



Code of Practice on Access to Public Information

&

Policy on the Use of Confidentiality in Contracts
and Agreements

Last updated: February 2017

Code of Practice on Access to Public Information

Introduction

The States of Guernsey has approved this Code of Practice which reinforces its approach to openness and improving access to Public information. It sets out:

- The States' commitment to releasing information and to responding positively wherever possible to requests for information
- The limits to openness that are necessary to protect confidentiality in a number of well-defined circumstances

Background

The States of Guernsey believes that:

- Open government is part of an effective democracy
- Guernsey residents must have adequate access to the information and analysis on which government business is based
- Guernsey residents are also entitled to clear and frank explanations concerning the policies, decisions and actions of the States

The States of Guernsey agrees the guiding principles should apply to this Code of Practice on Access to Public Information:

- A presumption of disclosure
- A corporate approach
- A culture of openness
- Pro-active publication
- Effective record management

The States of Guernsey also recognises that, like all governments, notwithstanding the presumption of disclosure in the balance of the public interest, the States will need to keep some information confidential, and it has a duty to protect the proper privacy of those with whom they deal.

This Code of Practice describes the exceptions that should be applied to the presumption of disclosure in order to meet these duties and protect Guernsey's legal, commercial, competitive or public interests.

31 July 2013

Part 1

This Code of Practice supports the Policy & Resources Committee's policy of extending access to States of Guernsey information, and responding to reasonable requests for information, except where disclosure would not be in the public interest as specified in Part 2 of this Code.

Purpose

1.1. The aims of the Code are:

- to improve policy-making and the democratic process by extending access to information in order to provide the basis for the consideration of proposed policy;
- to protect the interests of individuals and companies by ensuring that reasons are obtainable for administrative decisions, except where there is statutory authority or established convention to the contrary; and
- to support and extend the principles of public service.

1.2. These aims are balanced by the need:

- to maintain high standards of care in ensuring the privacy of personal and commercially confidential information; and
- to preserve confidentiality where disclosure would not be in the public interest or would breach personal privacy or the confidences of a third party, in accordance with statutory requirements and Part 2 of the Code.

1.3. For the purposes of this Code a 'reasonable request' means that a request is not irrational, frivolous or vexatious.

Information the States will release

1.4. Subject to the exceptions in Part 2, compliance with this Code requires States service areas and Committees to release information relating to significant policies, actions and decisions and other matters related to their mandated areas of responsibility. This can be achieved by:

- making available, where practicable, information about what services are being provided along with Committee business plans
- publishing significant policy decisions, made under delegated authority by the States of Deliberation, explaining each decision by issuing guidance on the implications of that decision and information on how it will be implemented
- publishing any facts and relevant analysis which the Committee considers important in framing major policy proposals and decisions
- making available information about how public services are run, demonstrating the accountability of service delivery, and what complaints and redress procedures are available
- giving reasons for administrative decisions to those affected.

1.5. Information should be published on the States of Guernsey website and where appropriate significant publications of information should be notified to the domestic

media. The Corporate Communications team will be able to assist in advising the best mechanism for publication.

- 1.6. This Code does not require service areas or Committees to acquire information that they do not possess, to provide information which is already published, to provide material which the States did not consider to be reliable information, or to provide information which is provided as part of an existing charged service other than through that service.

Responses to reasonable requests for information

- 1.7. As a small jurisdiction Guernsey has limited resources dedicated to any particular service delivery. This means that publishing information or responding to requests promptly can have significant impact upon the ability to supply essential services. This will mean that when considering how to prioritise publication of information the overriding objective of the service area or Committee will be to provide cost effective services in line with the strategic aims of the States. This approach will minimise levels of disruption in the delivery of such services.
- 1.8. Subject to paragraph 1.7 above, information made available in response to reasonable requests made from the public will be provided as soon as practicable. The target for response to simple requests for information is 20 working days from the date of receipt. This target may need to be extended when significant search or collation of material is required. Where information cannot be provided under the terms of the Code, an explanation will be given.

Scope

- 1.9. The Code applies to States' service areas and Committees.

Guidance

- 1.10. Where guidance is required on the application of this Code, the handling of potential controversial issues in a corporate manner and the balance of interest in response to these questions it can be sought from the Office of the Policy & Resources Committee.

Investigation of Complaints

- 1.11. Complaints that information which should have been provided under the Code has not been provided, should be made in writing to the Chief Secretary or Principal Officer of the Committee concerned. If the applicant remains dissatisfied, the complaint may then be referred to the Committee concerned. The Committee may refer any matter to the Policy & Resources Committee for consideration where appropriate.

Part 2

Reasons for Confidentiality

The following categories of information are exempt from the commitments to provide information in this Code. References to harm or prejudice include both actual harm or prejudice and risk or reasonable expectation of harm or prejudice. In such cases, it should be considered whether any harm or prejudice arising from disclosure is outweighed by the public interest in making information available. The exceptions will not be interpreted in a way which causes injustice to individuals.

This list is detailed in order to provide as much clarity as possible on when information cannot be released by the States – broadly, if its disclosure would be legally, commercially or operationally prejudicial.

The guidance is indicative of the type of information that may be excluded from publication. There will be some areas where the exception should be treated as absolute and others where the exception can be waived if it is considered to be in the public interest. Where one of these exceptions is sought to be waived it should only be done following consultation with the Office of the Policy & Resources Committee.

Exceptions to the presumption of disclosure

2.1 Security and external relations

- Information whose disclosure would harm the conduct of international relations or affairs.
- Information received in confidence from other governments or courts in other jurisdictions (including within the Bailiwick) or international organisations.
- Communication through official channels and with Her Majesty or other members of the Royal family.
- Information whose non-disclosure is required for the security, safety and well-being of the Bailiwick.

2.2 Effective management of the economy and collection of taxes

- Information whose disclosure would harm the ability of the States to manage the economy, or could lead to improper gain or advantage.
- Information whose disclosure would harm the financial interests of the States.
- Information whose disclosure would prejudice the assessment or collection of tax, duties or contributions, or assist tax avoidance or evasion.
- Information whose disclosure would prejudice economic or commercial interests of any person.

2.3 Effective management and operations of the public service

- Information whose disclosure could lead to improper gain or advantage or would prejudice:

- the competitive position of a Committee or other public body or authority;
 - negotiations or the effective conduct of personnel management or commercial or contractual activities;
 - the awarding of discretionary grants.
- Information whose disclosure would harm the proper and efficient conduct of the operations of a service area, Committee or other public body or authority or of any regulatory body.
- Information whose disclosure would prejudice the commercial interests of the States.

2.4 Internal discussion and policy advice

- Information whose disclosure would harm the frankness and candour of internal discussion, including:
 - proceedings of the Policy & Resources Committee, Principal Committees and other committees of the States;
 - proceedings of Parliamentary Committees prior to public meetings or hearings;
 - internal opinion, advice, recommendation, consultation and deliberation;
 - projections and assumptions relating to internal policy analysis;
 - analysis of alternative policy options and information relating to rejected policy options;
 - confidential communications between Committees, public bodies and regulatory bodies.

2.5 Law enforcement and legal proceedings

- Information whose disclosure could prejudice the administration of justice, including fair trial and the enforcement or proper administration of the law.
- Information whose disclosure could prejudice legal proceedings or the proceedings of any tribunal, public inquiry or other formal investigation (whether actual or likely) or whose disclosure is, has been or is likely to be addressed in the context of such proceedings.
- Information relating to proceedings which have been completed or terminated, or relating to investigations which have or might have resulted in proceedings.
- Information covered by legal professional privilege.
- Documents created or retained by the courts or tribunals for the purposes of litigation.
- Information whose disclosure could prejudice the prevention, investigation or detection of crime, the apprehension or prosecution of offenders, or the security of any building or penal institution.
- Information whose disclosure could harm public safety or public order.
- Information whose disclosure could endanger the life or physical safety of any person, or identify the source of information or assistance given in confidence for law enforcement or security purposes.

2.6 Immigration and nationality

- Information relating to immigration, nationality, consular and entry clearance cases.

2.7 Environmental

- Information whose disclosure could increase the likelihood of damage to the environment, or rare or endangered species and their habitats.

2.8 Public employment

- Personnel records (relating to public appointments as well as employees of public authorities) including those relating to recruitment, promotion and security vetting and personal details of employees.

2.9 Voluminous or vexatious requests

- Requests for information which are frivolous, vexatious or manifestly unreasonable or are formulated in too general a manner, or which would require unreasonable diversion of resources because of the amount of information to be processed or the need to retrieve information from files not in current use.
- Where a request appears voluminous the service area should liaise with the requester to seek to narrow the scope of the enquiry.

2.10 Publication and prematurity in relation to publication

- Information which is or will soon be published, or whose disclosure would be premature in relation to a planned announcement or publication.

2.11 Research, statistics and analysis

- Information relating to incomplete analysis, research or statistics, where disclosure could be misleading or deprive the holder of priority of publication or commercial value.
- Information held only for preparing statistics or carrying out research, or for surveillance for health and safety purposes (including food safety) and which relates to individuals, companies or products which will not be identified in reports of that research or surveillance, or in published statistics.

2.12 Privacy of an individual

- Unwarranted disclosure to a third party of personal information about any person (including a deceased person) or any other disclosure which would constitute or could facilitate an unwarranted invasion of privacy or breach of the Data Protection (Bailiwick of Guernsey) Law, 2001.

2.13 Third party's commercial confidences

- Information including commercial confidences (including grants and loans), trade secrets or intellectual property whose unwarranted disclosure would harm the competitive position of a third party.
- Information where third party has requested or agreed to confidentiality as part of a contract or agreement.

2.14 Information given in confidence

- Information held in consequence of having been supplied in confidence by a person who:
 - gave the information under a statutory guarantee that its confidentiality would be protected; or
 - was not under any legal obligation, whether actual or implied, to supply it, and has not consented to its disclosure.
- Information whose disclosure without the consent of the supplier would prejudice the future supply of such information.
- Medical information provided in confidence if disclosure to the subject would harm their physical or mental health, or should only be made by a medical practitioner.

2.15 Statutory and other restrictions

- Information whose disclosure is prohibited by or under any enactment, regulation, European Union law or international agreement including data protection legislation
- The publication of defamatory or potentially defamatory statements.

Part 3

List of Policies published in line with this Code of Practice:

- 1) Policy on the Use of Confidentiality in Contracts and Agreements (attached)

Policy on the Use of Confidentiality in Contracts and Agreements

1. This policy applies to all agreements and contracts between the States of Guernsey and a third party. A third party can be an individual, business, or any other organisation. Its aim is to ensure consistency of approach when entering into negotiations subject to conditions of confidentiality or in relation to the use of confidentiality clauses across the States of Guernsey when: making out of court settlements; entering into contracts or other agreements; entering into negotiations subject to conditions of confidentiality; or entering into non-disclosure agreements.

Policy principles

2. Subject to the principles below, the presumption of openness and disclosure described in the Code of Practice on Access to Public Information should apply to all formal agreements, out of court settlements and contracts.
3. The States will not seek, or agree to, or enter into negotiations under conditions of confidentiality or accept the inclusion of a confidentiality clause in any agreement simply to avoid the prospect of disclosing information. The acceptance of such conditions or the inclusion of confidentiality clauses should only be agreed where it is necessary and justifiable, in line with the exceptions described in Part 2 of the Code of Practice on Access to Public Information.
4. Where appropriate, authorisation for the inclusion of a confidentiality clause should be sought. The States enters into many agreements every year. The Departments and Committees will therefore need to use their discretion in order to manage risk and where appropriate expressly agree to delegate authority. Depending in the nature of the clause and the circumstances of the use of that clause authorisation could be delegated to an appropriate senior officer, the Minister (or his deputy) of the relevant Department or Chairman of the relevant Committee. The boards of Departments and the Committees will need to expressly agree the level and threshold to which authority for entering into a confidentiality agreement is delegated.
5. This policy is underpinned by the transparency and accountability of the States of Guernsey balanced against the respect for the important principle of confidentiality between the States of Guernsey and third parties. Public authorities should only use such conditions of confidentiality in circumstances where the public interest so requires.

Applying the policy

6. All cases must be considered on a case by case basis against the above principles. When applying the policy consideration must be given to:
 - (i) the nature of the interest to be protected;
 - (ii) the balance of the public interest in maintaining confidentiality against the public interest in making the information publicly available;
 - (iii) whether a limited duty of confidentiality is appropriate as opposed to a blanket clause;
 - (iv) whether concluding the agreement is dependent on terms of confidentiality or the inclusion of confidentiality clause;
 - (v) the parties to the agreement.
7. The exceptions that are described in Part 2 to the Code of Practice on Access to Public Information will apply. Where guidance is required as to the balance of interest in response to these questions it can be sought from the Policy Council.

31 July 2013