

**REPLY BY THE PRESIDENT OF THE POLICY & RESOURCES COMMITTEE
TO QUESTIONS ASKED PURSUANT TO RULE 14 OF THE RULES OF PROCEDURE
BY DEPUTY CHRIS GREEN**

Question 1

It has recently been asserted that a letter was sent by the Guernsey government to the UK government in relation to the issue of Syrian refugees without the requisite political authority. Can the Policy and Resources Committee confirm that correspondence sent from the States of Guernsey / Policy Council in the last political term to the UK government – indicating that our government would not be in a position to receive any Syrian refugees - had been fully authorised at the highest political level prior to being sent?

Answer

The correspondence sent on behalf of the Policy Council explaining the position in respect of the ability to take refugees on the Vulnerable Persons Relocation Scheme reflected the agreed position of the Policy Council. A summary of this position was put in the public domain (<https://www.gov.gg/article/151392/Statement-on-Guernseys-response-to-the-Syrian-refugee-crisis>).

The Policy & Resources Committee has not sent any letters to the UK Government on the issue of Syrian refugees. No letters have been sent without the requisite political authority.

Question 2

A recent decision of an Information Tribunal in the UK has held that the correspondence between the UK government and the Crown Dependencies is eligible for public disclosure under the UK's Freedom of Information Act. They concluded that the exemptions under the law were not met and that relevant correspondence could be disclosed. What are the implications of this decision for Guernsey?

Answer

The Committee is of the view that the case before the recent First Tier Tribunal, *Webber v Information Commissioner and the Home Office* (2018), does not fully respect the relationship between the UK and the Crown Dependencies. The Committee is also of the view that there may have been an error of law because the appropriate section of the UK Freedom of Information Act (FOIA) was not considered or applied. The Committee considers that section 27 of the FOIA (not s.36) should have been applied in this case, as this focuses on the effects of disclosure of information where it would be likely to prejudice relations between the UK and any other State or the UK's interests abroad.

It was the collective views of the offices and the political authorities in the Crown Dependencies responsible for managing the relationship with the UK that, because the UK FOIA was not applied correctly, the nature of the correspondence between our respective governments was not properly taken into account, in particular, when applying the public interest test. Unless the decision in the matter is challenged and/or other appropriate measures taken to restrict third party access to information exchanged between the UK Government and the Crown Dependencies through official or mutually recognised channels, there is likely to be a degradation of the ability to exchange views freely. That cannot be good for effective government and the relationship between the UK Government and the Crown Dependencies and regardless of whether the Tribunal upholds its original decision these important issues needed to be raised with the UK Government. It was as a result of these issues being raised that the Home Office made the decision to appeal the judgment of the First Tier Tribunal.

These concerns are about the principle of how communications between our governments are treated and not about the specific correspondence relating to this case.

Question 3

Can the Policy and Resources Committee comment on their current understanding of the status of correspondence between the UK government and the governments of the Crown Dependencies in terms of whether such correspondence is able to be disclosed publicly under the Freedom of Information Law in the UK in the ordinary course of events? Would such correspondence be subject to disclosure under the States of Guernsey's Code of Practice on Access to Public Information?

Answer

The UK's Freedom of Information Act, 2000, has a number of exemptions contained within it that need to be considered when looking to publish information. Section 27 of the Act focuses on the effects of disclosure of information where it would be likely to prejudice relations between the UK and any other State or the UK's interests abroad. The UK information Commissioner provided guidance on these exemptions and the guidance in relation to section 27 is available here: https://ico.org.uk/media/for-organisations/documents/1184/awareness_guidance_14_-_international_relations.pdf. This guidance makes clear that in this section of the act the definition of States and organs of States in relation to exemption under this section includes "the government of any state and any organ of its government and will include for example, states with a government structure; the overseas territories of the UK and of other countries; and Crown Dependencies such as the Channel Islands".

Under the States of Guernsey's Code of Practice for Access to Public Information (API), correspondence with the UK can be exempted from release on the grounds of "Information whose disclosure would harm the conduct of international relations or affairs" (exemption

2.2). This exemption exists for similar purposes to s27 of the FOIA and intends to prevent the chilling effect that the release of intergovernmental communications can cause. The same information has been requested as to the correspondence requested under the API regime as to that referred to in the Webber v Information Commissioner and the Home Office case. This information has been exempted from release on the basis of exemption 2.2. A similar approach was also taken in the other Crown Dependencies.