
STATES OF JERSEY



GUIDANCE ON ACCESS BY STATES MEMBERS TO OFFICIAL INFORMATION

**Presented to the States on 23rd December 2011
by Privileges and Procedures Committee**

STATES GREFFE

REPORT

FOREWORD

In the UK and other jurisdictions, parliamentarians retain a separate right of access to official information in addition to any requests for information that they may make under freedom of information legislation.

The most recent public statement relating to members' rights of access to official information in Jersey was published on 2nd June 1987 in response to a question tabled in the Assembly.

Following the adoption by the States of the Freedom of Information (Jersey) Law 2011, the Privileges and Procedures Committee considered that this advice should be updated to provide members with a point of reference that reflects the current ministerial system of government.

The following guidance has been prepared by H.M. Attorney General and is being issued as a report by the Committee so as to assist members in their understanding of what access they might expect to have to information held by Ministers and ministerial departments, as well as to any other information held by the States of Jersey.

The report is being issued in accordance with the Committee's responsibility under Standing Order 128(h) of the Standing Orders of the States of Jersey "to keep under review the procedures and enactments relating to public access to official information and the procedures relating to access to information for elected members".

Connétable A.S. Crowcroft of St. Helier
Chairman, Privileges and Procedures Committee

**Guidance on the Access by States Members to
information held by Ministers, Ministerial Departments or otherwise by the
States of Jersey**

1. The purpose of this note is to provide guidance to States Members (“Members”) on what access Members might expect to information held by Ministers, Ministerial Departments or otherwise held by the States. Generally, Members are entitled to expect that Ministers will provide information to Members if asked to do so. If they do not provide that information, or if Members otherwise wish to ask for it in a more formal context, it can be sought in questions in the States. The principles set out at paragraph 4 below apply whether or not the information is sought informally (as is most often the case) from a Minister or a Ministerial Department or in a States question.

Questions in the States

2. Holding Ministers to account is a fundamental part of a Member’s duties and the ability to do so, within the context of a sitting of the States Assembly, is in part via the mechanism of written or oral questions. Members can submit written questions to any Member on a matter for which that Member has official responsibility or, under Standing Order 63, can ask oral questions of any such Member. The permissible form and contents of questions are contained within Standing Order 10.
3. Provided that the question meets the provisions of Standing Order 10 (and is accordingly within Standing Orders), then a Member may ask it. How the person who is asked the question responds to it, however, is entirely a matter for him or her.

Principles

4. As mentioned above, the following principles apply to the answers given by Ministers or other Members to written or oral questions and to the provision of information to Members requested outside the context of a sitting of the States Assembly:
 - (a) There is a practice or convention that Ministers will provide information requested by a Member.
 - (b) The purpose of the practice or convention is to enable a Member to discharge his or her duties as a Member.
 - (c) In general, it is for a Member to decide what information he or she needs. Unless it is obviously irrelevant to any function of a Member of the Assembly, *or there is some other good reason to refuse to provide it*, the practice or convention dictates that Minister should provide it.
-

- (d) The access by Members to information cannot be enforced by a Court. The Court has no jurisdiction. If a Minister refuses, without good reason, to provide information and is accordingly in breach of the practice or convention, the consequences for that Minister are political and not legal. By way of remedy, an aggrieved Member might choose to request the information by way of a (further) written/oral question or, perhaps exceptionally, bring a proposition to the States requesting that such information be made available.
- (e) The presumption that a Minister will provide information, whilst strong, is nonetheless qualified to some extent. In particular, Ministers might quite properly decline to provide information or edit information that they do provide if for a good reason. That may include:
 - (i) where disclosure would constitute a breach of confidentiality;
 - (ii) where disclosure would constitute a criminal offence;
 - (iii) where disclosure would contravene one or more of the data protection principles set out in the Data Protection (Jersey) Law 2005;
 - (iv) where disclosure would put policy in development into the public domain prematurely;
 - (v) where the information is, of its nature, privileged, such as legal advice.

Position of Attorney General

5. The Attorney General (which for these purposes includes reference to the Solicitor General) may, subject to certain exceptions, also be asked to provide information.
6. It is not appropriate to ask the Attorney General to reveal any legal advice that he has given to Ministers or to anyone else. Legal advice attracts a general privilege from disclosure (referred to as "*legal professional privilege*" or "*legal advice privilege*"). Furthermore, whereas the Attorney General can be asked for legal advice in the Assembly by any Member on a matter before the Assembly, the Attorney General's advice given to others by convention remains confidential and there is a separate privilege with regard to that advice. For recognition of the significance of questions relating to legal

advice, see paragraphs 9.27 et seq. of the Code of Practice for Scrutiny Panels and the Public Accounts Committee of 8th April 2008. (N.B.: under the Freedom of Information (Jersey) Law 2011 (not yet in force) the legal advice of the Law Officers is “*qualified exempt information*” which means that a request for it can be refused if the public interest in refusing it outweighs the public interest in providing it.)

7. The Attorney General is also in charge of the prosecution service and all criminal prosecutions are brought in his name. It is fundamentally important that any decision taken in a prosecution matter is actually and demonstrably free of any political interference or pressure. The Attorney General is not accountable in the Assembly or politically in any way for any individual prosecution decision. Accordingly, the Attorney General should not be asked and, if asked, will not answer any questions which might be construed as an attempt to place pressure on the Attorney General as to how he exercises his discretion in prosecution matters or to account to the Assembly for any prosecution decisions.

Non- Ministerial Information

8. Non-Ministerial information sought from the Greffier of the States or any States body will be provided unless there is a pressing reason not to provide it. This information is not under the dominion of a Minister but is held on behalf of the States Assembly as a whole. Such information might be refused in exceptional circumstances (which may include those listed in paragraph 4 above) and in particular it will generally not be appropriate to provide information in the possession of the States Employment Board as this often relates to employees who are entitled to expect confidentiality.

General Points

9. The entitlement of States Members to information exists alongside the rights of any person to information under the Code of Practice on Public Access to Official Information held by the States, Committees of the States and Departments of the States, or the Freedom of Information (Jersey) Law 2011 (when it is in force).
10. Scrutiny Panels and Members of Scrutiny Panels have enhanced rights of access to information to enable them to discharge their duties as Members of Scrutiny. This is often made subject to a confidentiality agreement. Those enhanced rights may be found in the Code of Practice for Scrutiny Panels and the Public Accounts Committee (8th April, 2008). Those enhanced rights only apply to the exercise by members of their functions in Scrutiny and not otherwise.

Important Note

11. Members should be aware that the character of any information provided to them does not alter by reason of the fact that it has been provided. In other words, if confidential information is provided to a Member so that the Member can discharge his or her duties, it remains confidential and if that information is used by the Member for any other purpose then that Member

will be liable for the consequences of that use even though they have obtained that information pursuant to his or her status as a Member of the Assembly.

12. Parliamentary Privilege applies to anything said by Members in a meeting of the States Assembly and in other defined circumstances as well (see Article 34 of the States of Jersey Law 2005). Any abuse of privilege is dealt with through the Code of Conduct for Elected members.