

## Freedom of Information (Jersey) Law 2011

### DECISION NOTICE

<b>JOIC Reference</b>	CAS-04796
<b>Date of Decision Notice</b>	4 April 2025
<b>Scheduled Public Authority</b>	Office of the Chief Executive
<b>Address</b>	Union Street St Helier Jersey JE2 3DN
<b>Date of Request</b>	10 March 2024
<b>Date of Response</b>	14 May 2024
<b>Date of request for Internal Review</b>	7 June 2024
<b>Date of Internal Review Response</b>	22 July 2024
<b>Date of appeal to Information Commissioner</b>	23 July 2024

### Summary/Decision

1. On 10 March 2024, the Complainant requested certain information from the Office of the Chief Executive (the **SPA**) about a dossier (the **Dossier**) received by the SPA from the JFSC in respect of a particular business licence application, together with any related email correspondence (the **Request**).
2. The SPA wrote to the Complainant on 14 May 2024 (the **Response**) stating that the Dossier was no longer held by the SPA. In terms of the email correspondence, the SPA provided certain email correspondence which was redacted (the **Withheld Information**), citing the exemptions at Arts.25 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 22 July 2024 (the **IR Response**)
  - a. confirming that the Dossier was not held; and

- b. providing some amended correspondence that had previously been withheld under Art.25 of the FOI Law.
4. In all other respects, the Response was upheld by the reviewers.
5. The Complainant did not agree with the outcome of the Internal Review and issued an appeal to the Information Commissioner (the **Commissioner**) on 23 July 2024 (the **Appeal**).
6. The Commissioner's decision is that the appeal is partially upheld. The SPA must provide the Complainant with the information set out in Appendix 2 of this Decision Notice within 35 days<sup>1</sup>.

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

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7. 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.
8. This Decision Notice sets out the Commissioner's decision.

### **The Request**

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9. On 10 March 2024, the Complainant submitted their Request in the following terms:  
*"An email dated 17 November 2016, sent at 14:20:15, to Paul Routier, copied to Ian Gorst, Philip Ozouf, Sir Philip Bailhache, Mike King, Richard Corrigan, Kate Nutt and Colin Powell, in relation to a business licence application, contains the following: "Having received this confirmation, and a short dossier from JFSC in the same view, it is now a matter for government to decide whether to approve the application."*

*This email was previously disclosed in response to FOI request 577912231.*

*A*

*Please provide a full copy of the "short dossier from JFSC" (referred to hereinafter as the "Dossier") referred to in the email, together with a copy of all enclosures to the Dossier (if any).*

*B*

*Please also provide a copy of all emails relating and/or referring to the Dossier and/or its contents, including (without limitation) any emails to which a copy of the Dossier was attached.*

*For the avoidance of doubt, this is not a request for information held by the JFSC; it is clear from the email referred to above that the Government of Jersey received a copy of the Dossier.*

*Please respond with an electronic copy of the requested information, 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 may discuss the matter.*

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<sup>1</sup> See para.64 of the [Art.44 Code of Practice](#)

*If it is necessary (and in accordance with the law) for any reason to redact any part of the information, 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”.*

10. On 14 May 2024 the SPA provided the Response in the following terms:

*"A*

*Following extensive investigations, it is herewith confirmed that a copy of the dossier is not held by the Government of Jersey. Article 3 of the Freedom of Information (Jersey) Law applies.*

*B*

*Copies of all relevant emails are attached in redacted form. Redactions have been applied in respect of:*

*Article 25 (personal information)*

*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.*

*A further email chain has been withheld under Article 31 of the Freedom of Information (Jersey) Law 2011.*

*Articles 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.*

*Article 25 - Personal information*

*(1) Information is absolutely exempt information if it constitutes personal data of which the applicant is the data subject as defined in the Data Protection (Jersey) Law 2018.*

*(2) Information is absolutely exempt information if –*

*(a) it constitutes personal data of which the applicant is not the data subject as defined in the Data Protection (Jersey) Law 2018; and*

*(b) its supply to a member of the public would contravene any of the data protection principles, as defined in that Law.*

*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*

*In considering whether to apply Article 31, regard has been given to the fact there is a strong public interest in protecting information if it is or it relates to the provision of advice by the Bailiff, Deputy Bailiff or the Attorney General or the Solicitor General. Such interest may still be overridden in some cases if there are particularly strong factors in favour of disclosure. However, after careful consideration of the exemption, details of this particular case, and matters for and against disclosure, it was considered the exemption applied."*

11. The Complainant issued their IR Request on 11 June 2024 indicating that they did not agree with the SPA's reliance on Arts.25 and 31 of the FOI Law. The Complainant also set out why they did not consider that the Response had been provided in compliance with the FOI Law, essentially submitting that it was not clear whether appropriate searches had been carried out and that it was unclear from the Response which exemptions the redactions referred to:

*"I am writing to request an internal review of the response to FOI Request 594204773.*

*It appears that not all emails relating and/or referring to the Dossier and/or its contents have been disclosed.*

#### *Inadequate / incomplete searches*

*As part of its internal review, the Panel is requested to check that adequate searches were carried out, including (without limitation) searches of the emails and records of the Director of Corporate Policy (as he then was), Paul Bradbury, Kate Nutt (as it is clear from information already disclosed that Ms Nutt was involved), and Senators Paul Routier and Philip Ozouf (both of whom are referred in some of the emails disclosed).*

*Further, the Panel is requested to verify that the searches included searches for emails relating and/or referring to the contents of the Dossier (as per the Request), not just to the Dossier itself.*

*If certain searches were not carried out, the Panel is requested to require the SPA to carry them out now and to produce any responsive information identified as a result of such searches.*

#### *Not clear if information has been withheld in its entirety*

*If documents have been withheld in their entirety, the basis for this should be reviewed and, if the Panel considers that such documents have been correctly withheld, then please can this be noted and an explanation provided.*

#### *Basis for redactions not clear*

*The Panel is also requested to review the redactions that have been applied and, to the extent that any redactions are retained, the disclosed documents are clearly annotated to indicate the exemption which has been applied to justify such redaction.*

*At present, it is unclear for many of the redactions whether the reason for those redaction is\_because the SPA has applied Article 25 or Article 31.*

*If Article 25 and Article 31 are the only exemptions applied (as suggested by the response), then the SPA could annotate all the instances where Article 31 is relied on and state that the\_remainder of the redactions are on the basis of Article 25 (if that is the case).*

#### Article 25

*With regards to Article 25, it seems this may not have been correctly applied, at least in\_some cases. It is accepted that private third parties would have had an expectation that their\_names would be kept private.*

*In the case of Government of Jersey employees, however, it is not accepted that there is the\_same expectation and a blanket decision cannot be made on the grounds of seniority; there\_should be a judgment made in each individual instance.*

*Similarly, employees of the Jersey Financial Services Commission (JFSC) cannot reasonably have expected their names not to be disclosed in documents subject to FOI requests, given that their roles were well known and publicised (e.g. by the JFSC).*

*Furthermore, since this information (i.e. their names and roles at the JFSC) is already in the\_public domain, it cannot be reasonably believed that the individuals would suffer any damage or distress from this information being disclosed. This is even more so given the passage of time; the redacted emails date from autumn 2018 and are therefore approaching 8 years old.*

*It is not reasonable to redact the name of the Attorney General on the basis of Article 25,given (amongst other things) his public facing role.*

#### Article 31

*To the extent that Article 31 is considered applicable, it is submitted that the Panel should\_make first enquiries of the Attorney General as to whether he consents to the exemption\_being waived. It is not clear whether this was done.*

*In considering the public interest test, it is not clear that due regard was given to (amongst\_other things) the historic nature of the information and therefore that its disclosure is less\_likely to cause prejudice.*

*Should the Panel, having concluded its internal review, determine to withhold any information, I should be grateful if the Panel could please provide in writing the reasons for\_its determination, including as much detail as possible."*

12. The results of the Internal Review were communicated to the Complainant on 22 July 2024 as follows:

*"An internal review was conducted by two senior members of staff independent to the original decision process.*

*The applicant has requested that additional investigations be carried out by the SPA in pursuit of information, however it should be noted that the Internal Review process is in place to undertake an examination of the material provided in response to the original request and to enable a fresh decision to be taken in reconsideration of relevant factors, not to extend the parameters of the request.*

*The panel then moved to ask the following questions:*

- 1. Was the right information searched for and reviewed?*
- 2. Were correct exemptions applied?*

*The panel reviewed the redacted and unredacted correspondence provided in response to the original request and considered whether adequate searches of information had been undertaken and the validity of redaction and exemptions. The following amendments were requested:*

*Email 20161110 15.08*

*(Comprising a chain of emails)*

*Page 1 - The panel questioned the rationale for redaction of the whole of sentence two of first email dated 10 November 2016 15:08, rather than simply the named person they then concluded that the redacted sentence would be amended to read:*

*'The first time I knew [REDACTED] had any involvement was yesterday afternoon.'*

*Page 4 - The panel questioned the rationale for the first redaction on paragraph three of email six, they then concluded that the redacted sentence would be amended to read:*

*'SPO spoke to me about the situation yesterday morning and I have to say that I was more confused after seeing him than before'.*

*In conclusion the panel finds that the Freedom of Information response reviewed the necessary documentation held by Government and applied exemptions in an appropriate manner."*

## **The Investigation**

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### **Scope of the case**

13. On 23 July 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 1 August 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 Practice<sup>2</sup> and within ten working days.
17. The required information ought to have been provided by the SPA by 15 August 2024 but was not, in fact, responded to until on 20 September 2024 (36 working days). The SPA provided detailed explanations as to why it considered the relevant exemptions had been appropriately applied in this case, together with a copy of the Withheld Information.
18. As is often the case, the responses provided raised additional queries, and the Commissioner wrote to the SPA on 2 October 2024 seeking further information. The Central FOI Unit wrote to the Commissioner on 10 October 2024, indicating that a response would be sent in short course (it was in draft, awaiting review), but such was not forthcoming. Chasers were sent by the Commissioner on 13 November 2024, 4 December 2024, and 18 December 2024.
19. The additional information was ultimately not provided until 17 January 2025. Again, no reasons were provided for the delay.
20. Further queries were raised by the Commissioner and communicated to the SPA (via the Central FOI Unit) on 22 January 2025 and a response provided on 6 March 2025.

### **Analysis**

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#### **Art.3 – INFORMATION HELD**

##### The Complainant's Position

21. As noted above, the Complainant was concerned that the SPA had not carried out appropriate searches in response to the Request.

##### The SPA's Position

22. The SPA said that the Dossier had been returned to the JFSC and that it no longer held a copy. It also advised that there were no other emails to provide in response to the Request.
23. The SPA also advised that the retention schedule in place at the time notes that information relating to files of successful business licence applicants would only be retained for 5 years in any event, with the "*File destroyed after the retention period*".

##### Analysis

24. In terms of the Dossier, the Commissioner asked for and was provided with satisfactory evidence that the Dossier was provided in hardcopy by the JFSC to the SPA which was

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<sup>2</sup> <https://jerseyoic.org/media/0i5huir0/joic-code-of-practice-1.pdf>

standard process at the relevant time. The recipient of that Dossier (who is still working with the SPA) was asked to confirm what had happened to the Dossier and confirmed that the Dossier had been returned to the JFSC once the business licence had been granted. He did not have a copy, and it was not saved onto the system. The SPA confirmed that:

*"Unfortunately, it is not possible to confirm when the SPA ceased to retain the dossier (or any information recorded within it), as no record is held of the date of its destruction or return to JFSC. However, it is assumed that it was not retained beyond the purpose of the original application."*

[REDACTED]

*No record is held of the date of destruction of the dossier".*

25. In terms of any emails relating to the Dossier, the Commissioner was provided with information regarding the searches undertaken by the SPA following receipt of the Request. The SPA explained that manual searches were carried out for the accounts of Kate Nutt and Richard Corrigan. The other individuals named in the Request (Paul Routier, Philip Ozouf, Philip Bailhache, Mike King and Colin Powell) had their accounts deleted at the point they left the Government of Jersey and information was not available covering the relevant period. Given the involvement of another individual in HAWAG matters, a physical search subsequently carried out on that individual's computer on 3 May 2024.
26. The SPA was asked, by the Commissioner, to re-run searches on Cryoserver using the name of the relevant entity that had been granted a business licence and to which the Dossier relates as a keyword. The SPA agreed to do this and carried out the search on 10 February 2025 searching the relevant keyword for the period 1 November 2016 (the date the business licence application was submitted) to 31 December 2016 (by which time the licence had been granted). The search was set to include the main body of any email message, together with the subject line and any attachments. The search was also re-run manually by each of the two individuals still employed by the SPA.
27. The SPA provided the Commissioner with evidence that the relevant searches returned nil results.
28. Where there is any dispute about whether a SPA holds information, the issue will be decided according to the balance of probabilities and whether it is more likely than not that a public authority holds (or does not hold) requested information). It will rarely be absolutely certain either way, and that information relevant to a request does not remain undiscovered somewhere within a public authority's records. In the UK, it is accepted that the UK ICO is, as a general principle, entitled to accept *"the word of the public authority and not to investigate further"* where there is no evidence of an inadequate search, any reluctance to carry out a proper search or of any motive to conceal information it actually holds – *"Were this to be otherwise, the IC, with its limited resources and its national remit, would be required to carry out a full scale investigation, possibly onsite, in every case in which a public authority is simply not believed by the requester"* (see *Oates v Information Commissioner (EA/2011/0138)*, at paragraph 11).
29. In *Yallop v Information Commissioner (EA/2023/0094)* (9 October 2023), the Tribunal held that a reasonable search would have included asking an official and their private office about the source of evidence that had been requested under FOIA, which the public authority had not done. This was despite the evidence being described as "anecdotal" in statements made



four years before the FOIA request. An appropriate and reasonable search for information included, as a minimum, searching in the places where it was reasonable to expect that the public authority would find the information.

30. The Commissioner is satisfied that the SPA has carried out appropriate and reasonable searches for the information requested.

## **ABSOLUTE EXEMPTIONS**

### **Art.25 – PERSONAL INFORMATION**

#### **The Complainant's Position**

31. In short, the Complainant does not consider that the Art.25 exemption has been appropriately engaged in this case. They note that the rationale for the application of certain redactions is not clear from the responses provided, nor is it clear in which instances the exemption has been applied (there is no indication which redactions related to the Art.25 exemption, as compared to Art.31). The Complainant is also concerned that where the Art.25 exemption has been applied, that it may have been applied in a blanket fashion rather than considering whether it was appropriate to redact the information in respect of that particular individual on a case-by-case basis. Specifically:

*"The Complainant notes that it is apparent from the Response the individuals' whose names have been withheld include employees of the GoJ and the JFSC.*

*It seems clear that those individuals were involved in the relevant email correspondence in their capacity as public officials; not private individuals. In circumstances where the individuals were carrying out their public functions, they cannot reasonably have expected that their names would remain public; certainly they must have had the expectation that their actions in their capacity as public officials would be subject to greater scrutiny than would be the case in respect of their private lives."*

#### **The SPA's Position**

32. The SPA's Position is set out in the Response cited at para.10 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 provided the Commissioner with an internal Government of Jersey document which is entitled "*Guidance for disclosure of officers' personal data within responses*". It also indicated that it considered that to release the information of certain named individuals, this would contravene Art.8(1)(a) and Art.8(1)(c) of the DPJL 2018 noting that:

*"Whilst in some cases the data of individuals below Chief Officer might be released – it is not necessarily "fair" for such employees' data to be published. That generally, it should be adequate for the public at large to know that Government individuals and the JFSC had been liaising in respect of a particular matter – without the name of the individual in Government or at the JFSC being disclosed. Accordingly, any additional processing of the name of Government or JFSC individual's details by way of their disclosure on any FOI log would breach the data minimisation principle and be unfair."*

## Analysis

33. The full text of Art.25 of the FOI Law can be found in the Legal Appendix at the end of this Decision Notice.
34. Art.25 specifies that personal data is exempt from disclosure if its disclosure would breach any of the data protection principles contained within the relevant data protection legislation in force at the time the decision to withhold the information was made.
35. Art.2 the Data Protection (Jersey) Law 2018 (DPJL 2018) defines personal data as follows:
- "(1) Personal data means any data relating to a data subject.*
  - (2) data subject is an identified or identifiable, natural, living person who can be identified, directly or indirectly, by reference to (but not limited to) an identifier such as –*
    - (a) a name, an identification number or location data;*
    - (b) an online identifier; or*
    - (c) one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of the person.*
  - (3) The following matters must be taken into account in deciding whether the person is identified or identifiable –*
    - (a) the means reasonably likely to be used by the controller or another person to identify the person, taking into account factors such as the cost and amount of time required for identification in the light of the available technology at the time of processing and technological factors;*
    - (b) whether the personal data, despite pseudonymization, is capable of being attributed to that by the use of information other than that kept separately for the purposes of pseudonymization."*
36. The Commissioner has previously considered the concept of what constitutes personal data in an FOI context. Specifically looking at whether the data used, or is it to be used, to inform or influence actions or decisions affecting an identifiable individual and whether the data impacts or have the potential to impact on an individual, whether in a personal, family, business or professional capacity.
37. The SPA has indicated that the relevant individuals are likely to be identified from the requested information and the Commissioner has had sight of the unredacted information.
38. The Commissioner is satisfied that certain of the Withheld Information falls within the definition of personal data to the extent that it names certain third-party individuals (both individuals within and outside Government of Jersey), email addresses and professional titles. The information of a deceased individual has also been redacted in certain instances.
39. The fact that information constitutes the personal data of identifiable living individuals does not automatically exclude it from disclosure under the FOI Law. The second element of the test is to determine whether disclosure would contravene any of the principles set out at Art.8 of the DPJL 2018.

*Would disclosure of the Withheld Information contravene Art.8(1)(a) of the DPJL 2018?*

40. The Commissioner has had to consider whether to release the Withheld Information would breach one of the principles set out at Art.8 of the DPJL 2018. In this case, the SPA considers that it is not fair to release the Withheld Information into the public domain and refers to Art.8(1)(a) and (f) of the DPJL 2018 in this regard.

41. Art.9 of the DPJL 2018 sets out the requirements for lawful processing by providing that "processing shall be lawful only if and to the extent that at least one of the" conditions specified in Schedule 2 of the DPJL 2018 applies.

42. The Commissioner considers that the lawful basis most likely applicable in this case is the basis set out at Schedule 2 Part 1 para.4(d) of the DPJL 2018 which states:

*"The processing is necessary for –*

*...*

*(d) the exercise of any other functions of a public nature with a legal basis in Jersey law to which the controller is subject and exercised in the public interest by any person."*

43. In deciding whether disclosure of personal data would breach Art.8(1)(a) of the DPJL 2018, the Commissioner takes into account a range of factors including:

a. The reasonable expectations of the individual in terms of what would happen to their personal data. Such expectations could be shaped by:

- i. What the public authority may have told them about what would happen to their personal data;
- ii. Their general expectations of privacy, including the effect of Art.8 of the European Convention on Human Rights (ECHR);
- iii. The nature or content of the information itself;
- iv. The circumstances in which the personal data was obtained;
- v. Any particular circumstances of the case, e.g. established custom or practice within the public authority;
- vi. Whether the individual consented to their personal data being disclosed or, conversely, whether they explicitly refused;
- vii. The consequences of disclosure (if it would cause any unnecessary or unjustified damage or distress to the individual concerned); and
- viii. The balance between the rights and freedoms of the data subject and the legitimate interest of the public.

44. Notwithstanding the data subject's reasonable expectations or any damage or distress caused to them by disclosure, it may still be appropriate to disclose the Withheld Information if it can be argued that the processing is necessary, and the rights of affected data subjects can be protected.

45. In its own guidance note, the Government of Jersey records that:

*"In early 2017 the Office of the Information Commissioner issued a decision notice on an appeal which clearly stated that the application of a blanket exemption of Article 25 on names and related data of officers below the rank of Chief Officer was unacceptable.*

*As a blanket decision cannot be made on the grounds of seniority, there will need to be a judgement given in each instance. Where there is a genuine doubt about whether a disclosure should be made FOI officers should err on the side of caution and protect identity in the first instance...*

*Names are personal data within the meaning of the DPL but whether the surrounding information is also the personal data of that individual will involve consideration of whether the information is of biographical significance and relates to the individual. Just because an individual has been copied to an email or forwarded something on, the content of that email would not automatically be that individual's personal data unless it relates to them in a biographical capacity and focuses on them as an individual.*

*The Commissioner will consider whether or not the redactions applied by an SPA are appropriate in each instance particularly correspondence which has emanated from/involved other employees within a States of Jersey department.*

#### Commissioner's Decision

46. The Commissioner has considered the information withheld by the SPA pursuant to Art.25 of the FOI Law and concluded that the exemption has been improperly applied to certain of the Withheld Information and in respect of five named individuals (Person A, Person B, Person C, Person D, Person E).

47. In respect of Person A:

- a. The personal information is limited to Person A's name, job title, and email address all of which are in the public domain (and which have been released previously as part of other FOI requests).
- b. Person A occupied (and continues to occupy) a senior position within the Government of Jersey and was involved in the business licence application. They were also the person who received the Dossier from the JFSC.
- c. At all times Person A was acting in their role within the SPA and in a professional capacity.
- d. The possibility for adverse consequences in terms of disclosure have not been articulated by the SPA to the Commissioner. No risk to safety has been identified.
- e. The SPA did not seek consent from the affected individual (it was not considered practicable to do so as part of the procedural process).
- f. The Commissioner does not consider that disclosure would have an excessive or disproportionate adverse effect on the legitimate interest of Person A.
- g. Any information previously redacted to refer to Person A (identified in the confidential annex to this Decision Notice) must be provided to the Complainant.

48. In respect of Person B:

- a. The personal information is limited to Person B's name, then job title, and email address.

- b. At the time of the emails, Person B occupied a senior position within the Jersey Financial Services Commission. They were also the person who provided the Dossier to Person A.
- c. At all times Person B was acting in their role within the JFSC and in a professional capacity.
- d. Person B no longer holds that position and no longer works for the JFSC.
- e. The SPA did not seek consent from the affected individual (it was not considered practicable to do so as part of the procedural process).
- f. The possibility for adverse consequences in terms of disclosure have not been articulated by the SPA to the Commissioner. No risk to safety has been identified.
- g. The Commissioner does not consider that disclosure would have an excessive or disproportionate adverse effect on the legitimate interest of Person B.
- h. Any information previously redacted to refer to Person B (identified in the confidential annex to this Decision Notice) must be provided to the Complainant.

49. In respect of Person C:

- a. Person C is sadly now deceased. The DPJL 2018 does not apply to deceased individuals and therefore disclosure of Person C's name cannot contravene the principles of the DPJL 2018. The SPA acknowledged in their submissions that Person C's information had been withheld in error pursuant to Art.25 of the FOI Law. No alternative exemption has been cited by the SPA as applicable to Person C's information.
- b. Any information previously redacted to refer to Person C (identified in the confidential annex to this Decision Notice) must be provided to the Complainant.

50. In respect of Person D:

- a. The personal information is limited to Person D's name, then job title, and email address.
- b. At the time of the emails, Person D occupied a senior position within Visit Jersey (which is an arm's length organisation, funded by the Government of Jersey and which had been involved with the business licence application).
- c. At all times Person D was acting in their role within Visit Jersey and in a professional capacity.
- d. The possibility for adverse consequences in terms of disclosure have not been articulated by the SPA to the Commissioner. No risk to safety has been identified.
- e. The SPA did not seek consent from the affected individual (it was not considered practicable to do so as part of the procedural process).
- f. The Commissioner does not consider that disclosure would have an excessive or disproportionate adverse effect on the legitimate interest of Person D.
- g. Any information previously redacted to refer to Person D (identified in the confidential annex to this Decision Notice) must be provided to the Complainant.

51. In respect of Person E:

- a. The personal information is limited to Person E's name, then job title, and email address.
- b. At the time of the emails, Person E occupied a senior position within Visit Jersey (which is an arm's length organisation, funded by the Government of Jersey and which had been involved with the business licence application).

- c. At all times Person E was acting in their role within Visit Jersey and in a professional capacity.
- d. The possibility for adverse consequences in terms of disclosure have not been articulated by the SPA to the Commissioner. No risk to safety has been identified.
- e. The SPA did not seek consent from the affected individual (it was not considered practicable to do so as part of the procedural process).
- f. The Commissioner does not consider that disclosure would have an excessive or disproportionate adverse effect on the legitimate interest of Person E.
- g. Any information previously redacted to refer to Person E (identified in the confidential annex to this Decision Notice) must be provided to the Complainant.

52. For other individuals (not identified in this Decision Notice, which comprise five individuals), the Commissioner is satisfied that Art.25 has been applied appropriately.

## **QUALIFIED EXEMPTIONS**

### **Art.31 ADVICE PROVIDED BY A LAW OFFICER**

#### **The Complainant's Position**

53. In their appeal, the Complainant notes that:

*"Furthermore, even if the withheld information does constitute such "advice" by the Attorney General (or one of the other officials expressly named in Article 31), the public interest must still be considered. If the legislature had intended Article 31 to be an absolute exemption, it would have provided for this in the FOI Law; instead, Article 31 is a qualified exemption only. There is no presumption, accordingly, in favour of withholding information under Article 31; on the contrary, as the Commissioner has previously noted, the principle behind the FOI Law is to release information unless there is good reason not to.*

*Factors favouring disclosure include the general public interest in accountability and transparency, as well as any specific public interest. In the present case, there is specific public interest in information about the role that the Attorney General (an unelected official) has played in reviewing and approving applications for business licences being released to the public. Such information is of value to the public even though the name of the relevant applicant may be redacted; it is insight into the process which would be provided, rather than the specifics of a case, that is in the public interest.*

*The Complainant submits that one further factor weighing in disclosure may be the fact that any "advice" that was provided, would have been provided approximately 8 years ago, and therefore its sensitivity may be diminished (in comparison to advice that was provided more recently). As a general rule, sensitivity (and therefore the prejudice that may be caused by publication) diminishes as information ages".*

#### **The SPA's Position**

54. The SPA contends that Art.31 reflects the longstanding constitutional convention that government does not reveal whether Law Officers have or have not advised on a particular issue, or the content of such advice without the Law Officers' consent. The purpose of this confidentiality is to protect fully informed decision making by allowing Government to seek legal advice in private, without fear of adverse inferences being drawn from either the

content of the advice or the fact that it was sought. It ensures that Government is neither discouraged from seeking advice in appropriate cases, nor pressurised to seek advice in inappropriate cases. In its response to the Commissioner's request for information, the SPA has provided its rationale as to why it considers Art.31 applies to this aspect of the Complainant's Request.

### Analysis

55. The Commissioner understands that the Law Officers are the principal legal advisers to the GoJ, including the SPA. The core function of the Law Officers is to advise on legal matters, helping the Government to act lawfully and in accordance with the rule of law. The Commissioner considered the operation of Art.31 in previous decision notices<sup>3</sup> and does not replicate same here.
56. The Commissioner has seen and considered the information withheld pursuant to Art.31 of the FOI Law.
57. The exemption given at Art.31 is a qualified exemption. This means that even where the exemption is engaged, information is only exempted if the public interest in maintaining the exemption outweighs the public interest in disclosing the requested information. The focus here is whether the SPA was correct in concluding that the public interest in maintaining the exemption outweighed the public interest in disclosure.
58. The SPA has argued that, this is principally a private interest on the part of the Complainant, not evidence of public interest more generally and certainly not sufficient to displace the exemption.
59. Factors which may be relevant in balancing the public interest arguments may include whether a large number of people are affected, lack of transparency in the SPA's actions and misrepresentation of any advice given.
60. The Commissioner does not consider the public interest to be sufficiently strong in these particular circumstances to override the convention and the exemption from disclosure provided for at Art.31 of the Law. Whilst the timeframe relating to the request is historic, the Commissioner does not consider that factor to support the Complainant's suggestion that the exemption should not apply and no cogent evidence has been supplied to show that these are exceptional circumstances such as to find that the usual privilege that exists in the context of the government seeking advice from the LOD should be overridden.

### Commissioner's Decision

61. The Commissioner is satisfied that the exemption was appropriately deployed in the applicable circumstances.

## **GENERAL MATTERS**

### **The Decision**

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62. The Commissioner considers that the SPA was correct to conclude that the Dossier was not held.

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<sup>3</sup> [9 January 2019](#), [18 October 2019](#) and [23 December 2024](#)

63. However, in respect of the Withheld Information, the Commissioner has concluded that certain of the Withheld Information was improperly held pursuant to Art.25 and the SPA must provide the information in respect of Persons A, B, C, D and E as identified in Confidential Appendix 2 of this Decision Notice, within 35 days, to the Complainant. The SPA is required to provide the case officer with confirmation that this action has been completed, along with copies of the correspondence sent to the Complainant, to be submitted to the Commissioner's office.

64. The Complainant's appeal is therefore partially upheld.

### **Right of Appeal**

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65. An aggrieved person has the right to appeal against this Decision Notice to the Royal Court of Jersey.

66. Any Notice of Appeal should be served within 28 (calendar) days of the date on which the Decision Notice is issued.

Dated this 4 day of April 2025

Signed

A handwritten signature in black ink, appearing to read 'P. Vane', with a horizontal line underneath.

**Mr Paul Vane**

Information Commissioner  
Office of the Information Commissioner  
5 Castle Street  
St Helier  
Jersey



## **Legal Appendix**

### **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<sup>[4]</sup>.

## **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.

**Appendix 2**

