the need for the Code. It may also indicate that, in a small community,

networking and unofficial sharing of information pre-empt the use of formal channels. Both possibilities were explored at the Public Hearing, but inconclusively.

5.7. It was suggested that the Code was most useful to journalists working on in-depth stories, rather than those who are chasing news stories and interviews. As this kind of long-form investigative journalism is uncommon in Guernsey, this may also help to explain the low level of engagement from media organisations in respect of this review.

5.8. Differences between the handling of API requests and 'Rule 14' questions (written questions by States Members submitted in accordance with the Rules of Procedure of the States of Deliberation) were explored. It was felt that Rule 14 questions tend to receive more timely and comprehensive responses.

5.9. P&R's written submission recognised two areas where there were inadequacies, or gaps in the way the Code operated. The first of these concerned commissioned reports, the second was the lack of a formal complaints and appeals process, which was described as "*the area where the API Code would most benefit from changes*". At the Public Hearing Deputy St Pier said that he believed that the 2017 changes and greater promotion of the Code had all helped to promote its use, but conceded *"there are still things that need to be done and developed"*. This is also one of the conclusions reached by the Review Panel.

How far does the role of the Chief Information Officer (CIO) improve the effectiveness of the Code?

5.10. As part of the changes made in 2017, the CIO of the States, Mr Colin Vaudin, has taken responsibility for certain decisions made under the API Code. There are three areas where the CIO has a particular role:

- Managing requests
- Challenging exemptions
- Promoting transparency

5.11. In terms of **managing requests,** the CIO's office (via information@gov.gg) is the front door for any request under the API Code. Requests are received centrally and forwarded on to the place from where the information can be provided. Information on requests received is also collated centrally and categorised broadly by type of requestor *(Hansard: line 1730)*. However, responsibility for answering the request sits with the relevant Committee or service area, not the CIO.

5.12. In respect of **challenging exemptions**, any Committee wishing to apply an exemption to restrict the publication of certain information must first submit this to the CIO for approval or challenge. The CIO stressed to us the robustness of his challenge, but he does

not have the power to overrule a Committee, or the holder of a Public Office. If an exemption is applied, against the advice of the CIO, then the response is published with the exemption applied, but with a statement noting the CIO's dissenting view *(Hansard: line 1635)*. The CIO told us that this had not happened since 2017; whether that can be taken as a sign of the strength or weakness of the system, is impossible to tell.

5.13. During the Public Hearing, the CIO said that he would regularly advise Committees against applying an exemption *(Hansard: line 1609)*. P&R's submission states "*There have been no cases where the CIO has challenged the use of an exemption and this has not been resolved to the satisfaction of both the originator and the CIO*". It is difficult to establish, without more information, whether this is because the CIO has effectively influenced the Committees, or vice versa, but as a statement from 'government' it might unfortunately convey an impression of cosiness. Any civil servant, whatever their personal authority or commitment to transparency, would struggle to be perceived as fully impartial in challenging decisions of the States. During the Public Hearing, Deputy Gollop noted that the position of the CIO as investigator, gatekeeper and adjudicator of requests, might cause him to be conflicted in ways that an independent adjudicator would not be.

5.14. Nevertheless, the role of the CIO in the process has been welcomed by some States' Committees. One response to the Call for Evidence said that the "*requirement that any exemptions are approved by the States of Guernsey Chief Information Officer was a positive addition, and it provides appropriate oversight and ensures a consistent approach across the States/*."

5.15. The CIO also considers his role to be one of **promoting transparency** across the States'. He felt that this was only possible because his position within the States' gave him a sufficient understanding of all the functional areas within the States' along with a corporate overview *(Hansard: line 1800)*. He said that: *"I have noticed a cultural change in the last three-plus years through the application of this Code and the speed of response from service areas and Committee areas" (Hansard: line 1698).*

5.16. Establishing consistency and culture change across the States' is a significant challenge. While most States' Committees recognise the need to balance transparency with proportionality, one Committee's response to the Call for Evidence was striking for its argument that: "*rarely does the release of the data improve the quality of life for residents of the Bailiwick*" and "*there is not substantive evidence of anything important not being released by one means or another*." These remarks indicate the uphill task faced in driving cultural change across the board. Deputy Roffey rightly pointed out there is no reason why all States' committees should be the same as far as the release of information is concerned *(Hansard: line 480)*. However, we would expect the culture to be consistent and to be demonstrated by a default position of openness and proactive publication.

5.17. However, the API Code is only a small part of the CIO's role, and the States does not have a specific resource dedicated to promoting culture change *(Hansard: line 1397)*. In our view, Deputy St Pier weakened his claim of commitment to cultural change when he answered his own question *"Do we have a dedicated resource who are promoting the cultural change? No. We do not have people who are employed to do th*at" *(Hansard: line 1397)*. He went on to add that no one individual could drive cultural change and that it was the responsibility of politicians *"to help drive that cultural change in terms of their expectations" (Hansard: line 1402)*. We see two difficulties with this argument: first, expectations change with each new States', and by his own admission, P&R has not implemented an extant States' Resolution from 2013 on introducing an independent appeal in respect of a request under the Code *(Hansard: line 1251)*. Secondly, by making everyone responsible we fear that, in practice, no one sees it as their job to push for it. The Review Panel is of the view that the CIO 'owning' this responsibility is a positive step, which should be given the political backing it requires.

5.18. Finally, an exploration of the CIO's role necessarily gives rise to the question of '**ownership**' – who owns the information which is used to answer API requests, and who should ultimately decide whether or not it is to be released?

5.19. Mr Rob Moore, Senior Media and PR Officer, said that the decision as to who should handle an API request *"depends on the nature of the question to a point because some questions might be about policy in nature, some might be operational in nature and some might relate to a particular service area within a Committee structure… to a point that is also, kind of, on a case-by-case basis. It will be a different person who is the appropriate person to give the response on behalf of a service area"(Hansard: line 1835).*

5.20. In respect of commissioned reports, the CIO added: "*if it is commissioned on behalf of a Committee or Committee's area of work, the releasing entity effectively becomes the Committee Secretary on behalf of that Committee and whether the Committee Secretary, depending on their authorised authorities from that Committee – and those do vary across various Committee areas … Effectively the Committee becomes the releasing authority" (Hansard: line 1851).*

5.21. This is altogether different to the UK, where the FoI Act provides for a 'Ministerial Veto', to be used in exceptional circumstances and only following a collective decision of the Cabinet: it is the nuclear option.[7]

[7] Section 53 of the FOI Act provides for a ministerial veto, whereby a decision notice by the ICO or a court requiring the release of information can cease to be effective following the presentation of a certificate to the Information Commissioner to that effect by a Minister attending Cabinet.

5.22. If responsibility sits with each States Committee or statutory official, this further underlines the challenge – and the importance – of embedding a consistent approach across the States. The Review Panel agrees that decision-making in respect of the API Code must reflect the structure of the States', with political Committees having the responsibility to make decisions in accordance with their mandate; but underpinned by shared resources and a common approach towards understanding and applying the Code.

5.23. The Review Panel also recognises that, while the more robust challenge provided by an independent appeals process is needed, the final decision to release or refuse government information, must rest with the political leadership of the States'. However, the mechanics of how this might be achieved as part of the Island's system of government, needs further careful consideration. The Review Panel discussed whether this might be achieved by implementing a Guernsey equivalent of a 'Ministerial Veto', as exercised in Westminster, and potentially included in any future FoI legislation. This appears to be a potentially credible option, but the question remains as to where and how it could be effectively implemented within our current system of government. The Review Panel discussed another potential option that the President of the relevant Committee be given a right of appeal to the Bailiff in Chambers, on the sole ground that the disclosure ordered by the Independent Commissioner would not be in the 'public interest'. The Panel Members also discussed whether this responsibility should instead rest with the President of P&R and concluded that, while the broad concept appeared potentially appropriate, it would require additional thought. However, overall the Review Panel believes the concept would seem to fit quite well with the island's current system of government, subject to its overriding view that this aspect of a future FoI law needs further careful consideration.

Are exemptions fairly applied under the Code?

5.24. The Code's guiding principle of a presumption of disclosure has to be measured against the need for confidentiality for a variety of reasons, which are set out in the Code's exemptions. In the case of each exemption, the harm or prejudice arising from disclosure can be outweighed by the public interest in making the information available.

5.25. The most frequently used exemptions relate to voluminous, vexatious or frivolous requests; employment-related matters; and premature publication. The CIO advised the Review Panel that the number of exemptions had reduced over the last three years against a backdrop of more requests, adding that *"if your measurement of success perhaps is more requests and fewer exemptions, I would suggest that has been achieved" (Hansard: line 1514)*. The Review Panel considers that the sample size (total number of requests made to date) is too small, as yet, to be able to assess trends with any confidence.

5.26. In its written evidence, P&R said that they felt the exemptions included in the API Code guidelines were applied consistently by the CIO, bearing in mind that applications needed to be considered on a case-by-case basis.

5.27. Under the current system, where an exemption is approved by the CIO, an explanation is provided. At the Public Hearing, Mr Nick Mann said that *"the level of detail provided in these explanations was too limited" (Hansard: line 192)*, "*but accepted that a detailed provision of the justification for an exemption could be difficult to provide without revealing the information that the exemption was intended to protect*" *(Hansard: line 206).*

5.28. At the Public Hearing, Mr Nick Mann challenged the way in which some exemptions had been applied, especially in cases where the issue at stake was a matter of timing (for example, when the information is in a report which is due for public release at some future date). He also said there had been undue delays in responding to some requests: for example, a report in respect of St James Chambers took 6 months to be released and was then heavily redacted.

5.29. Mr Nick Mann challenged the lack of a definition of 'public interest', in the context of exemptions, and criticised the absence of an independent appeal process. Each of these is addressed separately below.

5.30. The Review Panel recognises that the application of exemptions will always be one of the most contentious elements of any FoI regime. This is evidenced by the differences in perspective between witnesses from within and from outside the States'. The Review Panel considers that this underlines the importance of having a process which is fair, and seen to be fair, when determining how exemptions should apply and when the public interest should be used to override them.

What evidence is there of a need for an Independent Appeals Process?

5.31. P&R acknowledged that the lack of a formal appeals process within the API Code was a weakness and stated that, *"the process of complaints and appeals is the area where the API Code would most benefit from changes… The Policy & Resources Committee believes there should be a clearer mechanism through the gov.gg website for members of the public to make complaints through a single channel, managed by the States of Guernsey Communications team."* Deputy St Pier said that P&R had not made progress regarding the complaints and appeals process under API as "*it has not been one of our priorities this term.*"

5.32. The need for an independent appeals process was endorsed by all witnesses at the Public Hearing. One said that *"it would provide greater credibility and help to drive cultural change" (Hansard: line 219)*. Another said "*that objectivity and neutrality were best provided by a statute-backed independent body" (Hansard: line 800)*; and yet another *"emphasised the importance of an independent third party in handling appeals against the use of the Code" (Hansard: line 148)*.

5.33. While P&R felt that the lack of an independent appeals process was a *"significant drawback"*, this acknowledgment was tempered by the comment, "…*it is important such an appeal process is proportionate and does not add significant cost".* This was echoed in written evidence from other Committees. As one stated: "*the Committee would welcome the introduction of a proportionate and independent review mechanism for any decisions made under the API framework. This would help to strengthen the States' commitment to access to public information*."

5.34. In seeking a low-cost solution, Deputy St Pier pointed out that "*the States' has plenty of appeals processes, various tribunals and others, that are manned at relatively low cost by volunteers" (Hansard: line 1265)*. However, any appellate body would have to have a sufficient understanding of the working of the States', and to be sufficiently <u>authoritative</u> and qualified to rule on where the public interest lies, where it clashes with the use of one of the Code's exemptions. A tribunal populated by lay people may struggle to fulfil this role. Nevertheless, the Review Panel agrees there is merit in exploring whether this responsibility could be added to an existing decision-making body or function, rather than requiring an entirely new set-up.

5.35. Ms Emma Martins (who was invited to attend the Public Hearing in her personal capacity, given her experience of Data Protection and Information Commissioner-type roles) said "*that it was not uncommon for FoI responsibilities to be given to the Office of the Data Protection Commissioner in other jurisdictions, as data protection and freedom of information are two sides of the same coin. In particular, some of the more complex issues around freedom of information relate to data protection concerns. In Guernsey, the Data Protection Office receives enquiries regarding information requests because, given the API Code's limited public recognition, the public think this is where they should go for information; once the system is explained to them enquirers often indicate a lack of confidence in it being able to help them."*

5.36. The CIO agreed that an independent appeals process would *"engender trust in the public in the spirit of the Code rather than perhaps changing the substance of how the Code is run and independent processing of how exemptions are applied" (Hansard: line 1780).*

5.37. Support for some form of independent appeals process was unanimous, and this is reflected in the conclusions of the Review Panel. However, there was perhaps not a clear vision for what this process should look like in practice, and some respondents implied that an independent appeals process would be a kind of interim step; strengthening the Code, without moving to a full legal framework. The question of how independence could be achieved without statutory backing was not fully explained or explored.

What evidence is there of a need for a Freedom of Information Law?

5.38. In their written submission, P&R set out their view that a FoI law is inappropriate for a jurisdiction of Guernsey's size, does not offer value for money, and could perversely restrict the amount of information provided to the public. These concerns were generally reflected in Committees' responses, which suggested that the Code was a more proportionate approach in a small community.

5.39. Interestingly, a similar comment was made by a respondent who made regular information requests of the States, saying that: *"The API process allows some responses to be provided 'in the spirit' of the request, even where the letter of the API Code might simply apply an exception. Under a FoI law, the rules will inevitably become more rigid and could limit the flexibility for responding".*

5.40. The Review Panel's analysis of API requests and responses showed a varied pattern of answers to API requests, but it would be fair to say that on occasion the replies had gone beyond what was strictly necessary and had fully entered into the spirit of the request. However, without comparable analysis (of, say, FoI requests in Jersey or the Isle of Man) it is difficult to say whether this would be different under a law. It is noteworthy that even advocates of FoI legislation acknowledged that "*a law would always be more prescriptive than a code" (Hansard: line 906)*.

5.41. The Review Panel explored the reasons why Jersey had decided that its Code was inadequate and needed to be put on a statutory footing. One of the reasons suggested to the Review Panel was the introduction of executive government in Jersey, *"for which a full-blown FoI law was seen as a quid pro quo" (Hansard: line 710)*.

5.42. For Jersey, reputational benefits were also considerations behind the move from having a code to a law: *"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 sometimes attracts"*[8].

5.43. At the Public Hearing, Deputy St Pier was clear that the issue of FoI had not been mentioned in any of the States' external relations dealings, even though Jersey and the

[8] States of Jersey Freedom of Information Position Paper, December 2004

Isle of Man have both introduced legislation, and Guernsey has not. To the extent that transparency is an issue for Guernsey's international reputation, this relates to matters such as beneficial ownership, which would not be addressed by providing a statutory FoI regime concerning information held by public bodies.

5.44. Irrespective of whether there is external or domestic pressure for legislation, Ms Emma Martins' evidence supports introducing a FoI law because it is the right thing to do. Her position is that *"you cannot half-do FoI*" and "*that it can be done in a way that is proportionate and delivers value" (Hansard: line 685)*. When pushed on whether a legal framework for FoI was a critical element in creating the cultural change required for openness and transparency, Emma Martins told the Review Panel: *"Yes, I think it gives a very strong signal that it matters to you as Government" (Hansard: line 786)*. She went on to add: *"I have not experienced what I would consider as to be much evidence of a genuine and robust commitment to the Code. I think the danger is that if the public see it as something that can be either opted in and opted out of, whilst the cultural default is, 'Let's keep it private', 'Let's keep it confidential' I think it will be a hard sell. I really do. The law will not fix that, you will still have those problems, but it means that there is a confidence in the process and that there is a process."* When pressed further, Emma Martins went on to say "*that ultimately, sanctions were needed to convince people [in government] of a cultural shift and that non-compliance had consequences*" *(Hansard: line 845).*

5.45. The Review Panel also had to consider whether the evidence it received indicated that the Code had led to the kind of culture change it was intended to. Most Committee responses indicated that the Code is well-embedded, but one response, which argued that "*there is no substantive evidence of anything important not being revealed by one means or another*", gave cause for concern that some States' Committees may remain disengaged from the Code and their responsibilities under it. In such cases, the ability of civil servants to point out to their Committee a legal requirement to disclose, strengthens the hand of officials in ensuring that potentially embarrassing (but not exemption covered) material, is not kept from disclosure. Unfortunately, P&R's decision not to prioritise resolutions, which it accepts are designed to improve the API Code, but which have been outstanding for more than five years, indicates the relative low importance of API to the States'.

5.46. All the witnesses wished to see a cultural shift to what Deputy St Pier described as *"disclosure by default" (Hansard: line 1081)*, but despite the optimism of the President of P&R and the CIO as to the direction of travel with the Code, the Review Panel is not convinced that the destination will be reached. Although there may be *"a growing degree of comfort with the Code" (Hansard: line 1087)* in the sense of the States' learning how to live with and in the case of the Communications Team manage the system, the Review

Panel fears that what Deputy St Pier described as *"comfort"* will, without legal sanctions to back it, be seen from outside as cosiness and an indication that the Code lacks teeth.

5.47. When exploring the question 'Is a FoI law necessary?' firmly held arguments were made in both directions. However, when exploring the question as to whether an independent appeals process is needed, the answer from all respondents was an emphatic 'yes'. The Review Panel is of the view that an independent process, would benefit from a legal framework to support it; and this must therefore shape the argument for a FoI law if this can be achieved at a proportionate cost.

What evidence is there of a need to codify the 'public interest' test?

5.48. Some of the exemptions to the presumption of disclosure are absolute[9]. In other cases, the API Code requires the 'public interest' to be weighed against any exemption. Mr Nick Mann was concerned that *"we do not know where the States sees public interest" (Hansard: line 139)*, however, by definition, this is a case-by-case test which is inherently subjective.

5.49. The 'public interest' may refer to a wide range of values and principles relating to the public good, or what is in the best interests of society. The UK Information Commission explains in its guidance, that while the public interest of an informed and involved citizenry promotes good decision-making by public bodies, those bodies need space and time to consider their policy options away from public interference. At the Public Hearing, Ms Emma Martins said that *"the question of what is in the public interest is heavily influenced by context, and to try to be prescriptive is dangerous*".

5.50. At present, any decision on whether the 'public interest' should overrule the application of an exemption sits with the CIO. At the Public Hearing when asked how this test would be applied, the CIO said that in some challenging cases he had needed to bring in legal advice; however, such advice does not necessarily provide a definitive answer on where the public interest lies. The Review Panel received no evidence that it would be practical or desirable to codify the 'public interest' test. The Review Panel believes that any future arbitrator of an independent appeals mechanism attached to an existing statutory office or role, may be best placed to provide guidance on the application of the 'public interest' test.

5.51. The Review Panel found that, inevitably, if it is accepted that the application of the 'public interest' test is a matter of judgment, the question returns to *who* is the appropriate person to make that judgment. Deputy St Pier referred to "*the knowledge and expertise that such a person would need to have in order to make a judgement"*

[9] In some cases there are legal, commercial or security considerations which mean information cannot be published

(Hansard: line 1305). He did not, however, address sufficiently the question of 'clout', of how much standing and authority is needed to say to Government, *"the public interest here overrides other political issues at the moment and this information needs to be disclosed*" *(Hansard: line 1295).* It is this requirement not for a 'skillset' but for independence plus authority, which has led the Review Panel to reject the suggestion that the job can be done in the way Deputy St Pier suggests, by, *"various tribunals and others that are manned at relatively low cost… by volunteers*" *(Hansard: line 1265)* and to accept the inevitability of an arrangement along the lines of an independent information commissioner function.

What are the costs, and what are the benefits, of increased freedom of information?

5.52. Certain assumptions are common among open government's advocates when discussing the presumed benefits of greater transparency and freedom of information. The UN's open government declaration speaks of improving services and achieving greater prosperity, while the Council of Europe refers to increasing public trust. Mr Mann spoke of "*an informed public enhancing debate" (Hansard: line 449)* and this view is one which is widely shared. However, openness comes at a cost, literally, in terms of the expense of operating the system, but also in its impact on confidentiality, hence the exemptions which all FoI regimes apply.

5.53. There is also the question of what might be the measure of a successful FoI regime. The Review Panel heard comments about the significantly higher number of FoI requests made in Jersey, compared to the smaller, though increasing number under the Guernsey's API code. Deputy St Pier described a chicken and egg problem: where the cultural shift which we want will come from the pressure of API requests, which Guernsey doesn't have in sufficient volume because of the lack of confidence and credibility in the API Code.

5.54. Then there is also the issue of what type of requests, by whom and about what? Would numerous requests from individuals in pursuit of their specific grievances be a victory for transparency? Possibly, but the Review Panel doubt that it is what is meant by those who talk of an informed public enhancing debate. The assertion that greater public scrutiny will, by improving the accountability of government pay for itself, remains just that, an assertion. A culture of openness has to be justified as a public good in itself and its cost needs to be proportionate.

5.55. The question of proportionality, in respect of cost, featured in the submissions from Principal Committees and was central to P&R's argument for retaining a code rather than introducing a FoI law. However, there is a lack of firm numbers to examine when it comes to assessing what the extra costs of introducing a FoI law would be.

5.56. According to P&R's written evidence, there is no specific budget for the API process and the Communications team consider it as a 'part of the job'. The major cost is the time spent by officials responding to requests when they would otherwise be doing 'the day job'. It has to be borne in mind that this is access to *information* (not merely documents or pre-existing data) and sometimes that information will be time-consuming to compile. However, the time-cost of requests will be the same irrespective of whether there is a code or a FoI law.

5.57. Furthermore, the costs of putting together the information are demand driven and so the more successful the system is the more it will cost to operate. Although it is possible that if there is a culture shift and more information is published proactively then, in theory, there could be a tailing off in requests for information.

5.58. When Jersey introduced its FoI Law, set-up figures were estimated at around £2m (a later review put the cost of implementation at £2.68m). Ongoing annual costs were expected to be £900,000 (P&R's submission), though some of these costs were attributed to factors such as records management, which would be incurred irrespective of the type of approach taken. In the Isle of Man the anticipated initial costs were around £500,000 with annual running costs of around £200,000.

5.59. P&R's written submission lists the factors which gave rise to both the establishment and ongoing costs in Jersey, many of which relate to records management, software services and staff training. With the exception of the Information Commissioner and staff, all the costs attributed are either already incurred by Guernsey in handling requests under the API Code, or would be if the Code becomes as successful as its proponents intend it to be. The additional direct costs that would arise from legislation, relate to the establishment and running of an Information Commissioner-type function, to provide the independent challenge required. On the evidence available to the Review Panel, it is difficult to provide an accurate estimate of these additional costs.

5.60. P&R argued that the introduction of a full FoI law "*will increase the administration and costs involved in facilitating access to public information without any benefit to the public or the Government's transparency agenda".* However, the P&R Committee itself strongly supported the creation of an independent appeals process. For the reasons the Review Panel has outlined in paragraph 5.51, it is convinced that such an independent appeals process requires a body with status and authority and cannot be run along the lines of existing appeals tribunals. Once that case is accepted, the difference in cost between an independent appeals process, which meets this new standard, and an Information Commissioner-type function, becomes significantly less.

5.61. In the Public Hearing, Deputy St Pier warned that *"…the cost of the new regime (Data Protection) is considerably more expensive than the cost of the last regime. I think we will*

find the same with FoI for the same reason…as soon as you are putting a much more rigid statutory framework around it, I think inevitably it will involve more people in managing the whole process of managing requests, exemptions and the decision-making. I think it will become, in a sense, a more contentious process and I think arguably you have seen this elsewhere where there is a statutory framework" (Hansard: line 1330). This was reflected in a Committee response which expressed concern that "*placing the Code on a statutory footing may have some unintended consequences which would detract from its current smooth operation and come at some considerable cost.*"

5.62. The financial impact of sanctions, should a FoI law be introduced, was not discussed in submissions to the Review Panel, but may underpin some of the concerns about additional costs. Since a FoI regime applies, by definition, only to government, the Review Panel agrees that financial sanctions are not likely to represent a wise use of public funds.

5.63. The review process did highlight some concerns with the States' existing ability to manage the day-to-day costs of any FoI regime in the absence of a dedicated budget. In its written evidence, P&R said that: *"Based on feedback provided by the Communications team which oversees the API process, there are service areas that feel providing API responses are proving too time-consuming, but overall the Policy & Resources Committee does not believe the current level of staff time involved in meeting API code obligations is excessive".* On the other hand, witnesses at the Public Hearing noted that the level of demand for information under the API Code had not been as high as was originally anticipated.

5.64. The Review Panel recognises that the States' must make difficult decisions about how to prioritise limited public funds. It understands the cautious response from Committees, in light of the impact of recent Data Protection legislation on the public sector, and agrees that FoI should not be imported wholesale from another jurisdiction, without consideration of its implications for Guernsey. However, the Review Panel is of the view that the value-for-money argument is more straightforward than it may seem, as the day-to-day costs of a FoI regime are already being incurred under the Code; and there is unlikely to be a material difference between the introduction of an 'Independent Appeals process' and the introduction of a FoI law.

What more can be done to improve proactive publication by the States of Guernsey?

5.65. Any system of access to information can be expected to drive a process of proactive publication, records management and disposal policy. Being able to point to where published information can be found, is preferable to being required to pull together specific information on a request-by-request basis. At the Public Hearing, Deputy Roffey said "*that the States was now far more open than it had been when he entered politics in*

the 1980s" (Hansard: line 500), a point with which Deputy Gollop concurred *(Hansard: line 370)*.

5.66. In the Public Hearing, Ms Emma Martins "*was certain that Jersey's statutory FoI framew*ork *had increased the level of proactive publication of information by the States of Jersey" (Hansard: line 935)* and that as a result *"there is much more information that is pushed out by default. That is just what happens to it." (Hansard: line 970)*. It was not clear, however, if this was her impression, or the result of monitoring. She was hesitant, however, to say that Jersey was the benchmark against which Guernsey should measure itself and argued "*that it was for each jurisdiction to define for itself what 'good' is like and how to define being 'accountable to" (Hansard: line 985)*.

5.67. Guernsey does not know if the API Code is driving proactive publication. It is not clear how decisions are taken on the publication of material and whether it is something that is left to the discretion of senior officers, or if there are efforts at co-ordinating that from the centre. This is an area where the CIO can view the pattern of publication across the States' and push for greater proactive publication and for more consistency between Committees. The Review Panel believes it would be helpful for the CIO to maintain an overview of the information published by the States' each year, so that it is possible to assess progress. At the very least we should be able to measure whether we are pushing more information out than we were before.

How should freedom of information requirements apply to reports or services commissioned, but not delivered, by the States of Guernsey?

5.68. Under the API Code, every States' Department and Committee is required to publish details of all reports they have commissioned, within six months of that report being commissioned. What is meant by 'commissioned report' is not specified, but the guidance[10] suggests '*any piece of work commissioned from a third party to the States', such as a consultant or outside agency*'.

5.69. P&R in its submission, points to a lack of clarity in practice, as to which reports meet this criterion. For example, where reports are carried out by a panel that is a combination of States Members, civil servants and external experts, it is unclear whether these should be treated as 'commissioned reports'. There are also reviews carried out by third parties, which are still considered as internal reviews by the commissioning Committee. This lack of clarity can cause difficulties later, if contributors to the review took part with an expectation of confidentiality, while the Committee is asked to publish the report.

5.70. Too much of the discussion about commissioned reports has focussed on their identification as such and "*on the requirement to provide information every six months*

[10] Guidance February 2017

on what reports have been commissioned" (Hansard: line 2067). Clearly, if you do not know the existence of something then you cannot know to ask for it to be made available under the Code. However, the real concern has to be whether the content of the commissioned reports is subject to the Code in the same way as other information held by the States', or whether other practices apply.

5.71. At the Public Hearing, Mr Nick Mann felt that the States was *"still commissioning reports without the intention of releasing them" (Hansard: line 71)*. He criticised the use of the Code's exemption [number 2.10] against the release of information prematurely where its publication is already intended.

5.72. The CIO acknowledged the media's interest in cases potentially involving exemption 2.10, but told the Review Panel that '*a conversation' would be entered into with the releasing Committee on whether and why premature release of the information would be a problem and added that in these cases, "having the API process linked … to media inquiries… provides us with a degree of more flexibility" (Hansard: line 1574)*.

5.73. According to the CIO *(Hansard: line 2085),* "*problems occur when a report is commissioned with insufficient consideration of what will happen to it at the end. When a reasonable API request is then made a whole host of questions start to be asked which would have been better addressed when the report was first commissioned and which probably would have meant a different approach to the report itself*".

5.74. Mr Nick Mann referred to putting in a request to see a commissioned report and there then being *"a lot of movement behind the scenes to go and then speak to the authors of the report to make sure that that can be released" (Hansard: line 71)*, which illustrates the issue.

5.75. In its written evidence, P&R said that "*it believed there should be a clearer, formal process for determining what constitutes a commissioned report, as this would improve how commissioned reports are recorded. This would allow Committees to establish, at the start of the commissioning (or terms of reference-setting) process, how the report would be handled in the context of the API Code"*.

5.76. In terms of policy scoping and advice, the States of Guernsey relies more on commissioned input from outside consultants than, in say, the UK where such work will form part of the day to day work of a much larger civil service. The current API Code allows for exemptions to be made for information whose disclosure would harm the frankness and candour of internal discussion[11] and refusals to release the contents of commissioned reports have been made under this provision. The question is whether this

11 Exemption 2.4 internal discussion and policy advice

test is the appropriate one to apply to commissioned reports, or whether the fact that the source of the advice was external sets the bar higher for making that judgment.

5.77. The President of P&R accepted that Guernsey would inevitably be more reliant on the use of external expertise, but he saw the issue for the API Code "*as relating primarily to whether or not a Principal Committee recognises that it has commissioned a report in the first place" (Hansard: line 1224)*. The issue of commissioned reports goes beyond the straightforward listing by Committees of the reports that exist and concerns whether different standards are applied to the release of their contents in relation to the internal discussion exemption. When this point was put to him, Deputy St Pier described it "*as an interesting and valid point" (Hansard: line 1212),* but he did not answer it. The Review Panel understand his reluctance to do so when sprung on him at a public hearing and trust that he will address it in his response to this report.

5.78. It is clear from what the Review Panel has heard, that there is no formal basis for treating commissioned reports in a different way from other material which the States' possesses when it comes to disclosure under the API Code. However, the fact that so much of the discussion has been around this issue, leads the Review Panel to conjecture that, perhaps fearing a deterrent effect on third parties bidding for contracts, there has been a temptation to adopt a slightly different practice from that applied to internal States' reports.

5.79. The Review Panel is of the opinion that any report commissioned with public funds, should normally be subject to the API Code on the same basis as the rest of the public sector (that is, the standard that applies should be neither less nor more rigorous). While a precise definition of a 'commissioned report' may not be easy to find, this is an area on which an independent appeals mechanism could rule in future, if required.

Alternative Providers and Public Funding

5.80. The Review Panel also considered whether services which are delivered by alternative providers, commissioned with public funds, should be subject to the API Code on the same basis as the public sector. In Guernsey, there are far fewer of these providers than in the UK, so the issue is less immediate; however, there are some services which are delivered by non-States' providers: some private companies, as with G4S at Guernsey Airport, and other charity organisations, such as in the case of the ambulance service.

5.81. The issue has its similarities with that of commissioned reports, though arguably the case is stronger when it comes to the ongoing provision of services, as opposed to a one-off piece of work. The Review Panel is of the view that the States' should move towards a position where it is clearly understood that FoI requirements apply equally to commissioned services (via the Committees that have commissioned them). However,

this is likely to need to be a gradual process, with respect for existing contractual terms. There is also the issue of services which are part-funded by the States' and cases where small grants are given; care is needed to avoid placing an undue burden on voluntary and non-profit organisations that may be working in partnership with the States'.

Should more be done to enhance public awareness and use of the Code?

5.82. The need for ongoing awareness raising in respect of the Code featured strongly in the Review Panel's Public Hearing. It was felt that the Code was not well-publicised and members of the public would not necessarily know where to go to make an information request. Ms Emma Martins gave us examples of public confusion about the Code (specifically that requests came to the Data Protection Commissioner) and unfortunately and probably unfairly, "*public cynicism about its usefulness" (Hansard: line 830)*.

5.83. That the problem with the Code may largely be one of perception, is unfortunately not something that the Review Panel believe can be rectified easily under the existing system. To some extent the name, API Code, is a problem; the term FoI is very widely understood and anything else finds difficulty with recognition; as Mr Mann put it, *"say API to people, then they will have no idea what you are talking about" (Hansard: line 265)*. Publicity may help, but the Review Panel fear that the label 'API Code' will always have the effect of conveying that which it is not, a FoI law. Nevertheless, the Review Panel agree with Mr Mann's suggestion that, "*if Guernsey does not introduce a legal framework, the simple change of renaming the Code as the 'Freedom of Information Code' would help to improve public awareness"*.

What more may be needed, in addition to the Code, to enhance government openness and transparency?

5.84. Although witnesses at the Public Hearing had divergent views on whether or not the Code should be put on a statutory footing, all agreed that a 'culture shift' towards greater openness was essential in achieving the aims of any FoI regime. All witnesses indicated that the States' still had room for improvement. The Review Panel is of the view that the Information Strategy produced by Belinda Crowe and published by the States' in 2011 still offers an important blueprint for a culture change towards increased transparency, and considers that the States' should revisit its recommendations.

5.85. One Committee recommended "*additional training for staff, particularly at senior levels, so that they are aware of their requirements under the Code and can help promote the core principles of openness and transparency."* The Review Panel agrees that this would be a positive development.

5.86. Appendix 5 to this Report explores the concept of 'Open Government' as a way of doing democracy which goes beyond just access to information. It is based around the three principles of:

- Accessibility
- Transparency
- Participation

5.87. The Review Panel considers that the States' could integrate the principles of Open Government into every aspect of its work; and, in doing so, would make major progress towards the kind of culture change required to support an effective FoI regime.

5.88. In addition, it must be recognised that effective democracy depends not just on Open Government, but also on an informative and critical media, and an engaged civil society. The Review Panel notes that there are limits on the extent of investigative journalism in Guernsey, and there is very little by way of an active and engaged civil society (with some notable exceptions, organised around specific causes). In fact, civil society and campaigning groups have been completely absent from this inquiry. These are the groups which, along with the media, would normally be expected to be a driving force for greater transparency and a FoI law. The scarcity of such organisations in Guernsey means that there is often nothing between the States' as the service provider and the citizen as recipient, which can articulate and elevate individual grievances into broader concerns. With their focus on single issues, Civil Society Organisations often present challenges to elected representatives, who are required instead to balance competing claims. Nevertheless, the absence of such bodies in Guernsey leaves a gap and is a barrier not just to an effective FoI regime, but to the scrutiny system as well.

5.89. These are not gaps that the States' can plug on its own, if at all; but the Review Panel is of the view that they should be acknowledged, and that future States' should give consideration as to what more could be done to stimulate active, informed citizenship.

What progress has the States made, to date, in respect of its own resolutions and commitments on freedom of information and open government?

5.90. In drawing this section to a conclusion, the Review Panel has looked at each of the resolutions which the States has made, to date, in respect of open government and freedom of information. The table below shows the progress made so far, and indicates what, in the opinion of the Review Panel, remains to be achieved.

Resolution	Status	Comment
Billet d'État XIX, September 2010 8B) To direct the Policy Council to consult with all States Departments and Committees and then to report to the States of Deliberation by no later than December 2011, setting out options for improving open government and transparency and establishing a corporate policy on freedom of information and open government.	**Partly achieved**	The States' has had a code on access to public information since 2013. This may fall short of the full FoI envisaged by those who led the amendment. A wider commitment to Open Government was set out in the 2011 Information Strategy, but its recommendations have not all been followed through.
Billet d'État XV, July 2013 1. To agree the guiding principles outlined in that States of Guernsey Policy for Access to Public Information States Report, as follows: - A presumption of disclosure; - A corporate approach; - A culture of openness; - Proactive publication; and - Effective record management.	**Achieved**	The Code on Access to Public Information is operational, and available at: https://www.gov.gg/information. These principles are enshrined in the Code. For the avoidance of doubt, this does not mean that the Review Panel considers they are universally observed in practice.
Billet d'État XV, July 2013 2. To agree that the presumption of disclosure will need to be subject to certain stated exceptions in order to protect legal, financial, commercial, competitive and public interests which will be agreed by the States from time to time.	**Achieved**	A set of exemptions, reflecting the need to protect these interests, are set out in Section 2 of the Code.
Billet d'État XV, July 2013 3. To agree the Code of Practice on Access to Public Information in Appendix Three of that Report which will apply to all States Departments and Committees and which incorporates the guiding principles and describes the exceptions but to direct that, in relation to Part 1, paragraph 1.11 of the Code, by no later than July, 2014 the Policy	**Partly achieved**	While the Code of Practice has been adopted, no progress has been made towards establishing a right of appeal to an independent person or body. Since 2017, a degree of internal challenge has been introduced by the creation of a role for the Chief Information Officer in evaluating the use of exemptions.

Council shall report to the States of Deliberation setting out their assessment of the feasibility, desirability and potential cost of providing a right of appeal to an independent person or persons in respect of a request made for access to information which is refused by a States Department or Committee, and further subject to removing the sentence "*There is no commitment that pre-existing documents, as distinct from information, will be made available in response to reasonable requests*" from section 1.6 of that Code.		
Billet d'État XV, July 2013 4. To endorse the Policy on the Use of Confidentiality in Contracts and agreements contained in Appendix Four of that Report.	**Achieved**	The policy forms part of the Code.
Billet d'État XV, July 2013 5. To direct the Policy Council to implement, no later than 31 March 2014, a consistent mechanism which Departments and Committees can use to record and collate data on the number and category of requests made under the Code of Practice, including when exemptions are applied and to direct Departments and Committees to implement the policy so that data collection can commence from 31 March 2014.	**Mostly Achieved**	A list of requests and responses under the Code is published at: www.gov.gg/information A summary overview of requests (including any exemptions applied) is not provided, although this was made available to the Review Panel on request.
Billet d'État XV, July 2013 6. To direct the Policy Council to report back to the States during quarter 1 of 2015 with a report evaluating the effectiveness of the Code of Practice and recommending	**Not achieved**	This remains outstanding, although an internal review of the effectiveness of the Code was carried out in 2017.

any changes it considers appropriate; that report to include details of all information requests which have been refused, providing the reason for the refusal, and under which part of the Code the refusal was made.		
Billet d'État XV, July 2013 7. To direct the Policy Council to report back to the States during quarter 1 of 2015 with a report evaluating the feasibility and implications of expanding the Code of Practice to include automatic disclosure rules similar to the UK "30 year Rule".	**Not achieved**	This has not been completed.
Billet d'État XV, July 2013 8. To direct every Department and Committee to publish details (namely the title of the report, who it is commission by and from and date of commission) of all reports commissioned by the Department or Committee within six months of that report being commissioned, unless the publication of such detail would fall within one of the exemptions from disclosure set out in the Code of Practice on Access to Public Information set out in Appendix Three of the Report.	**Mostly achieved**	A summary of commissioned reports is available on: www.gov.gg/information However, an outstanding issue remains as to the definition of a 'commissioned report'.

5.91. Of the outstanding issues, only one (the introduction of a '30 year rule', or similar) was not raised at the Public Hearing, although the question has been discussed by the Review Panel. The Review Panel is of the view that, if a statutory framework is introduced, rules on automatic disclosure should form part of it.

6. Conclusions and Recommendations

6.1. The year 2020 marks a decade since the Matthews-McManus amendment which committed to the States to "*open government and freedom of information*", and seven years since the introduction of the Access to Public Information Code. The Scrutiny Management Committee launched this review in order to assess the effectiveness of the Code and to identify areas where its operation could be improved.

6.2. The Review Panel has found some evidence of a move towards a culture of greater openness and transparency throughout the States', during the past decade, but progress has been slow. A number of resolutions dating back to 2013 remain outstanding. The Review Panel received very few responses from outside the States' and no evidence of a widespread public concern about the Code, which the Review Panel take to be a sign of indifference, rather than of contentment. While most States' Committee responses to the Review Panel's call for evidence were positive, and accepted the Code as a proportionate balance between the public right to information and the need for privacy and confidentiality in some government matters, this was not universal. Responses from the media representative at the Public Hearing highlighted concerns with the length of time needed to obtain a reply, and what was perceived as an over-reliance on exemptions.

6.3. There was universal agreement that the **absence of an independent appeals process,** through which the application of exemptions could be challenged, was a weakness of the current system. The Review Panel concludes that, without such a mechanism, it is not unreasonable for the public to lack full confidence in the States' commitment to openness and transparency.

6.4. The Review Panel is of the opinion that, in order for any appeals process to be independent, it requires a statutory framework – in other words, the development of a **Freedom of Information law** for Guernsey. While a number of witnesses suggested that an independent appeals mechanism could be introduced under the Code as an alternative option to a law, the Review Panel cannot see how this would be compatible with a body which has the authority to overrule Committees' use of exemptions on the grounds of the public interest. Once the need for such a level of status and authority in the appeals process is accepted, the cost differential between a 'voluntary' and a statutory solution would be reduced significantly.

6.5. Many of the costs attributed to a law are potentially already incurred in handling requests under the API Code, or would be if the Code becomes as successful as its proponents hope. However, the review process raised concerns, which the Review Panel believes are valid, that any access to information framework should be **proportionate**, bearing in mind overall constraints on States' resources. For that reason, the Review Panel

recommends that legislation should be carefully considered, rather than being copied directly from other jurisdictions. The primary focus of any legislation should be on the introduction of an independent appeals mechanism to challenge the application of exemptions, in accordance with a 'public interest' test; and the creation of clear timeframes for responding to information requests.

6.6. The Review Panel also believes that, in developing a statutory framework, it will be necessary to clarify how FoI principles should apply to commissioned reports and commissioned services, through the public sector bodies that have commissioned them. The review process has demonstrated that the lack of clarity in this area, at present, can be a source of contention between requestors, the States, and providers of commissioned reports.

6.7. The Review Panel recognises that, while the more robust challenge provided by an independent appeals process is needed, the final decision to release or refuse government information must rest with the political leadership of the States (as discussed in paragraph 5.23 above). However, the mechanics of how this might be achieved in keeping with the Island's system of government needs further careful consideration.

6.8. The Review Panel believes that the independent appeals function, under a future FoI law, could and should be **added to an existing statutory office or role**. This would allow for greater resilience, and certain economies of scale, reducing the overall cost of introducing new legislation. It is not uncommon for FoI responsibility to be given to the data protection regulator. The Review Panel has not reached a preferred view as to which office or role this should attach to, and believes there are a number of options for consideration including ones which the recent review of arms-length bodies may highlight.

6.9. The Review Panel considers that the role of the CIO as FoI champion has added value since its introduction in 2017. The Review Panel considers that the CIO should continue to have an internal role, reviewing and (as necessary) challenging the application of exemptions; raising awareness of the States' FoI responsibilities and helping to promote a consistent, positive approach towards information requests across all States' Committees; and providing central coordination of information requests (a single 'front door') and statistics about requests, responses and exemptions. The continued role is additional to and does not duplicate the work of, the independent appeals function; an increasing use of FoI will require more, not less from the CIO. This is an important function which helps to improve the quality of States' responses to information requests, and may help to minimise the need for independent appeals against States' decisions.

6.10. There is a lack of clarity over what might be the measure of a successful FoI regime; success is often seen in terms of a significantly higher number of information requests, with little consideration given to the nature of those requests. The Review Panel considers a change in culture to be the ultimate goal and that, if one of its measures is more proactive publication, then the extent to which that is happening has to be reviewed annually by the CIO.

6.11. The Review Panel believes that a FoI regime is an essential, and integral, part of the scrutiny of government. It therefore recommends that responsibility for developing FoI policy and legislation should be **added to the mandate of the Scrutiny Management Committee**. This means the Committee would become responsible for the development of FoI legislation as part of its programme for the next States' term.

6.12. The Review Panel considers that this division of responsibilities will give the public more confidence that, within government, there is an appropriate separation of powers in respect of FoI. For the avoidance of doubt, however, the Review Panel is *not* recommending that the role of the CIO should become a scrutiny function – this is clearly an important operational role helping States' Committees to deliver their responsibilities under any FoI regime.

6.13. The Review Panel considers that ongoing awareness raising, in respect of the Code on Access to Public Information, is required in order to enhance its usefulness. In support of this, the Review Panel recommends that the name of the Code should immediately be changed to the '**Freedom of Information Code**'.

6.14. Finally, the Review Panel recognises the need to provide a means for individuals to pursue their concerns, but considers that information requests which only deal with grievance cases will not necessarily create a better informed citizenry and greater engagement with public affairs. Guernsey lacks the civil society organisations which articulate interests and can elevate individual grievances into broader concerns. The Review Panel therefore recommends that consideration should be given to what can be done to stimulate civil society engagement, as an important pillar of a mature democracy and to integrating the principles of **open government** in all aspects of the States' work. These particular recommendations go beyond the scope of the Review and therefore have only been touched on lightly here; but the Review Panel commends them to future States of Deliberation for further examination.

The Review Panel summarises its recommendations as follows:

1. That a FoI law should be introduced in Guernsey, focusing on the creation of a proportionate independent process for appeals against the application of exemptions;

the creation of clear timeframes for responding to information requests; and the introduction of automatic disclosure rules.

2. That the independent appeals function, under any future FoI law, should be attached to an appropriate, existing statutory office or function, rather than being separately established.
3. That responsibility for the development of policy and legislation, in respect of FoI, should be included in the mandate of the Scrutiny Management Committee with immediate effect.
4. That the Scrutiny Management Committee should develop proposals to address recommendations 1 and 2, together with an assessment of the financial impact of their introduction, no later than the end of 2022.
5. That the existing Code should be renamed the 'Freedom of Information Code' with immediate effect, and that an ongoing programme of public awareness raising in respect of the Code should be carried out.
6. To agree that the CIO should hold the role of an information champion within the States', with responsibility for reviewing and challenging the use of exemptions; coordinating requests and collating data; and helping to raise awareness of, and improve engagement with, the States' FoI responsibilities, across the public sector.
7. That the CIO should review annually, progress made towards greater proactive publication of material by the States'.
8. That further consideration should be given to promoting the development of an active and engaged civil society which can articulate interests and elevate individual grievances into broader concerns and to integrating the principles of Open Government across all States' work, in order to support the culture change required for an effective FoI regime.

Appendix 1 - Terms of Reference - Access to Public Information (API)

Overview

The Scrutiny Management Committee (the Committee) will review the effectiveness of the existing 'Code of Practice on Access to Public Information' (API Code)[12] in the context of determining whether the Code has facilitated a climate and culture of openness, accountability and good governance as envisaged in the 2013 Policy Letter[13] and therefore whether the API Code remains fit for purpose.

Background

In July 2013, the States of Deliberation agreed to implement a "Code of Practice on Access to Public Information." In the supporting Policy Letter from the (then) Policy Council, it was clear that the intended new regime was envisaged to help develop a culture of transparency and openness; albeit through the development of guidelines and bespoke policies rather than through legislation.

The Policy Letter concluded that '*the most important step at this time is to adopt consistent good practice across the States and develop the right climate and culture before beginning to consider if a statutory framework is required*'[14]. It also recognised that a sensible balance needed to be struck between the desire for information and the cost of producing it.

The Policy Letter also stated that, '*In order to maximise the effectiveness of a phased approach … its [the API Code's] progress could be measured and benchmarked by one of the parliamentary scrutiny committees*'[15].

Review Scope

The Committee will consider but not be limited to the following areas as part of its review:

- Consideration of the current guidance, policies & procedures;
- A critical analysis of requests to date;
- The case for / against enhanced legislation in support of the API Code; and
- The right to appeal through an independent person / organisation.

Review Methodology

The Committee will form a 'Review Panel' tasked to consider this area which will include representation from the States of Guernsey and those independent of the Government. Following an initial desktop exercise to assess the current available information, the Review Panel will launch a formal consultation process involving the relevant elements of Government, the public and other interested parties on this matter. The Panel will seek to learn from experience in other jurisdictions, where appropriate. It is currently envisaged that public hearings may be held to gain additional clarity regarding the evidence submitted.

[12] As approved by the States of Deliberation in July 2013 and updated by the Policy & Resources Committee in 2017
[13] https://gov.gg/CHttpHandler.ashx?id=83312&p=0 para 2.1
[14] https://gov.gg/CHttpHandler.ashx?id=83312&p=0 para 6.2
[15] https://gov.gg/CHttpHandler.ashx?id=83312&p=0 para 9.5

Outcome

A balanced, evidence-based Scrutiny Management Committee Report, together with the transcripts of any public hearing(s), will be released into the public domain. The Report will consider the current policies in place, the effectiveness of the implementation of those policies, any gaps in the existing policy framework, and any recommendations on future action.

Further information

Public authorities need to be accountable for the decisions they make and the money they spend. Access to information helps the public and the media to make public authorities accountable; it allows for better informed public debate and could enhance the quality of decision-making by government. Access to information held by public bodies can also improve trust in government and increase public understanding of decision making and the operation of public bodies. Citizens have a right to know about the decision-making processes and activities of government, unless there is a public interest reason for them not to. This area has become increasingly complicated with the introduction of updated data protection laws in 2018.

The 2013 Policy Letter considered the issues surrounding the development of an Access to Public Information policy for the States of Guernsey, and asked the States to agree to the guiding principles for a Code of Practice on Access to Public Information, namely:

- A presumption of disclosure;
- A corporate approach;
- A culture of openness;
- Proactive publication; and
- Effective record management.

The Policy Letter spoke of how the States needed to balance meeting the desire for transparency against maintaining confidentiality, where necessary and justifiable. The presumption of disclosure was qualified by a list of circumstances where it was thought necessary to override that presumption in order to protect legal, commercial/competitive and public interests. This was intended to provide clarity on why information might be withheld from publication.

The Policy Letter examined the options available, taking into account the experiences in similar jurisdictions; this included the appropriateness of a legislative framework in support of freedom for information. The States of Deliberation endorsed the Policy Letter subject to amendments[16].

[16] https://gov.gg/CHttpHandler.ashx?id=99648&p=0

Following a review by the Policy & Resources Committee in early 2017 on the effectiveness of the code and how it should be applied, the P&R Committee agreed the following steps to enhance the effectiveness of the code:

- All Access to Public Information questions and responses will be published on gov.gg
- Work would be carried out to promote awareness of the code across the public service
- Work would be carried out to promote awareness of the code with the general public
- The Chief Information Officer will be tasked with reviewing any decision where an exemption has been used under the code

The Scrutiny Management Committee now considers it appropriate to review the working of the API Code, to assess whether the 'right climate and culture' has been developed along with consistent good practice across the States and to consider whether the Code of Practice is fit for purpose or whether a statutory framework is now required.

Further areas of interest

The Committee may consider the following areas as part of its review:

The existing provisions

- What use has been made and by whom of the existing API code; what types of requests are made?
- What beneficial changes could be made to the API code short of placing it on a statutory footing?
- What would be the impact and consequences of placing the current API code on a statutory footing?

Costs of the scheme and proportionality

- Access to public information comes at a cost; what would be proportionate in a jurisdiction the size of Guernsey?
- Is there evidence that the cost of administration can be offset by savings through access to public information leading to a more careful use of resources by public bodies?
- Requesting information is not the same as obtaining documentation; how far should public bodies have to go in compiling the information requested from the raw data that they may hold? What is a reasonable cost in terms of officials' time for a response to a request?
- Should there be a charge levied on requests in order to deter frivolous, vexatious, or multiple applications?

Intended and unintended consequences

- Does access to public information lead to an increase in proactive publication by public bodies and do such publication schemes significantly reduce future information requests?
- How to avoid the possibility of disclosure leading to a reduction in the frankness of advice to government and a diminution in the supply of information to government from third parties. Is there evidence of a shift towards keeping things off paper where they cannot be disclosed?

Exemptions

- What exemptions should there be and how would these be categorised between absolute and qualified exemptions?
- Would there be commercial exemptions and how would access to public information apply to outsourced public services?
- Should the Government (however defined) have a right of veto to requests in certain exceptional circumstances?

Administration of the scheme

- Who should adjudicate on requests and how is compliance enforced regarding access to public information?
- Should there be a 'requester blind' approach to applications for information?

Appendix 2 - The U.K. Freedom of Information Act 2000

The Freedom of Information Act 2000 provides public access to information held by public authorities.

It does this in two ways:

- public authorities are obliged to publish certain information about their activities; and
- members of the public are entitled to request information from public authorities.

The Act covers any recorded information that is held by a public authority in England, Wales and Northern Ireland, and by UK-wide public authorities based in Scotland. Information held by Scottish public authorities is covered by Scotland's own Freedom of Information (Scotland) Act 2002.

Public authorities include government departments, local authorities, the NHS, state schools and police forces. However, the Act does not necessarily cover every organisation that receives public money. For example, it does not cover some charities that receive grants and certain private sector organisations that perform public functions. Recorded information includes printed documents, computer files, letters, emails, photographs, and sound or video recordings.

The Act does not give people access to their own personal data (information about themselves) such as their health records or credit reference file. If a member of the public wants to see information that a public authority holds about them, they should make a data protection subject access request.

Justice Committee Report 2012-13

Freedom of Information brings many benefits, but it also entails risks. The ability for officials to provide frank advice to Ministers, the opportunity for Ministers and officials to discuss policy honestly and comprehensively, the requirement for full and accurate records to be kept and the convention of collective Cabinet responsibility, at the heart of our system of Government, might all be threatened if an FoI regime allowed premature or inappropriate disclosure of information. One of the difficulties faced in this inquiry was assessing how real those threats are given the safeguards provided under the current FoI legislation and what, if any, amendments are required to ensure the existence of a 'safe space' for policy making (Paragraph 154).

It was evident that numerous decisions of the Commissioner and the Tribunal have recognised the need for a 'safe space'. However, equally evident is the fact that in some cases their decision that information should be disclosed has challenged the extent of that safe space. We accept that for the 'chilling effect' of FOI to be a reality, the mere risk that information

might be disclosed could be enough to create unwelcome behavioural change by policy makers. We accept that case law is not sufficiently developed for policy makers to be sure of what space is safe and what is not (Paragraph 166).

While we believe the power to exercise the Ministerial Veto is a necessary backstop to protect highly sensitive material, the use of the word exceptional when applying section 53 is confusing in this context. If the veto is to be used to maintain protection for cabinet discussions or other high-level policy discussions rather than to deal with genuinely exceptional circumstances then it would be better for the Statement of Policy on the use of the Ministerial Veto to be revised to provide clarity for all concerned. We have considered other solutions to this problem but, given that the Act has provided one of the most open regimes in the world for access to information at the top of Government, we believe that the veto is an appropriate mechanism, where necessary, to protect policy development at the highest levels (Paragraph 179).

Independent Commission on Freedom of Information Report 2016

The report recommends that instead of public authorities being able to extend the deadline for answering a request by an uncapped period while they consider the public interest, that this is limited to a statutory period of 20 working days; they also recommend that this extension to the time limit only applies where the request involves information that is complex or of a high volume, or where consultation is required with third parties who may be affected by the release of the information. In addition, the report also address the delays that can occur where a request is refused and a requestor asks a public authority to review its own decision. There is currently no fixed limit on the time taken for such a review and we propose a statutory time limit of 20 working days.

They also recommend that the prosecution powers of the IC are strengthened to make it easier for him to prosecute offences relating to destroying information that has been requested under the Act, and to increase the penalty for this offence. The report also makes a number of recommendations to increase the amount of information that is released proactively by public authorities.

The report recommends that all public authorities who employ at least 100 full time equivalent staff are required to publish their compliance statistics in relation to their duties under the Act, and to publish responses to requests where information is given out, and that more information is proactively published about the expenses and benefits in kind paid to senior public sector executives. Finally the report recommends that the IC is given responsibility and powers of enforcement to ensure that public authorities are meeting their obligations to proactively publish information.

Chapter two ("section 35") considers the protection offered by the exemptions that protect government policy formulation, Cabinet material and inter-ministerial communications, Law Officer's advice, and the operation of ministerial private offices. The report recommends that the exemption for government policy formulation is redrafted to more closely match the exemption in the Environmental Information Regulations 2004, and that sections 35 and 36 are clarified so that material relating to collective Cabinet agreement is protected under a single exemption instead of being spread across two different exemptions.

In relation to the public interest test that is applied under section 35, it is recommended that the Act is clarified so that it is clear that the need for safe space is not diminished simply because a decision has been taken (although it may be diminished for other reasons), and that section 35 is amended so that when a public interest assessment is made some weight is given to the need to protect collective Cabinet responsibility, and the need to protect frank exchanges of views or advice for the purposes of deliberation.

Chapter three ("section 36") considers the protection afforded by the exemption that protects information where its release would prejudice the effective conduct of public affairs. Here the report recommends that the outdated and burdensome provision which requires the reasonable opinion of a qualified person to be obtained before the exemption can be applied is removed.

Chapter four ("risk assessments") considers the protection provided under the Act to candid risk assessments. It concludes that no additional protection is necessary.

Chapter five ("the Cabinet veto") considers whether the executive should have a final veto over the release of information and, if so, on what terms. Here the reports finds that it was clear that Parliament intended that the executive should have a veto, and recommends that the government legislates to clarify beyond doubt that it does have this power and recommends that the veto should be exercisable where the executive takes a different view of the public interest in release, and that the power is exercisable to overturn a decision of the IC. The report recommends that in cases where the IC upholds a decision of the public authority, the executive has the power to issue a "confirmatory" veto with the effect that appeal routes would fall away, and any challenge would instead be by way of judicial review of that veto in the High Court.

Chapter six ("the appeals process") considers the length and multiple stages of the existing appeals structure. This concludes that the First-tier Tribunal appeal too closely duplicates the full-merits assessment carried out by the IC, and recommends that this appeal stage is removed. This would strengthen the position of the IC as final arbiter of the substance of cases, but (similar to the Scottish system) an appeal to the Upper Tribunal on a point of law would remain.

Chapter seven (“burdens on public authorities”) considers the burden of requests on public bodies against the public interest in information being available. The report makes it clear that it does not consider it appropriate to impose an up-front charge. The report recommended that the obligations of public authorities in respect of the form in which information must be provided are clarified; that the power to issue a code of practice under section 45 is reviewed; and that the Code is updated and expanded. It also recommend that stronger guidance to public authorities is included in the Code about the use of section 14 of the Act to address burdens. Section 14, which allows the refusal of vexatious or repeated requests, has recently been clarified and can be used to refuse requests which are disproportionately burdensome. Finally it recommended that the government reviews the resources available to the Commissioner to ensure that they are adequate for him to carry out his duties under the Act effectively.

Appendix 3 - Jersey's Freedom of Information Law 2011

The UK's Freedom of Information Act (2000)[17] came fully into force in January 2005, the long implementation was to enable UK authorities be able to comply with the new legal requirements. Jersey considered the UK model not suitable for them as it had been criticised for being too 'cumbersome and ineffective…due to its exemptions and inclusions of a ministerial veto'. However if the States decided not to proceed with a law, Jersey citizens would be less legally entitled to government information than their UK counterparts.

In October 2009 the States of Jersey presented a Policy Paper/White Paper of the draft Freedom of Information (FoI) Law. This was as a result of work commenced in March 1994 where 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[18]. As a result the first step was to introduce a Code of Practice on Public Access to Official Information[19] which came into force in January 2000. The purpose of the Code was 'to establish a minimum standard of openness and accountability' by introducing a number of key obligations on departments and Committees. However, the Code was missing any mechanism to monitor the way departments classified, stored and retrieved information, and whether this process was consistent across the States.

It was recognised that despite the introduction of the 'Code' Jersey people did still not have the statutory rights of access to official information enjoyed in more than 50 other jurisdictions and it was considered that the 'force of the law was required to continue the culture change, giving the ordinary citizen a legal right of access to government information'. The aim of the Law was to give the people of Jersey the right to be supplied with information held by public authorities.

Jersey based its FoI legislation on 22 key policy outcomes. Jersey considered the introduction of a FoI law raised the same issues as the Data Protection law, mainly around effective record keeping, which makes accessing the right information easier and in the long term reduces the burden of producing the information requested.

The Freedom of Information (Jersey) Law 2011, commenced in January 2015[20] after a FoI programme had been run across all States departments to fully prepare for its implementation. Since its commencement there has been a steady increase year on year of FoI requests and in 2019 averaging around 90 requests per month.

Cost of implementation[21] - there were two separate allocations of funds for the Jersey FOI implementation, £500,000 to enable the start-up and project work in 2012 and a further £4,287,610 in 2013 for implementation during 2013 -2015.

17 http://www.legislation.gov.uk/ukpga/2000/36/contents
18 States of Jersey: Draft Freedom of Information Law 'Policy Paper': White Paper October 2009. States of Jersey - FoI Law White Paper 2009
19 A Code of Practice on Public Access to Official Information 1999/2004
20 https://www.jerseylaw.je/laws/revised/PDFs/16.330.pdf
21 Cost of implementing the Freedom of Information (FOI) legislation- Jersey

Spend to date	**Costs**
2012	£22,200
2013	£111,955
2014	£1,115,915
2015 (to April 30th)	£499,780
2015 forecast costs	£1,010,220
Total projected spend	**£2,825,970**

In May 2019 the Office of the Comptroller and Auditor General in Jersey published a report on the Arrangements for Freedom of Information: Follow-up[22]. It concluded that although there had been good implementation in areas such as the transition of central FoI activity into other departments, with a well-developed guidance manual and documents to collate responses. There was little progress in records management especially electronic records which would require an updated IT system and there appeared to be little evaluation of the effectiveness of FoI training or the costs of handling the FoI requests received.

A post implementation review of the UK FOIA completed in 2006[23] reviewed the operation and the implementation costs of the Act. It estimated that the total costs across government bodies in dealing with FoI requests was £24.4 million per year with the key cost driver being official's time in dealing with the requests.

22 https://www.jerseyauditoffice.je/wp-content/uploads/2019/05/Arrangements-for-FoI-Follow-up.pdf
23 https://webarchive.nationalarchives.gov.uk/%2B/http:/www.dca.gov.uk/foi/reference/foi-independent-review.pdf

Appendix 4 - Isle of Man Freedom of Information Act 2015

The Isle of Man first issued its Code of Practice on Access to Government Information[24] in September 1996. It has subsequently been revised with the introduction of the Public Records Act 1999; the Data Protection Act 2002 and the Freedom of Information Act (FOIA) 2015[25]. It is the Isle of Man Government's view that their citizens must have adequate access to information, but in a way that is balanced with the requirement to maintain privacy of individuals and effective government. With the introduction of the FOIA the role of the 'Isle of Man Data Protection Supervisor' was changed to the 'Isle of Man Information Commissioner' whose function was independent and not subject to direction of Tynwald, its branches or the Council of Ministers.

In the House of Keys in February 2014[26], the estimated cost of implementation was discussed and an estimated overall cost was predicted as up to £500,000 per year for the initial stages. The Minister also stated that 'the fundamental difference is that the Act creates a legally enforceable right to access information and therefore has to be more prescriptive than the Code….necessary for a request to be valid through to the review and enforcement provisions'.

The Council of Ministers introduced the Freedom of Information Act 2015 Code of Practice which was produced in consultation with the Information Commissioner to assist and advise Public Authorities in their fulfilment of their responsibilities under the Act.

In the House of Keys in November 2018[27], 'Questions for Written Answers' on the FoI requests - Breakdown per Government department for the last 12 months, there was a total of 463 requests given in various formats depending on the information available or exemptions in part or in full. Costs that have been incurred centrally by the Cabinet Office in the project to rollout out the Act across the Isle of Man are mainly employee costs[28]. Other spend relates to costs of training staff in the requirements of the Act, software and reference materials. The Isle of Man Act was a phased implementation across the public service starting in February 2016 and finishing in January 2018.

Financial Year	**Costs**
2014 – 2015	119,508.86
2015 – 2016	195,270.59
2016 – 2017	294,690.51
2017 – 2018	204,126.95
Total	**813,596.91**

Now that the Act has been fully rolled out future expenditure is expected to be much lower.

24 Isle of Man Code of Practice on Access to Government Information
25 http://www.legislation.gov.im/cms/images/LEGISLATION/PRINCIPAL/2015/2015-0008/FreedomofInformationAct2015_1.pdf
26 Hansard - House of Keys, Tuesday, 11th February 2014. Pg. 563-564 HANSARD 11th February 2014
27 Hansard - House of Keys, Tuesday, 6th November 2018. 2.1 Freedom of Information requests. Pg. 87-93 HANSARD November 2016
28 Stats from the Isle of Man – Cabinet Office - November 2019

Appendix 5 – Extracts from "Open Government: Reflections for the Panel on Access to Public Information"

The following excerpts are taken from a paper prepared by Deputy McSwiggan for consideration by the Review Panel when determining the initial scope of its Review:

The origins of the current States of Guernsey Code of Practice on Access to Public Information ('**the Code**') date back to a successful amendment to the 2010 States' Strategic Plan (Billet d'État XIX, September 2010) led by former Deputies Rhoderick Matthews and Sean McManus. The amendment was:

> *"To direct the Policy Council to consult with all States Departments and Committees and then to report to the States of Deliberation by no later than December 2011, setting out options for improving open government and transparency and establishing a corporate policy on freedom of information* ***and open government****."*

[…] In our scrutiny of this area, [… we] need to look at the bigger picture of Open Government, and how Guernsey meets or falls short of those important principles, and what could be done through or alongside the Code to address that. […]

What is "Open Government"?

According to the Open Government Declaration (which forms the basis of the Open Government Partnership, launched at the UN General Assembly in 2011), the principles of open government are:

- To increase the availability of information about governmental activities,
- To support civic participation,
- To implement the highest standards of professional integrity throughout the administration, and
- To increase access to new technologies for openness and accountability.

The Congress of Local and Regional Authorities of the Council of Europe ('**the CoE Congress**')[29] says: "open government describes a government that is transparent, participatory and accountable towards its citizens. It is a concept that can be applied to any government, irrespective of its size and no matter whether it is local, regional or national."

The CoE Congress says that the three principles of **transparency, participation** and **accountability** should be applied across five domains of government work: **budgeting, contracting, law making, policy making** and **service delivery**.

Why does Open Government matter?

Open government (that is, government that is transparent; that encourages civic participation; and that is visibly accountable for its actions) is not just good in its own right.

[29] In their report on "Transparency and Open Government" CG35(2018)14final. This is an excellent, comprehensive report on what open government means in practice, which could be very useful to us. I've drawn heavily on it for the rest of this paper, and have attached a copy as an appendix.

According to the CoE Congress, it can play an important role in increasing public trust and reducing corruption, "both of which are necessary in order for local democracy to flourish." It can also "lead to more effective provision of local public services" – not only because politicians and officials know they will be held accountable for their choices, but also because a focus on participation means citizens can bring their own knowledge and insights to help improve government decision-making.

The Open Government Declaration puts it in the following terms: "We uphold the value of openness in our engagement with citizens to improve services, manage public resources, promote innovation, and create safer communities. We embrace principles of transparency and open government with a view toward achieving greater prosperity, well-being, and human dignity in our own countries and in an increasingly interconnected world."

According to the World Bank[30]: "There are a few different reasons why we should value greater transparency. The first is the way that transparency potentially changes the way government operates. The second is that transparency potentially changes the relationship between people and government officials. And a third reason is that transparency enables groups, that otherwise would not be able to participate, to participate in governance."

Open government has the potential to strengthen the relationship between the States (including the public sector) and the people of the Island as citizens; to improve our stewardship of public funds; and to increase public engagement with, and creative thinking about, the challenges faced by our community and their possible solutions. It also reflects our aim, as set out in the Policy & Resource Plan, to maintain our reputation as a mature international jurisdiction. A commitment to open government in Guernsey is an important counterweight to the accusations of secrecy we often face from outside.

How open is Guernsey's government already?

The CoE Congress report on Transparency and Open Government (see Appendix 1) is particularly helpful in turning "open government" from a broad concept to a set of specific, reasonably measurable things which all governments could be doing to achieve greater transparency, civic participation and accountability.

This summary table is taken from page 14 of the report:

Function	Transparency	Participation	Accountability
Budgeting	The public have access to information on how government collects and spends public funds.	The public are involved in influencing or deciding how a public budget is spent.	The public can hold decision-makers to account for how public money is allocated and spent.
Contracting	The public have access to information on the	The public are involved in planning, awarding and/or	The public can hold decision-makers to account for how

[30] World Bank Blogs (written by John Turkewicz, June 2011) – "Why we should care about transparency" – available at: https://blogs.worldbank.org/governance/why-we-should-care-about-transparency

	full contracting cycle, including planning, tender, award, contract and implementation.	evaluating the implementation of government contracts.	goods and services are commissioned and procured.
Law making	The public have access to information on how laws are made and by whom.	The public are involved in informing, making and scrutinising laws.	The public can hold decision-makers to account for how they make laws and their implementation.
Policy making	The public have access to information on how policy is made and by whom.	The public are involved in informing, making, implementing and evaluating policies.	The public can hold decision-makers to account for how they make policies and what they achieve.
Service delivery	The public have access to information on their rights and entitlements, and the governance, funding and performance of public services.	The public are involved in designing, commissioning, delivering and evaluating public services.	The public can hold decision-makers to account for the quality and accessibility of public services.

I have looked at how this could be applied to the States, to illustrate how Guernsey is doing on open government, and to consider areas where we might want to make recommendations for change. […]. My initial analysis, using a four-point scale, from 1 (good) to 4 (bad), is shown below. [*These represent one Panel member's analysis and should not be taken as the official view of the Panel*.]

Function	Transparency	Participation	Accountability
Budgeting	2 – Annual budgets and Accounts are published. The Budget process was improved this year, with more information included about Committee submissions, including unfunded requests, and analysis of alternative options. Accounts are still not provided in internationally recommended formats.	3 – There is no real opportunity for the public to be involved in budget-setting. A Social Investment Fund has been set up, to provide funding to civil society organisations working towards the States' objectives. A £1m Participatory Budget fund was created in 2019 but has not been used.	3 – The only real mechanism for accountability is the 4-yearly General Election. There is no recall mechanism. Confidence in the Code of Conduct process is low. Other ways of holding each other to account (Motions of Censure or No Confidence) are rarely used.
Contracting	2 – Fairly extensive information about government tenders is available on the CI Procurement Portal.	4 – Public or civil society involvement in the tender process is rare to non-existent.	3 – As above.

Function	Transparency	Participation	Accountability
Law making	2 – The law-making process is fairly public: policy letters provide drafting instructions. Laws are submitted to the States for approval before they are enforced. A public library of Guernsey's laws is available online at guernseylegal-resources.gg. The schedule of laws queued for drafting, their priority and latest progress, is routinely published. The biggest gap here is a lack of public knowledge about how Guernsey's law-making processes work.	2 – The public are not *systematically* involved in informing, making and scrutinising laws. But because the process is quite public, they can become actively involved – there was a lot of engagement with the Population Management regime, for example. In some cases there are focused technical consultations (e.g. Capacity law) or broad public consultations (e.g. Equality law) and representatives of civil society are included in working groups (e.g. Equality law).	3 – As above.
Policy making	3 – Policies which are brought to the States are publicly visible and often the subject of public debate. The quality of communication about States' policy is variable at best. The kind of policy-making that happens at Committee level is much less visible to the public.	2 – This is variable, but a lot of policy areas are informed by public consultation, if not by longer-term engagement (e.g. involvement on working groups). Public involvement in implementation or evaluation is much rarer.	3 – As above.

Function	Transparency	Participation	Accountability
Service delivery	3 – There is a lot of information in the public domain about people's rights and entitlements to public services (especially on gov.gg); however, this is often difficult to navigate. Information about the governance and performance of public services (e.g. KPIs) is generally not routinely produced.	3 – This is variable. Most services have complaints processes; some will hold focus groups with customers when looking to change a service, or to improve its implementation. The Social Compact was intended to improve third-sector involvement with service delivery, but has been limited in its impact.	3 – As above.

On pages 15 to 21 of its report, the CoE Congress identifies recommendations for governments wishing to improve their performance in each area. [*The paper assessed which of these could be taken forward by the States. The Panel is recommending that this should be given further consideration in due course. Therefore the CoE Congress' recommendations are set out below without the original commentary in the paper*.]

Open Budgeting

- Publish key budget documents in a timely fashion and on a routine basis.[31]
- Produce an annual Citizens' Budget which communicates the headline figures of the Budget in an easy-to-understand format.
- Involve residents in defining budget priorities through holding budget consultations and/or defining a portion of the budget for participatory budgeting.

Open Local Contracting

- Publish key documentation and data on the contracts signed by the States, particularly where they relate to large amounts or critical services or infrastructure.
- Adopt the Open Contracting Data Standard.[32]
- Involve citizens in defining, awarding and evaluating contracts, particularly for essential services or infrastructure.

[31] See also the International Budget Partnership's "Guide to Transparency in Government Budget Reports": https://www.internationalbudget.org/wp-content/uploads/Guide-to-Transparency-in-Government-Budget-Reports-Why-are-Budget-Reports-Important-and-What-Should-They-Include-English.pdf
[32] See http://www.open-contracting.org/implement/global-principles/

Open Local Law-making and Policy-making

- Publish information in an accessible format about the democratic decision-making process, agendas, and minutes.
- Make council meetings open to members of the public, civil society and the press, unless there is an exceptional case for holding a meeting in private.
- Enable citizens to propose and vote on local laws.
- Publish information in an accessible format on the policy-making process, including up-to-date information on current policy processes.
- Identify issues of high priority to residents and involve them in developing, reviewing and/or deciding on policy options.
- Develop a participation policy which establishes a requirement to engage residents, which is communicated to residents, and which is legally enforceable.

Open Service Delivery

- Publish and promote information on the public services to which residents are entitled.
- Collect feedback on citizens' satisfaction with the quality and accessibility of public services.
- Involve citizens, particularly service users, in reviewing, designing and delivering public service. This requires a genuine willingness to act on citizens' ideas, and to provide feedback to participants on the outcome.

Joining the Open Government Partnership

The 2011 Information Strategy recognised the importance of a symbolic commitment to openness, as well as the practical changes needed to make it a reality.

With that in mind, we may also wish to recommend to the States that Guernsey should seek to join the Open Government Partnership as a Local member[33]. (The Local programme of the Open Government Partnership includes cities, regions and devolved administrations – including Scotland, Paris, Ontario, Tbilisi, Seoul and Kaduna State, among others.)

Joining the Open Government Partnership comes with a requirement to develop action plans, on a cyclical basis, to improve the openness of government. For the API Panel, this would give us some comfort that, rather than a one-off review of the Code alone, we would be leaving the States with a framework and a process that will require it to keep working towards better standards of transparency, civic participation and accountability. […]

[33] See: https://www.opengovpartnership.org/ogp-local-program/#About

Appendix 6 - Key Documents/Sources of Information

Document Title	Reference (URL)
States Strategic Plan 2010-2015, Policy Council, 29 September 2010	https://gov.gg/CHttpHandler.ashx?id=5963&p=0
States Strategic Plan 2010-2015 Amendment, 27 October 2010	https://gov.gg/CHttpHandler.ashx?id=100591&p=0
Information Strategy, Belinda Crowe, September 2011	https://gov.gg/CHttpHandler.ashx?id=83312&p=0 p1057-1071
'States of Guernsey Policy for Access to Public Information' Policy Letter, Policy Council, Billet d'État XV, July 2013	https://gov.gg/CHttpHandler.ashx?id=83312&p=0 p1042-1086
'Code of Practice on Access to Public Information', original 2013 version.	https://gov.gg/CHttpHandler.ashx?id=83312&p=0 p1076-1083
'States of Guernsey Policy for Access to Public Information' Policy Letter, Resolutions	https://gov.gg/CHttpHandler.ashx?id=99648&p=0
Code of Practice on Access to Public Information, February 2017	https://gov.gg/CHttpHandler.ashx?id=103768&p=0
Detailed Guidance on how to use the States of Guernsey Code of Practice for access to public information, February 2017	https://gov.gg/CHttpHandler.ashx?id=105845&p=0
Short Guidance note on Operational Implementation of the API Code	https://gov.gg/CHttpHandler.ashx?id=109035&p=0
Freedom of Information Act 2000 (UK)	http://www.legislation.gov.uk/ukpga/2000/36/contents
Freedom of Information (Jersey) Law 2011	https://www.jerseylaw.je/laws/revised/PDFs/16.330.pdf
Jersey Audit Office –Arrangements for Freedom of Information Follow-up	https://www.jerseyauditoffice.je/wp-content/uploads/2019/05/Arrangements-for-FoI-Follow-up.pdf
Isle of Man – Freedom of Information Act 2015	http://www.legislation.gov.im/cms/images/LEGISLATION/PRINCIPAL/2015/2015-0008/FreedomofInformationAct2015_1.pdf
Congress of Local & Regional Authorities – Transparency and Open Government	https://rm.coe.int/transparency-and-open-government-governance-committee-rapporteur-andre/16808d341c

Appendix 7 - Call for Evidence

Listed below are the Committees and organisations that were invited to submit evidence. A general Call for Evidence was extended to the public and advertised in the Guernsey Press, media and posted on the Scrutiny.gov.gg webpage.

Title
Policy & Resources Committee
Committee *for* Education Sport & Culture
Committee for Health & Social Care
Committee *for* Environment & Infrastructure
Committee *for* Economic Development
Committee *for* Home Affairs
Committee *for* Employment & Social Security
States' Trading Supervisory Board
States' Assembly & Constitution Committee
Development & Planning Authority
Overseas Aid & Development Commission
Transport Licencing Authority
Health Equality for All (HEAL)
Channel TV
BBC Guernsey
Guernsey Press
Bailiwick Express
Island FM
Press release to the General Public
UK Information Commissioner
School of Public Policy, University College London
CEO Leeds City Council
Chief Executive, Trust Management Offices, Southampton General Hospital
Mr Maurice Frankel

Appendix 8 - Resolutions, 30th July 2013, Access to Public Information

Billet d'État No XV dated 21st June 2013

After consideration of the Report dated 20th May, 2013, of the Policy Council:-

1. To agree the guiding principles outlined in that States of Guernsey Policy for Access to Public Information States Report, as follows:
- A presumption of disclosure;
- A corporate approach;
- A culture of openness;
- Proactive publication; and
- Effective record management.

2. To agree that the presumption of disclosure will need to be subject to certain stated exceptions in order to protect legal, financial, commercial, competitive and public interests which will be agreed by the States from time to time.

3. To agree the Code of Practice on Access to Public Information in Appendix Three of that Report which will apply to all States Departments and Committees and which incorporates the guiding principles and describes the exceptions but to direct that, in relation to Part 1, paragraph 1.11 of the Code, by no later than July, 2014 the Policy Council shall report to the States of Deliberation setting out their assessment of the feasibility, desirability and potential cost of providing a right of appeal to an independent person or persons in respect of a request made for access to information which is refused by a States Department or Committee, and further subject to removing the sentence "There is no commitment that pre-existing documents, as distinct from information, will be made available in response to reasonable requests." from section 1.6 of that Code.

4. To endorse the Policy on the Use of Confidentiality in Contracts and agreements contained in Appendix Four of that Report.

5. To direct the Policy Council to implement, no later than 31 March 2014, a consistent mechanism which Departments and Committees can use to record and collate data on the number and category of requests made under the Code of Practice, including when exemptions are applied and to direct Departments and Committees to implement the policy so that data collection can commence from 31 March 2014.

6. To direct the Policy Council to report back to the States during quarter 1 of 2015 with a report evaluating the effectiveness of the Code of Practice and recommending any changes it considers appropriate; that report to include details of all information requests which have

been refused, providing the reason for the refusal, and under which part of the Code the refusal was made.

7. To direct the Policy Council to report back to the States during quarter 1 of 2015 with a report evaluating the feasibility and implications of expanding the Code of Practice to include automatic disclosure rules similar to the UK "30 year Rule".

8. To direct every Department and Committee to publish details (namely the title of the report, who it is commission by and from and date of commission) of all reports commissioned by the Department or Committee within six months of that report being commissioned, unless the publication of such detail would fall within one of the exemptions from disclosure set out in the Code of Practice on Access to Public Information set out in Appendix Three of the Report.

Appendix 9: Code of Practice on Access to Public Information

States of Guernsey: Code of Practice on Access to Public Information