

Freedom of Information (Jersey) Law 2011

DECISION NOTICE

JOIC Reference	CAS-04740
Date of Decision Notice	12 March 2025
Scheduled Public Authority	Department for the Economy
Address	Union Street St Helier Jersey JE2 3DN
Date of Request	15 February 2024
Date of Response	15 March 2024
Date of request for Internal Review	2 April 2024
Date of Internal Review Response	17 May 2024
Date of appeal to Information Commissioner	9 June 2024

Summary/Decision

1. On 15 February 2024, the Complainant requested certain information from the Department for the Economy (the **SPA**) about the Financial Investigation Manual (the **Manual**) produced by the Economic Crimes and Confiscation Unit (**ECCU**) (the **Request**).
2. The SPA wrote to the complainant on 15 March 2024 (the **Response**) stating that the Manual was being withheld (the **Withheld Information**), citing the exemption at Arts.27 and 31 of the Freedom of Information (Jersey) Law 2011 (the **FOI Law**). The Complainant did not agree with the Response and requested an internal review 2 April 2024 (the **IR Request**).
3. The SPA responded to the IR Request on 17 May 2024 (the **IR Response**) and upheld the previous decision that had been made, also citing an additional exemption namely Art.42 of the FOI Law.

4. The Complainant did not agree with the outcome of the Internal Review and issued an appeal to the Information Commissioner (the **Commissioner**) on 9 June 2024 (the **Appeal**).
5. The Commissioner's decision is to that the appeal is not upheld. There are no further steps the SPA needs to take in relation to this matter.

The Role of the Information Commissioner

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

The Request

8. On 15 February 2024, the Complainant submitted their Request in the following terms:

"The Update on the National Risk Assessment of Money Laundering states at 5.4.7: "Additionally, manuals of Guidance in relation to ML investigations have been published to the LOD by the AG, and both SoJP and ECCU have produced their own Financial Investigation Manual."

 [Money Laundering Update.pdf \(gov.je\)](#)

Please provide a copy of the Financial Investigation Manual produced by ECCU (i.e. the Economic Crimes and Confiscation Unit).

The Government of Jersey must have a copy of this, since it is referred to in the Update on the National Risk Assessment of Money Laundering. Presumably it was also one of the reference documents supporting the Technical Compliance Questionnaire (TCQ) and/or Mutual Evaluation Questionnaire (MEQ) prepared as part of the MONEYVAL assessment.

Please respond with an electronic copy, by email.

If you encounter any practical difficulties with complying with this request, I should be grateful if you could please contact me by email as soon as possible (in line with your duty to advise and assist requesters), in order that we can discuss the matter.

To the extent relevant, there is clearly a strong public interest in disclosure of this information. The Manual may act as an exemplar for other jurisdictions; it is in the interest of Jersey that other jurisdictions also combat financial crime. If scrutiny of the Manual results in areas for improvement being identified and/or public criticism, that is also in the interest of Jersey, as it should serve to strengthen Jersey's efforts to combat financial crime.

It is noted that other jurisdictions have published similar manuals. Examples include the United States Department of Justice's Financial Investigations Guide and the CARPO training manual on Financial Investigations.

Ukraine has published its Manual on Financial Investigations, as part of a project implemented with the support of the European Union Anti-Corruption Initiative (EUACI). See <https://fiu.gov.ua/en/pages/dijalnist/funkcional/news/pidgotovleno-ta-predstavleno-posibnik-z-pitanprovedennya-finansovix-rozsliduvan.html>

A decision to decline to release the Manual is likely to foster suspicion and concern about the lack of transparency. It would be a peculiar state of affairs if Ukraine can determine to publish its Manual in full, but Jersey determines that it cannot.

If it is necessary (and in accordance with the law) for any reason to redact any information, however, please redact the minimum necessary and disclose the rest of the material, explaining in plain English the legal grounds justifying each redaction.

Please provide the requested information promptly and, in any event, no later than twenty (20) working days after the date of this request, as required by law."

9. On 15 March 2024 the SPA provided the Response in the following terms:

"The information requested is exempt under Article 27 of the Freedom of Information Jersey (Law) 2011

The Financial Investigation Manual (the "Document") has been produced by legal advisers within ECCU. The Document being intended to advise its primary audience how best to investigate money laundering and financial crime.

Whilst ECCU is not noted within Article 26A of the FOI Law, it performs a similar function for Jersey to some of the criminal investigative agencies noted therein whose manuals of investigation and other information would be automatically exempt.

It is recognised that the more readily accessible to criminals one can make a detailed understanding of matters such as that covered by the Document, the more likely it is such criminals could use such knowledge to avoid successful investigations (in turn leading to a greater chance of damage and harm occurring to Jersey's citizens and economy).

*What constitutes "national security" is not specifically defined by Jersey, the UK or European law. However, in the English case of *Norman Baker v the Information Commissioner and the Cabinet Office* (EA/2006/0045 4 April 2007) the Information Tribunal was guided by a House of Lords case, *Secretary of State for the Home Department v Rehman* [2001] UKHL 47, concerning whether the risk posed by a foreign national provided grounds for his deportation.*

The Information Tribunal summarised the Lords' observations as:

- *"national security" means the security of the United Kingdom and its people;*
- *the interests of national security are not limited to actions by the individual which are targeted at the UK, its system of government or its people;*
- *the protection of democracy and the legal and constitutional systems of the state are part of national security as well as military defence;*
- *action against a foreign state may be capable indirectly of affecting the security of the UK; and,*
- *reciprocal cooperation between the UK and other states in combating international terrorism is capable of promoting the United Kingdom's national security.*

Given the similarities of the Freedom of Information regimes, it is likely that the above definition would be followed in Jersey so that "national security" means the security of the Jersey and its people etc.

Likewise, 'required' (to safeguard national security) has been interpreted as meaning 'reasonably necessary'. Such approach being informed by the approach taken in the European Court of Human Rights, where the interference of human rights can be justified where it is 'necessary' in a democratic society for safeguarding national security. 'Necessary' in this context being taken to mean something less than absolutely essential but more than simply being useful or desirable.

There is no requirement to show that disclosing the withheld information would lead to a direct threat, but there must be a real possibility of an adverse effect. (House of Lords case, Secretary of State for the Home Department v Rehman [2001] UKHL 47).

Whilst there may be a difference between terrorism and organised crime, it is reasonable and reasonably necessary, to consider both, a threat to Jersey's national security its people and constitutional systems.

The Bailiwick of Jersey National Risk Assessment of Money Laundering noting:

"the JFCU-FIU's intelligence database has been reviewed and relevant cases extracted. These cases suggest that the greatest threat to Jersey comes from non-residents seeking to hide the proceeds of corruption and white-collar crime in Jersey"

Bodies such as the NCA (National Crime Agency) in the United Kingdom having also considered:

"The critical importance of the financial sector to the UK's economy means that money laundering, particularly high-end money laundering...can threaten the UK's national security and prosperity and undermine the integrity of the UK's financial system and international reputation"

Similarly, the UK has also recently announced that fraud will be reclassified as a national security threat, giving it the same status as terrorism. Please see the link below:

[Fraud to be Reclassified as a UK National Security Threat \(complyadvantage.com\)](https://www.complyadvantage.com/news/fraud-to-be-reclassified-as-a-uk-national-security-threat)

Whilst Article 27 is an absolute exemption and not a qualified exemption it is also noted that maintenance of a degree of confidentiality in respect of the manner in which financial crime may be investigated, is clearly in the interests of the public and that this approach assists the protection of democracy and the legal and constitutional systems of the state.

It is also considered that the Document constitutes legal advice concerning the investigation of financial crime, the privilege in which was not waived when it was provided to the Government Department.

It is not in the public interest for such legal advice to be available to potential suspects or defendants in financial crime cases, which would occur if the Document was published.

Accordingly, the Document is exempt under Article 31 and absolutely exempt under Article 27.

Articles applied

Article 27 - National security

(1) Information which does not fall within Article 26A(1) is absolutely exempt information if exemption from the obligation to disclose it under this Law is required to safeguard national security.

(2) Except as provided by paragraph (3), a certificate signed by the Chief Minister certifying that the exemption is required to safeguard national security is conclusive evidence of that fact.

(3) A person aggrieved by the decision of the Chief Minister to issue a certificate under paragraph (2) may appeal to the Royal Court on the grounds that the Chief Minister did not have reasonable grounds for issuing the certificate.

(4) The decision of the Royal Court on the appeal shall be final.

Article 31 - Advice by the Bailiff, Deputy Bailiff or a Law Officer

Information is qualified exempt information if it is or relates to the provision of advice by the Bailiff, Deputy Bailiff or the Attorney General or the Solicitor General.

Public Interest Test

With regard to the public interest arguments, HM Treasury v IC [2009] EWHC 1811 Blake J recognised that when engaged, the Convention will carry significant weight in the public interest test. The Convention has been considered by the Office of the Information Commissioner and was held to be part of Jersey law.

Whilst it is recognised that the strong public interest in protecting Law Officers' advice may still be overridden in some cases if there are particularly strong factors in favour of disclosure, conversely, disclosing the advice or whether advice was or will be sought could inhibit the Law Officers from (1) giving frank advice (2) inhibit government bodies in taking advice for fear of its publication; and (3) inhibit the full disclosure to the Law Officers of all material relevant to the advice being sought and therefore real weight ought to be afforded to this aspect of the Law Officers' Convention.

Disclosing either the legal advice or the fact of whether specific advice was sought to the public is not a greater consideration of public interest that requires disclosure of the advice or confirmation of what advice was given. It does not outweigh the three principles set out above which require the long-standing Law Officer Convention to be maintained. Therefore, the balance is in favour of maintaining the exemption and it is not considered the public interest in disclosure outweighs the preservation of the Convention on this occasion."

10. The SPA declined to provide the information requested, citing the exemptions provided for at Arts.27 and 31 of the FOI Law.
11. The Complainant issued their IR Request on 2 April 2024 indicating that they did not agree with the SPA's reliance on Arts.27 and 31 of the FOI Law. Specifically, in their IR Request, the Complainant set out why they did not consider that the Response had been provided in compliance with the FOI Law, essentially submitting that the SPA had improperly relied upon Arts.27 and 31 and that even if such did apply, they should have been applied only to certain parts of the Manual, not its entirety.
12. The results of the Internal Review were communicated to the Complainant on 17 May 2024 citing additional reliance on Art.42 of the FOI Law, as follows:

"This review has been completed by two senior staff members of the Government of Jersey, independent of the original decision-making process.

The original response has been reviewed and assessed to identify whether the application of the exemption had been applied correctly and whether it was appropriate to withhold information.

The Internal Review Panel considered the commentary provided in respect of Article 26A to be helpful and well-argued. However, it was not convinced that such analysis should alter reliance on Article 27. The approach adopted by Ukraine or the UK's College of Policing should not be determinative of whether an individual exemption applies in Jersey.

*The Internal Review Panel was content that Article 31 applies to the information in question and that the public interest supports the information being withheld rather than disclosed (having regard to **CAS-01542**).*

The Internal Review Panel also considered that Article 42 was engaged, with specific reference to Article 42(a) and (g). After careful consideration, it took the view that the public interest supports the information being withheld rather than disclosed, on the basis that the Manual may contain proprietary information that should not be divulged to parties who may seek to participate in money laundering."

The Investigation

Scope of the case

13. On 9 June 2024, the Complainant contacted the Commissioner to appeal against the IR Response. The Complainant asked the Commissioner to review the Complainant's Request and the responses received from the SPA to ascertain whether what had been provided was in accordance with the FOI Law and whether the exemptions cited by the SPA were appropriately applied.
14. The Commissioner has set out in this Notice the issues he has had to consider in respect of the relevant exemptions cited by the SPA.
15. 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 SPA. It will not be possible to set out in detail every part of the submissions made by the SPA and the Complainant as to do so would make this Decision Notice unwieldy, but he is satisfied that no matter of relevance has been overlooked and all the information provided by the parties has been considered.

Chronology

16. On 21 June 2024, the Commissioner wrote to the SPA to advise that the Complainant had made an Appeal to the Commissioner, pursuant to Art.46 of the FOI Law. The SPA was asked to provide their written submissions in response to the complaint made by the Complainant and a copy of the Withheld Information, in the usual way and in accordance with para.58 of the Art.44 Code of Practice¹.
17. The SPA responded to that letter on 12 July 2024, providing detailed explanations as to why it considered the relevant exemptions had been appropriately applied in this case, but declining to provide the Commissioner with a copy of the Withheld Information. As is often the case, the responses provided raised additional queries, and the Commissioner wrote to the SPA on 19 July 2024 seeking further information. Numerous chasers followed:
 - a. Email from the Commissioner on 14 August 2024 (the SPA indicated they would respond by 23 August 2024)

¹ <https://jerseyoic.org/media/0i5huir0/joic-code-of-practice-1.pdf>

- b. Email from the Commissioner on 30 August 2024 (SPA provided with a revised deadline of 3 September 2024)
 - c. Email from the SPA on 4 September 2024 requesting an extension until 6 September 2024
 - d. Email from the Commissioner on 27 September 2024
18. A response to the Commissioner's email of 19 July 2024 was finally provided on 4 October 2024 when, for the first time, the SPA then also sought to rely on the exemptions provided for at Art.32 (Legal Professional Privilege) and Art.41 (International Relations) of the FOI Law. The SPA continued to decline to provide the Commissioner with the Withheld Information.
19. This Commissioner wrote to the SPA on 17 October 2024 again requesting access to the Withheld Information, with access finally provided on 26 and 27 November 2024. Following inspection, further queries were raised by the Commissioner on 28 November 2024 and a response provided on 20 December 2024.
20. Once the Commissioner had received all the information it required from the SPA, on 7 January 2025 the SPA was asked to notify the Complainant of the fact that it had sought to apply additional exemptions to those originally cited in the Response and IR Response, which it did on 22 January 2025.
21. The Complainant provided additional comprehensive submissions to the Commissioner on the additional exemptions on 24 January 2025.

Analysis

ABSOLUTE EXEMPTIONS

Art.27 – NATIONAL SECURITY

The Complainant's Position

22. In their IR Request, the Complainant noted that authorities in other reputable jurisdictions (the Ukraine and the UK's College of Policing) have published similar guidance material and in their written submission to the Commissioner also noted that so has the Financial Action Task Force (**FATF**) which has also published its own detailed "Financial Investigations Guidance"². Specifically, the Complainant notes that:

"The FATF Financial Investigations Guidance includes, amongst other things, a section (VII) describing various investigative techniques that can be used in financial investigations. The Complainant submits that the fact that FATF, the global money laundering and terrorist financing watchdog, is comfortable publishing such detailed information gives further reason to doubt the GoJ's assertion that the publication of similar information by the GoJ would have an adverse effect on the national security of Jersey."

23. The Complainant also contends that even to the extent that the Manual could be said to contain information that may appropriately fall within the Art.27 exemption, that there may be parts of the Manual that do not and, accordingly, those parts of the Manual that do not fall within scope of the exemption ought to be disclosed. The Complainant cited the case of Channel 4 v the Information Commissioner EA/2010/0134, which focused on s.43 of the Freedom of Information

² https://www.fatf-gafi.org/content/dam/fatfgafi/reports/Operational%20Issues_Financial%20investigations%20Guidance.pdf.coredownload.pdf

Act 2004 (FOIA) and a commercial contract³ noting that *"to the extent that there are any parts of the Manual that can be properly withheld on the basis of Article 27, this should not necessarily result in the withholding of the whole of the Manual. Instead, such parts that can be properly withheld (if any) should be appropriately redacted, with the remainder of the Manual disclosed"*.

The SPA's Position

24. The SPA's Position is set out in the Response cited at para.9 above and is not repeated. In its submissions to the Commissioner the SPA elaborated on these arguments with specific reference to the Withheld Information and explained how this could be used to undermine its work in relation to the combatting of terrorism and financial crime. For obvious reasons, those submissions have not been repeated in this Decision Notice. Suffice to say, the SPA's position is that the Manual is a confidential internal only use document for the ECCU which is part of the Law Officers' Department tasked with prosecuting complex international financial crime, money laundering and terrorist financing.
25. The SPA advised the Commissioner that the Manual (minus its appendices) were provided to limited individuals within the SPA involved in preparations for Jersey's MONEYVAL assessment. The Withheld Information was necessary for the work of the assessors for the purposes of MONEYVAL's evaluation of Jersey's defences against financial crime. The entire MONEYVAL process (both internally and externally with the Council of Europe) is conducted under strict confidentiality and in accordance with its published Rules of Procedure⁴ and it is clear from those Rules (specifically Rule 29) that all documents and information elaborated may *only be used for the specific purpose provided. Such documents cannot be made public without a Committee decision based on a specific request to that effect."*

Analysis

26. This is the first occasion since the FOI Law came into force that a SPA has sought to rely on the exemption contained at Art.27 of the FOI Law. Art.27(1) of the FOI Law states that:

"Information which does not fall within Article 26A(1) is absolutely exempt information if exemption from the obligation to disclose it under this Law is required to safeguard national security."

27. In broad terms, Art.27 allows a SPA not to disclose information if it considers that releasing the information (here, the Manual) would make Jersey or its citizens more vulnerable to a national security threat.
28. The operation of Art.27 of the FOI Law is different to the way in which National Security is approached in the UK. This is because the equivalent provision in FOIA (s.24) is subject to a public interest test; it is a qualified exemption as opposed to an absolute exemption. Accordingly, guidance and case law from E&W is of limited assistance here, and reference to cases focusing on not only different exemptions but a qualified exemption, is also unlikely to be of particular assistance save as set out below.

Meaning of National Security

29. There is no local guidance as to the definition of "national security" and it is not defined in the FOI Law. The position is similarly unclear in E&W (there is no definition in the Freedom of

³ The local equivalent provision is Art.33 of the FOI Law which is a qualified exemption and subject to the public interest test.

⁴ <https://rm.coe.int/moneyval-2014-36prov-rev16-rop-5th-en/1680b3a352>

Information Act 2006 (**FOIA**), albeit the UK ICO in its guidance refers to the case of Norman Baker v. ICO and the Cabinet Office EA/2006/2007⁵ which notes, as follows:

"Definition of National Security

26. The expression "national security" is not defined in FOIA and we can find no exhaustive definition in any statutes or judicial decisions. However we have been referred to the House of Lords (HL) decision on the topic in *Secretary of State for the Home Department v Rehman* [2001] UKHL 47; [2003] 1 AC 153. The HL made a number of findings and observations which we find helpful in this case:

(i) "national security" means "the security of the United Kingdom and its people." (para 50 per Lord Hoffman);

(ii) the interests of national security are not limited to action by an individual which can be said to be "targeted at" the UK, its system of government or its people (para 15 per Lord Slynn);

(iii) the protection of democracy and the legal and constitutional systems of the state is a part of national security as well as military defence (para 16 per Lord Slynn);

(iv) "action against a foreign state may be capable indirectly of affecting the security of the United Kingdom" (paras 16-17 Lord Slynn); and

(v) "reciprocal co-operation between the United Kingdom and other states in combating international terrorism is capable of promoting the United Kingdom's national security" (para 17 Lord Slynn)

30. As to the final point set out above, para.17 of the Rehman judgment is, in the Commissioner's view, of particular interest in the context of this appeal:

*"I would accept the Secretary of State's submission that **the reciprocal co-operation between the United Kingdom and other states in combating international terrorism is capable of promoting the United Kingdom's national security, and that such co-operation itself is capable of fostering such security "by, inter alia, the United Kingdom taking action against supporters within the United Kingdom of terrorism directed against other states"**. There is a very large element of policy in this which is, as I have said, primarily for the Secretary of State. This is an area where it seems to me particularly that the Secretary of State can claim that **a preventative or precautionary action is justified. If an act is capable of creating indirectly a real possibility of harm to national security it is in principle wrong to say that the state must wait until action is taken which has a direct effect against the United Kingdom.**" (emphasis supplied).*

31. The second issue to consider is whether the withholding of the Manual is "required to safeguard national security".

32. In his guidance⁶, the UK Information Commissioner considers that:

"Required is taken to mean that the use of the exemption is reasonably necessary.

⁵ <https://informationrights.decisions.tribunals.gov.uk/DBFiles/Decision/i24/Baker.pdf>

⁶ <https://ico.org.uk/for-organisations/foi/freedom-of-information-and-environmental-information-regulations/section-24-safeguarding-national-security/>

"Required" is defined by the Oxford English Dictionary as "to need something for a purpose" which could suggest the exemption can only be applied if it is absolutely necessary to do so to protect national security. However, the Commissioner's interpretation is informed by the approach taken in the European Court of Human Rights where interference to human rights can be justified where it is "necessary" in a democratic society for safeguarding national security. **Necessary in this context is taken to mean something less than absolutely essential but more than simply being useful or desirable. Therefore, we interpret required as meaning reasonably necessary...**

It is not necessary to show that disclosing the information would lead to a direct or immediate threat to the UK. In a time of global terrorism our national security can depend on cooperating with others. **This can involve protecting allies, cooperating with other countries in the fight against terrorism, as well as building relations with other prospective allies. This means that you can engage the exemption to prevent a disclosure that would have adverse consequences for one of these partners, even if disclosure would not result in a direct or immediate risk of attack on the UK or its citizens...**

We also recognise that terrorists can be highly motivated and may go to great lengths to gather intelligence. **This means there may be grounds for withholding seemingly harmless information on the basis that it may assist terrorists when pieced together with other information they may obtain.** Although "mosaic" arguments arise when considering other exemptions, **the issue in these cases is whether combining the requested information with other information in the public domain will cause harm. In section 24 cases, the issue extends to whether the requested information will be useful if combined with other information that terrorists may already have or could obtain"**

33. Whilst not binding in this decision, the Commissioner concurs with the UK ICO's analysis of "required" and adopts the same interpretation here.

Commissioner's Decision

34. The Commissioner has carefully considered the nature of the Withheld Information. Firstly, the purposes for which the Manual was provided to the SPA are, in the Commissioner's view, highly relevant in this case in terms of deciding whether the exemption has been properly engaged.
35. The Withheld Information is a Manual produced by lawyers within the ECCU and as set out in its response, it was provided to the SPA for the purposes of the Island's MONEYVAL assessment. Indeed, this stance appears to have been pre-empted by the Complainant who notes in their initial Request that "The Government of Jersey must have a copy of this, since it is referred to in the Update on the National Risk Assessment of Money Laundering. Presumably it was also one of the reference documents supporting the Technical Compliance Questionnaire (TCQ) and/or Mutual Evaluation Questionnaire (MEQ) prepared as part of the MONEYVAL assessment..."
36. The Manual was provided to the SPA (without exhibits) for the sole purpose of allowing those staff members with responsibility for completion of the relevant submission to MONEYVAL. The Commissioner cannot elaborate on the contents of the Withheld Information further than he has done so already without compromising the content of the Withheld Information itself, but he is satisfied that for the reasons set out by the SPA in its Response and additional written submissions to the Commissioner, that the release of the Withheld Information would represent a risk to the Island's national security.
37. For completeness, it is noted that the Complainant invited the Commissioner to consider (applying similar principles to those set out in the case of Channel 4 v. Information Commissioner) carving up the Manual and allowing disclosure of certain parts of it.

38. The Commissioner, notes the UK ICO's guidance as set out at para.32 above and the notion that "seemingly harmless" information could result in harmful consequences if disclosed and concurs with the SPA's contention that *"It is recognised that the more readily accessible to criminals one can make a detailed understanding of matters such as that covered by the Document, the more likely it is such criminals could use such knowledge to avoid successful investigations (in turn leading to a greater chance of damage and harm occurring to Jersey's citizens and economy)."*
39. Disclosure under the FOI Law is, essentially, disclosure to the world at large and the Commissioner is satisfied that disclosure of even small pieces of information from the Manual could aid terrorist activity in that it could allow those undertaking criminal/terrorist activities to gain a greater understanding of the techniques, capabilities, methodology and resources deployed by the ECCU which could render those measures less effective. This is because it would reveal information about the ECCU's investigative techniques. This is of national importance in an international financial centre and global economy under increasingly serious threats from money laundering and those engaged in financial crime.
40. Accordingly, whilst the Complainant's reference to the UK case of *Channel 4 v. ICO* is understood, the circumstances are not comparable with that case focusing, as it did, on a commercial contract and the application of a qualified exemption subject which is subject to a public interest test. The circumstances are completely different and the document which is the focus of this appeal is one that is, on the SPA's contention something affecting the Island's National Security and which may be exempted here on absolute grounds.
41. The Commissioner's decision therefore is that the Art.27 exemption was appropriately applied to the entirety of the Withheld Information.

QUALIFIED EXEMPTIONS

42. Given the Commissioner's decision that Art.27 was correctly applied to all the Withheld Information (i.e. the entirety of the Manual) and the Commissioner has decided that it should not be disclosed, he has not gone on to consider the citing of Arts.31, 32, 41 or 42 of the FOI Law.

GENERAL MATTERS

Meaning of "held"

43. In its written submission to the Commissioner, the SPA raised a suggestion for the first time that it may be considered that the requested information was not "held" for the purposes of the FOI Law on the basis that it was provided on a confidential basis by a third party (the ECCU). It was not strongly advanced as a reason to withhold the information requested, but for the avoidance of doubt, the Commissioner does not agree with this suggestion. It is clear that the Withheld Information was required by the SPA for its own purposes and as part of its preparations for the MONEYVAL assessment and that the Manual was "held" for the purposes of the FOI Law by the SPA at the time the Request was received.

Destruction of the Withheld Information by the SPA

44. As noted at para.17 above, on 12 July 2024, the Commissioner was advised that the Withheld Information was no longer in the possession of the SPA *"all duplicate copies of the Withheld Information have been deleted by Government as the MoneyVal inspection is now over. Further, such steps have been undertaken on the basis that the Law Officers' Department retains the Master Copy of the Withheld Information, which has not been amended and will not be amended. Should the Information Commissioner wish to examine the Withheld Information in connection*

with this appeal, we would ask that your Office liaises with Advocate [REDACTED] (Law Officers' Department) in the first instance".

45. On 17 July 2024, the Commissioner raised queries about the destruction of the Withheld Information including seeking confirmation of the date it had been deleted.
46. Upon further enquiry, the SPA advised (on 4 October 2024) that:
 - a. *"On 1 July 2024, any copies of the Withheld Information were requested to be returned or deleted. The originals remain within ECCU in the Law Officers' Department and are available for inspection by JOIC"*
 - b. *"Subsequent to the correspondence from HM Attorney General, it was confirmed there were not hard copy versions of the Withheld Information to be returned by Government. Electronic versions of the Withheld Information was deleted by [the SPA] on 2 October 2024 following confirmation that no offence would be committed by doing so."*
47. Art.49 of the FOI Law sets out that it is an offence if a person destroys information in circumstances where an applicant would have been entitled to be supplied with that information, if that destruction was done *"with the intention of preventing the authority from supplying the information to the applicant"*.
48. It appears from the information received by the Commissioner that the SPA destroyed the Withheld Information after it had been made aware of the Complainant's Appeal to the Commissioner and after the Commissioner had already asked for a copy of the Withheld Information (which is done as standard as part of every appeal conducted), this on the basis that the MONEYVAL assessment had concluded and so it was no longer required by the SPA for the purposes for which it was originally obtained.
49. As a result of the destruction of the Withheld Information by the SPA (which the Commissioner needed to review to decide whether the relevant exemptions had been applied to it), the Commissioner was left with no alternative but to seek access to that information from the Law Officers' Department (which is not a SPA for the purposes of the FOI Law).
50. The Commissioner wishes to place this matter on the public record and make his position clear that under no circumstances must information that is subject to a live appeal be destroyed by the SPA, particularly where a copy of that information has not been provided to the Commissioner and where the only copy that exists is then in the possession of an entity not subject to the provisions of the FOI Law.
51. An interpretation of the above incident could be that this was done so that even if the Commissioner concluded that the information had been improperly withheld and ought, therefore, to be released to the Complainant, that it would not be able to comply with that order because it no longer held the information.
52. The Commissioner expects to be provided with the information that has been legitimately requested by his office as part of the appeal process, and in the manner and timeframe required. It must not be destroyed or withheld from production.
53. Delays in responses by SPAs (as can be clearly seen from the chronology cited) are simply not appropriate and serve only to prevent the Commissioner from progressing the appeal in a timely manner. Where the Commissioner asks for information it must be provided in a timely way. Given the lack of legal mechanisms available to him to compel the provision of information (the only route being the invoking of the provisions of the MoU dated 21 November 2014) it is all the more important that SPA's engage in the appeal process in a timely and transparent way.

Late application of exemptions

54. As noted in the Commissioner's guidance note⁷, it is not good practice to apply exemptions late in the day, particularly once an appeal has been submitted to the Commissioner.
55. The Complainant had suggested that given the very late reliance on Arts.32 and 41, that these should not be considered by the Commissioner. Ultimately, it was not necessary for the Commissioner to consider the exemptions given his conclusions on the applicability of Art.27 but he does consider there to be force in the Complainant's arguments that such ought to have been disregarded in any event.
56. Accordingly all SPAs are reminded that if a SPA wishes to apply exemptions it must give careful thought to this at the point of providing a response to the Request not many months later and which serves only to delay matters.

The Decision

57. The Commissioner considers that in respect of the Withheld Information (the Manual), the SPA has responded to the request for information appropriately in this case and that the exemption provided for at Art.27 of the FOI Law was appropriately deployed.
58. Accordingly, the complainant's appeal is rejected.
59. There are no further steps the SPA needs to take in this matter.

Right of Appeal

60. An aggrieved person has the right to appeal against this Decision Notice to the Royal Court of Jersey.
61. Any Notice of Appeal should be served within 28 (calendar) days of the date on which the Decision Notice is issued.

Dated this 12 day of March 2025

Signed..... 

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

⁷ https://jerseyoic.org/media/unefoi2n/joic-12a-freedom-of-information_2.pdf

8 General right of access to 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 the 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.

9 When a scheduled public authority may refuse to supply information it holds

- (1) A scheduled public authority may refuse to supply information it holds and has been requested to supply if the information is absolutely exempt information.
- (2) A scheduled public authority must supply qualified exempt information it has been requested to supply unless it is satisfied that, in all the circumstances of the case, the public interest in supplying the information is outweighed by the public interest in not doing so.
- (3) A scheduled public authority may refuse to supply information it holds and has been requested to supply if –
 - (a) a provision of Part 3 applies in respect of the request;
 - (b) a fee payable under Article 15 or 16 is not paid; or
 - (c) Article 16(1) applies.

13 Time within which a scheduled public authority must deal with a request for information

- (1) A scheduled public authority must deal with a request for information promptly.
- (2) If it supplies the information it must do so, in any event, no later than –
 - (a) the end of the period of 20 working days following the day on which it received the request; or
 - (b) if another period is prescribed by Regulations, not later than the end of that period.
- (3) However, the period mentioned in paragraph (2) does not start to run –
 - (a) if the scheduled public authority has, under Article 14, sought details of the information requested, until the details are supplied; or
 - (b) if the scheduled public authority has informed the applicant that a fee is payable under Article 15 or 16, until the fee is paid.
- (4) If a scheduled public authority fails to comply with a request for information –
 - (a) within the period mentioned in paragraph (2); or

(b) within such further period as the applicant may allow,

the applicant may treat the failure as a decision by the authority to refuse to supply the information on the ground that it is absolutely exempt information.

(5) In this Article "working day" means a day other than –

(a) a Saturday, a Sunday, Christmas Day, or Good Friday; or

(b) a day that is a bank holiday or a public holiday under the Public Holidays and Bank Holidays (Jersey) Law 1951^[4].

18 Where a scheduled public authority refuses a request

The States may, by Regulations, prescribe the manner in which a scheduled public authority may refuse a request for information.

27 National security

(1) Information which does not fall within Article 26A(1) is absolutely exempt information if exemption from the obligation to disclose it under this Law is required to safeguard national security.

(2) Except as provided by paragraph (3), a certificate signed by the Chief Minister certifying that the exemption is required to safeguard national security is conclusive evidence of that fact.

(3) A person aggrieved by the decision of the Chief Minister to issue a certificate under paragraph (2) may appeal to the Royal Court on the grounds that the Chief Minister did not have reasonable grounds for issuing the certificate.

(4) The decision of the Royal Court on the appeal shall be final.