



States of Guernsey

Guidance on how to use the States of Guernsey Code of Practice for Public Information

**Version 1
February 2014**

States of Guernsey
Code of Practice on Access to Public Information

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1. Introduction

1. In July 2013 the States of Guernsey agreed the Code of Practice on Access to Public Information ('the Code of Practice', attached to this guidance note) which contains the following guiding principles:
 - A presumption of disclosure;
 - A corporate approach;
 - A culture of openness;
 - Proactive publication; and
 - Effective record management.
2. 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 it concerns.
3. The 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. The exceptions can be applied to a document as a whole or to part of a document through redaction of information.
4. Should you have any queries in relation to applying the Code of Conduct or any issue not referred to in this guidance note, please contact the Policy Council or email information@gov.gg.

2. How the public make a request

5. The Code of Practice applies to all States of Guernsey Departments and Committees and can be applied to all requests for information. Any request for information may be dealt with under the Code. A request for information may not always be obvious and may not expressly state that it is being made under the Code. It is strongly recommended that requests should be made in writing and should expressly state that they are being made under the Code of Practice.
6. The Code of Practice is not designed to replace the handling of routine requests, where those request can be dealt with simply and quickly by communication through a telephone call, email or in a face-to-face meeting.
7. Requests should be made in writing and should expressly state that the information is being requested under the “Code of Practice on Access to Public Information”.
8. The request should be sent to information@gov.gg or to:

Information Requests
Policy Council
Sir Charles Frossard House
St Peter Port
GUERNSEY
GY1 1FH

Further details can be obtained from www.gov.gg/information

9. The request should be made in clear simple language. The requester should consider how broad the request is and seek to limit the question to focus on the information required. This limits the use of staff resources on accessing information that is not necessary.
10. The request should include the requester’s contact address and details so that the relevant Department can discuss the matter with the requester if necessary to clarify the request and that it is clear where the response should be sent.
11. The relevant Department will seek to respond to the requester with the information within 20 working days. Alternatively if one of the exceptions is being applied, the reasons why information has been withheld should be given. If it is not possible to respond within 20 working days an explanation should be given as to why there will be a delay in responding to the request.
12. If the requester is not content with the response they may ask for the matter to be considered by the Department Board or Committee. If the requester is still not content with the request they may ask for the matter to be referred to the Policy Council for consideration.

13. This mechanism for requesting information does not replace the right of an individual to request their own personal data through the subject access provisions outlined in Section 7 of the Data Protection (Bailiwick of Guernsey) Law, 2001.

3. Dealing with a request

Handling routine requests and applying the Code of Practice

14. A routine request is one that can be dealt with simply and quickly by communication through a telephone call, email or in a face to face meeting. The Code of Practice is not designed to replace or interfere with the handling of routine requests.
15. When an official might consider that there are sensitivities surrounding the release of information then the request should be reviewed in light of the Code of Practice, including the consideration of the exceptions and redacting the report in relation to sensitive information.
16. Individual Departments/Committees should consider what processes they need to establish for authorising the use of one of the exceptions in the Code of Practice. The process may vary depending on the sensitivity of the matter at hand or whether there are any matters which may be considered to be controversial.
17. Where matters are likely to be considered controversial, consideration should be given to referring that matter to the Departmental Board or Committee.

Applying the exceptions

18. Care should be taken to ensure that the exceptions are only applied if absolutely necessary.
19. Where exceptions are applied and information is withheld or redacted then a clear explanation of why the information is being withheld should be provided to the requester including reference to the exception relied upon.
20. Where more than one exception is relevant then the overriding exception in terms of importance should be referred to in any explanation. It is not necessary to refer to all exceptions that might apply. If more than one exception is relevant it may be expressed that the information is being held "*primarily under exception XX*"
21. If an exception is applied it should be recorded in accordance with section 5 of this guidance note.
22. Officials in the Policy Council can provide advice on applying exceptions if required.

Sensitivity over time

23. When applying the exceptions consideration should be given to the sensitivity of information changing over time. What is not in the public interest to divulge or publish now may not retain that status in the long term. If it is necessary to apply an exception then consideration should be given as to when and if the exception might be lifted.
24. It should also be noted that information that is already planned to be published at a later date may be withheld until that date. The receipt of an information request for that information should not override the existing plans for publication.

Dealing with requests when there are limited resources

25. Under the Code of Practice, there is no obligation to respond to vexatious requests for information. How to handle vexatious requests is dealt with below.
26. Furthermore, the Code of Practice acknowledges that the States of Guernsey is a relative small organisation and has limited resources that need to be focussed on service delivery. Where requests become voluminous and start to significantly impact the ability of the Department or Committee to operate effectively, then the overriding responsibility of the relevant Department or Committee is for service delivery rather than responding to a request for a potentially large amount of information. The requester should be asked to try to narrow or refine the request. If this is not possible the request should be rejected under exception 2.9 of the Code of Practice.
27. Where the handling of requests is substantially and negatively impacting service delivery, the matter should be raised with the Chief Officer of the Department or Principal Officer of the Committee concerned. These concerns should be passed to the Policy Council so that it can consider how the Code of Practice is operating and what mitigating measures could be taken.

Handling vexatious requests

28. There is no exact test for what should be treated as a vexatious request for information. However, there are a number of factors to consider e.g. the request may be considered to be manifestly unreasonable, repeated or frivolous. A key question to ask is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress.
29. Further, the impact of responding to the request on the Department or Committee and its ability to perform its functions should be weighed up against the perceived genuine purpose and value of the request.

Media requests

30. There is no clear divide between public and media requests for information under the Code of Practice. The media are advised to make requests for information under the Code of Practice in the same way as all other members of the public, i.e. in writing with express reference to the Code of Practice. Where a Department or Committee will be responding to a media enquiry under the Code of Practice, it should inform the media requester.
31. Where it is prudent to provide information as soon as possible for public engagement or reputational reasons, then consideration should be given to providing a rapid response. Where an update or political comment is requested, the timing of any response should also be considered as well as the need to respond.
32. Responses to requests for information under the Code of Practice to the media should take into account that the response is more likely to be published as part of a news article. Consideration should be made about any additional context to the information being provided to ensure that the information and any associated key messages are well understood. Departments or Committees should seek communications advice on this matter if required.

Providing information

33. The response should be in plain English, avoiding jargon or technical language where possible.
34. The Department or Committee should consider if any additional information, explanation or context should be supplied to ensure that the information is fully understood.
35. When information is provided, and where possible, a record of that information should be kept in accordance with section 5 of this guidance note.

4. Redaction

Principles of redaction

36. Redaction is the separation of disclosable material from non-disclosable information by blocking out individual words, sentences, paragraphs or the removal of whole pages or sections prior to release of the document.
37. Redaction should always be carried out on a copy of the original document so that the original record remains intact.
38. Redaction should be performed by staff that are knowledgeable about the record itself and can determine what material should be withheld. If in doubt, guidance can be sought from officials at the Policy Council.
39. Where appropriate, the political body of the Department or Committee should consider the redaction of information, in particular if the redaction or remaining document is likely to be contentious.
40. Consideration of the Code of Practice should be made in relation to each redaction made and to the document as a whole. The reason for each redaction made should be noted and where possible included with the document.
41. When redacting information care should be taken to ensure that disclosable material cannot be deduced. For example, the size and shape of the redaction or from references elsewhere that might suggest the contents of the redacted material.
42. Where so much information is being redacted that the document becomes nonsensical then the whole document should be withheld.
43. Redaction should be applied consistently throughout the document.
44. Where information is redacted an explanation for the reason for the redaction should be included either within the document or in an accompanying note. When giving reasons reference should be made to the most relevant exception from Part 2 of the Code of Practice. Care should be taken to ensure that the reason for redacting does not reveal the disclosed information itself.

Redaction techniques

45. Where information has been redacted it should be indicated with the following signpost, either in typeface or handwritten:

*[*** redacted]*

Reasons for the redaction can be made at this stage or by referencing the redaction to an accompanying note.

46. When redacting material in hard copy the redaction should be applied to a copy of the original to preserve the integrity of the original document. There are several techniques that can be deployed:
 - a. Using 'cover up' tape placed over the area and marking the material as redacted;
 - b. Applying correction fluid to white or black out the text and marking the material as redacted;
 - c. The physical removal of the material with a scalpel and marking the material as redacted.
47. Care should be taken to ensure that a copy is then made of the redacted material to ensure that the redacted information cannot be read by holding the document to the light or reading at an angle.
48. When redacting material in electronic format, a copy of the original file should be worked on to preserve the integrity of the original. The data to be redacted should be removed from the file by deletion and marking the material as redacted. The information to be redacted should be removed and the redaction marked. Black text boxes should not be placed over the text because it may still be possible to read or copy the underlying data.
49. The file should be 'round tripped'; this means that the file should be converted to an alternative format, such as an ASCII or raw text format before being converted to a PDF format. Alternatively, the redacted document can be printed out in hard copy and scanned back into PDF format. This will remove any embedded metadata or previous version control that exists with the document, such data would mean that the redacted material would still be discoverable. PDF format (in image format rather than with readable text) is the preferred format for supplying a document containing redactions.

5. Recording responses

Recording requests for information

50. The resolution from the States of Deliberation in July 2013¹ states that there should be a “consistent mechanism which Departments and Committees can use to record and collate data on the number and category made under the Code of Practice, including when exceptions are applied.”
51. It is recommended that requests under the Code be made in writing to the Policy Council by way of email to the following email address: information@gov.gg or hard copy letter sent to Sir Charles Frossard House. Requests will then be forwarded on promptly to the Department concerned.
52. The Policy Council will record the request and whether any exception is applied when they are notified. Departments that respond directly are asked either to copy in information@gov.gg so that the response can be logged, or to keep their own log of requests. A simple spreadsheet can be supplied from information@gov.gg for these purposes.

Calculating the time and cost spent responding to requests:

53. In order to assist transparency, Departments may wish to publish the estimated cost of generating the information alongside the published responses to complex requests for information under the Code of Practice, where appropriate.
54. When assessing the estimated time taken to respond to requests for information the following activities should be taken into consideration:
 - Determining whether the Department/Committee holds the information requested;
 - Locating the information or documents containing the information;
 - Retrieving such information or documents;
 - Extracting the information from the document or other information source;
 - Redacting information which may not be taken into consideration or is not in the public interest to publish;
 - Drafting the response based on the information obtained.
55. Any other activity which has a significant impact on the costs of preparing a response should also be included. It may not be possible to provide an estimate of the cost of approval by the Board of any Department or senior management where these activities are part of another administrative process.

¹ Billet d'État XV resolution : <http://www.gov.gg/CHttpHandler.ashx?id=83860&p=0>

How to calculate costs:

56. The officer(s) who are tasked with preparing the above information are asked to estimate the hours worked on a particular matter and to calculate the costs of that time. The figures should be estimated using the figures in table 1.
57. The final figure should be expressed as a total estimate of the costs. A breakdown to the total figure should not be published. It is recommended that the following table is included at the end of the written response:

Cost (approx)	£0.00
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58. The number of hours taken to generate the response should not be published alongside this figure in order to ensure that confidential salary information is not inadvertently published by implication.

Discretion

59. Some discretion should be exercised by States Departments and Committees to assess the benefits of publishing the cost, taking into account the cost of calculating this figure. It may not be appropriate to evaluate the cost for every response to a request for information. For example, where costs are negligible or not significant they need not be calculated or included with the response.

Table 1:

States of Guernsey Employee Costs 2013-2014

Costs = Salary + Superannuation + Social Security

2013- 2014 Pay	Nominal Recharge Cost		
	per week	per day	per hour
Grade			
TYPB	£609	£122	£16.93
TYPC	£665	£133	£18.46
PA1	£758	£152	£21.07
PA2	£869	£174	£24.14
CA	£452	£90	£12.55
AA1	£575	£115	£15.97
AA2	£671	£134	£18.64
EG1	£769	£154	£21.36
EG2	£856	£171	£23.78
EG3	£944	£189	£26.21
EG4	£1,028	£206	£28.54
EG5	£1,116	£223	£30.99
SO1	£1,259	£252	£34.96
SO2	£1,377	£275	£38.26
SO3	£1,507	£301	£41.86
SO4	£1,649	£330	£45.80
SO5	£1,804	£361	£50.12
SO6	£1,974	£395	£54.84
SO7	£2,160	£432	£60.00
SO8	£2,363	£473	£65.65
SO9	£2,586	£517	£71.83
SO10	£2,829	£566	£78.60
SO11	£3,096	£619	£86.00
SO12	£3,388	£678	£94.10

6. Handling complaints

60. If a requester is dissatisfied with a response the matter should be raised between the requester and Department/Committee directly. It should be established if there is a misunderstanding between the meaning of the request between the requester and States Department/Committee.
61. Where an exception has been applied and the requester is dissatisfied that the information has been withheld the requester should make that complaint in writing to the Chief Officer of the Department or Principal Officer of the Committee concerned.
62. If the requester is dissatisfied the matter may be referred to the Department board or Committee concerned. Where appropriate the Department or Committee may refer the matter to the Policy Council for consideration. This is not an appeal process; it is a process of referral to the Policy Council for advice or political guidance.
63. Officials from the Policy Council are available to give advice on handling complaints.

7. Using the Confidentiality Policy

65. The Policy on the Use of Confidentiality in Contracts and Agreements ('the Policy') was published with the Code of Practice, and agreed by the States of Deliberation in July 2013².
66. It is a fundamental principle of the Policy that the States of Guernsey should only use confidentiality clauses where it is considered to be in the public interest to do so. Whilst transparency and accountability are important there are circumstances where confidentiality between the States of Guernsey and third parties must be respected. Provided consideration is given to the principles outlined in the Policy, Departments should be able to justify the use of confidentiality clauses on a reasonable and proportionate basis
67. The Policy requires each Department to use its discretion as to when confidentiality clauses should be used. Departments will need to take a risk based approach and take a decision depending on what authority had been delegated in respect of that agreement or contract.
68. The Policy is intended to take into account the wide range of contracts and agreements that the States of Guernsey enter into. Where there is a high level of risk and it is considered expedient then the use of a confidentiality clause should be referred to a Department Board so that its use can be expressly approved.

² Available in Billet d'État XV: <http://www.gov.gg/CHttpHandler.ashx?id=83312&p=0>

8. Published Reports Commission

70. An amendment to the States Report entitled “States of Guernsey Policy for Access to Public Information” requires: *every Department and Committee to publish details (namely the title of the report, who it is commissioned by and from and date of commission) of all reports commissioned by the Department or Committee within six months of that report being commissioned, unless the publication of such detail would fall within one of the exceptions from disclosure set out in the Code of Practice on Access to Public Information.*
71. A page on www.gov.gg/information has been created to allow this information to be published. Departments and Committees can notify information@gov.gg that a report has been published (unless it falls within a relevant exception) and this will be added to the website. The Policy Council will email all Departments and Committees every six months to ensure that updates have been provided. Departments may wish to keep their own records and a standard format log is available upon request.
72. The amendment does not specify what a “report commissioned” means. Departments and Committees should use their discretion. As a guide, a report commissioned may be interpreted as a piece of work commissioned from a third party to the States, such as a consultant or outside agency. Departments may wish to include details of internal reviews commissioned but this is at their discretion.
73. Where the publication of the fact that a report has been commissioned would not be in the public interest one of the exceptions should be applied. For example, if revealing a report had been commissioned would release personal data or risk the security of the islands. This means the fact that report has been commissioned need not be published.
74. The disclosure that a report has been commissioned does not prejudice the application of the Code of Conduct for Access to Public Information on the publication of the contents of that report.

ANNEX
States of Guernsey
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; and
- 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; and
- 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;
- Proactive publication; and
- 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 Council'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 Departments 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 Departmental 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 Department 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;
- and 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. In the absence of a central communication unit, officials from the Policy Council will be able to assist in advising the best mechanism for publication.
- 1.6. This Code does not require Departments 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 Departments and Committees 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 Departments 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 Policy Council.

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 Officer of the Department or Principal Officer of the Committee concerned. If the applicant remains dissatisfied,

the complaint may then be referred to that Department's Board. The Department may refer any matter to the Policy Council 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 Policy Council.

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 Department 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 Department 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 Council and Boards of the Departments;
 - 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 Departments, 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 Department or Committee 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 an 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