



States of Guernsey

Guidance on how to use the States of Guernsey Freedom of Information Code

Version 2: January 2022

States of Guernsey
Freedom of Information Code

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1. Introduction

1. In June 2021 the States of Guernsey agreed¹ to change the title of the existing 'Code of Practice for Access to Public Information' to the 'Freedom of Information Code' ('the Code') the Code contains the following guiding principles:
 - A presumption of disclosure;
 - A corporate approach;
 - A culture of openness;
 - Proactive publication; and
 - Effective record management.
2. The Guernsey government also recognises that, like all governments, notwithstanding the presumption of disclosure in the balance of the public interest, the States will need to keep some information confidential, and it has a duty to protect the proper privacy of those it concerns.
3. The Code describes the exceptions that should be applied to the presumption of disclosure in order to meet these duties and protect Guernsey's legal, commercial, competitive or public interests. The exceptions can be applied to a document as a whole or to part of a document through redaction of information.
4. Should you have any queries in relation to applying the Code or any issue not referred to in this guidance note, please contact the Office of the Policy & Resources Committee or email information@gov.gg.

2. How the public make a request

5. The Code applies to all Committees and service areas across the States of Guernsey and can be applied to all requests for information. Any request for information may be dealt with under the Code.
6. The Code is not designed to replace the handling of routine requests, where those requests can be dealt with simply and quickly by communication through a telephone call, email or in a face-to-face meeting.
7. Requests should be made in writing and should expressly state that the information is being requested under the "Freedom of Information Code".
8. The request should be sent to information@gov.gg or to:

Information Requests
Office of the Policy & Resources Committee
Sir Charles Frossard House

¹ [Billet d'Etat XIII Volume 3 - SMC Policy Letter - Freedom of Information - June 21](#)

St Peter Port
GUERNSEY
GY1 1FH

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

9. The requester should consider how broad the request is and seek to limit the question to focus on the information required. This limits the use of staff resources on accessing information that is not necessary.
10. The request should include the requester's contact address and details so that the relevant Committee can discuss the matter with the requester if necessary to clarify the request and that it is clear where the response should be sent.
11. The relevant service area will seek to respond to the requester with the information within 20 working days. Alternatively, if one of the exceptions is being applied, the reasons why information has been withheld should be given. If it is not possible to respond within 20 working days an explanation should be given as to why there will be a delay in responding to the request.
12. If the requester is not content with the response they may ask for the matter to be considered by the Committee. If the requester is still not content with the request they may ask for the matter to be referred to the Policy & Resources Committee for consideration.
13. This mechanism for requesting information does not replace the right of an individual to request their own personal data through the subject access provisions outlined in Section 7 of the Data Protection (Bailiwick of Guernsey) Law, 2001.

3. Dealing with a request

Handling routine requests and applying Freedom of Information Code

14. A routine request is one that can be dealt with simply and quickly by communication through a telephone call, email or in a face to face meeting. The Code is not designed to replace or interfere with the handling of routine requests.
15. When an official might consider that there are sensitivities surrounding the release of information then the request should be reviewed in light of the Code, including the consideration of the exceptions and redacting the report in relation to sensitive information.
16. Where matters are likely to be considered controversial, consideration should be given to referring that matter to the relevant Committee.

Applying the exceptions

17. Care should be taken to ensure that the exceptions are only applied if absolutely necessary.

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

Sensitivity over time

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

Dealing with requests when there are limited resources

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

Handling vexatious requests

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

Media requests

29. There is no clear divide between public and media requests for information under the Code. The media are advised to make requests for information under the Code in the same way as all other members of the public, i.e. in writing with express reference to the Code. Where a Committee will be responding to a media enquiry under the Code, it should inform the media requester.
30. Where it is prudent to provide information as soon as possible for public engagement or reputational reasons, then consideration should be given to providing a rapid response. Where an update or political comment is requested, the timing of any response should also be considered as well as the need to respond.
31. Responses to requests for information under the Code to the media should take into account that the response is more likely to be published as part of a news article. Consideration should be made about any additional context to the information being provided to ensure that the information and any associated key messages are well understood. Service areas should be mindful that FOI responses are published and available to media, regardless of whether they were requested by the media. For advice on engaging with the media, service areas should contact the Communications Team.

Providing information

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

4. Redaction

Principles of redaction

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

Redaction techniques

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

*[*** redacted]*

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

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

5. Recording responses

49. The Policy & Resources Committee will record the request and whether any exception is applied when they are notified. Committees that respond directly must copy in information@gov.gg so that the response can be logged, and may also wish to keep their own log of requests. A simple spreadsheet can be supplied from information@gov.gg for this purpose.

Calculating the time and cost spent responding to requests:

50. In order to assist transparency, Committees may wish to publish the estimated cost of generating the information alongside the published responses to complex requests for information under the Code, where appropriate.

51. When assessing the estimated time taken to respond to requests for information the following activities should be taken into consideration:

- Determining whether the Committee holds the information requested;
- Locating the information or documents containing the information;
- Retrieving such information or documents;
- Extracting the information from the document or other information source;
- Redacting information which may not be taken into consideration or is not in the public interest to publish;
- Drafting the response based on the information obtained.

52. Any other activity which has a significant impact on the costs of preparing a response should also be included. It may not be possible to provide an estimate of the cost of approval by the Committee or senior management where these activities are part of another administrative process.

How to calculate costs:

53. The officer(s) who are task with preparing the above information are asked to estimate the hours worked on a particular matter and to calculate the costs of that time. The figures should be estimated using the figures in table 1.

54. The final figure should be expressed as a total estimate of the costs. A breakdown to the total figure should not be published. It is recommended that the following table is included at the end of the written response:

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

Discretion

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

Table 1:

States of Guernsey Employee Costs 2021-2022

Costs = Salary + Superannuation + Social Security

2021-2022 pay	Nominal Recharge Cost		
	Per Week	Per Day	Per Hour
Grade			
TYP B	£674	£135	£18.72
TYP C	£735	£147	£20.42
PA1	£839	£168	£23.31
PA2	£961	£192	£26.71
CA	£500	£100	£13.89
AA1	£636	£127	£17.67
AA2	£742	£148	£20.62
EG1	£851	£170	£23.63
EG2	£947	£189	£26.30
EG3	£1,044	£209	£28.99
EG4	£1,137	£227	£31.57
EG5	£1,234	£247	£34.28
SO1	£1,392	£278	£38.67
SO2	£1,523	£305	£42.32
SO3	£1,667	£333	£46.30
SO4	£1,824	£365	£50.66
SO5	£1,996	£399	£55.44
SO6	£2,184	£437	£60.66
SO7	£2,389	£478	£66.37
SO8	£2,614	£523	£72.62
SO9	£2,860	£572	£79.45
SO10	£3,130	£626	£86.94
SO11	£3,424	£685	£95.12
SO12	£3,747	£749	£104.09

6. Handling complaints

57. If a requester is dissatisfied with a response the matter should be raised between the requester and Committee direct. It should be established if there is a misunderstanding between the meaning of the request between the requester and States Committee.
58. Where an exception has been applied and the requester is dissatisfied that the information has been withheld the requester should make that complaint in writing to the Committee Secretary or Principal Officer of the Committee concerned.
59. If the requester is dissatisfied with the Committee Secretary's response the matter may be referred to the Committee concerned. Where appropriate the Committee may refer the

matter to the Policy & Resources Committee for consideration. This is not an appeal process; it is a process of referral to the Policy & Resources Committee for advice or political guidance.

60. Officials from the Policy & Resources Committee are available to give advice on handling complaints.

7. Appeals Process

61. If the applicant remains dissatisfied, the complaint may then be referred to the Freedom of Information Panel, which is an appeal body independent of the States of Guernsey, which was established on 1st January 2022². The purpose of the Panel is to determine appeals against decisions made by a Principal Committee, or other States Body against the release of information made on the application of exemptions under the Freedom of Information Code (the Code).
62. The Panel aims to provide an independent appeals process which is accessible to all and offers a fair and transparent determination of an appeal on the application of exemptions under the existing Freedom of Information Code.
63. The purpose of a submission to the Panel is to allow an independent review of a decision made by the relevant States Committee. All appeals will be determined on the basis of a review of the relevant States Committee's decision. A merits review will involve a full reconsideration of the facts of the decision on the application of exemptions under the existing Code which is the subject of the appeal.

There are two grounds for appeal:

1. That an exemption has been wrongly applied.
2. That the exemption is correctly applied but that the public interest overrides its use.

8. Using the Confidentiality Policy

64. The Policy on the Use of Confidentiality in Contracts and Agreements ('the Policy') was published with the Code and agreed by the States of Deliberation in July 2013³.
65. It is a fundamental principle of the Policy that the States of Guernsey should only use confidentiality clauses where it is considered to be in the public interest to do so. Whilst transparency and accountability are important there are circumstances where confidentiality between the States of Guernsey and third parties must be respected.

² [Billet d'Etat XIII Volume 3 - SMC Policy Letter - Freedom of Information - June 21](#)

³ [Billet d'Etat XV - Art 5 - July 2013](#)

Provided consideration is given to the principles outlined in the Policy, Committees should be able to justify the use of confidentiality clauses on a reasonable and proportionate basis.

66. The Policy requires each Committee to use its discretion as to when confidentiality clauses should be used. Committees will need to take a risk-based approach and take a decision depending on what authority had been delegated in respect of that agreement or contract.
67. The Policy is intended to take into account the wide range of contracts and agreements that the States of Guernsey enter into. Where there is a high level of risk and it is considered expedient then the use of a confidentiality clause should be referred to a Committee so that its use can be expressly approved.

9. Commissioned Reports

68. An amendment to the States Report in 2013 entitled “States of Guernsey Policy for Access to Public Information⁴” requires: *every Department and Committee to publish details (namely the title of the report, who it is commissioned by and from and date of commission) of all reports commissioned by the Department or Committee within six months of that report being commissioned, unless the publication of such detail would fall within one of the exceptions from disclosure set out in the Code of Practice on Access to Public Information (now known as the Freedom of Information Code).*
69. A page on www.gov.gg/information has been created to allow this information to be published. Committees can notify information@gov.gg that a report has been published (unless it falls within a relevant exception) and this will be added to the website. Officers of the Policy & Resources Committee will email all Committees every six months to ensure that updates have been provided. Committees may wish to keep their own records and a standard format log is available upon request.
70. The amendment does not specify what a “report commissioned” means. Committees should use their discretion. As a guide, a report commissioned may be interpreted as a piece of work commissioned from a third party to the States, such as a consultant or outside agency. Committees may wish to include details of internal reviews commissioned but this is at their discretion.
71. Where the publication of the fact that a report has been commissioned would not be in the public interest one of the exceptions should be applied. For example, if revealing a report had been commissioned would release personal data or risk the security of the islands then the fact that report has been commissioned need not be published.

⁴ [Billet d'Etat XV - July 2013](#)

This Guide should be read in conjunction with;

The Freedom of Information Code - January 2022 – [link](#)

A Guide to Freedom of Information Appeals in Guernsey – January 2022 – [link](#)