

STATES OF JERSEY



DRAFT FREEDOM OF INFORMATION (JERSEY) LAW 201- (P.39/2011): COMMENTS

**Presented to the States on 28th April 2011
by the Council of Ministers**

STATES GREFFE

COMMENTS

The Council of Ministers fully supports the principles of openness, transparency and access to information on which this Law is based. It is firmly committed to these principles and welcomes proposals to strengthen public access to information as a general right of all people, with limited exemptions that can be challenged.

Limiting exemptions allows government to adopt the concept of maximum disclosure which could mitigate the administrative impact of Freedom of Information (FOI) legislation. However a system or process for disclosure needs to be devised for Jersey that allows requests to be “rapidly and fairly” processed and processed consistently across Departments. The Council of Ministers has previously stated that it believes that the existing Code of Practice on Public Access to Information is proportionate and works well but is concerned that a move to a statutory right of access is not as easy as the Privileges and Procedures Committee report might suggest. The Council believes that implementation of such a Law must be carried with adequate resources.

Moving to a statutory provision should not be undertaken without a full understanding and a commitment to provide the resources necessary to meet that provision. In the case of Freedom of Information legislation, failure to meet statutory provisions by the government can only lead to damage to both domestic and international reputations and a failure to meet expectations. The Council of Ministers holds the view that the resource needs in the Committee’s report are understated on several fronts. To help to quantify the resource requirement, the Chief Minister has commissioned SOCitm (who are an independent organisation of information management specialists) to develop an initial implementation plan for the introduction of Freedom of Information legislation in the light of Departments’ record management standards. This information is more relevant to the proposition (P.41/2011) of Deputy Le Hérissier.

The initial implementation plan has been produced independently through consultation with individual Departments and Non-Executive bodies. The report produced by SOCitm highlights the need for a comprehensive programme bringing together Freedom of Information, Records Management and the Public Records Law. In short the plan identifies the need to deal with the issues and weaknesses inherent in the records management systems within the States and the lack of compliance with the Public Records Law. Both need to be resolved before the Draft Freedom of Information Law can be implemented.

The Public Records Law (Jersey) 2002 represents an example of a Law that was introduced without adequate resources. Despite the declaration that the Law had no manpower or resource issues in 2002, lack of resource has resulted in a Law that Departments do not adhere to, with a resultant cost for Jersey Archive alone of approximately £500,000 to clear a 20 year backlog.

The Council of Ministers therefore believes that the Privileges and Procedures Committee have understated the need for resources in the following areas –

- Effect on departments that have limited ability to absorb FoI activities into existing resources.
- The creation and maintenance of a FoI Unit.
- Additional resources in the Law Officers’ Department.
- Enhancement of records management to meet FoI requirements.

- The ability of Jersey Archive to meet Public Records Law provisions.

The Council of Ministers recognises other costs that have been identified by the Committee in its report, such as additional staff in an Information Commissioners Office, but overall believes that the cost to implement and meet the requirements of the Draft Freedom of Information Law would be at least £5.6 million and thereafter £1.3 million a year, certainly for the first few years.

These costs have not been massaged to delay or defer the implementation of the Law. They have been discovered by SOCitm, independently and represent an estimated cost of moving from the position that exists at present to a properly functioning Freedom of Information Law.

This amount does not include the resources needed to improve records management across the States where preparedness for FOI access varies between Departments. At an early stage in the plan the resources needed to deal with elements such as filing systems, cataloguing, indexing as well as any necessary “back scanning” will have to be identified. It is this aspect of the cost of implementation in Departments that is a significant concern for the Council of Ministers, given that the previous introduction of the Public Records Law was not adequately resourced. Whilst record keeping is adequate for the purposes of day-to-day service delivery, considerable work is needed to bring standards up to those needed for proper compliance with this Law. In the case of many, if not all Departments, the Council believes it may not be possible to simply absorb that additional workload. There is a danger, therefore, that the Law may add to the costs of “bureaucracy” as perceived by some observers in that it will increase costs without necessarily improving service delivery or efficiency.

To meet the provisions of a Freedom of Information Law a fully integrated programme of work covering Records Management and Public Records will have to be designed and include –

- A scheme for Programme and Implementation Governance.
- Commissioning an Information Governance Unit.
- Review of Information Requests and Publication Schemes.
- Creation and Implementation of Information and Records Standards.
- Information and Records Awareness and Training.
- Commissioning of a Freedom of Information Unit.
- Resources in the Law Officers and Data Protection Departments.
- Creation of Policies and Procedures.
- FoI Training and Awareness.
- Communications Plan.
- Enabling Technology including the Internet.

In looking at the timescale for implementation, the Council of Ministers welcomes the Committee’s view of potentially a 5 year lead in period. However, this is subject to sufficient resources being made available during a period of restraint to allow records management, the provisions of the Public Records Law and the implementation of Freedom of Information legislation to come together as a cohesive process across States departments. To do this a more detailed plan will need to be developed based on

the work done by SOCitm and incorporating the officers and existing working groups identified in both the Committee's report and the report by SOCitm. This Editorial Working Group is identified as a key resource in the implementation plan. Clearly this is a further draw on the resources of individual Departments where Public Records Officers have other duties to perform. Part of the initial work of this group will be to analyse existing information requests to Departments which currently are not recorded but would likely fall within the Freedom of Information legislation.

The estimated cost of implementing Freedom of Information is summarised in the following table from the information contained in the report by SOCitm following their discussions with Departmental Public Records Officers (PROs) and those heavily involved in records management in Departments. The timescale for this plan, which tackles Records Management as well, is 4 years, so that if started now, in the middle of 2011, would result in the Law possibly being implemented in late 2015 as mentioned in P.41/2011.

In this table, one off costs represent the expenses of IT licences and initial training cost for example, whilst on going costs identify maintenance contracts, recruitment within some Departments (such as the Law Officers) and the Departmental costs solely relating to the effort of Departmental Public Records Officers.

Year	Time	One off	On going	Departments	Total
1	2011/12	£718k	£453k	£1.40m	£2.571m
2	2012/13		£453k	£370k	£0.823m
3	2013/14	£20k	£457k	£370k	£0.847m
4	2014/15	£80k	£934k	£375k	£1.389m
		Total Implementation Cost			£5.63m
5	2015/16		£934k	£375k	£1.309m

The activity programme is explained in more detail in the Council of Ministers comments to P.41/2011 which shows that some activities have been absorbed in existing resource provision. There is little scope to absorb any more.

Finally, the Council of Ministers recognises the balance between allowing access to information without barriers and the cost that access incurs. The Council therefore supports the idea of reasonable charges with a maximum cap. The question of charges will have to be debated but a statutory system for Freedom of Information will not be self financing.

The Council supports the proposed draft Law and believes that, at this stage, the debate should focus on the principles and intentions of the draft legislation. However, it is anxious that the expectations of States members are not unduly raised regarding the ease and cost of implementation and ongoing maintenance. The Council would not wish to be in the position of introducing a Law that there was little chance of fully complying with. It believes that introduction and ongoing maintenance of a Law should be proportionate and have the maximum benefit for sensible use of limited funds and manpower, introduced *only* on the basis that sufficient resources are made available to allow it to be properly implemented and managed. This will require a minimum of £5.6 million for implementation and estimated initial running costs of approximately £1.3 million a year. These costs have not been identified in the 2012

Business Plan which is to be lodged in July and debated by the States in September. If the States approve the Law, further debate will have to take place for the 2012 Business Plan, or the next Strategic Plan and future Business Plans, to identify what services can be reduced or removed to afford the implementation of the Law, as the States will have fixed an overall spending “envelope” and it is important that the discipline of that approach is not breached. Given the well-documented efforts of States departments already to implement stretching CSR targets, States members will need, at that time, to balance their support for implementing this legislation, if approved, against potential reductions in other areas.