



REVIEW OF ACCESS TO PUBLIC INFORMATION (API) TERMS OF REFERENCE

Overview

The Scrutiny Management Committee (the Committee) will review the effectiveness of the existing 'Code of Practice on Access to Public Information' (API Code)¹ in the context of determining whether the Code has facilitated a climate and culture of openness, accountability and good governance as envisaged in the 2013 Policy Letter² and therefore whether the API Code remains fit for purpose.

Background

In July 2013, the States of Deliberation agreed to implement a "Code of Practice on Access to Public Information." In the supporting Policy Letter from the (then) Policy Council, it was clear that the intended new regime was envisaged to help develop a culture of transparency and openness; albeit through the development of guidelines and bespoke policies rather than through legislation.

The Policy Letter concluded that *'The most important step at this time is to adopt consistent good practice across the States and develop the right climate and culture before beginning to consider if a statutory framework is required.'*³ It also recognised that a sensible balance needed to be struck between the desire for information and the cost of producing it.

The Policy Letter also stated that, *'In order to maximise the effectiveness of a phased approach ... its [the API Code's] progress could be measured and benchmarked by one of the parliamentary scrutiny committees.'*⁴

Review Scope

The Committee will consider but not be limited to the following areas as part of its review:

- Consideration of the current guidance, policies & procedures;
- A critical analysis of requests to date;
- The case for / against enhanced legislation in support of the API Code; and
- The right to appeal through an independent person / organisation.

Review Methodology

The Committee will form a 'Review Panel' tasked to consider this area which will include representation from the States of Guernsey and those independent of the Government. Following an initial desktop exercise to assess the current available information, the Review Panel will launch a formal consultation process involving the relevant elements of Government, the public and other interested parties on this matter. The Panel will seek to learn from experience in other jurisdictions, where appropriate. It is currently envisaged that public hearings may be held to gain additional clarity regarding the evidence submitted.

Outcome

A balanced, evidence-based Scrutiny Management Committee Report, together with the transcripts of any public hearing(s), will be released into the public domain. The Report will consider the current policies in place, the effectiveness of the implementation of those policies, any gaps in the existing policy framework, and any recommendations on future action.

¹ As approved by the States of Deliberation in July 2013 and updated by the P&R Committee in 2017

² <https://gov.gg/CHttpHandler.ashx?id=83312&p=0> par 2.1

³ <https://gov.gg/CHttpHandler.ashx?id=83312&p=0> par 6.2

⁴ <https://gov.gg/CHttpHandler.ashx?id=83312&p=0> par 9.5



Further information

Public authorities need to be accountable for the decisions they make and the money they spend. Access to information helps the public and the media to make public authorities accountable; it allows for better informed public debate and could enhance the quality of decision-making by government. Access to information held by public bodies can also improve trust in government and increase public understanding of decision making and the operation of public bodies. Citizens have a right to know about the decision-making processes and activities of government, unless there is a public interest reason for them not to. This area has become increasingly complicated with the introduction of updated data protection laws in 2018.

The 2013 Policy Letter considered the issues surrounding the development of an Access to Public Information policy for the States of Guernsey, and asked the States to agree to the guiding principles for a Code of Practice on Access to Public Information, namely:

- A presumption of disclosure;
- A corporate approach;
- A culture of openness;
- Proactive publication; and
- Effective record management.

The Policy Letter spoke of how the States needed to balance meeting the desire for transparency against maintaining confidentiality, where necessary and justifiable. The presumption of disclosure was qualified by a list of circumstances where it was thought necessary to override that presumption in order to protect legal, commercial/competitive and public interests. This was intended to provide clarity on why information might be withheld from publication.

The Policy Letter examined the options available, taking into account the experiences in similar jurisdictions; this included the appropriateness of a legislative framework in support of freedom for information. The States of Deliberation endorsed the Policy Letter subject to amendments.⁵

Following a review by the Policy & Resources Committee in early 2017 on the effectiveness of the code and how it should be applied, the P&R Committee agreed the following steps to enhance the effectiveness of the code:

- All Access to Public Information questions and responses will be published on gov.gg
- Work would be carried out to promote awareness of the code across the public service
- Work would be carried out to promote awareness of the code with the general public
- The Chief Information Officer will be tasked with reviewing any decision where an exemption has been used under the code

The Scrutiny Management Committee now considers it appropriate to review the working of the API Code, to assess whether the 'right climate and culture' has been developed along with consistent good practice across the States and to consider whether the Code of Practice is fit for purpose or whether a statutory framework is now required.

⁵ <https://gov.gg/CHttpHandler.ashx?id=99648&p=0>



Further areas of interest

The Committee may consider the following areas as part of its review:

The existing provisions

- What use has been made and by whom of the existing API code; what types of requests are made?
- What beneficial changes could be made to the API code short of placing it on a statutory footing?
- What would be the impact and consequences of placing the current API code on a statutory footing?

Costs of the scheme and proportionality

- Access to public information comes at a cost; what would be proportionate in a jurisdiction the size of Guernsey?
- Is there evidence that the cost of administration can be offset by savings through access to public information leading to a more careful use of resources by public bodies?
- Requesting information is not the same as obtaining documentation; how far should public bodies have to go in compiling the information requested from the raw data that they may hold? What is a reasonable cost in terms of officials' time for a response to a request?
- Should there be a charge levied on requests in order to deter frivolous, vexatious, or multiple applications?

Intended and unintended consequences

- Does access to public information lead to an increase in proactive publication by public bodies and do such publication schemes significantly reduce future information requests?
- How to avoid the possibility of disclosure leading to a reduction in the frankness of advice to government and a diminution in the supply of information to government from third parties. Is there evidence of a shift towards keeping things off paper where they cannot be disclosed?

Exemptions

- What exemptions should there be and how would these be categorised between absolute and qualified exemptions?
- Would there be commercial exemptions and how would access to public information apply to outsourced public services?
- Should the Government (however defined) have a right of veto to requests in certain exceptional circumstances?

Administration of the scheme

- Who should adjudicate on requests and how is compliance enforced regarding access to public information?
- Should there be a 'requestor blind' approach to applications for information?