

**Freedom of Information (Jersey) Law 2011**

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**DECISION NOTICE**

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<b>JOIC Reference</b>	CAS-03656
<b>Date of Decision Notice</b>	27 April 2023
<b>Scheduled Public Authority</b>	n/a
<b>Address</b>	
<b>Date of Request</b>	August 2022
<b>Date of Response</b>	August 2022
<b>Date of request for Internal Review</b>	7 September 2022
<b>Date of Internal Review</b>	4 October 2022
<b>Date of appeal to Information Commissioner</b>	4 October 2022

**Summary/Decision**

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1. In August 2022, the Complainant requested certain information via the Government of Jersey (**GoJ**) website relating to the myRegistry portal for the Jersey Financial Services Commission (**JFSC**) (the **Request**).
2. The GoJ's Central FOI Unit (the **Unit**) wrote to the complainant indicating that a) the requested information was not held by the GoJ; and (b) advising that, in any event, the JFSC is not a scheduled public authority for the purposes of the Freedom of Information (Jersey) Law 2011 (the **FOI Law**) (the **Response**).
3. The Complainant did not agree with the Response and requested an internal review on 7 September 2022 (the **IR Request**).
4. The GoJ responded to the IR Request on 4 October 2022 (the **Internal Review**).

5. The Complainant did not agree with the outcome of the Internal Review and so appealed to the Information Commissioner (the **Commissioner**) on 4 October 2022 (the **Appeal**).
6. The Commissioner's decision is that the:
  - a. the information requested by the Complainant is not held by the GoJ to whom the Request was addressed; and
  - b. JFSC is not a scheduled public authority for the purposes of the FOI Law and the appeal is not upheld.

### **The Role of the Information Commissioner**

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7. It is the duty of the Commissioner to decide whether the request for information made by the Complainant has been dealt with in accordance with the requirements of Part 1 of the Law.
8. This Decision Notice sets out the Commissioner's decision.

### **The Request**

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9. The Complainant's Request was in the following terms:

*"Please could you confirm:*

- *Which supplier developed the myRegistry portal for the JFSC?*
- *What was the cost incurred to develop myRegistry? What are the ongoing annual costs associated with it?*
- *Was a public procurement process run (e.g. such as that defined by the State Procurement Best Practice Procedures)?*

*Please can you provide any documentation associated with the procurement of myRegistry such as project brief / RFQs / Eols / ITT / PQQs / evaluation reports, etc."*

10. In August 2022, the Unit provided the Response in the following terms:

*"The information requested is not held by the Government of Jersey. The Jersey Financial Services Commission is not a scheduled public authority under the Freedom of Information (Jersey) Law 2011. Article 3 of the Law applies.*

*For further information, the organisations which are covered by the Freedom of Information (Jersey) Law 2011 are listed in the following link:*

*[How to make an FOI request](#)*

*Article applied*

#### **Article 3 – Meaning of "information held by a public authority"**

*For the purposes of this Law, information is held by a public authority if –*

- (a) it is held by the authority, otherwise than on behalf of another person; or*
- (b) it is held by another person on behalf of the authority."*

11. The GoJ accordingly declined to provide the information requested firstly on the basis that it simply did not hold the information requested by the Complainant but also that the request fell outside the scope of the FOI Law because the JFSC was not in scope.
12. The Complainant wrote to the Unit seeking an Internal Review on 7 September 2022. That request was in the following terms:

*"Thanks for your reply. I would like to request an internal review on the following basis:*

1. *This request relates to information held by the Jersey Financial Services Commission.*
2. *The Jersey Financial Services Commission was established as a body by resolution of the States in the adoption of the Financial Services Commission (Jersey) Law 1998, pursuant to Article 2(1) "There shall be established a body to be known as the Jersey Financial Services Commission".*
3. *The Freedom of Information (Jersey) Law 2011 Schedule 1 (Article 1 (3) defines a scheduled public authority as "A committee or other body established by resolution of the States or by or in accordance with standing orders of the States Assembly."*
4. *The Jersey Financial Services commissioner therefore meets the definition of a Scheduled Public Authority and is not exempt under Article 3.*
5. *Further, The Freedom of Information (Jersey) Law 2011 applies to any public authority, not just Scheduled Public Authorities. A public authority is defined in Part 1 of the law to also include: (1)(d) any administration of the States" (sic) , (1)(h)(ii) "any body that carries out statutory functions", or (1)(h)(iv) "any body that carries out statutory functions", or (1)(h)(iv) "any body which appears to the States to exercise functions of a public nature".*

*On all these counts the Jersey Financial Services Commission is subject to the Freedom of Information (Jersey) Law 2011 and an exemption can not (sic) be applied. I would appreciate it if you could revisit the basis of the exemption applied.*

*Thanks" (the **IR Request**)*

13. The results of the Internal Review were communicated to the Complainant on 4 October 2022, as follows:

***" Internal review response***

*The original response has been reviewed and assessed to identify whether the application of the exemption had been applied correctly.*

*It is noted that paragraph (3) of Schedule 1 does not capture independent statutory bodies such as the JFSC, but captures bodies established by the Assembly.*

*The JFSC, along with a number of independent statutory regulators, do fall within the meaning of the term "an administration of the States" as defined in Article 1 of the Freedom of Information (Jersey) Law 2011 as follows:*

*"administration of the States" means –*

*(a) a department established on behalf of the States; and*

*(b) a body, office or unit of administration, established on behalf of the States (including under an enactment);*

*The JFSC is a body established by an enactment and therefore falls within (b) of this definition.*

*In the definition of "public authority" in Article 1 of the Law, the public authorities that are an "administration of the States" are referred to as a distinct type of public body from the bodies established by a resolution of the Assembly or under Standing Orders.*

*Under the Law, paragraph (4) of Schedule 1 makes it clear that a subset of that group, namely the Government Departments established on behalf of the States, were scheduled public authorities. The effect of the Law is that the JFSC and other bodies, offices and units of administration established by an enactment are public authorities that are capable of being added to Schedule 1, including using the power to amend that Schedule in Article 6 of the Law, however they are not covered by Schedule 1 unless so added (this is illustrated by the addition of the Children Commissioner to Schedule 1 when that office was established).*

*Schedule 2 of the Law applies to "Scheduled Public Authorities" as opposed to public authorities.*

*The reviewers, having considered the application of Article 3 in this instance, concluded that the exemption was appropriate and should be upheld." (the **IR Response**).*

## **The Investigation**

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### **Scope of the case**

14. On 4 October 2022 (by way of email timed at 22:54pm), the Complainant contacted the Commissioner to appeal the IR Response. The Complainant asked the Commissioner to review the Complainant's request and the Response received in order to ascertain whether the Response provided was in accordance with the FOI Law and whether, as indicated, the JFSC did not fall within scope of such.
15. The Commissioner considers the scope of this case to be whether the JFSC is a scheduled public authority under the terms of the FOI Law.
16. The Commissioner has set out in this Notice the particular issues he has had to consider.
17. In coming to a decision on this matter, the Commissioner has considered all the relevant submissions, or parts of submissions, made to him by both the Complainant and the GoJ. He is satisfied that no matter of relevance has been overlooked.

### **Chronology**

18. On 4 November 2022, the Commissioner wrote to the Unit to advise that the Complainant had made an Appeal to the Commissioner, pursuant to Art.46 of the Law. The Unit was asked to provide their written submissions in response to the complaint made by the Complainant.
19. The Unit responded to that letter on 18 November 2022, providing detailed explanations as to why it considered Response to the Request (including the IR Response) was appropriate in all the circumstances of the case.

## Analysis

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20. Relevant extracts from the FOI Law can be found in the Legal Appendix at the end of this Decision Notice.

### The GoJ's position

21. In addition to explanations provided in its Response, and Internal Review, the GoJ was invited to provide submissions to this office and to advise the Commissioner of any further arguments upon which it wished to rely.

22. In short, the GoJ maintained its contention that the JFSC is not a body listed as scheduled public authority in Schedule 1 of the FOI Law, and so it simply does not fall within scope of the legislation.

23. The GoJ again confirmed that, in any event, it does not hold the information sought by the Appellant.

### The Complainant's position

24. The Complainant's position is as set out in the IR Request. In short, the Complainant does not agree with the GoJ's interpretation of the FOI Law and believes that the JFSC is covered and should provide the information requested. The Complainant advised that they had originally called the JFSC seeking information but were told to contact the GoJ FOI Unit. It is unclear as to the scope of this call including whether the individual from the JFSC understood that the Complainant was seeking information about the JFSC's myRegistry project.

25. Specifically, the Complainant provided their views in a fulsome and helpful email provided at the time of their request to the Commissioner for a review, as follows:

"Hi,

*Please could you process an appeal for the attached decision from the Central FOI unit? I have included a summary of the case below:*

#### **1. Summary**

*1. I have requested information from the JFSC*

*2. This has been denied by the Central FOI team, as an exemption has been applied on the basis that the JFSC is not a Scheduled Public Authority under the The Freedom of Information (Jersey) Law 2011 (the "Law")*

*I believe that the JFSC is a Scheduled Public Authority, I outline the basis below.*

#### **2. Appeal basis: The JSFC is a Scheduled Public Authority, as defined in Schedule 1 Para 3 of the Law**

*The Central FOI team state that "paragraph (3) of Schedule 1 does not capture independent statutory bodies such as the JFSC, but captures bodies established by the Assembly."*

*However, paragraph (3) of Schedule 1 defines a Scheduled Public Authority as: "A committee or other body established by resolution of the States or by or in accordance with standing orders of the States Assembly."*

*It therefore captures a committee of other body established either by:*

1. "...resolution of the States"; or
2. "...in accordance with standing orders of the States Assembly."

*This definition only requires one of the two conditions to be met.*

*The JFSC was established as a body by resolution of the States in the adoption of the Financial Services Commission (Jersey) Law 1998, pursuant to Article 2(1) "There shall be established a body to be known as the Jersey Financial Services Commission".*

*It is therefore a body established by resolution of the States, satisfying the first condition of para 3, and a scheduled public authority under Schedule 1 of the Law.*

*The Financial Services Commission (Jersey) Law 1998 was also Lodged au Greffe and passed on 19 May 1998 by the States Assembly Finance and Economic Committee, and so the creation of the JFSC is also in accordance with the standing orders of the States Assembly, meeting the second criteria.*

*Although both criteria are met, only one of the two are required for the JFSC to be considered a Scheduled Public Authority.*

## **2. Other considerations to the response**

**The fact that the JFSC is a Scheduled Public Authority under Schedule 1, para 3 of the Law is sufficient to uphold this appeal.**

*However, the Central FOI team make further incorrect interpretations of the law, which I would like to highlight. They suggest that:*

1. *"Under the Law, paragraph (4) of Schedule 1 makes it clear that a subset of that group, namely the Government Departments established on behalf of the States, [are] scheduled public authorities."; and*
2. *"the JFSC and other bodies, offices and units of administration established by an enactment are public authorities that are capable of being added to Schedule 1 [...] however they are not covered by Schedule 1 unless so added [under Article 6 of the law]"; and*
3. *"this is illustrated by the addition of the Children Commissioner to Schedule 1 when that office was established"*

*This is incorrect on several accounts:*

1. *The JSFC is an independent body established by resolution of the States, not a Government department (the Central FOI team accepts this in the third paragraph of their response "independent statutory bodies such as the JFSC")*
2. *Withstanding this fact, the Law does not require a Government department to be added by way of Amendment to be included in the definition of a Scheduled Public Authority. Schedule 1 para 4 already includes them as "A department established on behalf of the States".*
3. *Article 6 is a power for the States Assembly to amend Schedule 1, not a requirement to list individual bodies/entities/departments by name to be included in the definition.*
4. *The illustration of the addition of the Children Commissioner to Schedule 1 to attempt to exemplify the Central FOI team's argument is flawed as the Children's Commissioner is a*

*function of office, which not already captured under the other definitions in the Schedule (it is neither a body established by resolution (para 3) nor a department established by the States (para 4)).*

*The JFSC (a body established by resolution of the States) is already included in the definition of a Scheduled Public Authority under Schedule 1 paragraph 3, and does not need to be added by way of Amendment."*

#### Analysis

26. Art.1 of the FOI Law clearly sets out that a:

*"scheduled public authority" means a public authority described in Schedule 1"*

27. Sched.1 of the FOI Law (as at the date the Request was made) is in the following terms and sets out those scheduled public authorities that must comply with the terms of the FOI Law:

- "1 The States Assembly including the States Greffe.*
- 2 A Minister.*
- 3 A committee or other body established by resolution of the States or by or in accordance with standing orders of the States Assembly.*
- 4 A department established on behalf of the States.*
- 5 The Judicial Greffe.*
- 6 The Viscount's department.*
- 6A Andium Homes Limited, registered on 13th May 2014 under registration number 115713.*
- 7 The States of Jersey Police Force.*
- 8 A parish.*
- 9 The office of the Commissioner for Children and Young People established under the Commissioner for Children and Young People (Jersey) Law 2019."*

28. The FOI Law provides that the scope of the right to access information under the legislation is set out at Art.8, as follows:

- "8 General right to be supplied with information held by a scheduled public authority*  
*If a person makes a request for information held by a scheduled public authority –*
  - (a) The person has a general right to be supplied with information by that authority; and*
  - (b) Except as otherwise provided by this Law, the authority has a duty to supply the person with the information".*

29. Put simply, it is only those entities falling within the definition of "Scheduled Public Authorities" (i.e. those listed in Sched.1 to the FOI Law) that are obliged to respond to requests for information.

30. The JFSC is not specifically listed in Sched.1 by name and so, to fall in scope, it needs to either fall within the definition of being "3. a committee or other body established by resolution of the States or by or in accordance with standing orders of the States Assembly" or "4. a department established on behalf of the States".
31. The Commissioner does not consider that the JFSC is capable of falling within the second definition set out in the preceding paragraph (the JFSC is not a department established on behalf of the States) and so will not consider such further.

*Does the JFSC fall within the definition of "3. a committee or other body established by resolution of the States or by or in accordance with standing order of the States Assembly" as contended by the Complainant?*

32. Sched. 1 of the FOI Law lists the sorts of bodies that fall within scope, including various types of governmental bodies and certain specifically named entities. This schedule has been amended over the years to include within scope the Parishes, Andium Homes and, more recently, the Children's Commissioner for Jersey.
33. The JFSC is a regulator, independent from the GoJ and was established in 1998 pursuant to an enactment - the [Financial Services Commission \(Jersey\) Law 1998](#) (the **FSC Law**) - which law came into force (of the most part) on 4 June 1998. Art.2 of the FSC Law sets out as follows:

*"2 Establishment of the Commission*

*(1) There shall be established a body to be known as the Jersey Financial Services Commission.*

*(2) The Commission shall be a body corporate with perpetual succession and a common seal and may –*

*(a) sue and be sued in its corporate name;*

*(b) enter into contracts and acquire, hold and dispose of any property; and*

*(c) so far as is possible for a body corporate, exercise the rights, powers and privileges and incur the liabilities and obligations of a natural person of full age and capacity.*

*(3) The application of the common seal of the Commission shall be authenticated by the signature of a person authorized by the Commission to sign on its behalf and every document bearing the imprint of the seal of the Commission shall be deemed to be properly sealed unless the contrary is proved.*

*(4) Save as this Law provides to the contrary, the Commission shall be independent of the Minister and of the States and neither the Minister nor the States shall be liable for any act or omission or debt or other obligation of the Commission."*

34. The proposition to the FOI Law<sup>1</sup> contains a section detailing those bodies that are intended to fall within the scope of the Law. Interestingly, the JFSC is mentioned, as follows:

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<sup>1</sup> [P.39/2011](#)



"2.51 In order for the Law to apply to a public authority, that authority must be added to Schedule 1 to the Law, at which point they are referred to as 'scheduled public authorities' in the text of the Law.

2.52 The Committee proposes that the first authorities to be subject to the Law are as currently set out in Schedule 1 –

The public authorities to be covered by the Law from when it first comes into force are set out in Schedule 1, and are –

- (a) the States Assembly including the States Greffe;
- (b) a Minister;
- (c) a committee or other body established by a resolution of the States or by or in accordance with standing orders of the States Assembly;
- (d) an administration of the States, that is
  - (i) a department established on behalf of the States; and
  - (ii) a body, office or unit of administration, established on behalf of the States (including under an enactment);
- (e) The Judicial Greffe;
- (f) The Viscount's Department.

A "body, office or unit of administration, established on behalf of the States (including under an enactment)" will include the following quasi public bodies –

1. Jersey Financial Services Commission
2. Jersey Competition Regulatory Authority
3. Jersey Law Commission
4. Jersey Appointments Commission
5. Waterfront Enterprise Board, or successor.

**However, the Law will not apply to these bodies until they are added to Schedule 1 by Regulation, and there are no immediate plans to do so.**

2.53 The Schedule may be amended by Regulation, and other public authorities can be added from time to time following debate by the States, within a framework to ensure the Law is applied to all those authorities within a reasonable period of time..." (emphasis supplied)

35. The above indicates the clearly stated intention which was that the JFSC was not to fall within scope of the FOI Law until such time in the future the States Assembly saw fit to add it to Sched. 1.

36. To include the JFSC within the definition of "an administration of the States" (which is set out in Art.1 of the FOI Law as: "(b) a body, office or unit of administration, established on behalf of the States (including under an enactment)" similarly demonstrates a very clear intention by the

States Assembly that those bodies created by enactment should be dealt with differently to the type of entity envisaged by "b. a committee or other body established by a resolution of the States or by, or in accordance with, standing orders of the States Assembly".

37. Whilst the JFSC is considered a public authority as a result of the ambit of an "administration" of the States – because this definition expressly includes bodies established on behalf of the States under an enactment – Sched.1 of the FOI Law does not include "administration of the States" and the provisions of the FOI Law are not, therefore, applicable to the JFSC.

#### *Information Held*

38. Whilst not the focus of the Complainant's Appeal, the GoJ has also confirmed that it does not hold the information in the Request i.e. it does not have information about the creation of the JFSC myRegistry system developed by the JFSC and it is right to record that there is no evidence to suggest that the requested information is actually held by the GoJ and the Commissioner is satisfied that this is the case.

#### **The Decision**

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39. Accordingly, the Complainant's appeal is not upheld.

#### **Right of Appeal**

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40. An aggrieved person has the right to appeal against this Decision Notice to the Royal Court of Jersey.
41. Information on how to do so can be found on [www.jerseyoic.org](http://www.jerseyoic.org).
42. Any Notice of Appeal should be served within 28 (calendar) days of the date on which the Decision Notice is issued.

Dated this 27th day of April 2022

Signed:  ...

**Mr Paul Vane**  
Information Commissioner  
Office of the Information Commissioner  
5 Castle Street  
St Helier  
Jersey