



Jersey

# **FREEDOM OF INFORMATION (JERSEY) LAW 2011**

## **Official Consolidated Version**

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Jersey

# FREEDOM OF INFORMATION (JERSEY) LAW 2011

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Jersey

## FREEDOM OF INFORMATION (JERSEY) LAW 2011

A **LAW** to provide for the supply of information held by public authorities and for connected purposes.

Commencement [[see endnotes](#)]

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### PART 1

#### GENERAL

#### 1 Interpretation

In this Law, unless a contrary intention appears –

“absolutely exempt information” means information of a type specified in Part 4;

“administration of the States” means –

- (a) a department established on behalf of the States; and
- (b) a body, office or unit of administration, established on behalf of the States (including under an enactment);

“information” means information recorded in any form;

“Information Commissioner” means the person appointed as such under Article 5(1) of the [Data Protection Authority \(Jersey\) Law 2018](#)

“function” includes a duty and a power;

“public authority” means –

- (a) the States Assembly including the States Greffe;
- (b) a Minister;
- (c) a committee or other body established by a resolution of the States or by, or in accordance with, standing orders of the States Assembly;
- (d) an administration of the States;
- (e) a Department referred to in Article 1 of the [Departments of the Judiciary and the Legislature \(Jersey\) Law 1965](#);

- (f) the States of Jersey Police Force;
- (g) a parish;
- (h) to the extent not included in paragraph (a) to (g) above, any body (whether incorporated or unincorporated) –
  - (i) which is in receipt of funding at least half of which is from the States in one or more years,
  - (ii) which carries out statutory functions,
  - (iii) which is appointed, or whose officers are appointed, by a Minister,
  - (iv) which appears to the States to exercise functions of a public nature, or
  - (v) which provides any service under a contract made with any public authority described in paragraphs (a) to (g), the provision of such service being a function of that authority;

“qualified exempt information” means information of a type specified in Part 5;

“Regulations” means Regulations made by the States for the purposes of this Law;

“scheduled public authority” means a public authority described in Schedule 1.<sup>1</sup>

## **2 Meaning of “request for information”**

- (1) For the purposes of this Law, “request for information” means a request for information made under this Law that –
  - (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.
- (2) In paragraph (1)(a), a request for information in writing includes a request for information transmitted by electronic means if the request –
  - (a) is received in legible form; and
  - (b) is capable of being used for subsequent reference.

## **3 Meaning of “information held by a public authority”**

For the purposes of this Law, information is held by a public authority if –

- (a) it is held by the authority, otherwise than on behalf of another person; or
- (b) it is held by another person on behalf of the authority.

## **4 Meaning of “information to be supplied by a public authority”**

- (1) For the purposes of this Law, the information held by a public authority at the time when a request for the information is received is the information that is to be taken to have been requested.

- (2) However, account may be taken of any amendment or deletion made to the information between the time when the request for the information was received and the time when it is supplied if the amendment or deletion would have been made regardless of the request for the information.

## **5 Law does not prohibit the supply of information**

Nothing in this Law is to be taken or interpreted as prohibiting a public authority from supplying any information it is requested to supply.

## **6 Parts and Schedule 1 may be amended by Regulations**

The States may, by Regulations –

- (a) amend any of Articles 1 to 4 and Schedule 1;
- (b) amend Parts 4 and 5 by adding further descriptions of absolutely exempt information or qualified exempt information.

## **7 Scheduled public authorities to prepare information index**

Each scheduled public authority, in order to facilitate the implementation of this Law, must prepare and maintain an index of the information that it holds.

# **PART 2**

## **ACCESS TO INFORMATION HELD BY A SCHEDULED PUBLIC AUTHORITY**

## **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.

## **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.

## **11 Means by which a scheduled public authority may supply information**

A scheduled public authority may comply with a request for information by supplying the information by any reasonable means.

## **12 Duty of a scheduled public authority to supply advice and assistance**

A scheduled public authority must make reasonable efforts to ensure that a person who makes, or wishes to make, a request to it for information is supplied with sufficient advice and assistance to enable the person 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.
- (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](#).

#### **14 A scheduled public authority may request additional details**

A scheduled public authority that has been requested to supply information may request the applicant to supply it with further details of the information so that the authority may identify and locate the information.

#### **15 A scheduled public authority may request fee for supplying information**

- (1) A scheduled public authority that has been requested to supply information may request the applicant to pay for the supply of the information a fee determined by the scheduled public authority in the manner prescribed by Regulations.
- (2) The request for the fee must be made within the time allowed to the scheduled public authority to comply with the request for the information.

#### **16 A scheduled public authority may refuse to supply information if cost excessive**

- (1) A scheduled public authority that has been requested to supply information may refuse to supply the information if it estimates that the cost of doing so would exceed an amount determined in the manner prescribed by Regulations.<sup>2</sup>
- (2) Despite paragraph (1), a scheduled public authority may still supply the information requested on payment to it of a fee determined by the authority in the manner prescribed by Regulations for the purposes of this Article.
- (3) Regulations may provide that, in such circumstances as the Regulations prescribe, if two or more requests for information are made to a scheduled public authority –

- (a) by one person; or
- (b) by different persons who appear to the scheduled public authority to be acting in concert or in pursuance of a campaign,

the estimated cost of complying with any of the requests is to be taken to be the estimated total cost of complying with all of them.

## **17 Where public records transferred to the Jersey Heritage Trust**

An application for information that has been transferred by a scheduled public authority to the Jersey Heritage Trust shall be dealt with in the manner prescribed by Regulations.

## **18 Where a scheduled public authority refuses a request**

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

## **19 A scheduled public authority must supply information held by it for a long time**

- (1) If a request is made to a scheduled public authority for information that it need not otherwise supply by virtue of –

- (a) Article 28;
- (b) Article 30;
- (c) Article 33;
- (d) Article 34;
- (e) Article 37; or
- (f) Article 39,

it must supply the information if it has held the information for more than 30 years.

- (2) If a request is made to a scheduled public authority for other information that it need not otherwise supply by virtue of any other provision of Part 4 or 5, it must supply the information if it has held the information for more than 100 years.

- (3) The States may, by Regulations –

- (a) exempt any information from the provisions of paragraph (1) or (2); or
- (b) specify such other period for the purposes of paragraph (1) or (2) as it thinks fit.

## **20 Publication schemes**

Regulations may prescribe requirements for a scheduled public authority to adopt and maintain a scheme requiring it to publish information.

## PART 3

### VEXATIOUS AND REPEATED REQUESTS

#### **21 A scheduled public authority need not comply with vexatious requests**

- (1) A scheduled public authority need not comply with a request for information if it considers the request to be vexatious.
- (2) In this Article, a request is not vexatious simply because the intention of the applicant is to obtain information –
  - (a) to embarrass the scheduled public authority or some other public authority or person; or
  - (b) for a political purpose.
- (3) However, a request may be vexatious if –
  - (a) the applicant has no real interest in the information sought; and
  - (b) the information is being sought for an illegitimate reason, which may include a desire to cause administrative difficulty or inconvenience.

#### **22 A scheduled public authority need not comply with repeated requests**

- (1) This Article applies if –
  - (a) an applicant has previously made a request for information to a scheduled public authority that it has complied with; and
  - (b) the applicant makes a request for information that is identical or substantially similar.
- (2) The scheduled public authority may refuse to comply with the request unless a reasonable interval has elapsed between compliance with the previous request and the making of the current request.

## PART 4

### ABSOLUTELY EXEMPT INFORMATION

#### **23 Information accessible to applicant by other means**

- (1) Information is absolutely exempt information if it is reasonably available to the applicant, otherwise than under this Law, whether or not free of charge.
- (2) A scheduled public authority that refuses an application for information on this ground must make reasonable efforts to inform the applicant where the applicant may obtain the information.

#### **24 Court information**

- (1) Information is absolutely exempt information if it is held by a scheduled public authority only by virtue of being contained in a document –

- (a) filed with, or otherwise placed in the custody of, a court; or
  - (b) served upon, or by, the scheduled public authority,in proceedings in a particular cause or matter.
- (2) Information is absolutely exempt information if it is held by a scheduled public authority only by virtue of being contained in a document created by –
  - (a) a court; or
  - (b) a member of the administrative staff of a court,in proceedings in a particular cause or matter.
- (3) Information is absolutely exempt information if it is held by a scheduled public authority only by virtue of being contained in a document –
  - (a) placed in the custody of; or
  - (b) created by,a person conducting an inquiry or arbitration, for the purposes of the inquiry or arbitration.
- (4) In this Article –
  - “arbitration” means arbitration to which Part 2 of the [Arbitration \(Jersey\) Law 1998](#) applies;
  - “court” includes any tribunal in which legal proceedings may be brought;
  - “inquiry” means an inquiry or a hearing held under an enactment;
  - “proceedings in a particular cause or matter” includes an inquest or post-mortem examination.

## 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.<sup>3</sup>
- (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.<sup>4</sup>

## 26 Information supplied in confidence

Information is absolutely exempt information if –

- (a) it was obtained by the scheduled public authority from another person (including another public authority); and

- (b) the disclosure of the information to the public by the scheduled public authority holding it would constitute a breach of confidence actionable by that or any other person.

## **26A Information supplied by, or relating to, bodies dealing with security matters<sup>5</sup>**

- (1) Information is absolutely exempt information if it is held by a scheduled public authority and either or both of the following apply –
  - (a) it was directly or indirectly supplied to the scheduled public authority by any of the bodies specified in paragraph (2); or
  - (b) it relates to any of those bodies.
- (2) Those bodies are –
  - (a) the Security Service within the meaning of section 1 of the Security Service Act 1989 of the United Kingdom;
  - (b) the Secret Intelligence Service within the meaning of section 1 of the Intelligence Services Act 1994 of the United Kingdom;
  - (c) the Government Communications Headquarters within the meaning of section 3 of the Intelligence Services Act 1994 of the United Kingdom, including any unit or part of a unit of the armed forces of the Crown which is for the time being required by the Secretary of State to assist the Government Communications Headquarters in carrying out its functions;
  - (d) the special forces within the meaning of section 84 of the Freedom of Information Act 2000 of the United Kingdom;
  - (e) the Tribunal established under section 65 of the Regulation of Investigatory Powers Act 2000 of the United Kingdom;
  - (f) the Tribunal established under section 7 of the Interception of Communications Act 1985 of the United Kingdom;
  - (g) the Tribunal established under section 5 of the Security Service Act 1989 of the United Kingdom;
  - (h) the Tribunal established under section 9 of the Intelligence Services Act 1994 of the United Kingdom;
  - (i) the Security Vetting Appeals Panel referred to in section 23(3) of the Freedom of Information Act 2000 of the United Kingdom;
  - (j) the Security Commission referred to in section 23(3) of the Freedom of Information Act 2000 of the United Kingdom;
  - (k) the National Criminal Intelligence Service established under section 2 of the Police Act 1997 of the United Kingdom;
  - (l) the Service Authority for the National Criminal Intelligence Service established under section 1 of the Police Act 1997 of the United Kingdom;
  - (m) the Serious Organised Crime Agency established under section 1 of the Serious Organised Crime and Police Act 2005 of the United Kingdom;
  - (n) the National Crime Agency formed under section 1 of the Crime and Courts Act 2013 of the United Kingdom;

- (o) the Intelligence and Security Committee of Parliament established under section 1 of the Justice and Security Act 2013 of the United Kingdom.
- (3) Except as provided by paragraph (4), a certificate signed by the Chief Minister certifying that the information to which it applies was directly or indirectly supplied by, or relates to, any of the bodies specified in paragraph (2) is conclusive evidence of that fact.
- (4) A person aggrieved by the decision of the Chief Minister to issue a certificate under paragraph (3) may appeal to the Royal Court on the grounds that the Chief Minister did not have reasonable grounds for issuing the certificate.
- (5) The decision of the Royal Court on the appeal shall be final.

## **27 National security**

- (1) Information which does not fall within Article 26A(1) is absolutely exempt information if exemption from the obligation to disclose it under this Law is required to safeguard national security.<sup>6</sup>
- (2) Except as provided by paragraph (3), a certificate signed by the Chief Minister certifying that the exemption is required to safeguard national security is conclusive evidence of that fact.
- (3) A person aggrieved by the decision of the Chief Minister to issue a certificate under paragraph (2) may appeal to the Royal Court on the grounds that the Chief Minister did not have reasonable grounds for issuing the certificate.
- (4) The decision of the Royal Court on the appeal shall be final.

## **28 States Assembly privileges**

- (1) Information is absolutely exempt information if exemption from the obligation to disclose it under this Law is required to avoid an infringement of the privileges of the States Assembly.
- (2) Except as provided by paragraph (3), a certificate signed by the Greffier of the States certifying that exemption is required to avoid an infringement of the privileges of the States Assembly is conclusive evidence of that fact.
- (3) A person aggrieved by the decision of the Greffier of the States to issue a certificate under paragraph (2) may appeal to the Royal Court on the grounds that the Greffier did not have reasonable grounds for issuing the certificate.
- (4) The decision of the Royal Court on the appeal shall be final.

## **29 Other prohibitions or restrictions**

Information is absolutely exempt information if the disclosure of the information by the scheduled public authority holding it –

- (a) is prohibited by or under an enactment;
- (b) is incompatible with a European Union or an international obligation that applies to Jersey; or
- (c) would constitute or be punishable as a contempt of court.

## PART 5

### QUALIFIED EXEMPT INFORMATION

#### **30 Communications with Her Majesty etc. and honours**

Information is qualified exempt information if it is or relates to –

- (a) a communication with Her Majesty, with any other member of the Royal Family or with the Royal Household; or
- (b) the conferring of an honour or dignity by the Crown.

#### **31 Advice by the Bailiff, Deputy Bailiff or a Law Officer**

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

#### **32 Legal professional privilege**

Information is qualified exempt information if it is information in respect of which a claim to legal professional privilege could be maintained in legal proceedings.

#### **33 Commercial interests**

Information is qualified exempt information if –

- (a) it constitutes a trade secret; or
- (b) its disclosure would, or would be likely to, prejudice the commercial interests of a person (including the scheduled public authority holding the information).

#### **34 The economy**

Information is qualified exempt information if its disclosure would, or would be likely to, prejudice –

- (a) the economic interests of Jersey; or
- (b) the financial interests of the States of Jersey.

#### **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.

#### **36 Information intended for future publication**

- (1) Information is qualified exempt information if, at the time when the request for the information is made, the information is being held by a public authority with a view to its being published within 12 weeks of the date of the request.

- (2) A scheduled public authority that refuses an application for information on this ground must make reasonable efforts to inform the applicant –
  - (a) of the date when the information will be published;
  - (b) of the manner in which it will be published; and
  - (c) by whom it will be published.
- (3) In this Article, “published” means published –
  - (a) by a public authority; or
  - (b) by any other person.

### **37 Audit functions**

- (1) Information is qualified exempt information –
  - (a) if it is held by a scheduled public authority mentioned in paragraph (2); and
  - (b) if its disclosure would, or would be likely to, prejudice the exercise of any of the authority’s functions in relation to a matter mentioned in paragraph (2)(a) or (b).
- (2) A scheduled public authority referred to in paragraph (1) is a scheduled public authority that has functions in relation to –
  - (a) the audit of the accounts of another public authority; or
  - (b) the examination of the economy, efficiency and effectiveness with which another public authority uses its resources in discharging its functions.
- (3) Information is also qualified exempt information –
  - (a) if it is held by the Comptroller and Auditor General; and
  - (b) if its disclosure would, or would be likely to, prejudice the exercise of any of his or her functions.

### **38 Endangering the safety or health of individuals**

Information is qualified exempt information if its disclosure would, or would be likely to –

- (a) endanger the safety of an individual; or
- (b) endanger the physical or mental health of an individual.

### **39 Employment**

Information is qualified exempt information if its disclosure would, or would be likely to, prejudice pay or conditions negotiations that are being held between a public authority and –

- (a) an employee or prospective employee of the authority; or
- (b) representatives of the employees of the authority.



**40 Defence**

- (1) Information is qualified exempt information if its disclosure would, or would be likely to, prejudice –
  - (a) the defence of the British Islands or any of them; or
  - (b) the capability, effectiveness or security of any relevant forces.
- (2) In paragraph (1)(b) “relevant forces” means –
  - (a) the armed forces of the Crown; or
  - (b) a force that is co-operating with those forces or a part of those forces.

**41 International relations**

- (1) Information is qualified exempt information if its disclosure would, or would be likely to, prejudice relations between Jersey and –
  - (a) the United Kingdom;
  - (b) a State other than Jersey;
  - (c) an international organization; or
  - (d) an international court.
- (2) Information is qualified exempt information if its disclosure would, or would be likely to, prejudice –
  - (a) any Jersey interests abroad; or
  - (b) the promotion or protection by Jersey of any such interest.
- (3) Information is also qualified exempt information if it is confidential information obtained from –
  - (a) a State other than Jersey;
  - (b) an international organization; or
  - (c) an international court.
- (4) In this Article, information obtained from a State, organization or court is confidential while –
  - (a) the terms on which it was obtained require it to be held in confidence; or
  - (b) the circumstances in which it was obtained make it reasonable for the State, organization or court to expect that it will be so held.
- (5) In this Article –

“international court” means an international court that is not an international organization and that was established –

  - (a) by a resolution of an international organization of which the United Kingdom is a member; or
  - (b) by an international agreement to which the United Kingdom was a party;

“international organization” means an international organization whose members include any two or more States, or any organ of such an organization;

“State” includes the government of a State and any organ of its government, and references to a State other than Jersey include references to a territory for whose external relations the United Kingdom is formally responsible.

## **42 Law enforcement**

Information is qualified exempt information if its disclosure would, or would be likely to, prejudice –

- (a) the prevention, detection or investigation of crime, whether in Jersey or elsewhere;
- (b) the apprehension or prosecution of offenders, whether in respect of offences committed in Jersey or elsewhere;
- (c) the administration of justice, whether in Jersey or elsewhere;
- (d) the assessment or collection of a tax or duty or of an imposition of a similar nature;
- (e) the operation of immigration controls, whether in Jersey or elsewhere;
- (f) the maintenance of security and good order in prisons or in other institutions where persons are lawfully detained;
- (g) the proper supervision or regulation of financial services; or
- (h) the exercise, by the Jersey Financial Services Commission, of any function imposed on it by any enactment.

## **PART 6**

### **THE INFORMATION COMMISSIONER AND APPEALS**

## **43 General functions of the Information Commissioner**

- (1) The Information Commissioner must –
  - (a) encourage public authorities to follow good practice in their implementation of this Law and the supply of information; and
  - (b) supply the public with information about this Law.
- (2) Each year the Information Commissioner must prepare a general report on the exercise by the Information Commissioner of his or her functions under this Law during the preceding year.
- (3) The report must be laid before the States Assembly as soon as practicable.

## **44 The Information Commissioner may or may be required to issue a Code of Practice**

- (1) Regulations may permit or require the Information Commissioner to issue a Code of Practice for the purposes of this Law.
- (2) Regulations made under paragraph (1) may, in particular, prescribe –
  - (a) the subject matter to be addressed by a Code of Practice;

- (b) any consultation that must be undertaken or approval that must be obtained before a Code of Practice is issued; and
- (c) the effect (if any) of complying or of not complying with a Code of Practice.

#### **45 Powers of Information Commissioner to enter premises, to require the supply of information and to inspect information**

Schedule 2 shall have effect.

#### **46 Appeals to the Information Commissioner**

- (1) This Article applies to a decision by a scheduled public authority –
  - (a) as to the amount of a fee payable under Article 15(1) or 16(2);
  - (b) as to the cost of supplying information for the purpose of Article 16(1);
  - (c) to refuse to comply with a request for information on a ground specified in Part 3;
  - (d) to refuse to comply with a request for information on the ground that the information is absolutely exempt information;
  - (e) to refuse to comply with a request for information on the grounds that it is qualified exempt information and 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; or
  - (f) taken in compliance, or purported compliance, with any requirement of Part 2 of the Law including Regulations made under that Part, such decision being one that is not otherwise referred to in sub-paragraphs (a) to (e).<sup>7</sup>
- (2) A person aggrieved by a decision of a scheduled public authority to which this Article applies, may, within 6 weeks of notice of that decision being given or, if later, within 6 weeks of the date the applicant has exhausted any complaints procedure provided by the scheduled public authority, appeal to the Information Commissioner.<sup>8</sup>
- (3) The appeal may be made on the grounds that in all the circumstances of the case the decision was not reasonable.
- (4) The Information Commissioner must decide the appeal as soon as is practicable but may decide not to do so if the Commissioner is satisfied that –
  - (a) the applicant has not exhausted any complaints procedure provided by the scheduled public authority;
  - (b) there has been undue delay in making the appeal;
  - (c) the appeal is frivolous or vexatious; or
  - (d) the appeal has been withdrawn, abandoned or previously determined by the Commissioner.
- (5) The Information Commissioner must serve a notice of his or her decision in respect of the appeal on the applicant and on the scheduled public authority.
- (6) The notice must specify –

- (a) the Commissioner's decision and, without revealing the information requested, the reasons for the decision; and
- (b) the right of appeal to the Royal Court conferred by Article 47.

#### **47 Appeals to the Royal Court**

- (1) An aggrieved person may appeal to the Royal Court against a decision of the Information Commissioner under Article 46.
- (2) The appeal may be made on the grounds that in all the circumstances of the case the decision was not reasonable.
- (3) The appeal must be made within 28 days of the Information Commissioner giving notice of his or her decision to the applicant.
- (4) The decision of the Royal Court on the appeal shall be final.
- (5) Where the appeal was in respect of a decision by the Information Commissioner not to decide an appeal, the Royal Court may direct the Information Commissioner to decide the appeal.
- (5A) Subject to paragraph (5), the Royal Court shall –
  - (a) allow the appeal;
  - (b) substitute for the Information Commissioner's decision such other decision that the Information Commissioner could have made; or
  - (c) dismiss the appeal.<sup>9</sup>
- (6) At the hearing by the Royal Court of an appeal the aggrieved person and the Information Commissioner may each appear and be heard either in person or by a representative, such representative being an advocate of the Royal Court or such other person as the Royal Court may by rules prescribe.

#### **48 Failure of a scheduled public authority to comply with a notice by the Information Commissioner**

- (1) This Article applies where, on an appeal under Article 46, the Information Commissioner has served a notice on a scheduled public authority that contains one or more of the statements set out in paragraph (2) and the authority has not complied with the notice after –
  - (a) failing to appeal under Article 47; or
  - (b) having appealed, having lost the appeal.<sup>10</sup>
- (2) The statements mentioned in paragraph (1) are –
  - (a) that the fee payable by virtue of Article 15(1) or 16(2) should be less than the fee determined by the authority and that the information should be supplied on payment of the fee specified in the notice;
  - (b) that the cost of supplying information for the purpose of Article 16(1) should be less than the cost determined by the authority and that the information should be supplied on payment of the amount specified in the notice;

- (c) that the refusal by the authority to comply with a request for information on a ground specified in Part 3 was not reasonable and that the information should be supplied;
  - (d) that the refusal by the authority to comply with a request for information on the ground that the information was absolutely exempt information was incorrect and that the information should be supplied;
  - (e) that the refusal by the authority to comply with a request for information on the grounds that it is qualified exempt information and 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 was not a reasonable decision and that the information should be supplied;
  - (f) that the authority has not complied with the requirements of Part 2 of the Law, namely the requirement [insert a description of the requirement and the applicable provision setting out the requirement in Part 2 or in Regulations under that Part] and that the authority must comply with the requirement.<sup>11</sup>
- (3) The Information Commissioner may certify in writing to the Royal Court that the scheduled public authority has failed to comply with one or more requirements in the notice.<sup>12</sup>
- (4) The Court may inquire into the matter and hear –
- (a) any witness who may be produced against or on behalf of the scheduled public authority; and
  - (b) any statement that may be offered in defence.<sup>13</sup>
- (5) After inquiring into the matter, the Court may do either or both of the following –
- (a) deal with the scheduled public authority as if it had committed a contempt of court; and
  - (b) substitute for the Information Commissioner's notice such other notice that the Information Commissioner could have made.<sup>14</sup>

## PART 7

### MISCELLANEOUS AND SUPPLEMENTAL

#### **49 Offence of altering, etc. records with intent to prevent disclosure**

- (1) This Article applies if –
- (a) a request for information has been made to a scheduled public authority; and
  - (b) under this Law the applicant would have been entitled to be supplied with the information.
- (2) A person is guilty of an offence and liable to a fine if the person –
- (a) alters;
  - (b) defaces;
  - (c) blocks;
  - (d) erases;

(e) destroys; or

(f) conceals,

a record held by the scheduled public authority, with the intention of preventing the authority from supplying the information to the applicant.

- (3) Proceedings for an offence under this Article shall not be instituted except by or with the consent of the Attorney General.

## **50 Defamation**

- (1) This Article applies if information supplied by a scheduled public authority to an applicant under this Law was supplied to the scheduled public authority by a third person.
- (2) The publication to the applicant of any defamatory matter contained in the information is privileged unless the publication is shown to have been made with malice.

## **51 Application to the administrations of the States**

- (1) In this Law each administration of the States is to be treated as a separate person.
- (2) However, paragraph (1) does not enable an administration of the States to claim for the purposes of Article 26(b) that the disclosure of information by it would constitute a breach of confidence actionable by another administration of the States.

## **52 States exempt from criminal liability**

- (1) This Article applies to the following public authorities –
- (a) the States Assembly including the States Greffe;
  - (b) a committee or other body established by the States or by or in accordance with the standing orders of the States Assembly;
  - (c) an administration of the States;
  - (d) the Judicial Greffe;
  - (e) the Viscount's department.
- (2) A public authority to which this Article applies is not liable to prosecution under this Law but Article 49 applies to a person acting on behalf of or employed by such an authority as it applies to any other person.

## **53 Regulations**

- (1) The States may make Regulations prescribing any matter which may be prescribed under this Law.
- (2) Regulations under this Law may contain such transitional, consequential, incidental or supplementary provisions as appear to the States to be necessary or expedient for the purposes of the Regulations.

**54 Rules of Court**

- (1) The power to make rules of court under Article 13 of the [Royal Court \(Jersey\) Law 1948](#) shall include the power to make rules regulating the practice and procedure on any matter relating to the Royal Court under this Law.<sup>15</sup>
- (2) Without prejudice to the generality of paragraph (1), such rules of court may, in particular, make provision for –
  - (a) enabling directions to be given to withhold material or restrict disclosure of any information relevant to proceedings under Article 47 from any party (including any representative of any party) to the proceedings; and
  - (b) notwithstanding Article 47(6), enabling the court to conduct such proceedings in the absence of any person, including a party to the proceedings (or any representative of a party to the proceedings).<sup>16</sup>
- (3) In making rules of court described in paragraph (2), regard shall be had to –
  - (a) the need to secure that the decisions that are the subject of such proceedings are properly reviewed; and
  - (b) the need to secure that disclosures of information are not made where they would be contrary to the public interest.<sup>17</sup>

**55** <sup>18</sup>

**56 Citation**

This Law may be cited as the Freedom of Information (Jersey) Law 2011.

**57 Commencement**

- (1) This Law shall come into force on such day or days as the States may by Act appoint.
- (2) Different days may be appointed for different provisions of this Law or for different purposes.

**SCHEDULE 1<sup>19</sup>**

(Article 1)

**SCHEDULED PUBLIC AUTHORITIES**

- 1 The States Assembly including the States Greffe.
- 2 A Minister.
- 3 A committee or other body established by resolution of the States or by or in accordance with standing orders of the States Assembly.
- 4 A department established on behalf of the States.
- 5 The Judicial Greffe.
- 6 The Viscount's department.
- 6A Andium Homes Limited, registered on 13th May 2014 under registration number 115713.
- 7 The States of Jersey Police Force.
- 8 A parish.



## SCHEDULE 2

(Article 45)

### POWERS OF INFORMATION COMMISSIONER TO ENTER PREMISES, TO REQUIRE THE SUPPLY OF INFORMATION AND TO INSPECT INFORMATION

#### 1 Interpretation

In this Schedule –

“occupier” of premises includes a person in charge of a vessel, vehicle, aircraft or hovercraft;

“premises” includes a vessel, vehicle, aircraft or hovercraft;

“warrant” means a warrant issued under this Schedule.

#### 2 Entry and search

(1) The Bailiff may issue a warrant if the Bailiff is satisfied by information on oath supplied by the Information Commissioner that there are reasonable grounds for believing that –

(a) a scheduled public authority has failed or is failing to comply with –

(i) any of the requirements of Part 2,

(ii) so much of a notice under Article 46(5) that requires steps to be taken;  
or

(b) an offence under Article 49 has been or is being committed,

and that evidence of such a failure to comply or of the commission of the offence is to be found on any premises specified in the information.

(2) A warrant under this paragraph may authorize the Information Commissioner or any of the Information Commissioner’s officers or staff within 7 days of the date of the warrant –

(a) to enter the premises specified in the warrant;

(b) to search such premises;

(c) to inspect and seize any documents or other material found there which may be such evidence as is mentioned in paragraph (1);

(d) to take copies of any such documents;

(e) to require any person occupying the premises to provide an explanation of any documents or to state where they may be found; and

(f) to inspect, examine, operate and test any equipment on the premises in which information held by the specified public authority may be recorded.

### **3 Additional conditions for issue of warrant**

- (1) The Bailiff shall not issue a warrant unless satisfied –
  - (a) that the Information Commissioner has given 7 days' notice in writing to the occupier of the premises in question demanding access to the premises;
  - (b) that either access was demanded at a reasonable hour and was unreasonably refused, or although entry to the premises was granted, the occupier unreasonably refused to comply with a request by the Information Commissioner or any of the Information Commissioner's officers or staff to permit the Information Commissioner or the officer or member of staff to do any of the things referred to in paragraph 2(2); and
  - (c) that the occupier has, after the refusal, been notified by the Information Commissioner of the application for the warrant and has had an opportunity of being heard by the Bailiff on the question whether or not it should be issued.
- (2) Sub-paragraph (1) shall not apply if the Bailiff is satisfied that the case is one of urgency or that compliance with that sub-paragraph would defeat the object of entry.

### **4 Execution of warrants**

- (1) A person executing a warrant may use such reasonable force as may be necessary.
- (2) A warrant shall be executed at a reasonable hour unless it appears to the person executing it that there are grounds for suspecting that the evidence in question would not be found if it were so executed.
- (3) If the premises in respect of which a warrant is issued are occupied by a public authority and any officer or employee of the authority –
  - (a) is present when the warrant is executed, the person executing it shall show the warrant to that person and supply him or her with a copy of it; or
  - (b) is not present, the person executing it shall leave a copy of it in a prominent place.
- (4) A person seizing anything in pursuance of a warrant shall give a receipt for it if asked to do so.
- (5) Anything so seized may be retained for so long as is necessary in all the circumstances but the person in occupation of the premises in question shall be given a copy of anything that is seized if the person so requests and the person executing the warrant considers that it can be done without undue delay.

### **5 Matters exempt from inspection and seizure**

- (1) The powers of inspection and seizure conferred by a warrant shall not be exercisable in respect of information which is absolutely exempt information under Article 27.
- (2) The powers of inspection and seizure conferred by a warrant shall not be exercisable in respect of –
  - (a) any communication between a professional legal adviser and the adviser's client in connection with the giving of legal advice to the client with respect to the client's obligations, liabilities or rights under this Law; or

- (b) any communication between a professional legal adviser and the adviser's client, or between such an adviser or such a client and any other person, made in connection with or in contemplation of proceedings arising under or arising out of this Law and for the purposes of such proceedings.
- (3) Sub-paragraph (2) applies also to –
  - (a) a copy or other record of any such communication; and
  - (b) any document or article enclosed with or referred to in any such communication if made in connection with the giving of any advice or, as the case may be, in connection with or in contemplation of and for the purposes of such proceedings.
- (4) Sub-paragraphs (2) and (3) do not apply to anything in possession of any person other than the professional legal adviser or to anything held with the intention of furthering a criminal purpose.
- (5) References in this paragraph to the client of a professional legal adviser include references to any person representing such a client.
- (6) If the person in occupation of premises in respect of which a warrant is issued objects to the inspection or seizure under the warrant of any material on the grounds that it consists partly of matters in respect of which those powers are not exercisable, the person shall, if the person executing the warrant so requests, furnish the latter with a copy of so much of the material as is not exempt from those powers.

## **6 Return of warrants**

- (1) The Information Commissioner shall return a warrant to the Bailiff after it is executed or, if not executed, within the time authorized for its execution.
- (2) The person by whom the warrant is executed shall make an endorsement on it stating what powers have been exercised under the warrant.

## **7 Offence**

A person who –

- (a) intentionally obstructs an authorized person in the exercise of any right conferred by a warrant; or
- (b) fails without reasonable excuse to give any person executing a warrant such assistance as the latter person may reasonably require for the execution of the warrant,

commits an offence and shall be liable to imprisonment for a term of 6 months and to a fine.

## ENDNOTES

### Table of Legislation History

| Legislation  | Year and No                      | Commencement   | °Projet No (where applicable) |
|--|----------------------------------|--|-------------------------------|
| Freedom of Information (Jersey) Law 2011   | <a href="#">L.17/2011</a>        | 1 January 2015<br>( <a href="#">R&amp;O.202/2014</a> )               | <a href="#">P.39/2011</a>     |
| Freedom of Information and Data Protection (Amendments) (Jersey) Law 2014              | <a href="#">L.15/2014</a>        | 1 January 2015   | <a href="#">P.49/2014</a>     |
| Freedom of Information (Schedule 1 to Law) (Amendment) (Jersey) Regulations 2014       | <a href="#">R&amp;O.83/2014</a>  | 1 January 2015   | <a href="#">P.81/2014</a>     |
| Freedom of Information (Schedule 1 to Law) (Amendment No. 2) (Jersey) Regulations 2014 | <a href="#">R&amp;O.184/2014</a> | 1 January 2015<br>(except Regulation 1(2) in force 1 September 2015) | <a href="#">P.154/2014</a>    |
| Freedom of Information (Exemptions – Amendment of Law) (Jersey) Regulations 2014       | <a href="#">R&amp;O.201/2014</a> | 1 January 2015   | <a href="#">P.162/2014</a>    |
| Data Protection (Jersey) Law 2018  | <a href="#">L.3/2018</a>         | 25 May 2018  | <a href="#">P.116/2017</a>    |
| Data Protection Authority (Jersey) Law 2018  | <a href="#">L.4/2018</a>         | 25 May 2018  | <a href="#">P.117/2017</a>    |

°Projets available at [www.statesassembly.gov.je](http://www.statesassembly.gov.je)

### Table of Endnote References

|                             |                                      |
|-----------------------------|--------------------------------------|
| <sup>1</sup> Article 1      | amended by L.4/2018                  |
| <sup>2</sup> Article 16(1)  | substituted by L.15/2014             |
| <sup>3</sup> Article 25(2)  | amended by L.3/2018                  |
| <sup>4</sup> Article 25(3)  | inserted by L.3/2018                 |
| <sup>5</sup> Article 26A    | inserted by R&O.201/2014             |
| <sup>6</sup> Article 27(1)  | amended by R&O.201/2014              |
| <sup>7</sup> Article 46(1)  | amended by L.15/2014                 |
| <sup>8</sup> Article 46(2)  | amended by L.15/2014                 |
| <sup>9</sup> Article 47(5A) | inserted by L.15/2014                |
| <sup>10</sup> Article 48(1) | amended by L.15/2014                 |
| <sup>11</sup> Article 48(2) | amended by L.15/2014                 |
| <sup>12</sup> Article 48(3) | amended by L.15/2014                 |
| <sup>13</sup> Article 48(4) | substituted by L.15/2014             |
| <sup>14</sup> Article 48(5) | added by L.15/2014                   |
| <sup>15</sup> Article 54(1) | amended by L.15/2014                 |
| <sup>16</sup> Article 54(2) | added by L.15/2014                   |
| <sup>17</sup> Article 54(3) | added by L.15/2014                   |
| <sup>18</sup> Article 55    | spent, omitted                       |
| <sup>19</sup> Schedule 1    | amended by R&O.83/2014, R&O.184/2014 |