

FREEDOM OF INFORMATION (JERSEY) LAW 2011

DECISION NOTICE

JOIC Reference	CAS-05998-T1C3Z1
Date of Decision Notice	31 July 2026
Scheduled Public Authority	Infrastructure & Environment
Address	Union Street St Helier Jersey JE2 3DN

Summary

1. The Complainant requested information from Infrastructure and Environment (the **SPA**) about planning application P/2025/0783 (the **Request**).
2. The Request was submitted through the Government of Jersey's FOI portal on 25 March 2026. The Request was not processed by the SPA as a formal request under the Freedom of Information (Jersey) Law 2011 (the **FOI Law**). Instead, the SPA decided to deal with the matter as a "business as usual" (**BAU**) request.
3. The Complainant issued an appeal to the Information Commissioner (the **Commissioner**) on 27 April 2026 (the **Appeal**).
4. The Commissioner has investigated and finds that the SPA has failed to deal with the Request in accordance with the requirements of Part 1 of the FOI Law. The Complainant's Request was valid for the purposes of Art.3 of the FOI Law and in failing to respond to the Request within twenty (20) working days, the SPA breached Art.13(1) of the FOI Law. The Commissioner's decision is to that the appeal is therefore upheld. However, there are no further steps the SPA needs to take in relation to this matter in relation to disclosure because the evidence before the Commissioner shows that the Request was handled through BAU and that all the information requested was ultimately provided to the Complainant through that route.

The Request

5. The Complainant's Request (submitted via the Government of Jersey's (**GoJ**) freedom of information [portal](#) on 25 March 2026) was in the following terms:

"All e-mail correspondence between Senior Planning Officers and ██████████ in January 2026 and all correspondence between all States Departments, the Planning Department, Planning Officers and ██████████, the applicants (for application P/2025/0783) and ██████████ in respect of the property Sunnylands, La Grande Route des Sablons, Grouville, including in relation to the pre application advice provided and the planning application P/2025/0783 to date."

6. On 25 March 2026 the Central Information Governance Unit (the **Central Unit**) emailed the Complainant in the following terms:

"On review this will not be processed as a Freedom of Information request but as a Business-as-Usual Request.

As your request is currently with us anonymously, we require your permission to forward this on with your personal information to the I&E Governance Team directly to manage on your behalf."

7. The Request was therefore not refused by reliance on any exemption under the FOI Law. Rather, it was diverted out of the formal FOI process and treated administratively as BAU.
8. On 21 April 2026, the SPA acknowledged the Request as a BAU request and stated that it was aiming to get back to the Complainant by 7 May 2026, which it did.

The Investigation

Scope of the case

9. On 27 April 2026, the Complainant contacted the Commissioner to complain about the fact that the SPA had dealt with their Request as BAU, rather than under the provisions of the FOI Law.
10. The issues for the Commissioner are whether the SPA was entitled to remove a validly submitted FOI request from the statutory FOI process and instead handle it as BAU, whether Art.11 of the FOI Law justified that approach, and whether the procedural requirements of the FOI Law were complied with.

Role of the Information Commissioner

11. 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.
12. 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 and sets out his decision.
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 the SPA. He is satisfied that no matter of relevance has been overlooked.

Chronology

14. On 27 March 2026 (at 10:13), the Central Unit asked the SPA whether the Request could be handled as BAU or FOI:

"Good morning

Please can I&E confirm if this can be handled as BAU or FOI?

All e-mail correspondence between Senior Planning Officers and ██████████ in January 2026 and all correspondence between all States Departments, the Planning Department, Planning Officers and ██████████, the applicants (for application P/2025/0783) and ██████████ in respect of the property Sunnylands, La Grande Route des Sablons, Grouville, including in relation to the pre application advice provided and the planning application P/2025/0783 to date."

15. On 30 March 2026 (10:17), ██████████ of the SPA replied: *"This can be responded to as BAU".* Later the same morning she added: *"Happy to respond as BAU. Please contact the applicant to request for their details to be sent to us so we can manage their request as BAU."*

16. On 16 April 2026 (7:35am), the Complainant gave permission for personal details to be shared with the SPA, but noting that: *"Under the Freedom of Information request 20 days has now passed since my Freedom of Information request on 25 March 2026 so please can you confirm when I will receive the information as has been requested on 25 March 2026."*

17. Later that same day (at 12:52) the Central Unit replied to the Complainant stating: *"Please see your details which will be shared with the I&E Governance Team directly and they will be in touch. Your request of information will be handled as Business-as-Usual Request and not a Freedom of Information Request as per our email below. And at 12:55, the Central Unit emailed the SPA stating that: "We have now received permission from the requestor to share their information. Please see their details below:..."*

18. At 21:12 the Complainant emailed the Central Unit also expressly querying why the request was not being processed under the FOI Law and asking for the rationale for that decision:

"Thank you for your e-mail and please can you provide me with a detailed explanation, the rational (sic) and the reason as to why my Freedom of Information request is not being processed under the Freedom of Information (Jersey) Law 2011 and within the 20 days which has now surpassed this timeline.

Another question and what is a Business-as-Usual request and where can I reference the Business-as-Usual within the Freedom of Information (Jersey) Law 2011 and will the information that I requested be provided now that we have surpassed the 20 days timeline?

Please accept this e-mail as my authority to forward on my personal information directly to the I&E Governance Team to provide the information that I requested under the Freedom of Information (Jersey) Law 2011 without any further delay.

Many thanks in advance and I look forward to receiving the information tomorrow."

19. On 17 April 2026, internal I&E correspondence stated: *"This still needs to be logged as BAU and acknowledgment still to be sent to the customer".*

20. On 20 April 2026 (11:31), the Central Unit informed the Complainant that *"We have tried to call but have not been able to contact you. As per the email attached you had agreed to have your information shared with the Scheduled Public Authority (SPA). They should have reached out confirming it is now with them, and they will be moving this forward. All communicaiton (sic) on this must continue with them as the FOI with us is closed. We have also received another similar FOI from yourself and believe this should also be asked as*

part of your current BAU questions with the planning department. Please confirm how you wish to proceed, or if you would like us to try and contact you by telephone again."

21. On 21 April 2026 (10:20) the SPA wrote to the Complainant stating that:

"Thank you for your request which is being dealt as a BAU – Business as Usual request.

We have forwarded your data disclosure request to the relevant team within the Regulation Department to search and locate the data, and we are aiming to get back to you by 07 May 2026, however, should we require more time, we will contact you as soon as possible to keep you updated.

Meanwhile, should you have any queries please do not hesitate to contact us."

22. On 24 April 2026, the Central Unit told the Complainant that it did not have an FOI request and could not assist further, and that a new similar FOI would also be part of the communication to be had directly with the SPA.

23. On 30 April 2026, the Commissioner wrote to the SPA seeking an explanation of:

- a. who made the decision to reject the Request and treat it as BAU;
- b. on what basis the Request was rejected; and
- c. which provisions of the FOI Law were relied upon.

24. On 14 May 2026, the SPA responded to the Commissioner's questions. Amongst other things, the SPA said the Request *"was not refused or rejected"* but was instead *"agreed with the applicant"* to be handled administratively as BAU, and it relied on Article 11 of the FOI Law and JOIC guidance in this regard.

Commissioner's Analysis and Findings

25. This case is not one in which the SPA relied on a substantive exemption under the FOI Law. No response was issued to the Complainant rejecting or otherwise refusing to act on the Request and the Complainant has not told the Commissioner that they did not in fact receive the information they had asked for (the Commissioner asked the Complainant to confirm but as at the date of this Decision Notice has not received a response. He has however had sight of the response provided to the Complainant, which was given to the Commissioner by the SPA). Accordingly, the central question is whether a valid request made under the FOI Law could lawfully be diverted out of the statutory regime and handled instead as BAU.

The Complainant's Position

26. The Complainant's position is a simple one; they query whether the SPA could decide to deal with the Request as BAU rather than as a request made under the FOI Law. The Complainant does not agree that they gave permission for their Request to be dealt with in this way.

The SPA's Position

27. The SPA's position is equally simple. It says that the Complainant agreed for the Request to be dealt with as BAU and that, accordingly, the usual provisions of the FOI Law do not apply in this case.

Analysis

28. Art.2 of the FOI Law states that any reference to a "*request for information*" is reference to such a request which:

- a. is in writing;
- b. states the name of the applicant;
- c. states an address for correspondence; and
- d. describes in adequate detail the information requested.

29. The Commissioner considers that if a request meets the above requirements, it is a valid request for information under the FOI Law and the scheduled public authority has an obligation to respond to it promptly (Art.13(1)) and in any event within twenty (20) working days (Art.13(2)(a)).

30. Considering the wording of the Complainant's Request, the Request clearly describes the information requested. It was made in writing (electronically via the GoJ portal) and provided the Complainant's name and address for correspondence. Accordingly, the Commissioner is satisfied that the Request submitted by the Complainant is a valid request for information under the FOI Law.

31. Art.8 of the FOI Law sets out that:

"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."

32. Being a valid request, the SPA is obliged to respond to such in accordance with the FOI Law.

33. The Commissioner notes first that the Request was made through the Government of Jersey FOI portal, was in writing, identified the applicant and described the information sought with specificity. The SPA has not suggested that the Request itself was invalid. Similarly, the SPA does not suggest that any of the provisions in Part 3 of the FOI Law apply (i.e. it has not suggested that the Request was either vexatious (Art.21) or repeated (Art.22).

34. The contemporaneous documents show that the decision to treat the matter as BAU originated within the SPA after the Central Unit asked whether the Request should be handled as BAU or FOI. The SPA responded to the Central Unit on 30 March 2026 that the matter could be responded to as BAU and was "*Happy to respond as BAU*".

35. The Central Unit then informed the Complainant on 25 March 2026, and again on 16 April 2026, that the request would not be processed as an FOI request but as BAU.

36. The SPA's later submission to the Commissioner was that the request "*was not refused or rejected under the Freedom of Information (Jersey) Law 2011*" and that, in accordance with Art.11 of the FOI Law, "*it was agreed with the requester that the information would be provided administratively through BAU arrangements rather than through a formal FOI*

response process." The SPA also said that, as per JOIC guidance, the information could be disclosed administratively, the applicant had agreed, and the information was reasonably suitable for routine operational disclosure.

37. The Commissioner does not accept that Art.11 permitted the SPA to remove the Request from the statutory FOI regime altogether. A provision concerned with the means by which information may be supplied governs the form of compliance with a valid request; it does not permit a SPA to disapply the statutory framework, its deadlines, or the requester's rights of review and appeal.

38. The Guidance Note to which the SPA refers as part of their appeal reads as follows:

"For a request to be valid under the Law it must be in writing, but applicants do not have to mention the Law or direct their request to a designated member of staff. It is good practice to provide the contact details of your freedom of information officer or team, if you have one, but you cannot ignore or refuse a request simply because it is addressed to a different member of staff. Any letter or email to a SPA asking for information is a request for recorded information under the Law.

This doesn't mean you have to treat every enquiry formally as a request under the Law. It will often be most sensible and provide better customer service to deal with it as a normal customer enquiry under your usual customer service procedures, for example, if a member of the public wants to know what date their rubbish will be collected, or whether a school has a space for their child.

The provisions of the Law need to come into force only if:

- *you cannot provide the requested information straight away; or*
- *the applicant makes it clear they expect a response under the Law.*" (Emphasis supplied)

39. The documents supplied to the Commissioner as part of this appeal process do not show that the Complainant agreed to withdraw the FOI request. Rather, they were told by the Central Unit that the Request was to be treated as a BAU Request and they repeatedly questioned why the request was not being processed under the FOI Law and referred expressly to the 20-day timescale having passed. Those queries about the legal basis for dealing with their Request as BAU were never responded to by either the Central Unit or the SPA and whilst the Complainant did consent to personal details being shared with the SPA, that is not the same thing as consenting to the loss of statutory FOI rights.

40. The SPA and the Central Unit also treated the FOI request as having been closed administratively. On 20 April 2026 the Complainant was told that *"the FOI with us is closed"*, and on 24 April 2026 the Complainant was told that the FOI team did not have an FOI request and could not assist further.

The Commissioner's Decision

41. As noted at paragraph 38 above, the Commissioner considers that the Request was valid as per Art.2 of the FOI Law.

42. The Commissioner finds that the SPA failed to deal with the Request in accordance with Part 1 of the FOI Law. The failure lay not in the application of an exemption, but in treating a

valid FOI request as having been removed from the statutory regime and dealt with only as BAU. Noting the Commissioner's guidance (upon which the SPA sought to rely), the Complainant clearly did not agree with the dealing of their Request as BAU and asked the Central Unit twice for clarification on the legal basis for which their Request was not to be dealt with under the FOI Law in the usual way. Similarly, the information requested was not capable of being provided "*straight away*" – it was not, in fact, entirely completed until 7 May 2026, some 33 working days after the Request was made.

43. The Commissioner also notes the SPA's submission that Art.11 of the FOI Law which they have interpreted as providing "*the SPA with the flexibility as to the means by which information may be supplied to an applicant*". Even accepting that proposition, such flexibility concerns how information is communicated, not whether the request remains subject to the FOI Law and the Commissioner finds that the SPA has erred in its interpretation of Art.11.

GENERAL MATTERS

44. Although it does not form part of this notice the Commissioner wishes to highlight the following matter of concern.
45. It is clear from the evidence supplied that it was the Central Unit that queried whether the Complainant's Request should be dealt with as BAU and the SPA agreed that was how it should be approached. The FOI Law is clear that any decision making regarding the handling of an FOI request rests with the relevant SPA. It is for the SPA to decide upon the validity of a request made and, similarly, for the SPA to make decisions about whether to reject such and on what basis, and which exemptions may be applicable in the circumstances.
46. The Central Unit is an administrative function only (it is not a scheduled public authority). It is the SPA (and not the Central Unit) that are responsible for complying with the provisions of the FOI Law which they must do so independently and without influence. Whilst scheduled public authorities may, of course, seek advice and assistance from wherever they wish (including the Central Unit) they cannot substitute or otherwise fetter their decision making and will be responsible for any decisions or actions purportedly taken in compliance with the FOI law.

The Decision

47. The Commissioner concludes that the SPA failed to deal with the Request, in contravention of Art.10 of the FOI Law in that it failed to confirm or deny whether it held the requested information. It is also in contravention of Art.13(1) in that it failed to deal with the request for information promptly or, in any event, within the period of twenty (20) working days.
48. Accordingly, the Complainant's appeal is fully upheld. However, the Complainant has received all the information requested and there are no further steps the SPA needs to take.

Right of Appeal

49. An aggrieved person (i.e. either the Complainant or the SPA) has the right to appeal against this Decision Notice to the Royal Court of Jersey.
50. Any Notice of Appeal should be served within 28 (calendar) days of the date on which the Decision Notice is issued.

51. Information on how to appeal may be obtained from:

Judicial Greffe
Royal Court House
Royal Square
St Helier
Jersey
JE1 1JG

Enforcement

52. If the SPA fails to comply with this decision, the Commissioner has the right to certify to the Royal Court of Jersey that the SPA has failed to comply. The Court has the right to inquire into the matter and may deal with the SPA as if it had committed a contempt of court.

Dated this 31st day of July 2026.

Signed.....



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Mr Paul Vane

Information Commissioner
Office of the Information Commissioner
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St Helier
Jersey