

Freedom of Information (Jersey) Law 2011

DECISION NOTICE

JOIC Reference	CAS-04942
Date of Decision Notice	04 July 2025
Scheduled Public Authority	Health and Community Services (SPA1) (to 6 November 2024) Ministerial Support Unit (as part of the Cabinet Office) (SPA2) (from 6 November 2024 onwards)
Address	Ministerial Offices Government of Jersey Union Street St. Helier Jersey JE2 3DN
Date of Request	24 April 2024
Date Response	2 December 2024
Date of appeal to Information Commissioner	10 October 2024

Summary/Decision

1. On 24 April 2024, the Complainant requested certain information from Health and Community Services (**SPA1**) about correspondence that had passed between the Minister for Health and Community Services and others regarding the departure of the then chair of the Health and Community Services Advisory Board (the **Request**).
2. The Complainant ought to have received a response to their Request by 22 May 2024 (20 working days). No response was received from SPA1. Accordingly, the Complainant was able to view this failure as a refusal *"to supply the information on the ground that it is*

absolutely exempt information” and issued an appeal to the Information Commissioner (the **Commissioner**) on 10 October 2024 (the **Appeal**).

3. Following the intervention of the Commissioner, SPA2 ultimately wrote to the Complainant on 2 December 2024 providing certain information (albeit redacted) (the **Response**) but withholding other information (the **Withheld Information**) citing the exemption at Art.25 of the Freedom of Information (Jersey) Law 2011 (the **FOI Law**).
4. The Complainant indicated that they did not agree with the Response, raising concerns with the level of redaction that had been applied to the documentation and questioning whether sufficient searches had been carried out given the paucity of information provided. The Complainant also maintained their concerns regarding the time taken to respond to the Request. Given the time that had elapsed since the Complainant made their initial Request and SPA2’s provision of a Response, the Commissioner did not require the Complainant to request any internal review, instead indicating that those issues would be dealt with by the Commissioner as part of the appeal process, as permitted by Art.46 of the FOI Law.
5. Whilst the Commissioner’s decision is to that the appeal is partially upheld, this relates to the time aspect of the Request only; the appeal is not upheld in respect of the Withheld Information and the application of Art.25 of the FOI Law, which the Commissioner considers was appropriately applied. There are, accordingly, 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 by the Complainant 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. The Complainant’s Request was set out as follows:

"I would like to see all correspondence between the Minister for Health and Social Services and others regarding the recent departure of the Chair of the Health and Community Services Advisory Board, including correspondence received by the Minister regarding the Chair. (This was recently the subject of a written question (WQ. 134/2024) to the minister, which he declined to answer)."

9. On 2 December 2024, SPA2 provided the Response, providing certain of the information requested and withholding certain information citing Art.25 of the FOI Law. The Response was in the following terms:

"Response

The requested correspondence is attached herewith.

Duplicate emails and those out of scope have been removed. The correspondence has been redacted in accordance with Article 25 of the Freedom of Information (Jersey) Law 2011.

Article applied

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 2005.

(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 2005; and

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

The Investigation

Scope of the case

10. On 10 October 2024, the Complainant contacted the Commissioner to appeal about the manner in which their Request had been handled and the fact that they had not received any response to it. Due to this lack of response, the Complainant asked the Commissioner to review their Request, and whether it had been actioned in accordance with the FOI Law including in terms of compliance with any legal timeframes.
11. Once the Response was ultimately provided to the Complainant on 2 December 2024, the Complainant asked the Commissioner to review the Response and determine whether the exemption cited by SPA2 had been appropriately applied. The Complainant also raised concerns about the sufficiency of the searches undertaken in order to identify material relevant to the Request.
12. The Commissioner has set out in this Notice the issues he has had to consider in respect of any delays on the part of SPA1 and/or SPA2 in terms of the steps taken to respond to the Request and also in terms of the relevant exemption cited by SPA2 in the Response.
13. 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 SPA1 and SPA2. He is satisfied that no matter of relevance has been overlooked.

Chronology

14. As noted above, the Complainant originally contacted the Commissioner on 10 October 2024 raising concerns about the fact that they had not received any response to their Request and which was, at that stage, some 97 working days overdue (noting the usual 20 working days provided for in the FOI Law in which to provide a response).
15. Following the Commissioner’s intervention and communications with the Central Freedom of Information Unit (**Central Unit**), the Central Unit ultimately provided the Response to the Complainant on 2 December 2024 (it was not made clear which SPA had provided the Response). The Complainant advised the Commissioner that they had concerns about the Response and asked the Commissioner to review what had been provided. Accordingly, the Commissioner wrote to the Central Unit on 5 December 2024 to advise that the Complainant

had made an Appeal to the Commissioner, pursuant to Art.46 of the FOI Law about the Response provided. The Commissioner was not aware at that stage that there was more than one SPA involved in the Response (having previously only been made aware that SPA1 was involved) and so the Commissioner asked SPA1 (via the Central Unit) to provide their written submissions in response to the complaint made by the Complainant.

16. The Central Unit finally responded to that letter on 8 January 2025, providing detailed explanations as to why it was considered that the Art.25 exemption had been appropriately applied in this case. It also provided the Commissioner with a copy of the Withheld Information together with some explanation as to why it had taken in excess of the usual 20 working day timeframe in which to provide the Response.

Analysis

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

17. The full text of Art.13 of the FOI Law can be found in the Legal Appendix at the end of this Decision Notice but, in short, a SPA "*must deal with a request for information promptly*" and when it supplies 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*"
18. The Complainant's position is straightforward. They did not receive any response at all to the Request until an appeal to the Commissioner had been submitted on 10 October 2024 and even then, did not receive the Response until 2 December 2024 (157 working days in total, and 137 working days over the usual 20 working days provided for in the FOI Law).

Analysis

19. The original date for the provision of a response to the Request ought to have been on 22 May 2024 (20 working days) but it was not, in fact, provided until 2 December 2024, which was 157 working days in total, and 137 working days later than ought to have been the case.
20. The Commissioner has seen correspondence that passed between the Complainant and the Central Unit about on-going delays:

- a. 28 May 2024 (timed at 11:41): Email from Central Unit to the Complainant:

"Thank you for your request of 24th April 2024.

The department dealing with your request has apologised, as they are unable to provide a final response today.

They have advised that, due to recent technical difficulties experienced within the department with the relevant email retrieval system, it has not been possible to collate all of the information necessary to enable them to review the information held and consider what redactions and the application of any necessary exemptions under the Freedom of Information (Jersey) Law 2011 and the Data Protection (Jersey) Law 2018 to-date. Please be assured that work is continuing to provide you with a response as soon as possible.

An extension of 20 working days has been requested, with the response or a progress update being due by Tuesday 25th June 2024.

Please note that it may be necessary to seek a further extension at that time; however, every effort is being made to provide you with your response at the earliest opportunity.

Apologies for any inconvenience caused by this delay.

Freedom of Information (Jersey) Law 2011

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.

Freedom of Information (Miscellaneous Provisions) (Jersey) Regulations 2014

2 Time limits for authority to deal with a request for information

For the purposes of Article 13(2)(b) of the Law the period prescribed is such period as is reasonable in all the circumstances of the case, not exceeding 65 working days following the day on which the scheduled public authority received the request.

- b. 25 June 2024 (timed at 15:30): Email from Central Unit to Complainant:

"Further to our email of 28th May 2024, we regret to advise that it will not be possible to provide you with your response today as had been anticipated.

The department dealing with your request has apologised and advised that work is continuing on collating the correspondence prior to reviewing and considering what redactions and exemptions may need to be applied.

A further extension of 20 working days has been requested, with the response or an update being due on Wednesday 24th July 2024.

Please accept our sincere apologies for inconvenience caused by this ongoing delay and we thank you for your patience."

- c. 27 June 2024 (timed at 10:18am): Email from Complainant to Central Unit:

"Thank you for this update.

However, I must say I find it inexplicable, and I would like to raise a complaint.

We are talking about a correspondence over a very short time period, there will not be many emails or other forms of communication involved, certainly compared to other FOI requests to which I was a party. The request is now more than two months old, and it seems to me that this is being strung out for no good reason, other than the hope that the passage of time will render the information less relevant.

Can you please advise if there is a formal route to make a complaint?"

- d. 27 June 2024 (timed at 15:11): Email from Central Unit to Complainant:

"...

Thank you for your email of today's date.

Please be assured that every effort is being made by the handling department to ensure that searches of each individual's email account, that has, or subsequently maybe identified throughout the search process, is reviewed to ensure that all relevant correspondence is collated.

Once this process has been completed, reviews of all in-scope correspondence are undertaken to ensure that the application of redactions and resulting exemptions under the Freedom of Information (Jersey) Law 2011 and the Data Protection (Jersey) Law 2018 are applied correctly.

In respect of a formal route to make a complaint, we would advise that there are two options open to you. One is to submit a request for an Internal Review, once you have received your response. Please see details attached.

Alternatively, you may wish to raise the issue through the Government's feedback portal.

Please see the following link: [Submit feedback to the Government of Jersey](#)

Please be assured that as soon as the response to your FOI request has been approved and final sign off obtained, we will forward it to you immediately.

Once again, we sincerely apologise for the delay in providing you with your response and that in no way is it the intention of the department to purposely delay the release of the information to you."

- e. 24 July 2024: Email from Central Unit to Complainant:

"...

Further to our email of 25th June and our subsequent correspondence, we sincerely apologise that Health and Community Services department are still not in a position to provide you with your final response today as they had hoped.

They have therefore requested an additional five working days in which to complete the necessary processes to enable them to release the response to you by Wednesday 31st July 2024.

We again apologise for inconvenience caused by this ongoing delay and thank you for your patience."

- f. 31 July 2024 (timed at 15:41): Email from Central Unit to Complainant:

"...

Further to our email of 24th July 2024 , we regret to advise you that the Health and Community Services department have confirmed to us that your response is still not yet ready for release.

The work to ensure that you are provided with a complete and accurate response to your request is ongoing, however please be assured that HCS are endeavouring to provide you with the information requested at the earliest possible opportunity.

We will update you as soon as HCS have an anticipated date for completion and release of your response.

Again, please accept our sincere apologies for inconvenience caused by this ongoing delay and we thank you for your patience."

- g. 2 September 2024 (timed at 08:09): Email from the Complainant to the Central Unit:

"I note that there is still no response to this FoI, which was lodged in April. It is now so far beyond the 20 day timeline responding to an FoI as to be farcical.

To review the situation, in an email dated May 28th it was stated that there were "technical difficulties" retrieving the relevant emails.

By the 25th of June it appeared that the emails had been found, but more time was required to review and redact the relevant emails.

On the 24th of July more time was required for the same purposes, which would apparently take 5 more working days.

By the 31st of July, the reasons for delay had run out, and it was just a case that the response was "not ready".

This is frankly disgraceful on the part of the government. Can you please advise what is the current reason for not releasing the emails, which had apparently all been located by the end of June and when will they be released?"

- h. 4 September 2024 (timed at 09:16): Email from Central Unit to Complainant:

"...

We have noted the contents of your email dated 2nd September 2024 and reached out to the Health and Community Services department for a response.

They have once again sincerely apologised for the ongoing delays with being able to provide you with your response and have stated that they believe it will be possible to provide you with your response imminently.

The explanation they have provided is that requests for correspondence are often complex and time-heavy, requiring review of all search returns and consideration of all prohibitions that may exist to disclosure in respect of applicable legislation.

2024 has – thus far – proven a record year for FOI requests, and the Department is currently handling a number of queries of this type.

Even whilst the subject of this particular request may seem straightforward, the search terms that needed to be explored are very high frequency for the business area, and this can result in a substantial number of emails that need review to determine whether they fall in scope, with subsequent redactions for applicable exemptions (as required).

Please be assured that the Central Freedom of Information Unit are in regular contact with the HCS governance team to ensure that work in providing responses is progressing.”

- i. 23 September 2024: Email from Complainant to Central Unit:

"Dear FOI Unit,

I note that the department were promising a reply "imminently" almost 3 weeks ago.

If it was imminent 3 weeks ago, what has happened in the meantime to delay it yet again?

Thanks"

- j. 5 October 2024: Email from Complainant to Central Unit:

"Any news?"

21. In its response to the Commissioner dated 8 January 2025, the Central Unit said that *"The request was processed at the start by SPA Health & Community Services, they are responsible for the initial delay up to 18 October 2024. The SPA was then transferred to Ministerial Support Unit, and they have managed the request from 19 October 2024."*

22. The Commissioner sought further explanation from the Central Unit about the decision to transfer the Request from HCS (SPA1) to MSU (SPA2) on 24 January 2025, as follows:

"Following a review of the response provided by the SPA on the 8 and 17 January 2025 we have a few more queries to raise regarding some of the content provided. To start with could the SPA or the FOI Team please clarify the following:

- Is the MSU a standalone SPA or is it part of the Cabinet Office? (or another SPA)?*
- Who identified the SPA the initial FOI Request went to? Basically, Who made the decision to send the request to HCS? Please provide evidence (as appropriate).*

- *What steps were taken by the SPA to respond to this request? Please provide evidence of the steps taken (as appropriate).*
- *Why did the SPA change and who made the decision to transfer the request to MSU?*
- *Did MSU engage with HCS to ensure information kept by HCS was captured?*
- *What search terms were used? Please provide evidence, (as appropriate)."*

A response was required by 7 February 2025.

23. On 10 February 2025, the Central Unit replied as follows:

"Good afternoon

Some of these were not clear as to the clarity you are looking for.

Maybe we can also discuss, but here are some responses.

- *Is the MSU a standalone SPA or is it part of the Cabinet Office? (or another SPA)?* **MSU is a SPA but sits under Cabinet Office as Department.**
- *Who identified the SPA the initial FOI Request went to? Basically, Who made the decision to send the request to HCS? Please provide evidence (as appropriate).* **Central FOI send out all requests.**
- *What steps were taken by the SPA to respond to this request? Please provide evidence of the steps taken (as appropriate).* **Please clarify the question.**
- *Why did the SPA change and who made the decision to transfer the request to MSU?* **HCS decided the request was better handled by MSU.**
- *Did MSU engage with HCS to ensure information kept by HCS was captured?* **Yes."**

24. On 18 February 2025, the Commissioner noted that certain information remained outstanding, namely in respect of the steps that had been taken by SPA1 to deal with the Response originally. This was chased on 10 March 2025, and 2 April 2025. Owing to the lack of substantive response in relation to the above by the Central Unit, the Commissioner contacted SPA1 directly on 19 May 2025 (as entitled) seeking the following information:

"1. What steps were taken by HCS to deal with the Request (if any) and was there any engagement with the Central FOI Unit

2. When did HCS request transfer of the FOI request to a different SPA

3. What was the basis of that request (transfer the FOI request to a different SPA)"

25. SPA1 provided the following response on 3 June 2025:

"1. What steps were taken by HCS to deal with the Request (if any) and was there any engagement with the Central FOI Unit

There was a significant delay in getting started on this request due to long-term absence and the impact this had on resources.

However, we did conduct the searches, extracting scoped correspondence from the cryoserver, and reviewing the results for relevance to the FOI request / response. The process of considering and applying exemptions then started. We carefully considered the application of article 25 [personal information] in relation to data relating to a board member that was included in the correspondence.

A response was then drafted and was approved by the Chief Officer. The CO noted that it should be shared with the ministerial support unit and the Minister.

Other than receipt of the FOI and the chasers, there was no request for advice or substantive engagement with the central unit, except for the response being provided to them, and when informing them when it had been agreed that the SPA responsible for responding to this request would be amended to the Ministerial /Cabinet office team

2. When did HCS request transfer of the FOI request to a different SPA

6 November 2024

3. What was the basis of that request (transfer the FOI request to a different SPA)

Having discussed this matter, it was considered the Ministerial Support Unit / Cabinet Office team as the business unit supporting the Minister with respect to Ministerial correspondence, were better positioned to respond to the applicant regarding the scope of all proposed redactions and exemptions"

26. In light of the apparent discrepancies between SPA1 and the Central Unit in terms of the transfer date, on 11 June 2025 the Commissioner sought additional clarity from SPA2, seeking confirmation about the date of transfer and what additional steps, if any, were taken by SPA2 upon receipt of the Request. A response was provided by the Central Unit on behalf of SPA2, as follows:

"Here is the response from the SPA to your questions.

1. Could you please confirm the correct date on which the FOI request was transferred from HCS to MSU?

On 6th November 2025, HSS asked the responsibility to be transferred.

2. Could the SPA please clarify why additional time was required to issue a final response to the Requestor, especially considering the limited information ultimately provided? (e.g., Did MSU carry out additional searches, review or amend the draft response, seek further internal approvals, or encounter technical or procedural delays). Please evidence as appropriate.

At the point of transfer (6th November) HSS had conducted the searches, reviewed the documentation, and proposed redactions. The Ministerial Office did not undertake additional searches but did review the documentation, ensuring that it only included in

scope information and that redactions were appropriately applied, including in relation to Article 25. It was this that took additional time.

JOIC notified us on 11th November that this request had been referred to them and the response was then provided to JOIC and the applicant on 27th November 2024."

Commissioner's Decision

27. It is clear that the Response was provided far outside the usual legal timeframe provided for under the FOI Law. Whilst an explanation has been provided by SPA1 as to the reasons for this delay, noting specifically a lack of resources and significant other caseload, that delay is considered wholly excessive in the circumstances of a narrowly defined request, relating to very specific circumstances and a limited time period. Indeed, the entirety of the information provided to the Commissioner for review was 50 pages.
28. Taking the more generous of the two dates advanced, the Commissioner considers that SPA1 was responsible for the delay until 6 November 2024.
29. No reasons have been advanced as to why upon transfer it then took an additional 18 working days for SPA2 to provide the Response to the Requester noting that by that stage, the bulk of the information sourcing and redaction work had already been carried out by SPA1 and SPA2 did nothing further in this regard. The Commissioner has seen the underlying information and does not consider that the volume was such that it required 18 working days to review the redactions proposed by SPA1 and no evidence has been supplied by or on behalf of SPA2 to explain the time taken other than to say that it "*took additional time*". In the context of an already vastly overdue Response the Commissioner also considers that SPA2 was responsible for the delay in providing the Response to the Complainant from 7 November 2024 – 2 December 2024.
30. Appeal upheld.

Art.25 – Personal Information

31. The full text of Art.25 of the FOI Law can be found in the Legal Appendix at the end of this Decision Notice.
32. 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.
33. The first step for the Commissioner is to determine whether the Withheld Information constitutes personal data as defined. If it does not, then Art.25 of the FOI Law cannot apply.
34. Secondly, and only if the Commissioner is satisfied that the requested information is personal data, he must establish whether disclosure of the data would breach any of the data protection principles.

The Complainant's position

35. The Complainant's position is straightforward; namely that they have concerns whether the Art.25 exemption has been applied correctly to the Withheld Information.

The SPA's position

36. In addition to the explanation provided in its Response, the Commissioner invited additional submissions to this office in the usual way and was asked to provide the Commissioner with the Withheld Information, which it provided in unredacted format.

37. Identifying information of two categories of third parties has been redacted namely:

- a. Certain Government of Jersey (**GoJ**) employees;
- b. Third parties outside of the GoJ.

38. In respect of both categories, the SPA contends that the Withheld Information relating to those third parties constitutes their personal data and to release their information would breach Art.8(1)(c)¹ of the Data Protection (Jersey) Law 2018 (**DPJL 2018**).

39. For GoJ employees, the personal information purely relates to full names and contact information (email addresses) of employees below Tier 2.

40. For other third parties, the personal information relates to names and contact information and certain other information that is said to be the personal information of those individuals.

Analysis

Is the information personal data?

41. Art.2 of the DPJL 2018 defines personal data as follows:

"(1) Personal data means any data relating to a data subject.

(2) A 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;

¹ Art.8(1)(c) of the DPJL 2018 refers to the data minimization principle and stipulates that a data controller must ensure that personal data are "adequate, relevant and limited to what is necessary in relation to the purposes for which they are processed"

(b) whether the personal data, despite pseudonymization, is capable of being attributed to that person by the use of information other than that kept separately for the purposes of pseudonymization.

(4) In this Article "identifier" means a number or code (including any unique number or code issued to the individual by a public authority) assigned to an individual by a controller or processor for the purposes of its operations that uniquely identifies the individual and includes location data."

42. 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.
43. It has been indicated that the relevant individuals (GoJ employees and other third parties) are likely to be identified from the requested information and the Commissioner has had sight of the unredacted information.
44. For both the GoJ employees and the other third parties, the Commissioner is satisfied that the Withheld Information falls within the definition of personal data.
45. 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)(c) of the DPJL 2018?

46. 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)(c) of the DPJL 2018² in this regard.
47. 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.*
48. 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."

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

² (c) adequate, relevant and limited to what is necessary in relation to the purposes for which they are processed ("data minimization")

- 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.

50. 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.

51. In Decision Notice 2018-012³, this office considered, in depth, the application of Art.25 of the FOI Law. Those comments are not repeated but in respect of information that may be in the public interest *"deciding how to apply article 25 of the FOI Law to cases, such as the present, involves balancing the privacy rights of the individual against the public interest in disclosure. Taking a proportionate approach involves two key considerations. The first is the nature and sensitivity of the information at issue ... The second consideration concerns that nature of the public interest that disclosure of the information would serve. The term 'public interest' or 'interest of the public' appears in many statutes throughout the Commonwealth, but such statutes rarely, if ever, provide a definition of the term or any guidance for evaluating the circumstance of specific cases. This leaves it open to variation in interpretation. I agree with the SPA that the term public interest is more specific than 'what the public finds to be interesting'. It does not refer to interest in the sense of being entertaining. The term public interest concerns the public having a stake or right that is at issue rather than simply mere curiosity. This term applies in circumstances where an event or development is likely to affect tangibly the public in general."*

52. As is usual in cases where the Art.25 exemption is relied upon, the Commissioner asked the following questions in its letter to the Central Unit dated 5 December 2025:

"At the same time as providing the unredacted information, please identify which parts of that information Art.25 has been applied to and please:

³ <https://oicjersey.org/wp-content/uploads/2018/11/Decision-Notice-2018-01-FINAL.pdf>

1. explain whose personal data the SPA considers the requested information to be. Is the SPA's position that all of the withheld information is personal data? Has the SPA considered whether any of the Withheld Information also constitutes special category data? (Both 'personal data' and 'special category data' are defined by Art.1(1) of the Data Protection (Jersey) Law 2018 (the **DPJL 2018**)).

2. confirm which of the data protection principles (as set out at Art.8(1)(a)-(f) of the DPJL 2018) you believe would be breached if the Withheld Information was disclosed.

3. In assessing whether disclosure would be unfair and thus constitute a breach of the lawfulness, fairness and transparency principle (Art.8(1)(a) of the DPJL 2018) the Commissioner takes into account a number of factors such as:

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

- i. expectations of the affected individual at the time the information was collected and at the time of the request
- ii. expectations of privacy in line with their rights at Article 8 of the European Convention on Human Rights
- iii. whether the data relates to their public or private life
- iv. nature or content of the data
- v. circumstances in which the data was obtained
- vi. what the individual was told in any privacy or fair processing notice about how their data would be used
- vii. any specific assurances given to the individual

b. The consequences of disclosing the information, i.e. what damage or distress would the individual suffer if the information was disclosed? In consideration of this factor the Commissioner may take into account:

- i. whether information of the nature requested is already in the public domain;
- ii. if so the source of such a disclosure; and even if the information has previously been in the public domain does the passage of time mean that disclosure now could still cause damage or distress? Furthermore, notwithstanding the data subject's reasonable expectations or any damage or distress caused to them by disclosure, it may still be fair to disclose the requested information if it can be argued that there is a more compelling public interest in disclosure. Therefore, in explaining why you believe that disclosure would be unfair and/or unlawful please consider the criteria set out above. Have the SPA considered whether any of the conditions in Schedule 2 would allow the information to be disclosed.

4. *advise whether the affected data subjects have been made aware of Request and, if so, whether they were specifically asked for their consent to disclose the requested information. If consent was sought, was it given or withheld?"*

Commissioner's Decision

The GoJ employees

53. The Commissioner asked for, and was provided with, information about the identity of the GoJ employees and confirmation of their Tier status. It was clear that at all relevant times the GoJ employees were acting within their GoJ roles and in a professional capacity.
54. The Commissioner has previously stated⁴ the blanket exemptions should not be applied to GoJ employee information simply due to the fact that they are deemed to be below a particular Tier. Indeed, within that Decision Notice, reference was also made to the following:

"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..."

55. Despite the GoJ's own stated Guidance as referred to above, it was clear from the responses provided to the Commissioner in this case that a blanket approach had actually been adopted purely on the basis of a GoJ employee's Tier and no apparent analysis carried out as to why the relevant provisions of the DPJL 2018 would be contravened by disclosure. Indeed, the Commissioner had to presume this to be the case as no arguments were positively advanced (including about the consequences of disclosing the Withheld Information, nor about the individual's expectations about what would happen with their personal data despite being asked to comment on such) for any of the individuals whose names and details had been provided over and above the fact that they are simply below

⁴ Decision Notice [CAS-04796](#),

Tier 2 status, simply noting that "... *The employees have not been asked for their consent to disclose. All employees over Tier 2 are disclosed as standard.*"⁵

56. Despite the lack of fulsome argument being advanced in respect of this aspect of the Withheld Information, the Commissioner has reviewed the Withheld Information of the GoJ employees, and, in the circumstances of this case, the Commissioner does not consider that any significant and overriding basis has been evidenced for the disclosure of these individuals' personal data. Whilst these individuals have been involved in communications, this does not provide a default justification for their identities to become a matter of public record. Whilst no risks have been identified in terms of disclosure of the information, it is clear that the GoJ employees were acting in administrative capacities, and the Commissioner has therefore determined that there is insufficient legitimate interest to outweigh the fundamental rights and freedoms of the individuals in the context of this specific request. Therefore, he considers that there is no legal basis to disclose information of the GoJ employees whose names and email addresses were withheld, and to do so would be in breach of principle 8(1)(c).

Third parties outside GoJ

57. As to the data pertaining to third party individuals who are not employees of the GoJ, the Commissioner has reviewed the relevant Withheld Information.

58. Again, and despite invitation, no fulsome submissions were advanced about why it was considered information about these third parties should not be disclosed, nor of any risks or adverse consequences identified in terms of any potential disclosure.

59. However, the Commissioner has reviewed the Withheld Information in respect of those Third Parties outside GoJ and is satisfied that the information has been appropriately withheld in accordance with Art.25 of the FOI Law.

60. Appeal rejected.

The Decision

61. The Commissioner considers that:

- a. Both SPA1 and SPA2 failed to comply with Art.10 of the FOI Law.
- b. SPA2 responded to the request for information appropriately in this case and that the exemption provided for at Art.25 of the FOI Law was appropriately deployed.

62. Accordingly, the Complainant's appeal is partially upheld.

63. There are no further steps either SPA needs to take in this matter.

Right of Appeal

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

⁵ Submissions made to the Commissioner on 8 January 2025.

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

Dated this 04 July 2025

Signed.....

A handwritten signature in black ink, appearing to read 'Paul Vane', followed by a horizontal dotted line.

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.

10 Obligation of scheduled public authority to confirm or deny holding Information

- (1) Subject to paragraph (2), if –
 - (a) a person makes a request for information to a scheduled public authority; and
 - (b) the authority does not hold the information,it must inform the applicant accordingly.
- (2) If a person makes a request for information to a scheduled public authority and –
 - (a) the information is absolutely exempt information or qualified exempt information; or
 - (b) if the authority does not hold the information, the information would be absolutely exempt information or qualified exempt information if it had held it,

the authority may refuse to inform the applicant whether or not it holds the information if it is satisfied that, in all the circumstances of the case, it is in the public interest to do so.

- (3) If a scheduled public authority so refuses –
 - (a) it shall be taken for the purpose of this Law to have refused to supply the information requested on the ground that it is absolutely exempt information; and
 - (b) it need not inform the applicant of the specific ground upon which it is refusing the request or, if the authority does not hold the information, the specific ground upon which it would have refused the request had it held the information.

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].

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 2005.

(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.

(3) In determining for the purposes of this Article whether the lawfulness principle in Article 8(1)(a) of the [Data Protection \(Jersey\) Law 2018](#) would be contravened by the disclosure of information, paragraph 5(1) of Schedule 2 to that Law (legitimate interests) is to be read as if sub-paragraph (b) (which disapplies the provision where the controller is a public authority) were omitted.