



OFFICIAL REPORT

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STATES OF GUERNSEY

SCRUTINY MANAGEMENT

COMMITTEE

Review of Access to Public Information
Public Hearing

HANSARD

Guernsey, Wednesday, 22nd January 2020

No. 1/2020

*Further information relating to the Scrutiny Management Committee
can be found on the official States of Guernsey website at www.gov.gg/scrutiny*

Members Present:

Panel Chair: Deputy Chris Green – President
Deputy Jennifer Merrett – Member
Advocate Peter Harwood – Non-States Member
Scrutiny Management Committee

Deputy Emilie McSwiggan – Panel Member of the API Review

Mr Mark Huntington – Principal Scrutiny Officer
Mr Alistair Doherty – Adviser

Business transacted

Procedural – Remit of the Committee	3
EVIDENCE OF Deputy Peter Roffey, Deputy John Gollop and Mr Nick Mann, <i>Guernsey Press</i>	3
EVIDENCE OF Ms Emma Martins, Data Protection Commissioner	16
EVIDENCE OF Deputy Gavin St Pier, President of the Policy & Resources Committee.....	23
EVIDENCE OF Lt Col. Colin Vaudin, Chief Information Officer and Mr Rob Moore, Senior Media & PR Officer.....	32
<i>The Committee adjourned</i>	47

Scrutiny Management Committee

Review of Access to Public Information Public Hearing

*The Committee met at 10 a.m.
in the Cambridge Room, Beau Sejour*

[DEPUTY GREEN *in the Chair*]

Procedural – Remit of the Committee

The Chairman (Deputy Green): Thank you very much. I would like to welcome everybody here today: elected representatives, our witness, senior public servants and members of the public.

Our session today is part of the evidence-gathering process to support the ongoing Scrutiny Review which is examining the Code of Practice on Access to Public Information.

5 Today we will be speaking to Deputies Roffey and Gollop and Mr Nick Mann of the *Guernsey Press*; Ms Emma Martins, Data Protection Commissioner; Deputy St Pier, President of Policy & Resources Committee; Mr Colin Vaudin, Chief Information Officer, and Mr Rob Moore, Senior PR & Media Officer.

10 Our Panel today are: myself, Deputy Chris Green, Chair of the task and finish panel; SMC Members, Deputy Jennifer Merrett and Advocate Peter Harwood; and Review Panel Member, Deputy Emilie McSwiggan. Turning to the arrangements for today, I can confirm that a *Hansard* transcript, as always, will be published of the sittings today in due course. Can I remind members of the audience that this is a formal parliamentary proceeding and therefore members of the public are not able to ask questions or make any comment whilst the hearing is in progress. Please can I
15 ask anybody who has any mobile telephones to put them onto silent.

By way of introduction, we are reviewing, as a panel, the States' Code of Practice on Access to Public Information and we are trying to understand whether the current regime is fit for purpose, whether it can be enhanced or beefed up in some way or whether the ideals of openness, transparency and good governance can only be secured by a freedom of information law or some
20 other legal framework, or indeed, perhaps, some other solution. So this hearing is a key part in the evidence collection phase of this Review. We have not determined any hard and fast conclusions at the moment, but we are progressing with that Review and we hope to be able to publish the Report within the next few months or so.

**EVIDENCE OF
Deputy Peter Roffey,
Deputy John Gollop and
Mr Nick Mann,
*Guernsey Press***

25 **The Chairman:** So, if we can start please with some introductions for our first witnesses.

Mr Mann: Okay, I am Nick Mann, News Editor at the *Guernsey Press*.

The Chairman: Thank you very much.

30 **Deputy Roffey:** Peter Roffey, Deputy for the South East.

The Chairman: Thank you.

35 **Deputy Gollop:** John Gollop, Deputy for St Peter Port North.

The Chairman: Thank you very much and welcome.

Deputy Roffey, if I could start with you briefly. On the evidence that has been presented to us so far, there does seem to be relatively little demand, so it would seem, for a freedom of information law in Guernsey, and perhaps the most obvious question resulting from that is why do you think there is? There just does not seem to have been many submissions from members of the public and professionals work in the area demanding that the whole transparency agenda, if you like, is put on a statutory basis.

Why do you think that is?

45 **Deputy Roffey:** I am not sure I can help you with it, to be honest. It would be interesting to know. Maybe it is just the nature of a busy community. They are so busy getting on with their own lives that they are, other than a few journos etc., not that interested in ferreting around and finding out what is happening behind the scenes.

50 **The Chairman:** So you think it is because people are not engaged rather than because it is not required?

55 **Deputy Roffey:** I certainly think some sort of procedure to make sure that when people have a legitimate entitlement to information they should be able to access it. I think you have almost got to start from the philosophical question of what information should be available, because I do not think it is 100%. I think we would damage Government considerably if we said that nothing could ever be confidential. Then you need to move on to what mechanisms you want to put in place that are cost-effective for a community the size of Guernsey's and yet effective in the sense that things that are simply embarrassing cannot be covered up by States Committees.

60 That is difficult, because the obvious thing would be to go, as you say, for a formal UK-style Freedom of Information Act, but I do wonder whether the cost-benefit analysis would be reasonable there. So I think there needs to be some sort of halfway house, personally.

The Chairman: Deputy McSwiggan.

65 **Deputy McSwiggan:** I wonder if I could just put to Mr Mann what Deputy Roffey has just said. Do you agree that it would damage Government if we said that nothing could ever be kept confidential?

70 **Mr Mann:** Yes. There has to be a level of confidentiality. I think what we would argue is that at the moment there is still a culture that leans towards confidentiality at the first point and it should not. I think we see that. Commissioned reports would be a prime example, where the States is still commissioning reports without the intention of releasing them, or you will put a request in to see a report and there will be a lot of movement behind the scenes to go and then speak to the authors of the report to make sure that that can be released.

75 That was something we were told, I believe, certainly when the Code was first introduced, that that culture would change, and I do not think it has to the extent that we would have expected. I can very quickly move on to saying why I do not think that has happened or how I think we could improve that, and that would certainly be the independent appeals mechanism which hopefully we will be able to move on to.

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Advocate Harwood: Do you think the culture would – ?

The Chairman: Sorry, Advocate Harwood.

85 **Advocate Harwood:** Sorry. Do you think the culture would have changed if we had gone for a legal framework rather than the Code?

Mr Mann: Well, a legal framework would certainly have more power. I definitely do not need to tell you that.

90 I think we had to go on that journey. The journey that we have been on, from having absolutely nothing in place to having a Code, I think, was probably necessary for the States to get its house in order, even in terms of the information that it has got and how it accesses that information. I think when the Code was introduced the statistics, the data, was not there. So you could have had a law, we could have been asking for information, but it was not readily accessible. So it would have collapsed and failed from the beginning.

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Advocate Harwood: Have you been hindered in your efforts as a journalist by not having a law?

100 **Mr Mann:** Well, it is almost impossible to say, isn't it? Because, do we know what information we have not been able to get out of the States? By necessity, we don't!

Advocate Harwood: But by definition it is up to you to decide what information you want – (**Mr Mann:** Yes.) and to make the request. Have you ever used the Code formally?

105 **Mr Mann:** Have I used the Code? I think I am probably one of the more prolific users of the Code, if we to go back over time.

I think it may be important to explain how we use the Code as well, which might help your understanding. The Code is not our first port of call in getting information from the States. We are in a position where we can pick up the phone and we can ask for information and request information of Committees and Departments that will go through the Communications Team, I guess, in the States nowadays. So the Code is really a backstop for us, and I certainly only use it as a backstop when we have been declined information that I think should be accessible.

Have I used the Code and not got information I think I should? Yes. Have I –

115 **The Chairman:** Can I press you for an example of that, or examples?

Mr Mann: I am just trying to think. Let's use the most recent example I have got. This is an example where the Code is slow and laborious and is not producing as it should be producing – within the 21-day timetable. I think it is something Peter will know about, because it was the review of the relationship between the States and St James' Chamber. Someone is going to have to remind

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me – I know Colin and Rob are here – of how long it took us to get anything in response to that. It was certainly over 21 days.

Can I just turn around and ask them? (*Laughter*)

125 **The Chairman:** Go ahead, you can.

From the public gallery: About six months.

130 **Mr Mann:** Six months, right – lightning speed. And that just should not happen. It should not take six months to get these responses. Then I look at this response and, well, there is part of a report there. It is missing pages. I can show you the back cover: it is just redactions.

And we talk about confidentiality and the need for confidentiality. That may well be justified. But I do not know, because I do not know what information is not there; specifically, you do not know why an exception has been applied to that piece of information; and we can move on and say that
135 we do not know how exceptions are being interpreted. So we know in the Codes that there is a public interest defence for releasing information, but we do not know where the States sees public interest or where its barrier is on public interest.

140 **Deputy Roffey:** Mr Chairman, would it be totally against the rules for me to ask Mr Mann a question?

The Chairman: No, no, go ahead! (*Interjections*)

145 **Deputy Roffey:** And that is, would you have more confidence in those situations if the person making the final decision about what is redacted or not released was an independent third party, rather than the States Department themselves?

Mr Mann: Yes.

150 **Deputy Roffey:** So you had a route of appeal against that happening?

Mr Mann: Yes, absolutely.

155 **Deputy Roffey:** Okay. I am not trying to get to the answer before we start, I am just ...

The Chairman: No. Deputy Merrett.

Deputy Merrett: Thank you.

160 Mr Mann, I wanted to ask you, you mentioned your sources of information, and obviously API is one – (**Mr Mann:** Yes.) so what are your preferred sources of information?

165 **Mr Mann:** In what sense? Directly interviewing people is obviously always the preferred source of information, because that is the direct route of accountability, isn't it? Do we always want to be dealing with a filter through the States? No, because we know if a question goes into a Committee and then a Committee answers it, there are a lot of voices going into, 'Should we say this or should we say that?' And inevitably, I think there will be a cautious attitude taken to what information is put out.

170 **The Chairman:** If that is the case, and you, as you say, rightly use the usual sources to get your information and only when things dry up you then make applications under the Code, (**Mr Mann:** Yes.) would we not then expect a higher level of refusals in those circumstances than what we actually get – what we actually see?

175 **Mr Mann:** And I think you would. Ideally, if the Code was operating as it should be, the culture of openness and transparency would be there from the first point. So we would not need the Code, would we? Ultimately, if the States was following the Code in everything it did, there would be no need for the Code.

180 **The Chairman:** Yes.
Before I bring in Deputy Gollop, Mr Mann, how do you feel about the way that certain exemptions or exceptions to disclosure are used typically by the States? Is that something which you are uncritical of? How do you see it?

185 **Mr Mann:** I do not think I have ever been uncritical of an exception being used.
I think they are used, at times, unfairly. I think we can see examples where there is ... the prematurity of publication is one of them. So, 'We will not release this report because we are going to release it at some point in the future.' What point in the future that is, none of us know. I think that that is leant on quite a lot at times. Again, I think there is meant to be an explanation for the exemptions relied on within the Code. I think there is meant to be an explanation given to the requester about why that has been used, and I do not think those explanations come across. I think
190 the exception is used but you are never told why.

This, again, would come back to what we were talking about: having the independent scrutiny, so there is the third pair of eyes on it that you can rely on.

195 **The Chairman:** So just to capture that, and to reflect on that, you are saying that an exemption will be quoted, but the actual justification, in your experience, often is not there?

Mr Mann: Yes. And it might be that I am looking for more justification than maybe
(**The Chairman:** There is?) the Code is. I do not know, maybe I am just demanding too much.

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The Chairman: Deputy McSwiggan.

Deputy McSwiggan: Would you accept that sometimes providing the justification for the exemption reveals in effect the underlying information, (**Mr Mann:** Oh absolutely.) and that given,
205 could you think of another way of that explanation being provided? I mean as you were talking I was thinking a summary form of exemptions used during the year so that they are not identifiable.

Are there other routes that might be useful to you journalistically that would not reveal the underlying information?

210 **Mr Mann:** It is difficult, isn't it? And luckily I do not have to come up with the answer to that, though the people devising the Code do.

Again, I think I can just go, yes, maybe there can be better explanations attached within the Code as a generality, so that you can have an understanding what ... So like I was saying, we have never explained what the public interest is. There are explanations for what the public interest if you look
215 at the UK, which is the prime example that I tend to lean to – I think that would be really useful because you have definitely got more understanding. But again, it comes back to having an independent appeals mechanism so that you can trust that those exemptions are being used accurately.

220 I would also like to say that that would also be a way of the driving cultural change as well. I think that is really important. If the same people who are answering your questions, applying exemptions, taking the same advice, are then the same people, essentially, that are then deciding whether your appeal is right or wrong, you are never going to change anything, because the advice is always going to be the same. It is just a circular route, isn't it?

225 **Advocate Harwood:** Can I just ask, in your experience, is there inconsistency between the approaches adopted by the different Committees to a request?

Mr Mann: I would say, to a request, no. To media-handling in general, yes. And if it is part of what you are looking at, I believe, is the openness, transparency and culture of the States
230 **(The Chairman:** Sure.) then there is inconsistency across the Committees, and there should not be, because your guiding light should always be the Code.

Advocate Harwood: But the inconsistency is not necessarily relating to the Access to Public Information request?
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Mr Mann: No, because –

Advocate Harwood: You are not finding that one Committee is –

240 **Mr Mann:** – it is generally dealt with, ultimately, by the same people, isn't it?

Advocate Harwood: Okay, yes.

The Chairman: Mr Mann, you rightly identified need for an independent appeals mechanism
245 under the Code. Are there any other improvements to the Code that you can think of which would enhance the offer? This is on the assumption that Guernsey is not going to implement a freedom of information law, which is an assumption which we will come back to. But if it is the Code as it is now or an enhanced Code, what other things would you think from your experience are relevant here?
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Mr Mann: I think we should consider the scope of the Code and whether it should apply to arm's-length bodies of the States.

The Chairman: Arm's-length bodies, right.
255

Mr Mann: Yes. I have not fully considered that myself. I think it is something that should be looked at.

I actually have a problem with the name of the Code. This might sound really quite petty, but if you go round –

260 **The Chairman:** You are going to have to explain this one.

Mr Mann: – and say, 'API' to people, then they will have no idea what you are talking about.

265 **The Chairman:** Yes.

Mr Mann: I think we were shy of calling it – well, I did not devise it – **(Deputy Roffey:** I was not there either.) I turn to Deputies here. I think they were shy of calling it 'freedom of information' because of the expectations that that would have raised and I do not think we should be shy of raising those expectations.
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I think there should be more publicity given to the Code. It should be up front on the States' website, for example. If you go on the States' website the first link to the Code is on the bottom right-hand corner next to Terms and Conditions. I think it should be front and centre.

275 **The Chairman:** I think Policy & Resources in 2017 did say that part of the package of modifications to the Code was to approve the advertising (**Mr Mann:** Yes.) of it to the general public. Have you noticed anything particularly enhanced since 2017?

Mr Mann: I would not say since 2017. But actually that link did appear since 2017, so that was a major step. Excuse my sarcasm.

280 I think definitely the improvement that has happened, which we have to acknowledge, is that actually we are publishing the results of people's requests. I think that was a major step forward, but I think that pre-dates 2017. But I think, again, you can improve how it is displayed, how you have access to that information. If you were just searching for topics it would not work, would it? I think the UK and Jersey have different ways of publishing information.

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The Chairman: Deputy McSwiggan.

Deputy McSwiggan: Conscious that you are going to bring Deputy Gollop in shortly, (**The Chairman:** Yes.) I just wanted one final question of Mr Mann: could you point to examples of how the Code on Access to Public Information has improved the quality of local journalism, recognising that journalism mediates between the States and what the public knows about what its Government does?

295 **Mr Mann:** Would you be thinking more of pointing to information that we have accessed through the Code that we would not otherwise accessed? Because I think that is obviously a good example to the public of information that they should be seeing and that is good for accountability. So I can provide you examples of my requests that have gone through.

Deputy McSwiggan: Please do.

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Mr Mann: Whether I can do that off the top of my head is another question. I think –

The Chairman: Feel free to make a submission after the hearing.

305 **Advocate Harwood:** Yes.

Deputy Gollop: Yes, and I take the point –

Mr Mann: Yes, I have got some letters here which I will be passing over ...

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The Chairman: Deputy Gollop, how do you see it? Do you think the Code of Practice as it stands at the moment is working? Do you think you would like to see some improvements to it?

315 **Deputy Gollop:** If I could give a potted résumé of my interest in this field, I note that the then UK Prime Minister Tony Blair introduced it in the UK and later apparently said it was one of the things he really regretted doing, perhaps because certain elements of the media – it might have been *The Daily Telegraph*, it might have been BBC – deliberately asked questions about politicians' expenses, which was extremely alienating and disturbing for those individuals across all parties.

320 But leaving that aside, I remember working with a BBC journalist in the noughties who was called Hannah Bayman, who has since done extremely well in the BBC and other places, and I remember her being frustrated at the lack of freedom of information rules in Guernsey, and I took more of an interest in the subject.

325 Later on it came before the Assembly. I remember the then Deputy Chris Brock wanted an ombudsman, which to a certain extent included FOI as an issue and I remember a former Deputy – and he was did extremely well as a UK parliamentary candidate for the Liberal Democrats as well –

Mike Hadley was very keen on a stronger more robust approach to freedom of information. I appear –

The Chairman: Can I bring you back to the question, which is do you think the Code is working?

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Deputy Gollop: Well, I am coming back to the point now.

I am a member of the Islanders, Green Party of England and Wales, I think I signed up to the 2020 Association – (**Advocate Harwood:** You think?) And I see last year the 2020 Association successfully applied to Col. Colin Vaudin at the States of Guernsey for a freedom and information
335 in relation to STSP airport runway consultation issues, and then they applied for more details on the tender and got the snub perhaps – that appears to be the position.

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So there are people who have applied ... I think the access to information generally in Guernsey is less than in the UK. For example, I know it is a sensitive subject, but it is precisely the sensitivity that might interest the media: I think it is extremely difficult in Guernsey to identify the payments
340 given to individual senior public servants, senior civil servants, the Attorney-General, the Solicitor General, judges and so on, whereas that information would be more likely to be available in UK reference books or the UK. That is just one area and I have known States Committee Presidents, when asked questions in the States, even by Members, not only with the supposed confidentiality or commercial confidentiality or sensitivity or perhaps something being *sub judice*, but they will also
345 refer on occasions to the information being inappropriate in a small community.

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For example, if one asked how many persons were suffering from a rare, unusual medical condition, that information would generally be available in other countries or places. But in Guernsey it is thought to, without meaning to, in a way identify an individual or family. So in reality, our access to information is limited.

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Now, I was a media columnist on the *Globe* for 10 years. My column was subjective personal opinion. I remember various senior figures in Government, including perhaps a certain Chief Minister – who might be in the room – who was concerned that I was leaking information. Generally speaking, I did not – (*Laughter and interjections*)

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Advocate Harwood: Which means by implication ...!

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Deputy Gollop: There was indeed one occasion when the publication date of a States report and a paper ... But the problem was I suspected certain senior figures were thinking that information was leaking out with that column, but actually it was my guesstimates. My guesstimates were so good as to what the thinking was in Frossard House and other places that ... So sometimes what people consider to be leaked information is guesstimates and sometimes –

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The Chairman: Can I just bring you back to what we are trying to –

Deputy Gollop: – it is in the public domain already.

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The Chairman: I think you have, certainly in the past, Deputy Gollop, advocated a freedom of information law. You certainly did in the 2013 debate. But how do you account for the fact that there does seem to be a lack of public pressure for that as a solution?

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Deputy Gollop: Anecdotally, you may hear evidence today, if you ask the right questions, that perhaps there has been an increase in access to public information and that the process is perhaps, I do not know, more open than it was when the Chief Executive of the States and former times acted as a screening procedure, as they do with administrative review as well.

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But my core belief is that an internally focused system whereby a very senior member of the States executive leadership team is acting as an interested investigator, almost like the French judicial system, and a gatekeeper and a sign-poster and effectively almost a bouncer, is going to

cause conflict with the nature of the fact that the States is an executive and one organisation, especially these days.

380 I think perhaps we are seeing an evolution of Government whereby politicians are becoming more robust in their political views and personalities and association with associations, maybe in some cases, and that they will engage more in social media than hitherto was the case technically 10 years ago. But at the same time – *(Laughter)* **(The Chairman:** Sorry.) I have said before, and I will say again, that politicians have a lesser role in Government in many areas than they did 20 or 30 years ago –

The Chairman: Can we bring it back to ... I think Deputy Merrett wants to ask a question.

390 **Deputy Gollop:** – and therefore a Civil Service leadership team that is going to be more focused on operational credibility is not necessarily the right instrument – **(The Chairman:** Okay.) to look at freedom of information and I would definitely support an independent executive outside of the Royal Court, outside of the parliamentary or political process and outside of the States of Guernsey Civil Service, and I would also support a law, maybe not as draconian as the UK, but certainly a law appropriate to our conditions.

395 **The Chairman:** Alright.

Deputy Merrett, then Deputy McSwiggan and then Advocate Harwood.

Deputy Merrett: Deputy Gollop, you have seen the advent of the API Code coming into effect?

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Deputy Gollop: Yes.

Deputy Merrett: In your opinion, has it produced the relative cultural change ... you are an experienced Deputy, you work with different Committees: have you seen a cultural change in the presumption of disclosure?

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Deputy Gollop: No, it has not really.

I do not know if Mr Mann wishes to come in here or later, and I do not want to get controversial because my friend, Deputy Peter Roffey is sitting next to me too – but the thing is we have seen and we know that the scrutiny that Guernsey have shown an interest in is, for example, Education appointments, but that has been quite a long journey. That is just an example. One could look at all kinds of things, perhaps from planning to procurement to airports to runways. I do not think we are seeing the information that we would like to see in many areas of Government and the criteria for making decisions.

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Advocate Harwood: Can I ask two questions of Deputy Gollop?

The Chairman: Sorry, could I just bring in Deputy McSwiggan first.

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Advocate Harwood: Sorry.

Deputy McSwiggan: I just wanted to go back to the very start of Deputy Gollop's introduction, when you said that you may or may not be, but probably are, a member of the 2020 Association and as Deputy Green mentioned, we have had –

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Deputy Gollop: I have not heard from them for ages.

Deputy McSwiggan: – a submission from the 2020, saying they would very much like to see a freedom of information act.

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Deputy Gollop: I would support them in that.

Deputy McSwiggan: But the general platform of, not only 2020, but the other political organisations that formed so far, has been one of cost reduction and small government. Any measure of independence, whether through a code or a law, comes with an increase in costs.

435 So how do you balance that against that general drive towards smaller government and how do you prioritise that against the other things that a Government needs to spend its budget on?

Deputy Gollop: Well, some of the associations have not necessarily had a very consistent or clear outlook as to how they see fiscal policy and other policies moving forward, it would be not unfair to say. But then I suppose you could say that about certain UK and other political parties elsewhere.

440 I can imagine most members of the public, if you gave them a choice between spending £0.5 million a year on a freedom of information system and putting that into not withdrawing bus routes or definitely supporting life-saving or life-enhancing drugs, would not go for the freedom of information. But I think we should realise, and I know the Scrutiny Committee does realise – its very nature implies this – that we are in many ways a mini-nation state. We are having, on a miniature level, the same robust processes as you would expect to see in Westminster or similar places – (**The Chairman:** Deputy Roffey –) and therefore it should be part of our role as a Government to provide a proportionate system.

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Advocate Harwood: At whatever cost?

Deputy Gollop: At reasonable cost.

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The Chairman: Deputy Roffey, what do you think is the appropriate price to pay for greater openness from a political point of view and from a journalistic point of view?

Deputy Roffey: I think you want it to be as cost-effective as you possibly can and I think that means a trusted third party, an individual with a deputy, if you like, when they are not available, that is trusted by the public and trusted by the States but is not in any way a part of the States, to actually judge whether the public interest clause is being properly applied. I think the public interest clause is probably too broad. I think it could be broken down to some specifics. Commercial confidentiality is one, but there are lots of others.

460 But there will always need to be the catch-all. It is a bit like that special interest rule in the States. You can put lots of different circumstances that clearly are, but you cannot capture everything until it actually arrives – (**The Chairman:** Yes.)

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Can I just react to a couple of things that have been said?

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The Chairman: Of course, yes.

Deputy Roffey: I do not agree with the premise that all States Committees should be the same as far as openness is concerned. I used to chair SACC. We met in public and it was absolutely no problem at all, because the nature of the things that we were discussing, which were the rules of the States and quasi-constitutional matters, the process of actually evolving was not compromised by that. But just to give a couple of practical examples, I had a meeting yesterday of Employment & Social Security. One of the things that we were discussing there was pretty new drugs on the white list that had a discounted rate from someone who was piggybacking on the NHS. We will be excluded, utterly, from doing any of that if any of that became public knowledge, (**The Chairman:** Yes.) so we could not meet in public.

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485 But more importantly, I think actually later in that day, ESS was looking at – and I do not I am
breaking confidentiality, because everybody knows we are looking at it – how to make the Long-
term Care Insurance Fund sustainable. Now, when we have made decisions, that needs to be made
public. But we need to be able to think the unthinkable (**The Chairman:** Yes.) because it is a series
of really unpalatable options. I suspect if that was done in public, some of them would just not even
be visited for fear that it would be all over the media, 'They are considering doing this or they are
considering doing that...' – you need a space for policy formation, if you like.

490 **The Chairman:** This is the potential chilling effect –

Deputy Gollop: And lose their votes.

The Chairman: – of having too much openness.

495 **Deputy Roffey:** Can I just add two very brief things?

The Chairman: Yes, and then I will bring back Mr Mann.

500 **Deputy Roffey:** Firstly, I think the culture compared with when I first went to the States in 1982
is more open. It was *incredibly* closed then and nobody had the right to know anything until we
decided it and that was that.

The Chairman: That is good to know.

505 **Deputy Roffey:** And secondly, Deputy Gollop raises the issue of data protection and similar
issues, and that is problematic – the pinch points. I think you need to look at it, because I have been
incredibly frustrated that in some quarters the impression has been granted, for instance in the
instance that he was referring to, where your other review is on the starting blocks – (**The Chairman:**
Independent review.) we have been really wanting for months just to give you everything you
510 wanted and have had HM Comptroller saying, 'You are going to be breaking the law if you do that,
mate,' and therefore you need to have a resolution between how those two fit together. It might
be worth exploring with the Data Control Commissioner later on.

The Chairman: We will.

515 Can I just turn back to Mr Mann, and we will make this the last point. Did you have something
to add?

520 **Mr Mann:** A few little things. I do not want to go too detailed into the Education point, but I
think that was an interesting example of where a Committee gradually released more and more and
more information depending on who asked the question and in what format they asked the
question. So that was –

525 **Deputy Roffey:** That was what had already been leaked and therefore we need him to respond
to them, yes!

Mr Mann: That is as maybe, but I think we saw through the Rule 14 questions that were used,
with the Information Code that was used, and there were initial refusals and then eventually there
was a pull of information. We have always spoken about the Code being about the push of
information. We should not be extracting *desperately* information.

530 **The Chairman:** Yes, the proactive possibility.

Mr Mann: Yes, the proactive release.

The Chairman: Yes.

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Mr Mann: The cost I think is an interesting argument. If I remember rightly, when the Code was first being discussed there were Members of the States that would have told us that they are going to get a deluge of requests, 'It is going to bung up the system!' 'Civil Service time is going to be wasted when we could be doing much better things!' The reality is that really just did not happen. I think the public and media have been very sensible in how they have used the Code.

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So I think when we talk about the cost of a law, we have to look at how the Code is being used now – how many requests there are and how many appeals there are – and actually, I do not think the costs are going to be of the magnitude that may have been spoken about in days gone by.

545

I wanted to say that an informed public can also help enhance debate. So then it becomes a question of when the information is released to the public. Deputy Roffey was saying we could not possibly tell the public that we were considering this because they would scare the horses, and I think we –

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Mr Roffey: No, I am saying we would not consider it for fear of our own political futures if it became known that we were.

Sorry I interrupted.

The Chairman: Yes, we do need to wrap this up so, thank you.

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Mr Gollop: Yes, two points of clarification I would like to quickly add. We do not need to spend more than £100,000 a year on an independent FOI code, and the other thing is, even if you look across the water to Jersey or Alderney, the secrecy of committee minutes and committee agendas is much greater in Guernsey. I think there is a balance between the good arguments Deputy Peter Roffey has made and a much greater commitment to communicating to the public what is going on.

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The Chairman: I do not want to needlessly extend this, but on what basis do you say the £100,000 figure?

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Mr Gollop: Basically – it is a parallel discussion, with an ombudsman in that role perhaps – at the end of the day you do not need more than one, perhaps semi-retired or half-time professional managing the right to freedom of information requests with a member of staff. What is the cost of that? Less than £100,000.

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The Chairman: Okay. Alright. Let's draw a line there.
Are there any other questions?

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Advocate Harwood: I just ask one? Reference has been made to Rule 14 questions, which has been, comparatively, a recent introduction. Do you believe that has actually assisted the access to information? Do you as a journalist, for example, use one of your friendly Deputies (*Laughter*) to put a Rule 14 question on a point that you want to get some information about?

Mr Mann: I am not going to answer that directly, but I was sort of considering the fact –

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Deputy Roffey: We have got the right to that information! (*Laughter and interjections*)

585 **Mr Mann:** But I was considering a little bit on the journey over here, whether there should be a difference between how Rule 14 questions are dealt with and answered and how Code questions are dealt with and answered. I think that is interesting, because if it is about openness and transparency, they should all be answered in the same way and with the same level of detail.

Deputy Merrett: Sorry, Mr Mann, if can ask another question.

590 **The Chairman:** Let's make this the last question.

Deputy Merrett: You picked this up in your previous answer. You were saying about having a more informed public and I think that should be the driving factor. Openness and transparency, but also informing the community, because conspiracy theories and Guernsey gossip are just rife and once printed in the media and it gets repeated and repeated and repeated, somehow it seems to become a fact that it clearly is not.

595 So do you think that a freedom of information law would give the community and the media confidence to actually get information that is correct to be able to allow our community to get the message across that, for example, class numbers are not going to be increased? Because once it is written in the media, people believe it as 100% truth. So do you think that would actually help, if we had a freedom of information law to ensure that when you or members of our community ask questions they are actually getting information that comes from a credible source?

Mr Mann: I mean certainly –

600 **Deputy Merrett:** That source is accountable as well, so it is not a leak, is it? It is an accountable source which you can then question.

Mr Mann: Certainly it would help drive information getting out to the public, and you are right, it would help drive and make sure that that information was (**Deputy Merrett:** Was correct?) correct.

610 I think the States has to have a look at how it produces and publishes information, because I do not think it is always done in the best way – the most user-friendly way. I think there is a lot of information that the States have that would be useful for the public to have and they would want to have as well. That is not just about the Code and the law; that is just about presentation and accessibility.

615 **Deputy Roffey:** Can I just finally add –

The Chairman: Yes, we do need to wrap this up, but yes.

620 **Deputy Roffey:** Firstly, I think it should be a two-edged sword. I think if the Government has a duty to release, within reason, all the information the media want, the media should have an obligation to (**Deputy Gollop:** Duty.) correct incorrect information (**Deputy Gollop:** Responsibility.) that they publish.

625 I will not give a recent example, I will go well back. The late Catherine Kalamis several times published that we were going to close the Duchess of Kent residential home. Absolutely no such plans to do so, I had frightened relatives on the phone to me day after day after day, I was saying, 'No it is not true.', 'But it was on the *Press!* It must be right, it was on the *Press!*' (*Laughter*) Asked the *Press* to correct it and they just restated that they thought it was true!

630 So there needs to be a two-edged sword here and not just one.

The Chairman: Yes.

Mr Mann: I would say that obviously the codes that the media operate under ensure, or should ensure, accuracy and media correction where appropriate.

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The Chairman: Alright, okay. Thank you very much for attending.

Mr Mann, if you do have any additional submissions to make to the review that would be much appreciated, in writing.

Thank you very much. Thank you for your time.

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Mr Gollop: I might too, to codify what I wanted to say...

**EVIDENCE OF
Ms Emma Martins,
Data Protection Commissioner**

The Chairman: Right, can we just have an introduction please, Ms Martins?

Ms Martins: Yes, Emma Martins, Data Protection Commissioner.

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The Chairman: Thank you. Thank you very much for your attendance this morning.

As you know, we are conducting a review of the Code of Practice on Access to Public Information and whether Guernsey should consider a freedom of information law etc. Obviously you have a certain amount of experience from Jersey and Jersey's experience in terms of its own Code of Practice that then eventually led to them legislating for a freedom of information law.

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Do you have any particular observations or reflections on the Jersey experience that you feel would be relevant to our inquiry?

Ms Martins: The first thing I have to say is that these are personal observations as opposed to the position of the Data Protection Commissioner, because they are clearly two separate (**The Chairman:** Yes.) pieces of legislation and I have no statutory remit over that. So these are personal reflections on that particular journey.

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The Chairman: Okay.

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Ms Martins: I think that as a principle of government and of seeing freedom of information as being part of a good and healthy democracy, it is a noble and valuable principle and I think the interesting thing, coming at it both from a data protection perspective and FOI perspective, is there is no external pressure for a state to implement FOIA. So you will not see the equivalent pressure that you have with data protection, for example, which is about free flow of data so it is important the economy. FOIA is important, many would argue – some may not – that is part of healthy democracy. So that pressure is internal.

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So it is interesting to observe the jurisdictions where there is that pressure and where there it is not. I saw in Jersey that the pressure came a lot from the media – (**The Chairman:** Yes.) so they have a role to play in articulating what they want and why they want it and we saw that pressure built and have some effect. So the first question is, what are you wanting to do and why are you wanting to do it? I think that there is always a danger when there is not clarity, in terms of external pressure, of what the motivation is. I think it has to be sincere and it has to be genuine.

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I think you cannot half-do FOI. You cannot tick a box and say, 'We have the law in, therefore it is done, therefore we are open, transparent and accountable.' If you do it you have to commit to it. That comes with costs and commitments, but I think what I did see in the years that I was around at the office for implementation was some early resistance, because it does cost money. There is no

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getting away from that and there is no point in denying that. But I think it is possible to do in a proportionate and fair way and in a way that delivers value.

680 I think that what we see over time is a culture change, from the default of government activities being secret and behind closed doors and decisions being made about public money and decisions being made that will affect the public being made by default in private and in secret, the default is now largely that you have to argue for it to be held – the data to be secret – and to not be disclosed into the public arena.

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The Chairman: In your experience, what actually were the factors that drove Jersey to move from the Code of Practice to the statutory framework?

690 **Ms Martin:** It was the review of Government many years before then. So I think it was a sense that if we are going to move to a reformed government, ensuring accountability and transparency of decisions and money – they are both important, how Government spending is taxpayers' money and how Government is making decisions around that money often, but sometimes around policy and approach – that is a healthy aspect and a healthy element of democracy.

695 So I think that there may well have been, I am not aware of it, but it would always be my worry, that it would be seen as a tick box. That once you bring in the legislation it can look after itself with no support and no resources. That is not the case.

700 **Advocate Harwood:** Can I just follow up on the interesting point you made about when they reviewed the machinery of government – because we did a similar exercise in Guernsey – Jersey obviously went for a quasi-executive basis. Do you believe that it was in that context, therefore, that Freedom of Information was offered as a *quid pro quo* for that executive authority? Unfortunate you can say the same argument applies also to scrutiny. Scrutiny went hand in glove with having an executive government.

705 Do you think there was that influence of the fact that Jersey went for an executive government that meant the freedom of information became an issue?

Ms Martins: I think that is accurate, yes.

Advocate Harwood: Okay.

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The Chairman: Deputy McSwiggan.

715 **Deputy McSwiggan:** Yes. One of the issues that we wrestled with, with our first set of witnesses, is this question of what is proportionate, particularly in the context of a small island and an increasing drive towards small government or carefully prioritising government spending.

720 If you think about, even some things that you would call the fundamentals of democracy and the protection of human rights, Guernsey does not have all of those that you would necessarily expect of a mature jurisdiction. Recognising that you are speaking in a personal capacity, how do you think the state should be thinking about prioritising freedom of information as against the other pressures on its budget and the other fundamentals of democracy that it should be securing?

725 **Ms Martins:** Yes, it is a good question and I think one of things we grapple with in the data protection context is how do you ensure that a law delivers on what it has the potential to deliver on with limited resources? I think that that necessarily requires some creative approach to how you see regulation and how you see enforcement.

So if you approach it as a tick-box exercise which civil servants are forced to do, which we do not really buy into but you have to do it because there is a penalty if you do not do it, as opposed to, 'Listen, let's try and sit down to work out why openness and transparency is good and how we can ensure that legitimately confidential data remains so.' This is not about free-for-all of

730 information. This is about ensuring that where it is appropriate information is in the public domain
and where it is not it is not in the public domain.

So I think it goes way beyond implementing a piece of legislation to, fundamentally, the culture
of an organisation, whether that is Government or anything else, as to, how do you see yourself?
What do you see your role as being? The 'Civil Service' – those two words mean something. You are
735 serving the public and therefore you are accountable to the public. So how to ensure –

Deputy McSwiggan: Do you think – sorry – that that cultural change would be possible, say
with ... Is it only a law that could create that cultural change? Would the increased independence of
an API Code with an independent appeals mechanism, for argument's sake, achieve the same kind
740 of thing?

Ms Martins: There are all sorts of things you need to bring about cultural change and you do
need cultural change in FOI. You need it in data protection and where we are grappling with that
now. To deliver it well, if we do not just sit back and wait to react in the face of breaches, we need
745 to embed it as just the way it is done. You need that with FOI. It needs to be, 'Well, the default is
openness' and that can be with or without a law. If the default is openness, because that is what the
process of procedures of the Civil Service is, then that is what it will be, whether or not you
implement a primary piece of legislation.

Now, laws like anything – like road safety, like data protection – ultimately are a safety net when
750 things go wrong and they can be very useful to force people who do not comply to comply. But
you really do not want to be looking at it at the end of that process whereby the compliance has
failed. You want to look at it at the beginning of the process. How do we shift our attitude to the
information that we have and that we are custodians of on behalf of the public? That is the
important shift.

I think it is about how you engage: the language you use when you are a senior civil servant;
how they are talking about the data in their possession; what are they doing with the minutes of
meetings; what are they doing with the financial information? If the default is, 'It's ours, not anybody
else's, and we will keep it until we are forced to disclose it' as opposed to, 'Let's assume that
760 everything should be out there unless we can be clear as to why it should not be.' So that goes to
the very heart of cultural change, and that is incredibly complex and difficult. I think law is a part of
that.

But in the same way that in data protection terms, if you think, data protection covers and
regulates everybody in this Island, we are probably the smallest regulator. So you could create a
765 500-strong organisation that does this in force, but actually what we are trying to do is encourage
a wider discussion about why data protection is important for us as human beings. The same
conversation for FOI; why it is important for citizens to have it; why it is important for Government
to engage with it; why it is important for civil servants – every one of them – to buy into and
understand why being accountable encourages trust and confidence from the citizens they are there
to serve.

770 **Deputy McSwiggan:** So it is about leadership, not legislation, in that case?

Ms Martins: I think it is about both. I think it is top-down and bottom-up and law. It is all of
those things – all of those things.

775 **The Chairman:** Is the legal framework a critical element, though? I think that is what we are
tease out.

Ms Martins: Yes, I think it is a very strong signal that it matters to you as Government; that it
matters to the jurisdiction; that you see it as a fundamental part of what you do and why you do it.
780 So it is pointing to something like FOI as being fundamental to the work that you do.

The Chairman: But is cultural change whilst operating within the framework of the Code of
Practice a will-o'-the-wisp or is that something that can actually be achieved within the Code of
Practice?

785 **Ms Martins:** Again, these are very personal comments (**The Chairman:** Absolutely.) based on
my experiences. I have not experienced what I would consider as to be much evidence of a genuine
and robust commitment to the Code. I think the danger is that if the public see it as something that
can be either opted in and opted out of, whilst the cultural default is, 'Let's keep it private', 'Let's
790 keep it confidential' I think it will be a hard sell. I really do.

The law will not fix that, you will still have those problems, but it means that there is a confidence
in the process and that there is a process. The creation some sort of independent oversight that
people trust as not being in the heart of Government, and therefore not swayed and not in the
pocket of, is also very important.

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The Chairman: Deputy Merrett and then Advocate Harwood.

Deputy Merrett: Yes. There has been discussion this morning that, almost, the panacea is to
have an independent appeals process and therefore all will right with the world.

800 Do you see that as simply another mission creep, I suppose? 'We have got API, but if we do this
that might help' – do you see that as mission creep, or do you see it as, 'actually that would be the
panacea, that would...?'

Ms Martins: Well, it depends what your mission is. If it is a good mission, it is worth creeping
805 towards it.

I think that there is a danger of doing it because you think that is going to fix it: putting one
thing in when actually it is a puzzle. It is not necessarily a complex puzzle but it is a broad puzzle
with many pieces to it and you have to look at it in the round. You cannot just say, 'If I put the corner
piece in then I have fixed the problem'. First, you have got to know what the problem is and then
810 you have got to see it in the round and see that everybody has a part to play; not just a regulator,
not just an appeals board, not just a chief executive and not just politicians. It is everybody
collectively. I think there is always a danger in trying to fix it by doing one thing and then criticising
it when that one thing fails. This has got to be a collaborative exercise across all sectors.

815 But I think that what we sense ... we get inquiries in our office about access to information,
because that is where people think they should go, and they are often perplexed about why it is
that we cannot help them. They are often confused about where they should go, and again, this is
anecdotal, I want to stress that, but when you explain, because we do, we try and be helpful and
point out where they go, they just shrug their shoulders and say, 'Well yes, nothing will happen
there then, will it?'

820 So the sense that – from what I have seen – there is not an awful lot of confidence that that
process is robust and independent. It may or may not be the case. I do not know, I do not have an
experience of that process. But people's perception of that process is still very important to the
community at large, I would suggest.

825 **Advocate Harwood:** Can I just pick up a couple of points?

830 Again, following Deputy Merrett's point about this independent body being the panacea for the answer, do you believe from your experience, and I think you had experience in Jersey where you were providing some independence there, that actually you can create an independent role that can be effective without having a formal legislative framework or do you believe that you need a legislative framework in order to make an independent body work?

835 **Ms Martins:** That is a difficult question for me to answer. As a creature of law, as the Data Protection Commissioner, I am going to have to say that I think you need statute if you are serious, because I think it is not –

Advocate Harwood: Do you need to have sanctions at the end of the day?

840 **Ms Martins:** I think ultimately you do. It is of course the case that you would not want to use them very often or at all, because you would want compliance. That is the end game. The end game is not to see lots and lots of enforcement action, but ultimately to change people's attitudes – hopefully convince them through education and awareness. But there are always going to be a number of people that need to understand that we are serious and if you do not comply there are consequences.

845 I think that will help to shift the cultural engagement with this.

Advocate Harwood: Another point on that, and again, this independent body, if we were to create one, a figure of £100,000 has been mentioned as being the cost of it. Do you think that is realistic? If we were to ask your organisation to provide that independence, what additional resource, what cost to resource would it require do you think?

850 **Ms Martins:** It is not uncommon for FOI to be given to the data protection regulator, because there are different sides of the same coin. But you also see them separate and I think that I cannot answer that. It depends how you want to structure the law, what you want that process to look like and what powers you want it to have. Obviously, the greater powers the more resources you are going to need to carry out the investigation. So it is a very difficult one for me to answer.

855 But what I would say is that if you have somebody ... very often the tricky areas around FOI relate to data protection issues. So they are about privacy of individuals' information. So if you have two independents, the likelihood of some tension between the two which then becomes distracting is, I would suggest, quite high; which is why you have seen Information Commissioners' offices take responsibility for both, because that reduces the risk of – it is the same person, you can argue with yourself – that tension. I am aware of a number of jurisdictions that have separate ... they get on fine. But there are legal tensions that I think are just unhelpful for the people that the laws are meant to serve.

860 I think it becomes very bureaucratic then, with two regulators arguing, which I do not think is particularly helpful for anybody, actually.

The Chairman: Deputy Merrett.

870 **Deputy Merrett:** Yes, you mentioned cost, but the thing I would like some clarity on, if you could give it to me at all, is that surely it would be same cost for collecting data, for the record management, for the member of staff – the existing resource – to apply the API Code. So what additional cost, other than obviously drafting legislation, would there actually be?

In theory, if we are buying into the API, that resource is already being used.

875 **Ms Martins:** You mean for the Government?

Deputy Merrett: Yes.

880 **Ms Martins:** Yes, well absolutely. That is the argument. If you forget the legislation for a moment, if you just embed the default of openness of data, that can be done through web platforms, through all sorts of really useful and positive ways of doing that. That is exactly the point. So if you have a culture whereby that is just what you do, you do not need a law.

So the question you are grappling with is, we have not got that culture, I think it is probably fair to say, how do we get there and do we need a law to force it through, as it were, or is there another route for us to achieve the same thing without the cost and the bureaucracy?

885 That is a difficult question to answer.

Advocate Harwood: But the additional cost would be the cost of creating the independent body.

890 **Ms Martins:** Yes.

The Chairman: A slightly different question: is there a risk that if you bring in a freedom of information law which creates legally enforceable rights to information, that will inherently be more prescriptive than a Code?

895 Is that the experience in Jersey: more prescription?

Ms Martins: Yes. It is always going to be. But what I would say with a code is it probably just a little bit too easy to wriggle out of. Again, anecdotally, it is fair to say that from our experience – from my experience – its approach is, ‘How can we get out of disclosing?’ as opposed to ... you should not even have to refer to a code if the default is openness, but the minute you go to a code and think, ‘Well, how can we get around this?’ the fact that it is a code means it is much easier to do that – and being a small document it is ...

900 Having access to information that Government handles ... Government handles the most sensitive, complex type of data. We all know that. So comes with huge responsibility. So it is not just a question of putting that all into the public domain. Actually, there are lots of nuances, a lot of complexity, around at what stage information should be made public and at what stage it should not, and what the controls are around that.

So I think that the detail is actually quite important if you are putting legislation like this in place.

910 **The Chairman:** Deputy McSwiggan.

Deputy McSwiggan: Agreeing that detail is important, you say that anecdotally the mindset when freedom of information requests are received is, ‘How do I get around this?’

915 Can you cite examples of where you have seen that mindset in operation?

Ms Martins: Well, it is much more, I stress, anecdotal, because we do get enquiries made of our office by individuals. It is their experiences that they are us telling us about because they see us as the port of call for information concerns or complaints. So I strongly emphasise this is what we are hearing from, possibly, complainants, people already aggrieved or having issues. So it is no more than that and I would not want to pretend it is any more than that. This is not a detailed analysis of the attitude of Government towards the Code.

The Chairman: Do you think the adoption in Jersey of a statutory framework has helped with the level of proactive publication of information by the States of Jersey?

925 **Ms Martins:** Yes, definitely.

930 **The Chairman:** It is often said that Jersey in legislating for that statutory framework ... is there any suggestion that it gives some sort of international advantage in terms of reputation? Is that an argument that is worthy of looking at?

Ms Martins: Again, that is a difficult question to answer.

935 A personal response to that would be that committing in a way that a law commits to internal governance standards, like FOI, where you have not got the economic pressures – so if we do not put this in our economy may suffer, which is the case with data protection so it makes the arguments easier, this is –

The Chairman: I wonder if there is an analogy with data protection.

940 **Ms Martins:** There probably is, but it would not be the same in terms of the obvious and direct economic impact. But I am pretty sure that when looking at jurisdictions, if the default by virtue of a law is that there is openness of decision-making and openness of financial information of Government that that adds to the reputation of a jurisdiction.

945 So it is a difficult one to answer, but I would say broadly yes, for different reasons.

The Chairman: Can you help us with this, because one issue that we need to look at is the disclosure or otherwise of commissioned reports from third parties by the States. Are you aware of how effective Jersey's law has been in giving public access to reports which have been commissioned from third parties by Government? Are you able to comment on that?

950 **Ms Martins:** I do not have any direct experience of reports. I am pretty out the loop in recent years of Jersey, (**The Chairman:** That is fine.) but absolutely that data would be covered by FOI and there would have to be very strong reasons to not disclose it.

955 **The Chairman:** Non-disclosure, yes.

Deputy McSwiggan: Just staying on the theme of Jersey a little longer, in terms of what good looks like, what does Jersey publish or do differently to Guernsey that demonstrates the effectiveness of its freedom of information law? In terms of what we would want Guernsey to look like in the future, what does Jersey do that shows us where we are aiming at?

965 **Ms Martins:** Now I am not there in a permanent capacity, it is very difficult for me to say. But as a broad observation, there is much more information that is pushed out by default. That is just what happens to it. So the ability for a citizen to find information on gov.je has improved. I am not saying it is perfect. I am not suggesting for a minute that that is the benchmark, because that is for you to decide. But I think it has certainly allowed a level of access to information that was not there before.

970 I think I sense that the confidence that the media have in their ability ... and you often hear of it in the UK that these stories that break have started from an FOI request. So it is very useful not just for citizens, but importantly for journalists. Their ability to get to the bottom of stories, rather than just speak to civil servants or other sources, is important for a well-functioning media.

975 But it is very difficult to say, well, that is what good looks like and that is what they are delivering, so therefore aim for that. I think what you have got to be more focused on is, what are we wanting as Government? What do we think 'good' is like? How do we define being 'accountable to'? What do we think it is important for citizens and the media to be able to see about how we make decisions?

So I there is a danger sometimes of ... the Islands are so very similar in many ways, but equally this is a very unique challenge for any Government, regardless of where you are. I think, first of all, you have got to look to yourselves of what you think good looks like and what you think your citizens are entitled to.

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The Chairman: Peter Harwood.

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Advocate Harwood: One of the previous witnesses suggested perhaps we should try and redefine 'public interest' or try and create a better expression of 'public interest'. In your experience, and I think when we met once before you said there was no one absolute test of public interest, you have to do it on a case-by-case basis.

I really just want to make sure that that is still your view or is it capable of general definition?

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Ms Martins: It is capable of being attempted to be defined, but I think it is so heavily influenced by context and that context can change by the minute. So something that is in the public interest this morning may not be this afternoon.

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That is where you get to the heart of the complexity of this, because as I said before, the nature of the processing of the data of Government is so broad and so complex that to try and be prescriptive is dangerous. I think that the best you can do in that context is put somebody you trust in the position of being the arbiter. So you do not want inconsistent decisions. You want clarity around decision-making. You want accountability around decision-making whoever it is, whether it is the appeals panel or whoever it is that is making these decisions, you need someone that is alive to what that means for Government at that time.

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But I think, actually, if you try and be prescriptive and you try and define it too much, it will have pretty awful unintended consequences, actually.

Advocate Harwood: Thank you.

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The Chairman: Thank you very much. Have you got anything else you would like to add?

Ms Martins: No, if you are happy.

Advocate Harwood: Yes.

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The Chairman: I think so, thank you very much. Thank you for attending.

**EVIDENCE OF
Deputy Gavin St Pier,
President of the Policy & Resources Committee**

The Chairman: Right, Deputy St Pier, thank you very much for attending.

We are mid-Review; we are still collecting evidence and determining where we are going to go on this. I think Policy & Resources did provide us with quite a lengthy submission earlier on in the process, which you probably are familiar with. (**Deputy St Pier:** Yes.)

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One of your lines in that submission was, in terms of the access to information and freedom of information question generally: 'While it is the subject of interest for a handful of politicians and journalists, it does not seem there is a significant swell of public demand for the introduction of a freedom of information law.' It is certainly true in our call for evidence that we have had perhaps a limited number of submissions calling for the introduction of a freedom of information law so far.

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But is the problem with the current Code of Practice that its effect on the cultural change within the States has been relatively limited? How do you see it yourself? Do you stand by the submission that the P&R made earlier on in the process?

1025 **Deputy St Pier:** Yes, I do. I think it is about creating a culture of a presumption of disclosure. Obviously that does have to be balanced, as I think your last witness was suggesting. There will obviously and inevitably at times be issues of confidentiality and balanced against that also is of course the public interest and how do we define that and how does that shift over time and in relation to any given question? But I think the presumption of disclosure is the starting point. I think P&R's perspective is looking at the experience of the Code, it was clearly a slow start, but the number of enquiries is increasing; the number of exemptions is going down.

1030 So I think everyone is becoming more familiar with it and there seems to be a reasonable balance of media versus non-media use of the Code, which I think, again, is noteworthy: that it is not dominated by any one particular group or ignored by any one particular group. So in terms of taking us on a journey from having nothing a few years ago, I think the changes in 2017, the greater promotion, have all helped.

1035 But there are still things that need to be done and developed, I would suggest, and that is perhaps something we will get onto.

The Chairman: Deputy McSwiggan.

1040 **Deputy McSwiggan:** If I could ask you a flippant question first: if you could give the States of Guernsey marks out of 10 for transparency, where would you put us?

Deputy St Pier: Well, I am glad you prefaced that as a flippant question, so I can perhaps treat the question in that way.

1045 I do not think I would even attempt to do that. In terms of what the comparators are and so on, I do not know. I do not know what the answer to that would be. I think we have to look at our own needs and make our own judgments.

1050 **Deputy McSwiggan:** Yes, and that has taken me exactly where I wanted to go, on a more serious side. (**Deputy St Pier:** Yes.) How much do you think transparency matters to us as a Government and a community, and are we doing enough in that sense to make best use of it?

1055 **Deputy St Pier:** Well, transparency in Government is important. I think it is clearly a reflection of the change in society, I guess, which has become less deferential towards those in authority and Government as being the establishment that is in a sort of patriarchal way making decisions on behalf of the people that they govern. I think that culture has clearly changed significantly. Therefore, what comes with that is a greater expectation of accountability and in order to have accountability you need to have transparency.

1060 So I think that has been a journey which the community has been on, obviously not just in Guernsey. Whether the more recent development of social media and how that impacts on the community's expectations to information now I do not know. I suspect again that is probably a subject of some thesis by some student somewhere.

But it is clearly another factor that needs to be managed in this process of how we respond.

1065 **The Chairman:** Peter Harwood.

Advocate Harwood: Can you explain, as a politician and particularly as Chief Minister, what steps you can take to ensure that there is this cultural change which – you already alluded you believe that it has happened – what steps can you take to actually ensure that it does happen?

1070 **Deputy St Pier:** Well, I think it is about really supporting the disclosure of information and helping to reinforce the messages around our need to develop that disclosure by default. And commissioned reports, which again you touched on with your last witness towards the end, I think is an example where we have probably still got some way to go.

1075 Whilst I said in response to the President's opening question I think there has been a growing
degree of comfort with the Code, I think one area where the States as an organisation has not yet
become truly comfortable in its understanding is the question of commissioned reports. What is a
1080 commissioned report, what are we supposed to do with it, and so on. I think there are some data
protection issues in there as well as the freedom of information issues, which I think the advent of
GDPR more recently; learning how to deal with processing notices upfront at the head of
commissioning; all of those things are things that I think, frankly, we are still learning as an
organisation.

Advocate Harwood: Do you feel that a politician should be in a position to direct the executive
1085 of the States, the officers of the States, to adapt the culture, to be open to ... I mean do you feel it
is appropriate for you as a politician, and as I say, as Chief Minister, to direct that a particular piece
of information should be made available or should it be left solely in the hands of the officers?

Deputy St Pier: Well, I think clearly the setting of the political tone and environment is the
1090 responsibility of politicians and indeed I think that of course provides the genesis of the existence
of the Code in itself and the revision of the Code. So I think that is the role and responsibility of
politicians: setting that framework in which the public service then need to operate.

The Chairman: Deputy Merrett.

1095

Deputy Merrett: Thank you.

In this term of office, the governance structure has changed, with its new strategic leads. How
do you think that helps fluidity, how it is flowing through, (**Deputy St Pier:** Yes.) for API requests?

1100 **Deputy St Pier:** I do not think it makes a significant difference in terms of –

Deputy Merrett: So you think it is quite clear to a person that makes an API request who to
direct that request to and who to expect a response from? You think that is quite clear?

1105 **Deputy St Pier:** Well, whether it is clear to every individual who makes a request, I do not know.
But my concern more would be, where it lands within the organisation, that the organisation is clear
how to then handle it and how it is then managed within the organisation so that individual gets a
response within the timeframe and it is an appropriate response that has gone through the Code
and the Code has been applied consistently.

1110 And yes, I am comfortable with all of that.

Advocate Harwood: Can I just follow up?

1115 Within the revised structure that you are now putting in place who actually takes responsibility
for the decision whether or not to disclose? Historically, I suppose, it was the Chief Officer of a
Committee. (**Deputy St Pier:** Yes.) Given the new structure you have, who actually does take that
final decision on behalf of a Committee?

Deputy St Pier: Sorry? (*Interjection*) I would defer to –

1120 **Advocate Harwood:** Well, I admit I am not sure. We have had the discussion and we cannot
quite work it out.

Deputy St Pier: Yes, I mean I would defer for advice on that (**Advocate Harwood:** Okay.) as to
how each case would be handled.

1125 **Advocate Harwood:** Okay, thank you.

The Chairman: Can I bring you back to the P&R submission that we received? Because I think that is probably, certainly, one of the most significant submissions that we have had overall.

1130 In that, you touch upon what you think could be done with the existing Code to make it work better, (**Deputy St Pier:** Yes.) and you mentioned, I think you say that the Policy & Resources Committee believes that an independent appeals mechanism would be something that would strengthen the Code. Has any progress been made on that by the Committee since you wrote that letter to us?

1135 **Deputy St Pier:** No. It has not been one of our areas of focus or priority.

I think, to be honest, our expectation was you were clearly running this process and this review, so it seemed appropriate to make our submission and allow you to provide your insights before we devote resources to thinking about it further, (**The Chairman:** Yes.) and it would be my view.

So that has simply not been an area that we have devoted time to.

1140

The Chairman: One of the other areas which you touched upon a moment ago was about commissioned reports and the status of those. I think your Committee advocates having a clearer, more formal process for determining what the commissioned report is and when it should be disclosed.

1145 Do you think that is an area where your Committee can make some progress within a reasonable timeframe?

Deputy St Pier: Yes, I do.

1150 Again, I think it is one that needs ... it is a question of communicating with Committees and their staff, so that they have a clearer understanding and I think that does apply across the board.

But I think there is something that can be done now.

The Chairman: Deputy McSwiggan.

1155 **Deputy McSwiggan:** We know that one of your Committee's priorities this term has been the development of Guernsey's mature international identity and the standards around that. One of the arguments that we have heard in the course of this morning and in the submissions that we have received is that having a freedom of information law in place would be conducive to Guernsey's international reputation. Perhaps similarly making a broader commitment to open government would position Guernsey well internationally.

1160

Do you see that as an important part of our developing identity?

Deputy St Pier: It is a theoretical argument, but I think it can be overegged.

1165 I have not, certainly in any of our external relations and dealings with third countries or third-party organisations had that question and that challenge posed to us: 'Well, of course, there is a problem in Guernsey because you have not got an FOI law'. So if I think, whether it is our dealings with the EU in relation to the Code of Conduct Group or the OECD or other groups in terms of their focusing on the transparency and good governance of us as a jurisdiction, it is not an issue which has crept up the agenda.

1170 Now, whether that will change as a priority for the international community and it becomes a topic for conversation in the future, who knows? But I do not think it would be fair to characterise it as an issue of concern at the moment.

1175 **Deputy McSwiggan:** I mean specific issues around transparency, particularly the question of beneficial ownership, have been significant for us during this term of Government. Do you have any

sense of whether our overall approach to Government transparency would have any impact on the nature of those debates?

1180 **Deputy St Pier:** There are clearly some NGOs whose purpose is the promotion of open government. The Open Government Forum, for example, is one of those. Clearly they are a voice who speaks on some of these matters of transparency. So for them clearly it would be a matter of interest. But I would say that they are fairly limited.

1185 So again, I think in terms of going back to the premise of your question, which is in relation to the promotion of our international identity, is it or should it be one of the Island's and the community's priorities in order to assist with that? I do not see or I have not heard of any evidence to suggest that, and I think that is the most honest answer I can give in relation to that.

Advocate Harwood: Can we just go back to commissioned reports and this whole area of difficulty?

1190 One of the exemptions under the effort under the Code – I think it is also under the FOI Law in the UK anyway – is reference to internal discussion of policy advice, (**Deputy St Pier:** Yes.) there is an exemption. Are we, because we have to rely heavily upon using external resources because we have not actually got the resources within our organisation, creating a problem? We actually are going to an outside party and saying, 'Right, we want, as part of our internal discussion of policy advice, we want to commission a report to assist us in that.' Is that one of the concerns that you have? That there is this fudging, if you like, of the distinction between something that might be generated internally within your own staff, and actually having the same thing generated, but it is generated externally by a firm of accountants or a firm of lawyers?

1195 Is that one of the concerns you have in relation to commissioned reports?
1200

Deputy St Pier: It is a very interesting point and I think it is a very valid one.

1205 I think clearly as a small jurisdiction that does have limited resources we are perhaps inevitably more reliant on the use of external expertise in any given area than other jurisdictions might be; who might have that expertise in-house and therefore could rely on that internal discussion exemption. I have to say I do not regard that as being one of the major concerns for us as a Committee, because I think that is an issue that can be managed in our application of thinking about how we are going to handle commissioned reports.

1210 But I think it probably is true that we end up commissioning more reports because we are, wisely, not seeking necessarily to have all of that skill and resource permanently employed within the public service. So we draw on it as and when we need it. By definition it then becomes a commissioned report. I think our concern more is in relation to perhaps Committees not necessarily recognising when they have commissioned a report and when they have not. Something that they might regard, as you said, to be to assist them actually currently would fall within the definition of that.

1215 Actually, a very interesting, very live example is your own independent review of the Head of Curriculum and Standards. Now that is an independent review, but I think it would fall within a definition of a commissioned report, but it has not come forward from you as a Committee to us in the latest sweep of what, essentially, commissioned reports are out there.

So clearly we are all struggling to understand when to apply this.

1220 **The Chairman:** Yes. Okay. Deputy Merrett.

1225 **Deputy Merrett:** I would just like to take you back, Deputy St Pier, to your submission, basically, which said about the process of complaints and appeals, and you said you were waiting for us to report back in. However, there is an extant States Resolution from 2013 which says – I can quote it – the:

'right of appeal to an independent person or persons in respect of a request made for access to information ...'

1230 That was meant to be back to the States by 2014. So my question is that even if the SMC recommends that this goes forward, P&R have already said they think it should happen, there is already a States Resolution, I do not know what else that Scrutiny could possibly do to actually make Policy & Resources act on their own good advice that says we should do it. I mean, what else? There is an extant Resolution and your submission says we should do it, and yet we have heard today that no movement had been made towards that.

1235 **Deputy St Pier:** I suppose, as I said, it has not been one of our priorities in this term. Your review, I suppose, has provided a reason for us not necessarily to prioritise it – arguably you could say it should have been prioritised – because I guess you may have a very strong view in a particular direction that ought to be taken into account in thinking about what the appeals process should be.

So that is my rather thin excuse for the matter not being progressed as a priority in this term.

1240 **The Chairman:** Just going back to the submission from P&R, you put it on record that you do not believe, as a Committee, that there is a valid case for a freedom of information law in place of the Code, and I quote:

‘Given the likely need for additional resources to introduce a freedom of information law, the P&R Committee would argue it is more prudent to first look for more cost-effective ways to strengthen the existing Code. A move to an FOI law could lead to more cost, more bureaucracy and less transparency ...’

1245 Firstly, what do you think is a proportionate cost for, for example, an independent appeals mechanism? How do you make that judgement about what is a proportionate amount of money to spend on something like this – on an independent appeal mechanism to try to enhance the existing Code, on the assumption that we are not going to go down the statutory road?

1250 **Deputy St Pier:** That is a fair question. I do not think I am in a position to put a number on it and say, ‘Well I think if it is more than x that is disproportionate and if it is less than x that is proportionate.’ I think it is a subjective judgement rather than an objective one.

1255 Clearly we have plenty of appeals processes, various tribunals and others, that are manned at relatively low cost to the community by volunteers. Obviously there is some administration cost around that process but it is not an overly burdensome one. So my starting presumption would be that an appeals process could be developed at a proportionate cost, but putting a number on it ... I would be reluctant to do so in a public hearing here today.

Advocate Harwood: Can I just draw you out on that?

1260 You focus on the appeals process, and I agree an appeals tribunal would not be that expensive, but in the evidence we have heard earlier I think the suggestion is we should go further than that, even in relation to the existing Code and actually make an independent body responsible for receiving a request and ensuring that a request is dealt with, which is different from just purely an appellate process.

1265 That is where some of the evidence that we are receiving is suggesting we should go and I just wondered what your thoughts are on that suggestion. Because that would incur a cost.

1270 **Deputy St Pier:** I can see the inherent logic in seeking to have an entirely independent process from the outset. But again, I suppose my pushback on that would be, is it really necessary? Where is the evidence that the current process is not working or is in some way impeding the flow of information in such a way that justifies that additional structure and layout, at whatever cost, and query whether that in turn would also actually slow the process, because you would then have a body that is then having to liaise with Government rather than the Government liaising within itself. So I think I will take some persuading that we have such a problem that really would justify such a response.

1275 I think my approach to all of this is that I do not think there is a strong case made that there is
a major problem. I do not wish to be complacent, but I have not been presented with any evidence
or cases of such and therefore my approach would be much more incremental. And the next stage
of incrementalism in this journey, as a result of changing culture and expectations, would be around
developing the appeals process rather than a separate commission or some other entity that is
responsible for managing the whole process from the outset. That would be my view.

1280

The Chairman: But if that appeals process is going to be effective and has independence, and
it is going to be that an individual is going to have to make certain decisions/judgements about
what is in the public interest, what sort of person or body do you think would be appropriate to do
that? Because it is a role that requires some status, does it not, to in effect say to Government,
1285 'Actually in the public interest that overrides other political issues at the moment and that needs to
be disclosed'? That sort of person or body would have to have some standing for it to actually work
in the context of what we are talking about – wouldn't it?

Deputy St Pier: Yes. You would clearly have to have somebody who would have a sufficient
1290 understanding of the Code itself, the exemptions, the purpose of the exemptions and be able to
apply them, again, as your previous witness said, clearly a priority will be doing so in a consistent
manner and doing so in a way that is somebody who is able to make that judgement around what
the public interest is on any given issue and in any given period of time.

1295 But do we have individuals with that skillset or who would be able to apply their skills and
experience to that in our community? I would be surprised if we did not, put it that way.

The Chairman: Deputy Merrett.

Deputy Merrett: Yes, much has been mentioned of cost, but what I would appreciate clarity on
1300 is that if we have had a cultural buy-in to the API, if we are already collecting that data, if we already
have records management, if we already have the staff resource to process those API requests, what
additional cost do you think there would actually be if we had an FOI law?

Deputy St Pier: Again I think this is to some extent goes back to the President's question to the
1305 previous witness. I think by creating a statutory framework rather than the flexibility of a Code as a
framework you will introduce much more rigid lines of where decisions need to be made, inevitably,
because it will be a legal framework. It will involve lawyers, so you will probably need some either
legal experience or advice within Government to help manage that whole process.

1310 We have seen this of course. The precedent for this is data protection. The new data protection
regime, the same arguments could be made, in terms of, 'Well the data has not changed and the
obligation to save that and preserve that data and protect that data has not changed' and yet the
cost of the new regime is considerably more expensive than the cost of the last regime. I think we
will find the same with freedom of information for the same reason. Because as soon as you are
putting a much more rigid statutory framework around it, I think inevitably it will involve more
1315 people in managing the whole process of managing requests, exemptions and the decision-making.
I think it will become, in a sense, a more contentious process and I think arguably you have seen
this elsewhere where there is a statutory framework.

1320 So in answer to your question, Deputy Merrett, I think we need to look at the experience of other
jurisdictions and that is probably the best evidence that it would have a financial impact on us if we
were to go that route.

The Chairman: We are of course an outlier, aren't we? The Isle of Man and Jersey have both
chosen to put their regimes on statutory footings for whatever reason.

1325 **Deputy St Pier:** Yes.

The Chairman: That is a fact, isn't it?

1330 **Deputy St Pier:** It is a fact. It is also a fact that we are the smallest of those three jurisdictions and I think that is a relevant consideration. **(The Chairman:** Yes.) We have to develop policy solutions to all our problems that are relevant and appropriate for us as a jurisdiction. So if they have made the judgement that is the right solution for them, that is, of course, a matter for them. That does not necessarily mean it should be the same solution for us.

1335 **The Chairman:** Just to come back to the quote I read out from the P&R submission before, it was this bit that struck me slightly. It says: 'A move to an FOI law could lead to more cost, more bureaucracy and less transparency.' I think you have made the point about more cost. Let's pick that up: in terms of more cost, can you pinpoint exactly where those extra costs would come with a statutory regime? We have talked –

1340 **Deputy St Pier:** I think you would inevitably have a dedicated team who would be employed to manage that process. So I think what that number would be, again, I would not like to put a number on it today –

1345 **The Chairman:** More civil servants?

Deputy St Pier: – but I cannot envisage you implementing that regime without putting some dedicated resource into managing it. I think that is where the cost would come.

1350 **The Chairman:** Yes. The notion that a move to a statutory framework would lead to less transparency, is that something you want to elaborate on **(Deputy St Pier:** No –) in terms of how the P&R Committee sees it?

1355 **Deputy St Pier:** To some extent it was inherent in your question to the previous witness. I think it chimed with me because I think it does derive from the fact that you would have harder lines as a result of a statutory framework. I think by making it more legalistic you will have legal advice which inevitably will be more cautious. With respect to the lawyers in the room, that is the nature of the beast and that is the nature of the experience of Government: that lawyers will tend to offer a more conservative and ultimately adopt a more restrictive approach to the interpretation of the law.

1360 Also, I think it would be much more likely that you would say, 'Well the law provides that we have so many days, that information will not be provided until the last day.' I think, again, in a way it potentially could engender the wrong cultural responses rather than the right ones.

1365 **The Chairman:** Deputy Merrett.

Deputy Merrett: Deputy St Pier, your answer to the last question caused me a little bit of concern – alarm bells ringing in my head – because the basic response was that with an FOI law we would have a dedicated resource and have people actually managing this. But surely, if under the API Code there is an assumption of disclosure and there is meant to have been a cultural change, you should already have people in place that are driving this cultural change through.

Your answer, it appears to me, is that is not the case; **(Deputy St Pier:** No –) it will only be taken seriously if there is an FOI law.

1375 **Deputy St Pier:** Well, I think that there are two things, aren't there? There is people driving cultural change and there is people managing the process.

1380 I think what I was referring to would be a requirement under an FOI law to have people who are managing the requests and managing the whole process of operating within the new FOI law and ensuring that data or information is collated and preserved in a particular way that enables it to be recovered in accordance with the terms of the law. All of that issue would require dedicated resource.

1385 I think in terms of the current API Code, yes there are people who have the lead responsibility in helping to manage a request, but they are doing other things as well. Do we have dedicated resource who are promoting the cultural change? No. We do not have people who are employed to do that. I think that is, going back to Advocate Harwood's question earlier, to some extent the responsibility of politicians to help drive that cultural change in terms of their expectations, within, indeed, their own Committees. Indeed, Scrutiny themselves have had some requests for information under the API Code, you yourselves have applied exemptions.

1390 So again, all of us who have a political role on Committees have a role in driving that cultural change. I think it would be foolish and a mistake to think that it is the responsibility of any given individual, at either a political level or at a Civil Service level. Who could possibly do that?

The Chairman: Deputy McSwiggan.

1395 **Deputy McSwiggan:** Just staying in that same general area, as a member of a Committee that has set out at the start of the term to be much more proactive in its publication and was frustrated at the time by a lack of resources able to deliver that, do you now believe that the States is adequately resourced in the upstream areas? So things like communication, data collection, all that stuff that allows us to be proactive and to achieve the kind of culture that was envisaged when the
1400 API Code was introduced.

Do you believe that we are adequately resourced to deliver the kind of transparency our community deserves?

1405 **Deputy St Pier:** We are resourced, as I suspect is inherent in your underlying question. Do we have as much resource in every area that we would like, for example, in relation to communications, that enables us to be geared up to respond in every area as we would like? Probably not, but that I think is a known constraint that we are having to manage across the public service in terms of the prioritisation of inevitably scarce resources.

1410 **Deputy McSwiggan:** Would you agree then that it is hard not to offer the public at least the avenue of potentially formal redress if we cannot promise sufficient open communication from the start?

1415 **Deputy St Pier:** But equally, if you are talking about formal redress, I am not sure whether you are heading down the lines of, 'Therefore, that is the reason you need an FOI law: to have formal process.' If we feel that is the right response then we would have to accept the resource implications that would come with that.

1420 **The Chairman:** If we just make this the last question: do you think, again on the assumption that we are going to maintain a Code of Practice on this area, there is any merit going forward in that Code applying to providers of public services who are not technically within the public sector? In other words, should there be a kind of follow-the-money approach where if a third party or other commissioned body is providing some public services that an Access to Information request to that external body could potentially be covered under the Code? Do you think that is –

1425 **Deputy St Pier:** Sorry, just to be clear, (**The Chairman:** Yes.) Deputy Green, that I have understood your question correctly. So if Government commissions the services from, for example,

one of the commissions that have been set up, **(The Chairman: Absolutely.)** you query whether the Code would apply to them.

1430 I will be honest: it is not something that I have given consideration to. I can see the logic in the question and I can see that there may be merit in giving that some consideration. I think that would clearly be ... **(The Chairman: Yes.)** and I guess it could become one of the terms of the commissioning of those services: that you would expect that commissioned body to consider themselves subject to the Code.

1435 I think again, I suppose, it would become, where do you draw the lines on that? **(The Chairman: Yes.)** If Government is commissioning, coming back to Advocate Harwood's questions earlier, to the extent that it is commissioning the provision of an individual service, for example, would we expect the party providing that themselves to be subject to the Code? I suspect probably not. But if it is more broadly in the provision of services there may be a case.

1440 Sorry, it is a rather waffly answer, because it is not something I have given consideration to.

The Chairman: Could I ask that Policy & Resources give that some consideration as we go forward; where those boundaries might be?

1445 **Deputy St Pier:** Sure.

The Chairman: Okay. Have we got any other questions? I think we are done. Thank you very much for attending.

1450 **Deputy St Pier:** Good, thank you very much.

**EVIDENCE OF
Lt Col. Colin Vaudin, Chief Information Officer
and Mr Rob Moore, Senior Media & PR Officer**

The Chairman: Good morning. Could you introduce yourselves please?

1455 **Mr Vaudin:** Mr Colin Vaudin, I am the States of Guernsey Chief Information Officer and I have overall responsibility for the processing of Access to Public Information within the States of Guernsey.

The Chairman: Thank you very much.
Mr Moore?

1460 **Mr Moore:** Rob Moore, Senior Media & PR Officer working in the States' Communications Team.

The Chairman: Thank you very much for attending.

Mr Vaudin first: how do you see your role? Is it a gatekeeper role and what authority do you have in that role vis-à-vis the Code of Practice on Access to Information?

1465 **Mr Vaudin:** So in the 2017 review that the Policy & Resources Committee did on the success of the API Code I was given a role to effectively ensure the consistent application of exemptions and ensure that the API Code as far as possible throughout the organisation had greater understanding and encourage and provide some of that leadership role with other colleagues, including political colleagues, that the move towards transparency – and that was part of the letter at the time – was enacted.

1470

1475 So in terms of formal authorisation, part of that is in the Policy & Resources review that ensures that any exemptions applied to any API request, or indeed commissioned report, come through me for challenge, sanction, approval or, when there are situations I do not believe it is applied, challenge back into that organisation asking for greater clarity and understanding. So that is the formal authority I have.

1480 The informal authority I have through my responsibility for the Communications Team, some of the softer issues such as the decision we took to publish all API requests and the responses, and the work we have been doing on a twice-yearly basis, to go out to all Committee areas and other areas to gather their information on commissioned reports and who is going to publish that.

So there is a formal authority around exemptions and then there is informal authority through influence.

1485 **The Chairman:** In terms of your formal role regarding the exemptions, how do you think that has been working since 2017? Do you think that greater consistency of application has been achieved or is that still a work in progress?

1490 **Mr Vaudin:** I think overall in the last three years we have seen a reduction in the number of exemptions being applied to API requests. In around 2016 about 50% of API requests were subject to one or more exemptions, either to the entirety or a part of the documentation. I am sure my colleague has got the information to hand. In the last calendar year we had 35%; the year before that about 20%; and the year before about 18%. So the number of exemptions being applied has reduced.

1495 The explanation around exemptions is now included in the response to the applicant, which it was not before that time, so that there is an opportunity for them to challenge and question. And also the number of API requests overall has effectively doubled since 2017. So if your measurement of success perhaps is more requests and fewer exemptions, I would suggest that has been achieved.

1500 **The Chairman:** In terms of exemptions, which ones tend to be the most popular?

1505 **Mr Vaudin:** The three most popular are voluminous and vexatious or frivolous. So for example, less so from the media – and I hate to say anything positive about the media when Mr Mann is in the room obviously! – but this tends to be more from academics in the UK who are doing theses on information. So they may ask, for example: one of them was for all aspects and talks of knife crime going back over the last five decades. That is quite a voluminous type of request.

The second most common – and this is over a six-year period, I think that is about 10 or 11 – is premature publication. We have had seven over the last six years. All of those reports have subsequently been published.

1510 The third one is employment. Now this is where statistics can create an adverse understanding. I think there have been seven exemptions applied in regards to employment matters in the last six years, five of them in the last year in relation to one specific case. So you can get in statistics anomalies of that sort of nature.

1515 **The Chairman:** In terms of the first one of those, the most popular, voluminous, vexatious and frivolous, in terms of volume, do you work to any guidance in terms of what constitutes excessive volume? Is it just a finger in the air: 'Oh, that seems a bit voluminous'? (*Laughter*)

Deputy Merrett: 'That's a lot of hard work!'

1520 **Mr Vaudin:** I would hope it has got a bit more professional judgement than that.

But obviously the nature of the requests is very varied. Some of them are vexatious in nature and those are judged in a slightly different way.

1525 In terms of voluminous it is really around, once we get the request in the first thing we will do is we will go to the service area that it applies to and get an understanding from them of the amount of information they have readily available and/or staff time to recover that against the value of the outcome. Then invariably what we will do is enter into a conversation with the applicant to turn around and say, 'Can we understand what you are trying to get so we can provide you with the most appropriate response?'

1530 In most cases, quite a number of cases, what we do is we have them reframe the question in order to get an answer which they need, rather than just, 'Give us everything you've got.' Take for example the knife-crime issue, the appellant in that situation, through a series of dialogue undertaken by my colleague here, we got to the root cause of the issue. They were trying to identify knife-crime increases over about the last 10 years, especially in urban areas. That is a fundamentally different question to perhaps where they started from.

1535 **The Chairman:** Right, okay.

Your second example was premature publication. (**Mr Vaudin:** Yes.) Now, this is something that is mentioned quite often. One of previous witnesses talked about that: his frustrations when the States in effect says, 'We are not going to publish it now because we are going to publish it later'.

1540 Again, how does that work in a practical example? Can you give us a practical example of where, when the application for disclosure has been made, you have said no, but you have then had an idea of when it will be published? Is there an example of that?

1545 **Mr Vaudin:** So invariably in the cases, one of my colleagues goes through the paper. The requests on premature disclosure on the whole come from our media colleagues, usually because the media are interested in an issue that is going on which is very much in the public eye at that particular moment in time. So in more cases than not on premature publication those come from the media because it is in vogue at the moment.

1550 So actually, in that situation what we do is go and liaise with the colleagues in wherever the functional department is, because they are the authority on release. So we have a function to approve, challenge or accept an exemption, but it is still the releasing Committee that has the particular situation. So usually we will turn around and say, 'This is when it is due to be published. Does that cause you an issue? Why does it cause you an issue?' and enter a conversation.

1555 That is why having the API process which is linked to things like media enquiries, things like Rule 14 questions and other publications that come from the Data and Analysis team provides us with that degree of more flexibility of how we answer that.

The Chairman: Mr Moore.

1560 **Mr Moore:** In 2019 an example where that exemption was applied was in the case of the Fire Service's report on the Bulwer Avenue fire, which at the point at which the API was received requesting the information was still being compiled. It was due to be published within a matter of weeks. So the response was provided as prematurity of publication.

1565 As part of that process, when the service area wanted to respond with that exemption applied it does then go to the CIO to look at the appropriate use of that exemption. In that particular case I remember, and we can provide evidence for it afterwards, the CIO challenging at least the justifications provided for the use of that exemption. So simply to slap on a prematurity of publication exemption and say, 'Here you go' is not sufficient. A narrative needs to be included as to when it is likely that publication is going to happen to complete this process.

1570 So that is the most recent example from 2019 that I can think of.

Mr Vaudin: And perhaps to help members of the Committee, this is a response. It is not a particular response to this one and obviously in some cases, without going into detail of which case we are into, this was an application for exemption under vexatious or voluminous. My response to the area of Government was:

I therefore reject the use of exemption 2.9 in this case, requests for information which are 'frivolous,, vexatious or manifestly unreasonable or are formulated in too general a manner, which would require unreasonable diversion ...'

1575 Primarily because what that organisation was saying was, 'Well the data is in the wrong situation. We can't get it out.' That is not a situation where the appellant ... it is not their problem. So we do challenge back, and this probably comes to, if Mr Mann or the media has a view of me, I am a person who is supporting confidentiality across various parts of the organisation. And it does differ. Actually, I am the person who is trumpeting transparency and public interest and to quote some
1580 other people, if I am slightly, or people see me, at edge from all angles of this, I am probably doing the job that is about where it needs to be in this process.

The Chairman: Can you give examples of when you last overruled a Committee and said that something had to be disclosed?

1585

Mr Vaudin: I cannot overrule a Committee. That is not within my power because –

The Chairman: Or, rather (**Mr Vaudin:** Yes.) gave advice on the use of an exemption and gave the advice that it should be disapplied?

1590

Mr Vaudin: That happens on almost a weekly or monthly basis.

For example, in response to – let me just find which one it is – an area relating to Economic Development. So they have to submit their reasons for exemptions being applied in the first place (**The Chairman:** Yes.) so this is, once again, my response:

Section 2.14: I am not a lawyer but I am unsure how section 36 applies in this case as the individual is already known and in the public domain.

Section 2.3: I am unsure how this applies ...

1595 – and it goes on and on. In that case, in the final response that was sent out all those exemptions were removed, predominately because when the exemptions were initially applied I suspect they were applied too broadly and when a challenge is put back into it that is internal to the organisation they cannot generate a valid justification of why that exemption should apply when challenged with logic.

1600

The Chairman: Do you think that your overrulings in that regard have produced some sort of cultural shift or do you think that would be exaggerating it? You have done what you think is right but do you think that has actually helped to produce a cultural shift over time?

1605 **Mr Vaudin:** I think the leaders who are now getting these requests understand the level of challenge they get if they apply exemptions without logic.

Advocate Harwood: Can I just ask, you mention this is your formal role, but what sanction can you apply if in fact your recommendation that the exemption should not apply - if they choose to ignore that?

1610

Mr Vaudin: So within the review of the API Code in 2017, in order to give myself some teeth, which is probably the root of the question, if an exemption is applied to which I do not agree and through that period of dialogue we cannot get a position of mutual agreement, the API request is published with the exemption applied but with a statement that I do not agree with the exemption.

1615

That has not happened since 2017, because I can imagine from a media position ... or perhaps other colleagues would then question why has an exemption has been applied by a certain service area or Committee area to which the CIO, who has within the API Code responsibility for challenging exemptions, is not satisfied?

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Advocate Harwood: But in the absence of any further appeal process that does not really help the media does it?

Mr Vaudin: There is an appeals process within the –

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Advocate Harwood: Yes, but it is not an independent –

Mr Vaudin: It is not independent. But I think, once again, balancing the formal authority I have and the informal authority I have, the fact is that that has not occurred and I feel I have fairly robustly challenged a number of API exemptions over the last four years, I would say presents a positive position of how we are challenging and changing the culture in those organisations.

1630

Of course, going forward into the future – which I think, possibly, is the point of your question, Advocate Harwood – if there was an independent appeals process I suspect that would be taken into account through that appealing process.

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Advocate Harwood: Can I just ask another follow-up?

The Chairman: Peter Harwood.

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Advocate Harwood: Reference has been made to public interest, and we were asking Emma Martins, to what extent do you have to consider the issue about, is it in the public interest? And if so what advice do you take or do you rely on your own gut instinct?

Mr Vaudin: So depending on the case, for me, from a transparency agenda perspective – this is a horrible metaphor, I am always scared of a metaphor because you never know quite where you end up – it is three-legged stool.

1645

There is a transparency position and our API Code starts with the presumption of publication. There is the public interest position and of course public interest can either, depending on where you are coming from, mean you should publish everything or there is public interest, especially in areas perhaps round the Committee for Home Affairs where the public interest is actually confidentiality. And then the third part of the stool is the issue of confidentiality over all the various areas.

1650

So depending on the case depends on our advice, because what we challenge into is people using either one of those three legs as the entire basis of their justification for either release or non-release. So if you purely rely on a public interest argument it depends on where you sit on public interest. If you purely rely on transparency it depends on where you sit on transparency. So we are always balancing the three.

1655

That is why I said I think from certain applicants I will be seen to be someone who is sitting on the side of confidentiality or on the negative side of public interest, where perhaps internal to the organisation – because I think everyone agrees on transparency until it affects their specific area – **(The Chairman: Yes.)** that is the reality of life I am afraid – I probably am seen to be someone who sits on the side of greater transparency than perhaps they are comfortable with. So it is very much case specific.

1660

We have had some challenging cases where we have brought in legal advice on the balance in the interpretation of public interest in specific cases.

1665

The Chairman: Deputy Merrett.

1670 **Deputy Merrett:** Yes, I was quite concerned by your answer to the previous question. I think your words were you have had to use robust challenge and when you have exemptions being tried or cited constantly, I think you said. To me – I would ask the question, would you agree with me? – that implies that the cultural change has not happened and that you are still having to be robust; you are still having to fight back on exemptions, I think you said, on a constant basis.

Is that a true reflection that the culture has not changed?

1675 **Mr Vaudin:** In that case I have misled you slightly. I am reflecting on the journey over three years. In the first year exemptions were applied on a very regular basis of which there was constant challenge. I think now the consistency of the challenge is becoming less and the ease of the ability to have that robust challenge is becoming easier in the organisation.

1680 So I have noticed a cultural change in the last three-plus years through the application of this Code and the speed of response from service areas and Committee areas. So actually, I may have misled you then, Deputy Merrett, my apologies. I think at the beginning of the process three years ago that would have been a true reflection, less so now. I think Mr Moore has a ...

The Chairman: Mr Moore.

1685

Mr Moore: Yes, I might add that the API in a sense is quite a case-by-case process. So statistics on exemptions only tell you so much. You might have an exemption applied to an API of 'voluminous' after 90% of the information has been provided and that extra little bit, which is just going to be so much data it is going to take forever to get, an exemption is applied.

1690 Now, I think ultimately that is a more open position than simply looking at the number of exemptions would necessarily tell you.

The Chairman: Deputy McSwiggan.

1695 **Deputy McSwiggan:** Just to reopen a question that we posed to Deputy St Pier in the last sitting, do you believe that it is sufficiently clear to the public where the front door is in terms of making Access to Public Information requests?

1700 **Mr Vaudin:** At the point of the change to the Code in 2017, we also happened at the time to launch the new gov.gg website. They happened to be coincidentally taking place at the same time. We therefore inserted the Access to Public Information on the front part of the website. What we have is a number of blocks in the webpage which are the areas where members of the public hit most often. The honest position is Access to Public Information is not an area where we are getting voluminous requests from members of the public. So at the time we did do some more information about that. We do, through our processing of publishing all API requests on the website.

1705 So could we do more to inform the media that they can make API requests? Absolutely, and we will continue to want to do that. Are we seeing a very large number of requests from individual members of the public? I am sure my colleague has got the data with me. We also collect data on the type of people who submit; whether that is media; whether that is private individuals; or
1710 individuals who have, for example, a specific role in society. That may be the head of an NPO or a charity or indeed a columnist in the *Guernsey Press*. And I think the numbers, broadly, of requests from individual members of the public, the man on the street, is in relative terms quite low.

1715 **Mr Moore:** I think, from memory, I am just looking it up now, that in 2019 out of the 60-something enquiries we had, there were 20 or 21 from the individual members of the public. Yes, 20 for that year, plus about 20 from the media as well.

Deputy McSwiggan: That is chicken-and-egg a little, isn't it?

Mr Vaudin: Of course.

1720

Deputy McSwiggan: You would expect the media to know where to look for API requests. We might not expect it to be quite so easy for an ordinary member of the public to even know where to start. I think we heard some of that from the Data Protection Commissioner when she was sitting in here; that her office picks up some of those requests.

1725

So I wonder if you would agree that there is more that can be done in terms of making the front door more visible to the –

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Mr Vaudin: I think in almost every area that we could do more in terms of making front doors on specific issues wider. So I would say yes to that situation. Whether that would materially increase the number of requests I could not make a judgment on.

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Mr Moore: Interestingly, I think I am right in saying that the design of the front page of the website as it currently stands, the areas which are the most prominent at the moment, we determine by the areas most searched for different services. So because health care, because planning, because those things are what people look for the most we make those the easiest to find and people searching for an API or FOI mechanism does not come up as often and that is the kind of algorithm that at the moment decides where those things are.

So it is, what do people normally want to find? That is what we make the easiest for them to find.

1740

The Chairman: Deputy Merrett?

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Deputy Merrett: There has been mention of the percentages of how many came from the public and how accessible it is. But what do you think the perception is from our community of impartiality and independence when we have a member of Government deciding, being the gatekeeper?

I think you also said, Mr Vaudin, that you are also a champion of API, which I would think would be quite a conflicting role. What do you think the perception is to our community of basically marking one's own homework, *per se*?

1750

Mr Vaudin: I am in the fortunate position that I do not mark my own homework. I mark the homework of other the Committee areas and other functions within Government.

I think it is almost impossible for me to gauge public views of how I am fulfilling my role in this and it may be a question for perhaps the media who actually more understand that role of how well that is challenged in the situation.

1755

But whether or not ... and I think perhaps this is in my interpretation of the question, of the difference between an independent appeals process which would mark my homework and the Committee or functional area's homework and having an independent processing of that *a la* some sort of freedom-of-information-type position. I think there is, as has been articulated by other interviewees, a separation between the two of: do you need an independent appeals process ... ?

1760

And the submission from the Policy & Resources Committee, which you can imagine I had some input into, would be yes, because I feel that engenders trust in the public in the spirit of the Code rather than perhaps changing the substance of how the Code is run and independent processing of how exemptions are applied. Because in a lot of these you also do need quite a detailed understanding of the functions of Government and functions of the service area in order to try and make a judgement of whether an API exemption is appropriate to that or not. Otherwise, if you are too far removed from the functioning of Government, once again, you are applying it, slightly, as a layperson, and that can generate difficulties in its own right.

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1770 **The Chairman:** Does that not come back to the consistency point though? Because obviously Government Committees in Guernsey deal with a very wide variety of different subject matters: Health and Social Care; very different from Education; very different Environment and Infrastructure. So how can that consistency be applied by your process, Mr Vaudin, when there is such a wide disparity in potential subject matter? Do you see the point I am driving at?

1775 It is quite difficult unless one has an enormous expertise in a very wide variety of different subject matters.

1780 **Mr Vaudin:** Well, fortunately, I am honoured to be the Chief Information Officer for the States of Guernsey, so I am the Chief Information Officer for every Committee and functional area, and I do advise each and every Committee and functional area to varying degrees in various parts my work. So whilst I hate the word 'centralisation', I am in a situation where I do have an understanding of all the functional areas within the States, where if you did not have a corporate overview of that, I think the alternative is that decisions will be made on almost a Committee by Committee or functional service by functional service basis and therefore your opportunity for consistency would significantly reduce.

1785 **The Chairman:** I mean that is how it was –

Mr Vaudin: Done before, yes.

1790 **The Chairman:** – pre-2017, wasn't it?

Mr Vaudin: Yes.

1795 **The Chairman:** Advocate Harwood.

Advocate Harwood: A follow-up question to one we asked of the Chief Minister: under the new regime that is coming into place, who actually now has authority to authorise release on behalf of an individual Committee? Is it going to be the Committee Secretary? Is it going to be the various heads of function?

1800 Has that been clarified? Do we know actually who has the ultimate sanction to say yes or no to the initial request?

The Chairman: Mr Moore.

1805 **Mr Moore:** Yes, at least in practice it will be, if it is a request to a Committee, to that Committee to decide as a Committee, not delegated necessarily to one member.

But there will be –

1810 **Advocate Harwood:** Sorry, but it is the officer of the Committee who takes a decision? Because my understanding is it is not a matter for the politicians of a Committee.

1815 **Mr Moore:** Well, that depends on the nature of the question to a point, because some questions might be about policy in nature, some might be operational in nature and some might relate to a particular service area within a Committee structure. So it might be to Guernsey Police as opposed to Home Affairs. So to a point that is also, kind of, on a case-by-case basis. It will be a different person who is the appropriate person to give the response on behalf of a service area.

So if a request was going to Guernsey Police to provide information about how many times they have knife-crime incidents or something like that, it might be the Head of Law Enforcement in that case who will ultimately say, 'Yes, this the information that we are happy to provide, here it goes'. If

1820 it was a question to the Committee *for* Education, Sport and Culture about some of the processes around making certain appointments and things like that, it might be ... you know –

Advocate Harwood: So who decides who is the appropriate person to actually respond to the request?

1825 **Mr Vaudin:** So in that –

Advocate Harwood: I only ask it out of interest, not of criticism.

1830 **Mr Vaudin:** No. The first thing we would look at is who commissioned the report on whose behalf and whether that is commissioned on behalf of a political Committee or commissioned on behalf of a statutory official. Those are really, if you look at it in its purest form, if it is commissioned on behalf of a Committee or Committee's area of work, the releasing entity effectively becomes the Committee Secretary on behalf of that Committee and whether the Committee Secretary, depending on their authorised authorities from that Committee – and those do vary across various Committee areas ... Effectively the Committee becomes the releasing authority.

1835 If it is a statutory official, whether that is the Director of Public Health, Head of Law Enforcement, the Prison Governor or many others, on base of their statutory authority they have the releasing authority.

1840 **Advocate Harwood:** Coming back to an earlier question, the poor member the public who wants to make an Access for Public Information request, whose door do they initially go to? It seems to be, with due respect, a bit of a muddled area.

1845 **Mr Moore:** There is one portal, entrance way, into the API process which is through the Communications Team. So there is an email address –

Advocate Harwood: So it goes to you?

1850 **Mr Moore:** – information@gov.gg that comes into the Communications Team. The Communications Team has to direct it to where it seems the most appropriate place would be and that depends on who they think is going to have the information. That is where it will go in the first instance. To a degree there will probably be several officers then involved in collating the information –

1855 **Advocate Harwood:** But the initial point of contact is through your team?

Mr Moore: It is through Communications –

1860 **Advocate Harwood:** It is a centralised team.

Mr Moore: –for all Committees and all service areas.

1865 **Mr Vaudin:** How members of the public and media get to that front door is either through information, through gov.gg or indeed, we see multiple cases that they may go to their constituency Deputy and their constituency Deputy will point them in that direction. We have seen that before. So the front door is through the Communications Team, to provide consistency of approach, and because we are the ones that monitor the 20-day response period and things of that sort of nature. How they get to that front door can be via multiple channels.

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Mr Moore: And I think what is important is that when the response is then provided, the question is not always necessarily clear in which Committee or which service area they want the question directed to. So we have to make a judgement as to where that information will be found.

1875 When we provide the response we will say, 'This response was provided by the Committee for whoever' or, 'the office of the Committee for whichever', by law enforcement or whoever it might be. There may be even some occasions – I can only think of one example – where as a result of that we have then received a follow-up request that says, 'Well, actually, I would like to put the same question to this other Committee phrased in a slightly different way to get their take on it', which is fine, and then we divide it to that Committee as appropriate.

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Advocate Harwood: Okay, thank you.

The Chairman: Deputy Emilie McSwiggan.

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Deputy McSwiggan: Yes. Mr Moore, of course you have seen this from both sides of the fence, first as a journalist and now as part of the States' Communications Team. With the insights that that perspective brings, what more do you think the States could be doing to improve its transparency and its delivery of the API Code?

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Mr Moore: I think what has been a theme today is the notion of an independent appeals process. Now, how exactly that would look, how it would work and to what extent the States wanted to adopt it is a decision for politicians, I think. But that would give journalists like Nick Mann that sense of security that actually –

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The Chairman: There are other journalists in Guernsey. *(Laughter)*

Mr Moore: Well, there are, but I think the makeup of our media and the type of journalism that the different media do, the process is probably of more interest to the *Guernsey Press* than it probably is to the broadcasters, if I am honest. I think the broadcasters, in terms of what they are looking for from Government in terms of access, is more, 'I want a chance to grill a politician. I want to get an interview. I want someone live on telly tonight.' That is a different part of transparency, **(The Chairman:** Yes.) and it is another one that we try to facilitate and we should try to facilitate. It leads more from transparency into accountability.

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1905 But yes, going back to the appeals process, I think that does make a difference, but we also need to be realistic in how much you would expect that to ultimately change the wider public perception of Government's transparency. I think in the very short term, when there is a bit of fanfare around the fact that an appeals process is coming in, you will get a little bit of a boost in your transparency opinion poll. But I think over time that will fade.

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1915 I have some experience as a pan-Island journalist working with ITV in Jersey quite a lot of the time, where they do have an FOI regime. I am really not sure that the public opinion, the public feeling about how transparent the States of Jersey is, is particularly different to the feeling in Guernsey for how transparent the States of Guernsey is, even though you have two completely different regimes. So I think it is such a combination of factors that give the public that feeling which is not particularly tangible, it is not something that you can measure in statistics, but how much do they feel like they really know what is going on in their Government? It is a little bit of a different question.

The Chairman: Would you accept, though, there is a pretty widespread perception, and a lot of the evidence that we have received speaks to this, that the existing system for challenging the use of exemptions does look very cosy, doesn't it? Because it is all in-house. It is all within the States. There is that obvious kind of cosiness which perhaps does not lend itself to the ultimate kind of –

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1925 **Mr Moore:** Yes. So if part of the objective is to be *seen* to be having that (**The Chairman:** Exactly.) layer of independence, then an appeals process of whatever degree you want it to be is one way of addressing that.

Mr Vaudin: Sorry, can I –

1930 **The Chairman:** Yes, of course.

Mr Vaudin: You used the word, degree of ‘cosiness’, (**The Chairman:** Yes.) which I would object to.

1935 **The Chairman:** *Perception* of cosiness is probably what I meant.

Mr Vaudin: Of course. And therefore I think some of the evidence that you have been seeing – and we can pass you some more cases where exemptions have been challenged and all the rest of it – there is an opportunity here to challenge a perception of that sort of nature. So I think, once again, it is unhealthy and there is perhaps a slightly wider point: if the only way we can change perceptions of that sort of nature is by creating an external body, we will start creating a huge number of quangos and external bodies which I suspect in some cases we may not wish to in the future.

1940 I am making the point, we need to check ... (**The Chairman:** Yes.) Where there is robust ... by the Civil Service – I use that term deliberately because it was used quite extensively by your previous witnesses – I would say we do operate in a manner which is honest, objective, in the best service of the Civil Service. Therefore, we should not just operate on a perception issue when that is not borne out by facts.

1950 **The Chairman:** No. Okay.

Advocate Harwood: Can I just raise a follow-up question? How comfortable do you feel in exercising the role in relation to the Access to Public Information Code?

1955 **Mr Vaudin:** I feel very comfortable in it. I think, as you well know –

Advocate Harwood: I imagine that as an individual you can be very robust with your colleagues, but somebody else in that particular role might not be as robust?

1960 **Mr Vaudin:** I would suspect and I would hope perhaps that was one of the reasons that the Policy & Resources Committee chose me to fulfil that role.

Advocate Harwood: Yes, but with respect, you will not be there forever and a day, will you? (*Laughter*)

1965 **Mr Vaudin:** No, and therefore I am sure that whoever that role transfers to, unless you know something I do not –

Advocate Harwood: No. *(Laughter)*

Mr Vaudin: – will once again be selected on that sort of basis.

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The Chairman: Deputy Merrett.

Deputy Merrett: Robust is one thing, but do you feel independent and impartial when you are making judgement calls on exemptions? Do you feel that you are impartial and independent?

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Mr Vaudin: Yes.

Deputy Merrett: You have the leadership to do that?

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Mr Vaudin: Yes, because if I did not I do not feel I would be operating in the best traditions of the Civil Service.

The Chairman: Okay. Thank you.

Can I pick up on something one of our earlier witnesses talked about, which is, obviously there are a number of routes to getting information out of the States, one of them is often Deputies asking Rule 14 questions to States' Committees. Obviously, presumably, you both have a role in answering Rule 14 questions from Deputies as well as requests for information from members of the public.

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Do the criteria differ in terms of exemptions; of not answering certain questions; or is there a difference between the criteria in your experience?

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Mr Vaudin: In how we recommend, because obviously the authorities whether formal or would differ in different situations of course, our recommendations on the interpretation of exemptions does not differ independent if relevant of where we are going. And that is not just Rule 14 questions; that is media inquiries which might be dealt with slightly more on an informal basis or indeed a lot of the publications we put out through the Data and Analysis Team or Office of National Statistics.

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So we look at the exemptions because, once again, it is the three-legged stool of public interest, transparency and confidentiality. So we always look at any question through the same prism. How that advice is interpreted differs in certain situations but in my experience, actually, the advice is fundamentally taken in the same way.

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Advocate Harwood: Just one final question.

To what extent is your role hampered by data protection issues? Because there are concerns that data protection does impact on access to information. What is your experience? Because the new data protection regime is fairly new, how is it impacting upon you, the role you are filling, and the information that you are making available?

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Mr Vaudin: I think we are in the, if I remember correctly, first couple of years of the new data protection regulator – the ODPA – and the interpretation of the law. I think we are going through a period, as you would expect, of people understanding what the actual data protection law does. But there is – and I think we just need to be comfortable with the fact – in certain areas a challenge.

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The data protection law is primarily focused on the rights of the individual. When we are putting out things into the public arena on behalf of a Government there will be a natural conflict between the two. So this is a parliamentary hearing, so appearing in front of it I expect my name to be here and my name to be on the *Hansard* recording of this. However, if in a different environment this was not a parliamentary hearing, would you need my authority in a fair processing note for me to appear in front of you?

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2020 So there is a challenge between this issue on individuality versus the right of the public to know. It is not going to go away, so we need to be comfortable with how we navigate that, because greater rights of the individual it is a growing requirement. Growing rights of the individual to know it is a slightly different question.

2025 **The Chairman:** Yes, one final question. Proactive publication from your point of view, both of you, how are decisions taken on the proactive publication of material? Is it something that tends to be left to the discretion of principal officers or is there any effort at co-ordinating that from the centre?

Mr Moore?

2030 **Mr Moore:** I think– and this has kind of been identified already today – this is probably the area where, in terms of just how the practice happens, it needs some strengthening up to ensure that the practice aligns with what the policy currently is. If we are basically talking about commissioned reports and making sure that the ones that are appropriate to publish and published and the ones that, if there is a reason for exempting them, there is still a kind of process around that and that process is in itself transparent, is one where I think we in terms of those who are administering that process, still struggle, because I am not sure that just the day-to-day bureaucratic procedures are in place to make it happen as well as it should.

2035 So some areas are better than others, ultimately is what the outcome is.

2040 **The Chairman:** Mr Vaudin.

Mr Vaudin: To provide more detail on that, Mr Moore writes twice yearly to all Committee Secretaries, all principal officers in all the Committee areas saying, 'Which reports have you commissioned in the last six months? Which ones do you intend to commission in the next six months?' We do not have, as you can imagine, sight of every report that has been commissioned across every area within the States of Guernsey.

2045 So are we asking right questions? Yes. Are we in all cases getting the right answers? Possibly not. And this is what strikes a real frustration. I want to if I may just reflect on the point that one of your previous interviewees said, Mr Mann. He mentioned particularly a view about the St James' Chambers review –

2050 **The Chairman:** Yes.

Advocate Harwood: Can I just declare an interest?

2055 **Mr Vaudin:** Yes, I know.

Advocate Harwood: I chaired the Panel.

2060 **Mr Vaudin:** I will be very careful in what I say then. This really strikes at the issue: if it is not perceived as a commissioned report at the outset, or consideration is taken to whether it is a commissioned report and then what publication will happen at the end. When a reasonable API request – and this is the most extreme case we have come across in my tenure in this area – actually, what you then get is you are having all the questions asked at the end when things have already been done in a certain way.

2065 So I think we do need, as was submitted in the P&R request, to be more directive in what is a commissioned report. **(The Chairman:** Yes.) For example, there may be a view that in the part of the financial release around commissioning reports, we put a rule in against that, so people have to consider it – they have no choice – because that will avoid these very often complex and long

2070 discussions about release after the event, because that is not how the report was (**Advocate Harwood:** Commissioned?) put together and work through that at the beginning.

The Chairman: Yes. Deputy Merrett, shall we make this the last question?

2075 **Deputy Merrett:** I am very pleased to have Mr Moore here, because I think, to me, the whole basis of having API is actually so we should have an assumption of disclosure; about having an informed community and that information being based on facts and not fiction, across the full arena.

2080 So my question to you is: how does Comms deal practically with misinformation? And another query came up earlier, a question – and I think it is a good one – is how you, or we, actually communicate with the public in the first place – is it in the right formatting?

2085 So first of all, is there any active challenge to misinformation at all – because there is misinformation; and certainly, is there consideration as to how you will go forward with communicating with our public? Because that is what it is all about: it is about the presumption of disclosure?

Mr Moore: It will depend on what that misinformation is and what the priority issues are for the States' Committees at that time. So you will not respond to every single little thing that you see wrong posted on Twitter and Facebook.

2090 **Deputy Merrett:** Yes, of course.

2095 **Mr Moore:** It is not going to merit a response from Comms or from anybody. But if you are seeing something that is almost affecting the misunderstanding of wider swathes of the public and it has started to take hold a little bit, then yes, you need to respond to that through a range of comms channels. That will be through media releases and interviews where you put politicians in front of the traditional media who in turn are independent, can then provide some scrutiny, and then when they report it, it does have that layer of independence around it where you would hope the public would understand that to be the facts, the reality, of the case.

2100 Coupled with other things that we have to do because of how people consume information, which is putting stuff on social media, creating video content for social media, directly engaging with the public, whether that is through public meetings or drop-ins or whatever it might be. So you have to use this whole plethora of ways of trying to engage with the public. What mix of it you use will depend on what the topic is and how urgent it is that you need to get this information out there.

2105 But what I would say is that I think part of the cause of that misinformation ... social media is having a growing role in it. I think internationally we are seeing in all places and in all countries governments and organisations struggling with that and struggling with the way that people use social media in perhaps more increasingly divided communities. So I do think there is an easy answer to it. I do not think an appeals process for the API Code or even an FOI or any of those things, if I am honest, is going to solve that.

The Chairman: No. Okay, thank you very much.
Have you got anything else you would like to add?

2115 **Mr Vaudin:** If I may just possibly, to help out the Committee, (**The Chairman:** Yes.) there have been a number of questions today about the cost of freedom of information. (**The Chairman:** Yes.) Unfortunately I cannot 'wet finger in the air' this, so I have taken the figures from the Comptroller and Auditor-General of Jersey in 2016. Their estimate was that the implementation cost was £2.68 million.

2120 In October 2018 they had an FOI request to confirm those numbers, which they could not do because they did not have the information (*Laughter*) – I do not do that just for humour – and their running costs, by the Comptroller and Auditor-General was about £1 million a year, predominately because of – I think as you questioned, Deputy Green – those unintended consequences of if you then create an external arm’s-length body.

2125 If I can draw on this position, against the ODPa, the data protection laws ... They went from broadly an fte – a full-time equivalence – of about 1.5 people dedicated to Guernsey to six with an independent office, buildings etc. So, to try and give a sort of view, the Isle of Man estimated cost in 2010 was £5 million introduction fee and £1 million a year. That just gives an order of magnitude. I cannot question those figures, I do not know enough about them.

2130 The other question you asked Deputy St Pier was about arm’s-length bodies – (**The Chairman:** Yes.) we have had some thoughts on those. It is a complex area. If dealing with Government in this area is complex, the nature of arm’s-length bodies can become even more complex, because it always depends on who is providing those services.

2135 I will reflect on two cases where we have received requests. One – and these are API and Rule 14 questions – was about Aurigny (**The Chairman:** Yes.) and the finances of Aurigny, which I suspected may have been the root of some of that question. Another area where we are commissioning third-sector organisations to provide some of our services in areas such as Health & Social Care and all the rest of it: when you look at those it is a complex mixture. It depends on the business or the charity you are dealing with, because you need to understand their cultural transparency; how far you are prepared to ask questions just because they happen to be providing a service for Government; the cost that could increase because of risk, reputational or otherwise, they may perceive by entering a contract of that sort of nature with Government; and obviously therefore commercial interests and where they see those.

2140 So have we had a consideration of it? Yes, we have. Your approach to where you go, because 2145 you either include a large number of them or all of them, (**The Chairman:** Yes.) or only sections of them, and therefore you can get a situation of disparity. So we have looked at it, it is a very complex question but I enjoyed the challenge –

The Chairman: No, that is a helpful answer, thank you.

2150

Deputy Merrett: I do just want to come back on that –

The Chairman: Deputy Merrett. Let’s make this the last question.

2155 **Deputy Merrett:** – because you mentioned a million and hundreds of thousands, (**Mr Vaudin:** Yes.) but we actually contacted the Isle of Man, and their estimate of the cost for their FOI Law is £200,000 to £300,000 a year, with the future expenditures expected to be lower.

2160 So I do not want it to air in the media that it is £1 million a year, because that is not the reality. I think you said 2010 to be fair, (**Mr Vaudin:** 2010, yes.) but I am talking about 2020. In 2019 it is considerably less and is expected to go down, not up. So I think the embedding of it may have been initial cost. But certainly I do not want to ... I cannot sit here in all integrity (**Mr Vaudin:** No, no.) and not have it state in the *Hansard* what the actual costs are now.

2165 **Mr Vaudin:** No, thank you very much for that challenge. I took their figure off their website, so –

Deputy Merrett: It is a lot less. Yes.

The Chairman: Thank you very much for attending.

2170 Our review continues and there will be a *Hansard* published of today’s hearing, and obviously in a month or two, hopefully, we will be in a position to publish our review report.

Thank you very much.

Mr Vaudin: Thank you.

The Committee adjourned at 12:00.