

# Access to Public Information Response

September 30<sup>th</sup> 2014

## REQUEST UNDER THE CODE OF PRACTICE FOR ACCESS TO PUBLIC INFORMATION

Request sent on September 30<sup>th</sup> 2014:

I would like to appeal the decision made by the Policy Council to turn down my information request regarding the FTP reports.

Reading the code, the first point of appeal is to the chief officer/principal officer of a department/committee – it is silent on who to address this to with the Policy Council. Hopefully you will pass this in the right direction and advice if it is not you.

Broadly the request was turned down because ministers viewed it breached the exemption 2.4 (internal discussion and policy advice). This states information will not be released if its disclosure would harm the frankness and candour of internal discussion. The first point would be that the request does not ask for the minutes, so internal discussion becomes irrelevant on that front – i.e there is no discussion being disclosed, just information. If it is still a question of harming frankness of discussion, I'd suggest this is really reliant on what the information is and if there is any policy advice, who gave it. Releasing factual information on what an FTP project is, why it is one, how much will be saved by it, I'd argue could not possibly harm the frankness of discussion, it is just factual. On the advice front, given the example already in the public domain, this comes from senior figures within the civil service – for example the Treasurer. Given the Treasurer's experience and seniority, as someone who is regularly put forward for media interviews and well used to scrutiny and questioning, I can't see this type of information being released harming the Treasurers willingness to provide this type of advice on the FTP.

If you still feel the exception applies I'll move on my second argument. The Policy Council acknowledges the exception could be waived if it was in the public interest, but states it would defer discussion on that until after the PAC published its review findings 'in order not to prejudice the conclusion of PAC.' The chair of PAC disagrees that disclosure would prejudice its investigation – as do I.

I'd argue that the release of the information could not prejudice a review being carried out by people elected by the States because of their ability to be independent scrutineers. If they were swayed simply by the release and subsequent comment, then it calls into question the whole scrutiny process adopted by the States in the first place. There are too many examples to mention of scrutiny reviews locally and elsewhere when all the information has already been published on a subject, public debate and comment played out in the media, and then a review launched. Time and again we are reminded that the work of PAC is evidenced based.

So if a decision is made that the exception still applies, I'd argue it should be waived in the public interest and a decision should be made on that now, not deferred. Public interest is not defined in the code, but the concept of public interest has been described as something that is of serious concern or benefit to the public, not merely of individual interest. In this case, the success or otherwise of the FTP, and particularly its robustness and what is being classed as FTP saving, is of interest to all taxpayers – it is after all their money being spent or not.

The Australian information commissioner has said that to conclude that, on balance, disclosure of a document would be contrary to the public interest is to conclude that the benefit to the public resulting from disclosure is outweighed by the benefit to the public of withholding the information. I'd argue this test is passed in this case – what, after all, is the benefit to the public of keeping this information hidden? The Policy Council has already released similar information it holds for the HSSD/Social Security budget transfer under FTP, in an answer to a written question from a deputy where the public interest test also applies, so how could the public interest test not be passed for other examples?

#### Response from States of Guernsey on March 26<sup>th</sup> 2015:

Thank you for your requests, the decisions with regards to these requests are as follows. Apologies for the delay in response.

#### **FTP Quarterly Reports**

The Policy Council has considered the release of these papers and are of the view that exemption 2.10 (publication and prematurity in relation to publication) applies. This is on the basis that the Public Accounts Committee will be producing their report on the Financial Transformation Programme at the beginning of May and the final Financial Transformation Programme report is planned to be published for debate in the May States sitting. If this information was not what you were seeking at that stage please let us know.

#### **Policy Council papers – FTP**

The Policy Council remains of the view that, given the papers were likely to be subject to scrutiny by the Public Accounts Committee and in order not to prejudice the conclusion of PAC, it would be premature to consider publication of the advice prior to the PAC concluding its review and publishing its findings. I suggest making a renewed request which can be made to Policy Council following the conclusion of and publication of the PAC review in May. This would be considered primarily against exception 2.4 which was a specific concern raised by Policy Council.