

Freedom of Information (Jersey) Law 2011

DECISION NOTICE

OIC Reference	CAS-01506_J2G1Z4
Date of Decision Notice	4 <sup>th</sup> October 2018
Scheduled Public Authority	Education Department (the SPA)
Address	PO Box 142 Highlands Campus St Helier Jersey JE4 8QJ
Date of Initial Request	<ul style="list-style-type: none"> <li>• 24 January 2018 (timed at 07:17) (the <b>First Request</b>); and</li> <li>• 24 January 2018 (timed at 07:20) (the <b>Second Request</b>).</li> </ul>
Date of SPA's responses	21 and 28 February 2018
Date of requests for Internal Review	28 February 2018
Date of Internal Reviews	28 March 2018
Date of Appeal to Information Commissioner	17 April 2018

**Summary/Decision**

1. The Complainant made two requests of the SPA relating to:
  - a. Inspection reports for all Jersey secondary schools for the last two years (the **First Request**); and
  - b. SATS exam results sat in 2017 by Year 6 children (the **Second Request**).
  
2. In respect of the First Request, the SPA withheld the requested information under Art.35 of the Freedom of Information (Jersey) Law 2011 (the **Law**) on the basis that the SPA is currently in the pilot phase of developing the 'Jersey Schools Review Framework' and that, accordingly, any school reports (or other documentation) generated as part of that pilot scheme fall to be exempted from disclosure. The SPA undertook an internal review (**IR1**) and upheld the initial decision to withhold the requested information by relying on Art.35 (formulation and development of policy). The SPA briefly referenced the public interest test for the qualified exemption of Art.35 stating that exemption was maintained in the circumstances.

3. In respect of the Second Request, the SPA withheld the requested information under Arts.23 and 35 of Law. The SPA indicated that the prime method of assessment in respect of Year 6 pupils in Jersey is not 'SATS' (such apparently being an out of date UK reference), but rather locally led Teacher Assessments, the results for which are published by each individual primary school. The SPA also indicated that the method of assessing Year 6 pupils (which included some schools utilising certain Key Stage 2 tests in place in England and Wales (**E&W**)) is currently under development. The SPA undertook an internal review (**IR2**) and upheld the initial decision to withhold the requested information. The SPA briefly referenced the public interest test for the qualified exemption of Art.35 stating that exemption was maintained in the circumstances.
4. The Complainant appealed to the Information Commissioner (the **Commissioner**) in respect of both the First and Second Request.
5. The Commissioner's decision is that:
  - a. In respect of the First Request, the SPA withheld the requested information in accordance with the Law; and
  - b. In respect of the Second Request, the SPA withheld the requested information in accordance with the Law save to the extent that certain primary schools did not actually have results of Teacher Assessments actually available, despite the SPA advising the Complainant that every primary school had published such on their individual websites.
6. In respect of the First Request, no further steps need be taken by the SPA to comply with the Law.
7. In respect of the Second Request, the SPA must provide the Complainant with copies of the Teacher Assessments for Rouge Bouillon and Samares primary schools (or provide internet links to the Complainant, if available). The SPA must take these steps within 35 calendar days of the date of this Notice. Failure to comply may result in the Commissioner making a written certification of this fact to the Royal Court pursuant to art.48(3) of the Law and may be dealt with as contempt of court.

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

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

### **The Requests**

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#### *The First Request*

10. On 24 January 2018 (timed at 07:17) the Complainant requested the following

*"I have recently read Victoria College's inspection report via facebook. I haven't been able to find this level of detail on other secondary schools in Jersey, but I would like to have it to help*

*make some choices about my children's education. Please could I have any review/inspection reports that exist for Jersey's secondary schools for the last 2 years" (the First Request).*

11. On 21 February 2018 the SPA (via the Central Freedom of Information (FOI) Unit (the **Unit**)) responded to the First Request in the following terms:

*"The Independent Schools' Inspectorate (ISI) report was produced by an independent body paid for by Victoria College; such inspections are not carried out in the other secondary schools so it is not possible to provide any reports.*

*The Education Department is currently developing the 'Jersey Schools Review Framework', which is in a pilot phase. The Review Framework aims to increase the confidence held in the quality of service offered by our schools to pupils, parents, schools staff and the wider community. The framework will provide our schools with the tools to evaluate and improve the quality of their provision. Initial reviews have provided training for senior school leaders as well as opportunities to develop processes and amend the evolving framework and policy appropriately.*

*Release of the reviews completed is, at this time, exempt under Article 35 (Formulation and development of policies) of the Freedom of Information (Jersey) Law 2011. However the intention is to start publishing the outcomes of these reviews from January 2019 once the pilot phase is complete and every school has had the opportunity to participate in this valuable learning experience.*

*Information on each of the Island's secondary schools can be found on their respective websites and the Education Department always welcomes the opportunity to discuss options with prospective parents" (the **First Response**).*

12. In considering the public interest test (which the qualified exemption of Art.35 is subject to), the SPA noted that whilst it may be in the public interest to disclose the requested information *"for the purposes of transparency and openness"* that it was not in the public interest *"to disclose the information requested as releasing the information at this time is inappropriate, given that not all schools have yet completed a review and that the review process, along with the format and output of the review, is still under development."*
13. The Complainant subsequently responded to the First Response indicating that they were not in agreement with that decision. In particular, the Complainant indicated that they did not agree that the exemption had been applied appropriately and considered that any reports that were available should be released, notwithstanding the fact that there may be reviews outstanding in respect of other secondary schools. The Complainant also indicated that, in their view, there was very little information available to parents who were making choices about their children's education and that, in the circumstances, there was clearly benefit in releasing the information.

14. On 28 March 2018, the Unit contacted the Complainant to advise that the internal review (IR1) was complete. IR1 upheld the SPA's initial refusal to release the information sought in the First Request.
15. IR1 gave further arguments for withholding the information in the public interest in that the SPA believed that *"disclosure of the information requested jeopardises its ability to develop, in a 'safe place', the Jersey Review Framework pilot scheme. The Department's objective to better implement school improvement strategies, identify areas for improvement, share best practice and raise standards will be partly met as a result of the review process being finalised in January 2019."*

#### *The Second Request*

16. On 24 January 2018 (timed at 07:20), the Complainant requested the following

*"I understand Jersey's Year 6 school children underwent SATS exams in 2017. I can't find any results on gov.je. I would like to know the average SATS score, by primary school, and also by the secondary school that they then entered in September. I would like to know the information for all schools in Jersey, including the private schools if possible.*

*For example: Primary school where SATS were taken / Average SAT score for Maths / Average SAT score for English reading / Number of pupils Secondary school / Average SAT score (obtained in year before entry to secondary school) for Maths / Average SAT score (obtained in year before entry to secondary school) for English reading / Number of pupils"* (the Second Request).

17. On 28 February 2018 the SPA (via the Central Freedom of Information (FOI) Unit (the **Unit**)) responded to the Second Request in the following terms (the **Second Response**):

*"By 'SATS exams' we understand you to be referring to the 'Standard Assessment Tests' used by the UK Government's Department for Education (DfE) for primary schools in England. This is an old term, now referred to as the 'Key Stage 2 National Curriculum Tests'.*

*In England, the National Curriculum Tests are used at both the end of Key Stage 1 (ie end of Year 2, when most pupils are 7 years of age) and at the end of Key Stage 2 (ie end of Year 6, when most pupils are 11 years of age). These are used for three main purposes:*

- i. To measure pupils achievement against the National Curriculum in English and mathematics*
- ii. To hold primary schools accountable for standards achieved in their schools*
- iii. To set the benchmark for measuring the 'value added' by Secondary schools in holding these schools to account*

*The Jersey Education Department decided to investigate how to utilise elements of various standardised tests, not for the reasons cited above, but in order to strengthen and embed Teacher Assessment, whilst ensuring the delivery of a broad and balanced curriculum.*

*The key assessment used throughout Primary education is Teacher Assessment. This is supported by moderation, which includes the use of test data to ensure consistency between schools and validate teachers' judgements. Jersey schools have used a wide range of tests and assessments for many years. In 2016, for example, Jersey piloted the use of an Island-wide test of 11 year olds in the September of their Year 7 school year to moderate Teacher Assessment. In 2017 we extended the pilot to utilise some of the tests in the May of children's Year 6, for the same purpose of informing and strengthening our Teacher Assessments. In addition to the States of Jersey primary schools, five of the six private schools with Year 6 pupils chose to participate. Jersey schools do not use any Key Stage 1 Tests, and only elements of the Key Stage 2 Tests for the reasons stated above.*

*As you note, there is no publication of SAT results, as this is not used as a measure in Jersey. The equivalent measure is Teacher Assessment. Schools publish the Teacher Assessment outcomes of their pupils on their websites. This information is already in the public domain.*

*Data for individual schools is now published on their websites. A link to these is found below:*

[List of primary schools](#)

*The data sent to Secondary schools on each pupil is Teacher Assessment, moderated by both the year 6 test and wider moderation processes. Jersey Primary Schools share all academic assessment data with the child's school at secondary transfer. Core to this is the teacher's assessment of the individual pupil. This is informed by the outcomes of year 6 tests.*

*Whilst the Education department develops a wider understanding of how the use of testing contributes to raising standards, it is not in a position to release the information requested as this information is exempt under Article 35 of the Freedom of Information (Jersey) Law 2011(Formulation and development of policies).*

*If a parent has a child in Year 6, it is possible to request this information directly from schools, specific to the individual child, as is the case with any parent wishing to exercise their right to see information held by a school about their child."*

18. The Complainant responded to the Second Response indicating that they were not in agreement with that decision. In particular, the Complainant indicated that they did not agree with the exemptions relied on by the SPA and they did not agree that SATS data itself was part of any policy development. The Complainant again indicated that what was being requested was basic data relating to average SAT score firstly by primary score where the tests were conducted and secondly by the secondary school where the pupils transferred to.
19. On 29 March 2018, the Unit contacted the Complainant to advise that the internal review (IR2) was complete. IR2 upheld the SPA's initial refusal to release the information sought in the Second Request. In particular, the SPA indicated that "*whilst there was a need for transparency, the information requested relates to an ongoing process that is being monitored and developed by the Education Department. The data generated from the tests is used to directly inform the development of process and policy and therefore its release could affect future use of this*

*information. The Government needs safe space in which to rigorously explore and develop the best processes possible. For this reason, on balance, it is considered it would not be in the public interest to disclose this information.”*

## **The Investigation**

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### **Scope of the case**

20. On 17 April 2018, the Complainant contacted the Commissioner to appeal the SPA’s decision to withhold the information sought in the First and Second Requests. The Complainant asked the Commissioner to review IR1 and IR2 and the responses received from the SPA in order to ascertain whether such were in accordance with the Law.
21. The Commissioner has set out in this Decision Notice the particular issues that he has had to consider in respect of each exemption cited by the SPA and, where relevant, the public interest test.
22. He is satisfied that no matter of relevance has been overlooked.

### **Chronology**

23. On 1st June 2018, the Commissioner wrote to the SPA to advise that the Complainant had appealed to the Commissioner regarding the SPA’s responses to the First and Second Requests, pursuant to Art.46 of the Law. The SPA was asked to begin collating the relevant documentation falling within the scope of the Request (including the Withheld Information) and prepare a written submission in response to the complaint. The SPA was asked not to send that information/submission to the Commissioner until requested to do so.
24. On 20 June 2018, the Commissioner wrote to the SPA asking for a copy of the requested information that had been withheld by the SPA and for their written submissions in response to the appeal launched by the Complainant.
25. The SPA responded on 9 July 2018 and provided the Commissioner with a letter explaining the rationale applied by the SPA in respect of the withheld information, together with relevant copy documents.
26. The Commissioner wrote to the SPA on 30 July 2018 seeking further information, to which the SPA responded on 9 August 2018. The Commissioner has not thought it necessary to request further information from the Complainant given the thoroughness of their original submissions both to the SPA and in making their appeal to the Commissioner.

**QUALIFIED EXEMPTIONS**

**Art.35 – Formulation and development of policies**

27. The full text of Art.35 of the Law can be found in the Legal Annex at the end of this Decision Notice.
28. Art.35 provides an exemption for information which relates to the formulation or development of any proposed policy by a scheduled public authority. It is a qualified exemption meaning that it is subject to the public interest test.
29. The Commissioner has sight of the judgment of the First Tier Information Rights Tribunal in the case of Department for Education v. Information Commissioner EA/2014/0079 dated 29 January 2015. Whilst not binding in Jersey, the Commissioner finds the guidance given by the Tribunal in respect of s35(1) of the Freedom of Information Act 2000<sup>1</sup> instructive:

*“21. Section 35 is a class based exemption. There is much case law relating to this provision. This Tribunal is not bound by any decision of the Information Tribunal or another First-tier Tribunal (“FTT”). However it can take note of any persuasive arguments in such decisions, but is not bound by them. The FTT is of course bound by decisions of higher courts. In relation to the case law the parties variously brought the FTT’s attention to the following matters:*

- a. The question in determining whether section 35 is engaged is whether “the information relates to the formulation or development of government policy” and this would appear to be answered by considering the contents of the information itself.*
- b. The characterisation of the information cannot change over time. The fact that particular information contained in a document relates to the formulation of policy at a particular point in time, does not mean that it no longer relates to formulation of policy once the policy has in fact been finalised.*
- c. The timing point goes solely to the question of the public interest balancing exercise.*
- d. The words “relates to” and “formulation and development of policy” in section 35(1)(a) can be given a “reasonably broad interpretation”.*
- e. Every decision is specific to the particular facts and circumstances under consideration.*
- f. No information within section 35(1)(a) is exempt from the duty of disclosure simply on account of its status, of its classification as minutes or advice to a minister nor of the seniority of those whose actions are recorded.*

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<sup>1</sup> S35(1) of FOIA is the equivalent provision to Art.35 of the Law.

*g. The timing of a request is of importance to the decision. When the formulation or development of a particular policy is complete is a question of fact. A parliamentary statement announcing the policy will normally mark the end of the process of formulation.*

*h. In judging the likely consequences of disclosure on official's future conduct, we are entitled to expect of them the courage and independence that has been the hallmark of our civil servants.*

*22. From the case law where information falls within the class described in section 35(1)(a) there is no presumption of a public interest in non-disclosure and no inherent weight is to be attached to the fact that information relates to the formulation or development of government policy in the public interest balancing exercise. Section 35 does not automatically deem or assume that disclosure of the information will be harmful. The DfE need to demonstrate to the Tribunal the actual interest that it is seeking to protect by maintaining the exemption, rather than just pointing to the fact that information is of a sort that falls within the class described in section 35(1)(a)."*

30. In IR1, the SPA gave some limited reference to the public interest test noting that whilst it may be in the public interest to disclose the requested information for the purposes of transparency and openness, that it was considered not to be in the public interest to disclose the information at this time *"...as not all schools have yet completed a review and that the review process, along with the format and output of the reviews, is still under development"*.

31. In IR1 the SPA went further stating the following

*"The Education Department believes that disclosure of the information requested jeopardises its ability to develop, in a 'safe space', the Jersey Review Framework pilot scheme. The Department's objective to better implement school improvement strategies, identify areas for improvement, share best practice and raise standards will be partly met as a result of the review process being finalised in January 2019. Until this time the Department is not in the position to release further information."*

*Public interest arguments in favour of disclosing the requested information*

32. The Commissioner considers that some weight must always be given to the general principle of achieving accountability and transparency through the disclosure of publicly held information. Disclosure of the information sought in the First Request in this case would enable the public to better understand performance of schools in Jersey.

33. The Commissioner has noted the views of the Information Rights Tribunal in E&W in the case of DWP v. Information Commissioner (EA/2006/0040) as regards the general operation of FOIA:

*"It can be said...that there is an assumption built into FOIA, that the disclosure of information by public authorities on request is in itself of value and in the public interest, in order to promote transparency and accountability in relation to the activities of public authorities. What this*

*means is that there is always likely to be some public interest in favour of the disclosure of information under the Act. The strength of that interest, and the strength of the competing interest in maintaining any relevant exemption, must be assessed on a case by case basis: section 2(2)(b) requires the balance to be considered 'in all the circumstances of the case'.*

34. Similarly, in the case of Guardian Newspapers Ltd and Heather Brooke v. The Information Commissioner and BBC (EA/2006/0011 and 13), the Information Rights Tribunal said:

*"While the public interest considerations in the exemption from disclosure are narrowly conceived, the public interest considerations in favour of disclosure are broad-ranging and operate at different levels of abstraction from the subject matter of the exemption. Disclosure of information serves the general public interest in the promotion of better government through transparency, accountability, public debate, better public understanding of decisions, and informed and meaningful participation by the public in the democratic process.*

*There is, in our opinion, considerable public interest in disclosing information about decisions that have already been made. Such information is capable of, inter alia, encouraging participation in and debate about future decisions; informing people of which considerations were taken seriously, which were, and, may routinely be, ignored; the weight that is, or appears to be, given to particular factors; which 'tactics' are successful and which are not; revealing more about the role of the civil servant and the 'negotiations' that take place; and confirmation that the democratic process is working properly."*

35. In this case, the SPA itself recognises that disclosure of the information sought in the First Request would promote openness and transparency and that release of information may inform the public and thereby stimulate debate.

*Public interest arguments in favour of maintaining the exemption*

36. It is generally recognised that there is a strong public interest in ensuring that there is an appropriate degree of safe space in which officials are able to gather and assess information and provide advice to Ministers, without premature disclosure of the assumptions, evaluations and concerns regarding the development of process. This is particularly the case where the advice will be considered by ministers during the formulation and development of a government policy.
37. It is also recognised that public authorities should be able to consider the information and advice before them and be able to reach objective, fully-informed decisions without impediment and distraction. This so called "safe space" is needed in appropriate circumstances to safeguard the effectiveness of the policy process.
38. The Commissioner understands that verbal assurances were provided to teaching unions and head teachers of the various schools that the outcome of any reviews would only be published once a school had been assessed in accordance with the new scheme, once settled. It is noted that the school review process is new to the Island and it is not simply a carbon copy of any process that may be in place in E&W.

39. The pilot phase is an opportunity to test and evolve the assessment process not only for the schools being reviewed but also for those carrying out the assessments. It is axiomatic that assessors would have improved and refined their assessment practice over the course of the pilot phase and it may be viewed as unfair and not in the public interest to publish reviews that may be some two years apart. All participants apparently understand, however, that from 2019 onwards, reports compiled after that date will be published.
40. The Commissioner understands that publication of reports compiled following reviews conducted during the pilot phase are opposed for the above reasons.

*Balance of the public interest arguments*

41. The timing of the complainant's request is relevant to the Commissioner's decision in this case.
42. The school process is still in formation and it remains, at this point, in its pilot phase. Schools that have been assessed have not all been assessed using the same criteria and the manner of assessment has changed throughout the pilot phase. Thus a school assessed towards the latter stages of the pilot phase have been assessed against different criteria to a school assessed in the earlier stages. Reports would thus not be a like-for-like comparison.
43. Similarly, the schools on the Island have needed the time afforded in the Pilot Phase to become cognisant with the details of the Review Framework, the reviews themselves and how to respond in preparing and writing evaluation reports. The review process and the individuals themselves have evolved over time as the Pilot Phase has progressed.
44. Having considered the public interest arguments associated with the First Request, the Commissioner has decided that greatest weight should be given to the need to maintain an appropriate degree of safe space. This space will allow the SPA to consider what are live policy issues without the distraction and interference which would likely flow from premature disclosure of reports that are based on a review process that has not been consistently applied during the Pilot Phase period.
45. Accordingly, the Commissioner considers that the exemption was properly engaged and that the public interest in maintaining the exemption outweighs the public interest in disclosure.
46. The Commissioner has concluded that the SPA has properly applied Art.35 in respect of the First Request.

**Analysis – Second Request**

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**ABSOLUTE EXEMPTIONS**

**Art.23 – Information accessible to the applicant by other means**

47. The full text of Art.23 of the Law can be found in the Legal Appendix at the end of this Decision Notice.

48. The SPA contends that certain information in relation to Teacher Assessments (as opposed to the SATS requested by the applicant in the Second Request) are already available to the applicant by other means as the local primary schools publish information about those assessments on their respective websites.
49. Upon questioning, it became clear that the websites for two local primary schools were likely offline at the time IR2 was provided to the applicant, namely Rouge Bouillon and Samares thus not all the requested information was accessible to the applicant by other means in respect of those two schools.

#### **Art.35 – Formulation and development of policies**

50. The full text of Art.35 of the Law can be found in the Legal Annex at the end of this Decision Notice.
51. The comments at paragraph 28 are repeated.

#### *Public interest arguments in favour of disclosing the requested information*

52. The Commissioner notes that in the Second Response, the SPA did not make any reference at all to the public interest test.
53. In IR2 the SPA did refer to the public interest test as follows

*“...Following assessment the Department has to decide whether, on balance, the public interest in maintaining the exemption outweighs the public interest in disclosing the information. Although there is a need for transparency, the information requested relates to an ongoing process that is being monitored and developed by the Education Department. The data generated from the tests is used to directly inform the development of process and policy and therefore its release could affect future use of this information.*

*The Government needs a safe space in which to explore and develop the best processes possible. For this reason, on balance, it is considered it would not be in the public interest to disclose this information.”*

54. In its subsequent response to the Commissioner, the SPA provided further explanation to its consideration of the public interest test stating that it is understood there is a public interest in transparency and accountability. It confirmed that it also understood that there is a public interest in disclosing information which would enable parents to better understand the tests taken by their children and how pupils at certain schools were performing, however, it also considers that the public interest rests in maintaining the application of Art.35 of the Law.

#### *Public interest arguments in favour of maintaining the exemption*

55. The SPA contended that it is Teacher Assessments that are the key accountability measures for primary schools not KS2 tests. Whilst certain schools had utilised KS2 tests in 2017, this was done to inform and refine the Teacher Assessments, rather than as a standalone process. That process remains on-going.

56. The SPA also considers KS2 tests to be a crude accountability measure of itself and one that has apparently been found to be an unreliable and potentially divisive testing measure. The SPA is concerned about the risk to teachers and pupils in releasing results which are not, actually fully reflective of pupil assessments and which may create league tables that do not have the benefit of the statistical integrity of the English system.
57. Similarly, KS2 tests carried out in E&W are also different in composition to the KS2 testing that was carried out in Jersey on that particular occasion and there is a concern that any comparisons between jurisdictions would not be accurate.
58. The SPA has indicated that it would discontinue any use of KS2 tests if the data were released.

#### *Balance of the public interest arguments*

59. The timing of the complainant's request is relevant to the Commissioner's decision in this case. There is a real risk of prejudicing the policy development process (namely the development of Teacher Assessments) by disclosing the requested information. The Commissioner also accepts the argument that given the KS2 tests are not entirely reflective of the equivalent KS2 tests carried out in E&W, that it would potentially be damaging to release the information relating to the Second Request.
60. It is noted that Teacher Assessments are published by the various primary schools and that those results are available to members of the public.
61. In respect of the Second Request, the Commissioner considers that the exemption was properly engaged and that the public interest in maintaining the exemption outweighs the public interest in disclosure.
62. The Commissioner has concluded that the SPA has properly applied Art.35 in this respect.

#### **The Decision**

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63. The Commissioner's decision is that the SPA correctly withheld the information that is the subject of the First Request.
64. In respect of the Second Request, the Commissioner's decision is that the SPA correctly withheld the information that is the subject of the Second Request save for that the SPA incorrectly advised the Complainant that the Teacher Assessments were available for all primary schools when, in fact, they were not available for Rouge Bouillon and Samares. The Commissioner requires the SPA to provide copies of the relevant Teacher Assessments to the complainant.

#### **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. If you wish to appeal against this Decision Notice, you can obtain information on how to do so on <https://www.oicjersey.org>.

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

Dated this 4th day of October 2018

Signed.....

**Mr Paul Vane**

Deputy Information Commissioner  
Office of the Information Commissioner  
Brunel House  
Old Street  
St Helier  
Jersey

**8 General right to be supplied with information held by a scheduled public authority**

If a person makes a request for information held by a scheduled public authority –

- (a) the person has a general right to be supplied with 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.

**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.

**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.

### **35 Formulation and development of policies**

Information is qualified exempt information if it relates to the formulation or development of any proposed policy by a public authority