

## **2.16 Deputy S. Pitman of the Chief Minister regarding the Council of Ministers confidential 'B' agenda:**

Would the Chief Minister inform Members of the criteria for an item to be placed on the Council of Ministers confidential 'B' agenda and advise whether he is satisfied that the exemptions under the Code of Practice on Public Access to Official Information are always correctly applied?

### **Senator P.F.C. Ozouf (Deputy Chief Minister - rapporteur):**

Members will be aware that the criteria applied for placing items on the Council of Ministers 'B' agenda is laid out in section 3.2 of the Code of Practice on Public Access to Official Information to which the Deputy refers. I believe that the Chief Minister is correctly applying the procedure. I reviewed myself, as it happens, the Council of Ministers agenda last week and I can advise Members that in fact I have the 'Part B' agenda here and 4 items were moved from the 'B' agenda to the 'A' agenda after the discussion. I believe that the particular issue that Members may have is part 6.14 of the procedure which says that: "There should be an ability to retain information when it constitutes a premature release of draft policy which is in the course of development." That is the real issue which Members are concerned about and, as governments around the world, we do not release information which is in the course of development.

### **2.16.1 Deputy S. Pitman:**

Increasingly we are seeing smaller 'A' agenda minutes and larger 'B' agenda minutes, I have it from a very reliable source that there has been a significant number of items that did not need to be on the 'B' agendas, including the waste strategy, travel and transport strategy and other strategies. Could the Minister explain the reason for the extended 'B' agenda minutes?

### **Senator P.F.C. Ozouf:**

I regret the insinuation by the Deputy that there is some inappropriate activity by the Chief Minister and the Council of Ministers in hiding information. Nothing could be further from the truth. The Chief Minister has made and put in place strengthened arrangements and strengthened procedures to the Council of Ministers agenda and I would say to the Deputy that we cannot continue to operate on this presumption of a lack of trust. The Council of Ministers and the Chief Minister is working in a way which is designed to put as much information into the public domain as possible and Members should be, I think, grateful and appreciative of the fact that he is trying. He is moving items from 'B' to 'A' whenever it is possible and I cannot say that I see, as a Member of the Council of Ministers, truth in the allegations that the Deputy makes. It is really not founded and not fair.

### **2.16.2 Senator S. Syvret:**

Would the Assistant Minister not accept the fact that the clause he referred to in the Code of Practice on access to public information is there as a minimum standard and not an obligatory standard so that policies under discussion or development can in fact be released, should the Council of Ministers so choose, unless there were other legitimate pressing reasons for their retention as secret documents? Does he not accept that the Council of Ministers, much like frankly the old committee system, abused the 'Policy under development' clause in order to keep things out of the public domain that were entirely reasonably publishable?

**Senator P.F.C. Ozouf:**

For not the first time in the last 7 days Senator Syvret makes suggestions of, I think, inappropriate motive for what the Council of Ministers are seeking to achieve. Deputy Le Claire circulated to me and other Ministerial colleagues a very helpful statement by the new incoming President of the United States when he stated that there should be a presumption of openness, and that is absolutely the way that the Council of Ministers wishes to operate. Members will be aware however that there are issues which need to be discussed but which need to be properly debated, ventilated within the Council of Ministers within departments, before they are released into the public domain, because premature release of policy indicates that a decision has been made and that is not the case. Matters that were on the Council of Ministers' agenda last week which are remaining under 'B' are exactly that; discussions, policy under development, which no government in the world - not the United States or any other - would release prematurely.

**2.16.3 Deputy G.P. Southern:**

The words sound fine, a commitment to transparency and openness in theory, but is it not the case that, in fact, the Council of Ministers increasingly is using 6.14 to hide perfectly normal policy decisions which are in the process of being debated and which could very safely be out in the public domain for the public to debate what should happen? **[Approbation]** For example on the 'B' agenda quite recently was the question of bus passes and at what age to set the free bus passes, which has been already discussed this morning in general terms by Transport and Technical Services. Why did the 3 options presented to the Council of Ministers not be presented to the public so that they can make their mind up as to which way is the best way forward?

**Senator P.F.C. Ozouf:**

The Chief Minister and Council of Ministers are trying. I will give Members an example of ... precisely an example, I will deal with the issue of bus passes. The Council of Ministers discussed last Thursday the issue of Haut de la Garenne and the very sensitive issues concerning putting in place restorative work to undo some of the damage that had been caused to the building. Contained in the confidential paper that the Council of Ministers considered was sensitive information which could not be released into the public domain. The Chief Minister decided that he was going to convert the matter into an 'A' but has not put into the public domain the confidential briefing. Frankly, if we were to put in place ahead of the Council of the Ministers' time the discussion on bus passes we would have set hares running. The Council needed to discuss what its options were in relation to buses and the Minister for Transport and Technical Services has explained to the Assembly what the matters are. If we can do better in terms of recording actions after discussion so be it. We will continue to try. There is a presumption of openness but we do not wish to issue papers which will get hares running and effectively suggest to the public that decisions that have been made have not yet been made and are still under quite vociferous discussions in some cases.

**2.16.4 Deputy G.P. Southern:**

The Minister's answer insults the public and its intelligence. It can work out 3 options with 3 costings from bus passes. The Minister did not address the issue of bus passes. That issue could perfectly healthily in a perfectly open and transparent way be discussed now, and the public could be making their minds up on what the costs

and benefits are of all of those 3 options. Why could that not be in the public domain? I have no objection where you have commercial individuals identified or legal issues that the 'B' agenda should be kept for what it is for, which is keeping those sort of issues secret, but policy information when they are fairly straightforward could be out in the domain and that would be true transparency and true openness. When is he going to put his money where his mouth is?

**Senator P.F.C. Ozouf:**

I repeat the fact that the Chief Minister has given an absolute assurance that where it is appropriate and possible there will be a presumption of transparency. The issue of bus passes, the Minister took away ... if he is asking for immediate release following a Council of Ministers' discussion, the Minister for Transport and Technical Services took that issue away and had further discussions with his officials, further discussions with advisers in relation to coming to a considered matter. He has been careful in his words this morning about what he has already been able to commit but also explained to Members very clearly that there are still some issues to be resolved. That is policy under development as opposed to putting into the public domain complete information which is not decisions, which has hares running, and which gives the appearance of decisions made that have not been made. There is a presumption of openness and I think the majority of Members understand the new approach by the new Chief Minister.

**2.16.5 Deputy P.V.F. Le Claire:**

It is really related, although I know it is slightly off, I believe just as a fragment of memory that we had approved, and I stand to be corrected, that the minutes of the Board of Management would be circulated to States Members and I do not have any as yet. I wondered what was happening in that regard because those are important meetings of the Chief Executive Officers of the States?

**Senator P.F.C. Ozouf:**

I think we all realise, I need notice of precisely exactly where we are and I am happy to circulate a note to Members on the issue precisely, I think the issue is the Corporate Management Board issues a record of actions to be taken. It must be the case that all committees including Scrutiny Panels do hold discussions behind closed doors in order to develop their arguments and develop effectively their lines of questioning. I am sure that Scrutiny Panels do it. Other governments do it, other cabinets do it and I am sure that this administration is no different. There is a presumption of openness in all matters that we do; can we improve? Yes. Are improvements being made? Absolutely.

**Deputy P.V.F. Le Claire:**

I am not certain and I do not want to put the Senator on the spot because he is answering for the Chief Minister and his memory, he is going to go and check it, but maybe the Greffier or somebody could remind us whether or not we took a States decision to circulate these minutes? I am certain we did, certain that it was approved. I certainly have not seen anything yet.

**2.16.6 Senator A. Breckon:**

I wonder if Senator Ozouf could comment on the stated intent of the machinery of a government review, commonly known as the Clothier Review, that policy and development should be shared by the Executive with others to provide checks and

balances? In light of what he has just said I wonder if he could say where that sits now?

**Senator P.F.C. Ozouf:**

That is absolutely the right way that indeed Ministers and their corresponding Scrutiny Panels should be in a position to discuss policy under development. Three of the papers, I will say to Members, that were discussed at the Council of Ministers last week considered the issue of the financial affairs of the States. We looked at a draft capital programme in very, very, very high level detail. We considered what the funding pressures for different departments are. These are very early discussions of which I have already had some discussions with the Corporate Affairs Scrutiny Panel and certainly there is an opportunity for Scrutiny Panels, on the basis that confidentiality can be maintained and one is not going to put inappropriate information in the public domain, of course there is that additional opportunity for Scrutiny but until now we have had Scrutiny Panels examining Ministers in public of which they have had to be guarded in relation to what they say in public, because it is policy under development and no decisions have been made.

**2.16.7 Deputy S. Pitman:**

I would like to point out that it is a rarity for Scrutiny to hold meetings in confidence. If it is a rarity, that is a fact, and States Members do understand the sensitivity of issues like Haut de le Garenne to be kept confidential in 'B' agenda minutes, but the facts are there. There has been an exponential increase of the 'B' agenda.

**The Deputy Bailiff:**

Your question, Deputy?

**Deputy S. Pitman:**

Well, there has been an increase of these items on the 'B' agenda. Can the Minister explain why?

**Senator P.F.C. Ozouf:**

I have not looked at the minutes in that regard. What I perhaps could explain is the fact that this is a new Council of Ministers which is discussing its priorities and there is a great deal of high level issues which are coming forward. There are 2 policy issues which were finally decided on the Council of Ministers last Thursday which were put immediately in the public domain; namely, the submission to the States of further tax information exchange agreements and a tax information exchange agreement with Australia, Italy and New Zealand. Immediately that the Council had considered that it was put into the public domain, and what I would say to the Deputy is that I suspect that there is going to be ... now matters of policy are being concluded and worked on there is going to be a preponderance of matters moving from 'B' to 'A.' There is a presumption of openness and I would ask Members to respectfully trust the Council of Ministers to adhere to that principle.