



# JOIC

JERSEY OFFICE OF THE  
INFORMATION COMMISSIONER

## **Article 44 Code of Practice** **The Freedom of Information (Jersey) Law, 2011**

11011101  
101



# FREEDOM OF INFORMATION LAW – CODE OF PRACTICE

---

Office of the Information Commissioner - Code of Practice on the discharge of Scheduled Public Authorities' ("SPAs") functions under the Freedom of Information (Jersey) Law, 2011.

Issued in accordance with Article 44 of the Law.

## Foreword

- Introduction
- Role of the Information Commissioner
- The Freedom of Information Law
- Procedures and Training
- Further Guidance

## Code of Practice

- Introduction
- The provision of Advice and Assistance to persons making requests for information
- Responding to a Request and Time Limits
- Transferring requests for information
- Consultation with Third Parties
- Freedom of Information and Confidentiality Obligations
- Complaints Procedures
- Article 46 Appeals to the Information Commissioner



# FOREWORD

---

## Introduction

1. This Code of Practice (“the Code”), to which this is a foreword, fulfils the duty of the Information Commissioner (“the Commissioner”), as set out in Article 44 of the Freedom of Information (Jersey) Law, 2011, (‘the Law’) to provide guidance to those scheduled public authorities (“SPAs”) as defined at Schedule 1 of the Law as to the practice which it would be desirable for them to follow in connection with the discharge of their functions under the Law.

### **This foreword does not form part of the Code itself.**

2. The concept of freedom of information is not a new concept and hitherto SPAs have been encouraged to adhere to the Code of Practice for Access to Information first adopted by Act of the States dated 20 July 1999.
3. However, the Law will further the aim of providing greater openness in the public sector by helping to transform the culture of the public sector to one of greater transparency and ready access to public information and it will replace the ‘Code of Practice on Public Access to Information held by the States, Committees of the States and Departments of the States.’ This will enable members of the public to better understand the decisions of SPAs, and ensuring that services provided by the public sector are seen to be efficiently and properly delivered. Conformity with the Code by SPAs will assist in achieving this goal.
4. The aims of the Code are to:
  - a) Facilitate the disclosure of information under the Law by setting out good administrative practice that it is desirable for SPAs to follow when handling requests for information, including, where appropriate, enabling the transfer of a request to a different authority;
  - b) Protect the interests of applicants by setting out standards for the provision of advice which it would be good practice to make available to them and to provide for the development of effective means of complaining about decisions taken under the Law;
  - c) Facilitate consideration by SPAs of the interests of third parties who may be affected by any decision to disclose information, by setting standards for consultation; and
  - d) Promote consideration by SPAs of the implications for Freedom of Information before agreeing to confidentiality provisions in contracts and generally accepting information in confidence from a third party.



## Role of the Information Commissioner

5. The Commissioner has a duty under Article 43 of the Law to promote the following of good practice and, in particular, to promote observance of the requirements of the Law and of the provisions of this Code of Practice by SPAs. The Law confers a number of powers on the Commissioner to enable him/her to carry out that duty specifically in relation to the Code.

### Decision Notice

6. The Commissioner may refer to non-compliance with the Code in a Decision Notice issued as a result of an appeal under Article 46 of the Law. Where relevant, the Commissioner will make reference to the specific provisions of the Code in specifying

### Practice Recommendation

7. If at any time it appears to the Commissioner that the practice of a SPA in relation to the exercise of its functions under the Law does not conform with that set out in this Code of Practice, he/she may give to the authority a recommendation, under Regulations<sup>1</sup> made pursuant to Article 44 of the Law, specifying the steps which should be taken for the authority to comply with the Code. This notice is known as a “Practice Recommendation”.
8. A Practice Recommendation must be given in writing and must refer to the particular provisions of the Code of Practice with which, in the Commissioner’s opinion, the SPA’s practice does not conform. A Practice Recommendation is a recommendation and cannot be directly enforced by the Information Commissioner. However, a failure to comply with a Practice Recommendation may lead to a connected failure to comply with the Law. Furthermore, any failure by a SPA to take account of a practice recommendation may lead to the Information Commissioner publishing the facts relating to the issue of the recommendation, and including the details within the Commissioner’s statutory annual report to The States Assembly.
9. SPAs should also note that in considering whether it has discharged its functions in accordance with the Law, the Commissioner, or the Royal Court may take into account the Code of Practice and any Practice Recommendations when conducting a review under Articles 46, 47 or 48.

### Compliance with Decision Notices

10. Under the provisions of Article 48 of the Law, if a SPA fails to comply with a Decision Notice issued by the Information Commissioner, the Commissioner may certify in writing to the Royal Court that the SPA has failed to comply with that notice. The Royal Court may then inquire into the matter and, after hearing any witnesses who may be produced against or on behalf of, the SPA, and after hearing any statement that may be offered in defence, deal with the authority as if it had committed a Contempt of Court and/or substitute for the Commissioner’s original Decision Notice such other notice that the Commissioner could have made.



## The Freedom of Information Law and the Code of Practice Responsibilities

11. The Code provides guidance on good practice for SPAs in connection with the discharge of their functions under the Law. The main features of the Law:
- a) A duty to make reasonable efforts to provide sufficient advice and assistance to applicants approaching SPAs seeking information; (Article 12)
  - b) General rights of access in relation to recorded information held by SPAs, subject to certain conditions and exemptions (Article 8) and where such access is refused, to provide reasons for that refusal (Article 18 and the Code of Practice.)
  - c) The setting of time limits within which a SPA must deal with a request for information (Article 13)
  - d) The requirement for a SPA to create and retain an index of information that it holds. (Article 7)
  - e) Providing for criminal sanction where a person alters, defaces, blocks, erases, destroys or conceals a record held by an SPA with the intention of preventing the SPA from supplying the information to the applicant which would otherwise be supplied (Article 49)

### Duty to provide advice and assistance

12. Article 12 of the Law places a duty on SPAs to make reasonable efforts to provide sufficient advice and assistance to applicants and a SPA is to be taken to have complied with this duty if it has conformed with the provisions of this Code relating to advice and assistance. The duty to advise and assist can be the subject of an appeal by an applicant pursuant to Article 46(f) of the Law.
13. Further, if a SPA fails to comply with the provisions of the Code in this regard then pursuant to Article 4 of the Freedom of Information (Miscellaneous Provisions) (Jersey) Regulations, 2014, the Commissioner may issue a Practice Recommendation to the SPA, the results of which may be published at the Commissioner's discretion. Any failure by the SPA to adhere to such Practice Recommendation may be taken into account by the Commissioner and the Royal Court when considering any appeal under Article 46 or Article 47 of the Law respectively.

### Procedures and Training

14. All communications in writing to a SPA, including those transmitted by electronic means, may contain or amount to requests for information within the meaning of the Law and so must be dealt with in accordance with the provisions of the Law. Therefore all staff must be aware of the requirement to consider the possibility that any correspondence may contain requests which are capable of being interpreted as a request for information under Article 2 of the Law.

<sup>1</sup> Freedom of Information (Miscellaneous Provisions) (Jersey) Regulations 2014,



15. In many cases requests will be dealt with in the course of normal business, however it is essential that SPAs ensure that their staff are fully trained and aware of the requirements of the Law and the Code of Practice together with any relevant guidance on good practice issued by the Commissioner. SPAs should ensure that adequate training and support is provided in this regard and, in particular, SPAs should ensure that they also have sufficient staff with particular expertise in Freedom of Information who can provide expert advice to other members of staff as necessary.
16. In planning and delivering training, SPAs should be aware of other provisions affecting the disclosure of information such as the Data Protection (Jersey) Law, 2005 (“the Data Protection Law”).

## Further Guidance

17. The Office of the Information Commissioner (“the OIC”) is in the process of producing and publishing guidance in a number of key areas of the Law. In doing so we will seek to identify those areas which will be of particular relevance to both members of the public and SPAs.
18. Following introduction of the Law we will continue to review its operation in order to identify any need for additional supporting guidance. This monitoring role will utilise not only our own but also the experience of members of the public and SPAs in operation of the Law.



# CODE OF PRACTICE

---

## **(Freedom of Information (Jersey) Law, 2011, Article 44)**

Guidance to scheduled public authorities as to the practice which it would be desirable for them to follow in connection with the discharge of their functions under the Freedom of Information (Jersey) Law 2011.

This Code of Practice is issued by the Office of the Information Commissioner under Article 44 of the Freedom of Information (Jersey) Law, 2011 and received formal approval from the Chief Minister on the 21st. November, 2014.

## **Introduction**

1. This Code of Practice (“the **Code**”) provides guidance to scheduled public authorities (“**SPAs**”) as to the practice which it would, in the opinion of the Information Commissioner (“the **Commissioner**”), be desirable for them to follow in connection with the discharge of their functions under the Freedom of Information (Jersey) Law, 2011 (“the **Law**”).
2. Words and expressions used in this Code have the same meaning as the same words and expressions used in the Law.

## **The provision of advice and assistance to persons making requests for information**

3. The following paragraphs of this Code apply in relation to the provision of advice and assistance to persons who propose to make, or have made, requests for information to SPAs. They are intended to provide guidance to SPAs as to the practice which it would be desirable for them to follow in the discharge of their duty under Article 12 of the Law.

### **Advice and assistance to those proposing to make requests**

4. SPAs should publish their procedures for dealing with requests for information. Consideration should be given to including in these procedures a statement of:
  - a) What the SPA’s usual procedure will be where it does not hold the information requested (see also “Transferring requests for information”), and
  - b) When the SPA may need to consult other SPAs and/or third parties in order to reach a decision on whether the requested information can be released (see also “Consultation with third parties”),



5. The procedures should include addresses (postal and e-mail) to which applicants may direct requests for information or for assistance. A telephone number should also be provided, to enable potential applicants to seek assistance and guidance on how to make requests. It is important that any published information directs the public to contact points which are regularly monitored during periods of absence of staff members who deal with Freedom of Information matters.
6. SPAs in contact with the public should bear in mind that not everyone will be aware of the Law, or Regulations made under it. Where appropriate they will need to advise persons to explain that their contact is, or may amount to, a request for information under the Law.
7. Where a person is unable to frame his or her request in writing, the SPA should ensure that appropriate assistance is given to enable that person to make a request for information. Depending on the circumstances, consideration should be given to:
  - a) Advising the person that another person or agency (such as a Citizens Advice Bureau) may be able to assist them with the application, or make the application on their behalf;
  - b) In exceptional circumstances, offering to take a note of the application over the telephone and then send the note to the applicant for confirmation (in which case the written note of the telephone request, once verified by the applicant and returned, would constitute a written request for information and the statutory time limit for reply would begin when the written confirmation was received).

This list is not exhaustive, and SPAs should be flexible and proactive in offering advice and assistance that is most appropriate to the circumstances of the applicant.

#### **Clarifying the request:**

8. A request for information must adequately specify and describe the information sought by the applicant. If necessary SPAs are entitled to ask the applicant for more detail to enable them to identify and locate the information sought. SPAs should, as far as reasonably practicable, provide assistance to the applicant to enable him or her to describe more clearly the information requested.
9. SPAs should be aware that the aim of providing assistance is to clarify the nature of the information sought, not to determine the aims or motivation of the applicant. Care should be taken not to give the applicant the impression that he or she is obliged to disclose the nature of his or her interest as a precondition to exercising their rights of access. SPAs should be prepared to explain to the applicant why they are asking for more information. It is important that the applicant is contacted as soon as possible, preferably by telephone or e-mail, where more information is needed to clarify what is being sought.
10. Appropriate assistance might include:
  - a) Providing an outline of the different kinds of held information which might meet the terms of the request;
  - b) Providing access to the index of information held by the SPA (such as is required under Article 7 of the Law), in order to help the applicant ascertain the nature and extent of the information held by the SPA;





- c) Providing a general response to the request setting out options for further information which could be provided on request. This list is not exhaustive, and SPAs should be flexible and proactive in offering advice and assistance most appropriate to the circumstances of the applicant.

- 11. In seeking to clarify what is sought, SPAs should bear in mind that applicants cannot reasonably be expected to possess identifiers such as a file reference number, or a description of a particular record, unless this information is made available by the SPA for the use of applicants.

### **Limits to Advice and Assistance**

- 12. If, following the provision of such assistance, the applicant still fails to describe the information requested in a way which enables the SPA to identify and locate it, the authority is not expected to seek further clarification. The SPA should disclose any information relating to the application which has been successfully identified and located for which it does not consider an exemption to apply. It should also explain to the applicant why it cannot take the request any further and provide details of the SPAs complaints procedure and the applicant's rights under Article 46 of the Law (see "Complaints Procedure").

### **Advice and Assistance - Fees**

- 13. Where the applicant indicates that he or she is not prepared to pay the fee notified in any fees notice given to the applicant, the SPA should consider whether there is any information that may be of interest to the applicant that can be supplied free of charge.
- 14. Where a SPA is not obliged to comply with a request for information because, under Article 16(1) and regulations made under Article 53<sup>2</sup>, the cost of complying would exceed the "appropriate limit" (i.e. cost threshold) the SPA should consider providing an indication of what, if any, information could be provided which would bring the request below the appropriate limit. The authority should also consider advising the applicant that by reforming or re-focussing their request, information may be able to be supplied within any costs limits.
- 15. A SPA is not expected to provide assistance to applicants whose requests are vexatious or repeated as set out in Articles 21 or 22 of the Law. The Commissioner has issued guidance on dealing with vexatious and repeated requests.

## **Responding to a Request and Time Limits:**

- 16. The Law provides that an applicant has a general right to be supplied with information held by a SPA. However this general right of access may be limited, or refused, in certain circumstances which are set out in the Law for example where an applicant is making repeated/vexatious requests, where certain exemptions apply and/or where there are issues as to fees/cost limits relating to provision of any response.
- 17. Article 10 of the Law also imposes an obligation on a SPA to confirm or deny holding information although it may refuse to do so 'if it is satisfied that, in all the circumstances of the case, it is in the public interest to do so'.



18. However in all cases where a SPA, for whatever reason, refuses all or part of a request then it must inform the applicant in writing that it is doing so as follows:
- a) If a SPA intends to refuse a request on the grounds that it is subject to an exemption under Part 4 or 5 of the Law, or would exceed the cost limits under Article 16, then it must always issue the applicant with a refusal notice informing them of its decision.
  - b) A SPA relying on a claim that Article 21 or 22 applies must issue a refusal notice unless it has already done so in response to an earlier vexatious or repeated request from the same individual, and it would be unreasonable to issue another one.
  - c) Any refusal notice will always need to state the Article/s being relied upon with full explanation of reasons for the decision, including the details of any public interest test or prejudice test.
  - d) Where a request is refused because compliance is estimated to exceed the appropriate cost limit, the Commissioner recommends that Article 12 (duty to provide advice/assistance) extends to a need for the refusal notice to include a summary of the estimated costs. This should be set out as a simple schedule of the separate tasks at the regulated hourly rate, displaying both sub-totals and the overall total.
  - e) All refusal notices must provide the applicant with the relevant details of their ability to seek an internal review of the decision/s contained within the refusal notice.
  - f) All refusal notices must also inform the applicant of their right to appeal to the Commissioner under Article 46 of the Law.
  - g) In all cases the SPA should issue a refusal notice promptly at the earliest opportunity, and in any event no later than the statutory 20 working days commencing on the day after receipt of the request.
  - h) If the SPA needs further time to consider the public interest test then it should issue an initial notice explaining why any exemption applies and giving an estimated date by which the test will be completed. Once the test has been completed, if the SPA still intends to withhold information, it will need to issue a further refusal notice explaining its application of the public interest test to the question of disclosure.
  - i) Where the applicant has asked for their own personal data, the SPA should treat this as a subject access request under the Data Protection (Jersey) Law 2005, rather than issuing a refusal notice referring to Article 25 (absolute) exemption for Personal Information. The applicant should be advised accordingly.
19. If a SPA requires additional time to consider a request beyond the statutory limit of 20 working days then this can only apply where the authority can evidence a claim that it is 'reasonable' to do so. A SPA must create a detailed written record of the circumstances and reasons for claiming any extension, as well as the grounds upon which they claim the delay to be 'reasonable'.
20. As the Law does not provide any formal definition of what may be classed as being 'reasonable,' this will be reviewed during any appeal process undertaken by the Commissioner. It is to be noted that the written record of reasons for delay, extension and claim that it was 'reasonable' may also be reviewed by the Royal Court under Articles 47 and 48 of the Law.

<sup>2</sup> Freedom of Information (Costs)(Jersey) Regulations 2014



21. It may be that ‘reasonable’ delay may occur when detailed consideration of the question of ‘prejudice’ and the ‘public interest test’ may be necessary. A need to consult with third parties or to obtain legal advice may, at times, also be considered relevant grounds for ‘reasonable’ delay. However each case will be reviewed for separate decision on a case by case basis.
22. Any request for information must be dealt with promptly and in any event within 20 working days. Any further extension, which may be to a combined maximum of 65 working days as defined within Regulations<sup>3</sup>, should be limited in duration and completed as soon as possible. The use of an extension should, where possible, be avoided and seen as an exception to the 20 day limit. An extension should not be relied upon as a standard response or means to enable a SPA to delay response for their own purposes or convenience.
23. It is good practice that at all stages of a Freedom of Information Law request a SPA maintain a full and detailed record of all activities and decisions relating to the response, and whether disclosure has been made or has been refused. The applicant should be kept informed and updated of progress at regular intervals, and confirmation of this should form part of the record, a copy of which will be reviewed by the Information Commissioner on receipt of any appeal under Article 46 of the Law.
24. It is further good practice for a SPA to maintain a publicly available Disclosure Log in relation to Freedom of Information Law responses.

### **Transferring requests for information**

25. The following paragraphs apply in any case in which a SPA is not able to comply (either in full or in part) with a request because it does not hold the information requested and proposes, in accordance with Article 10(1), to confirm to the applicant that it does not hold that information.
26. If information is not held by the SPA to whom the request has been directed (“the First SPA”) but they have reason to believe that some or all of the information requested is held by another SPA, the First SPA should consider what would be the most helpful way of assisting the applicant with his or her request.
27. In most cases this is likely to involve:
- a) The First SPA Contacting the applicant promptly and informing him or her that they do not hold the information requested but that it may be held by another SPA;
  - b) Suggesting that the applicant re-applies to the SPA which the First SPA believes may hold the information; and
  - c) Providing the applicant with contact details for that other SPA.



## Consultation with Third Parties

28. There are many circumstances in which:

- a) Requests for information may relate to persons and organisations other than the applicant and the SPA; or
- b) Disclosure of information is likely to affect the interests of persons other than the applicant or the SPA.

29. It is therefore recommended that SPAs take appropriate steps to ensure that such third parties, and those who supply SPAs with information, are aware of the SPA's duty to comply with the Law, and that information will have to be disclosed unless an exemption applies. This will apply to third party individuals and organisations, whether under a relationship of contract with the SPAs or as partner agencies.

30. In some cases it will be necessary to consult directly with third parties in order to determine whether or not an exemption applies to the information requested, or in order to reach a view on whether the obligations in Part 2 of the Law arise in relation to that information. In a range of other circumstances it will also be good practice to do so; for example where a SPA proposes to disclose information relating to third parties, or which is likely to affect their interests, reasonable steps should be taken to give them advance notice of disclosure. Failing that, efforts should be made to draw it to their attention as soon as possible after the disclosure has been made.

31. In some cases, it may also be appropriate to consult third parties about matters such as whether any additional explanatory material or advice should be given to the applicant in addition to the information originally requested. This advice may, for example, refer to any restrictions (including copyright restrictions) which exist and the subsequent use which may be made of such information.

32. Unless previously agreed no decision to release information which has been supplied by one SPA to another should be taken without first notifying, and where appropriate consulting with, the SPA from which the information originated.

33. The information which is the subject of a request may relate to a number of third parties or may affect the interests of a number of third parties. Where those third parties have a representative organisation which can express views on behalf of those parties, the SPA may consider whether it would be sufficient to notify or consult with that representative body rather than the third party itself. If there is no representative body, the SPA may consider that it would be sufficient to notify or consult with a representative sample of the third parties in question.

<sup>3</sup> Freedom of Information (Miscellaneous Provisions)(Jersey) Regulations 2014



## Freedom of Information and confidentiality obligations

34. SPAs should always consider their obligations under the Law when preparing to enter into contracts which may contain terms relating to the disclosure of information by them.
35. When entering into contracts with non-public authority contractors, SPAs may be asked to accept confidentiality clauses, to the effect that information relating to the terms of the contract, its value and performance will not be disclosed. SPAs should carefully consider the compatibility of such terms with their obligations under the Law. It is important that both the SPA and the contractor are aware of the limits imposed by the Law on the legal enforceability of such confidentiality clauses.
36. The Law does, however, recognise that there will be circumstances and respects in which the preservation of confidentiality between the SPA and third party contractor is appropriate and must be maintained in the public interest.
37. Where there is good reason, as recognised by the terms of the exemption provisions of the Law, to include non-disclosure provisions in a contract, SPAs should consider the desirability of making express provision in the contract identifying the information which should not be disclosed and the reasons as to why confidentiality is deemed necessary in the circumstances. Consideration may also be given to including provision in contracts as to when consultation with third parties will be necessary or appropriate before the information is disclosed pursuant to a request under the Law.
38. Similar considerations will apply to the offering or acceptance of confidentiality obligations by SPAs in non-contractual circumstances. There will be circumstances in which such obligations will be an appropriate part of the acquisition of information from third parties and will be protected by the terms of the exemption provisions of the Law. It is important that both the SPA and the third party are fully aware of the limits imposed by the Law and the enforceability of expectations of confidentiality. SPAs should ensure that such expectations are created only where to do so is not inconsistent with the SPA's obligations under the Law.

## Internal complaints procedure

39. Every SPA must have a procedure in place for dealing with complaints in relation to its handling of requests for information. If the complaint cannot be dealt with swiftly and satisfactorily on an informal basis, the SPA should make the complainant fully aware of its formal internal complaints procedure.
40. When communicating any decision to refuse a request in reliance on an exemption, SPAs should notify the applicant of particulars of the procedure provided by the authority for dealing with complaints. In doing so, they should provide full details of that SPA's complaints procedure (including how to make a complaint) as well as informing the applicant of the right to appeal the SPA's decision to the Commissioner under Article 46 if he or she remains dissatisfied following the SPA's review of any complaint.



41. Any written reply from the applicant (including one transmitted by electronic means) expressing dissatisfaction with an SPA's response to a request for information should be treated as a complaint. Such communications should always be handled in accordance with the SPA's complaints procedure, even if, in the case of a request for information under the general rights of access, the applicant does not expressly state his or her desire for the authority to review its decision or its handling of the application.
42. The complaints procedure should aim to provide a fair, thorough and independent review of the process adopted and decisions taken by the SPA pursuant to the Law, including those involving a public interest test. It should enable a fresh decision to be taken on reconsideration of all the factors relevant to the request. Complaint procedures should be as clear and simple as possible and should encourage a prompt determination of the complaint.
43. Where the complaint concerns a request for information under the general rights of access, the review must be undertaken by someone senior to the original decision maker where this is reasonably practicable. The SPA should in any event undertake a full re-evaluation of the case, taking into account any further matters raised during the investigation of the complaint.
44. In all cases, complaints should be acknowledged promptly and the complainant should be informed of the SPA's target date for determining the complaint. Where it becomes apparent that determination of the complaint will take longer than the target time initially anticipated (for example because of the complexity of the particular case), the SPA should immediately inform the applicant explaining the reason for the delay and provide a revised target date for a response, if possible. The complainant should always be kept informed of progress and the outcome of his or her complaint.
45. SPAs should set their own target times for dealing with complaints; these should be reasonable and subject to regular review. Each SPA should record and publish its target times for determining complaints.
46. SPAs should ensure that records are kept of all complaints received and their outcome. SPAs should have procedures in place for monitoring complaints (and where appropriate amending) procedures for dealing with requests made under the Law.
47. Following an internal review, where the outcome is a decision that information should be disclosed which was previously withheld, the information in question should be disclosed as soon as practicable and the applicant should be kept informed of expected timescales for disclosure of such information.
48. Following an internal review, where the outcome is a finding that procedures have not been properly followed, the SPA should confirm such findings to the applicant and issue the applicant with an apology. The SPA should then ensure that the information is provided to the applicant as soon as possible. Any associated review and update of procedures or need for additional training should be undertaken as soon as possible to minimise the risk of similar errors occurring in the future.
49. Following an internal review, where the outcome is to uphold an initial decision to withhold information, or is otherwise in the SPA's favour, the applicant should be informed of the outcome and of his or her right to appeal to the Commissioner. The SPA should provide sufficient details of how to make an appeal and the appeal process.



# Appeals to the Information Commissioner

## The Law Relating to an Appeal

50. Under Article 46 of the Law, a person aggrieved by a decision of a SPA may, within 6 weeks of the SPA's decision or, if later, within 6 weeks of the date the applicant has exhausted any complaints procedure provided by the SPA, appeal to the Commissioner on the grounds that in all the circumstances of the case the decision was not reasonable.
51. An appeal should not ordinarily be submitted to the Commissioner without the applicant having 'fully exhausted' any internal complaints process provided by the relevant SPA. This means that the applicant must firstly make a complaint to the SPA seeking a review of the original decision in accordance with the SPA's internal review procedures.
52. It is only if a person is dissatisfied with the outcome of the internal review that they may then appeal to the Commissioner under Article 46 of the Law within 6 weeks of the review decision being communicated to the applicant. An appeal can only be made where the decision of the SPA relates to:
- a) The amount of any fee payable under Articles 15(1) or 16(2);
  - b) The cost of supplying information for purposes of Article 16(1);
  - c) Any refusal to comply with a request for information on the basis that such request was deemed to be vexatious or repetitious;
  - d) Any refusal to comply with a request for information on the ground that the information is Absolutely Exempt information;
  - e) Any refusal 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) Any decision taken in compliance/purported compliance with any requirement of Part 2 of the Law, including regulations made under Part. 2, such decision being one that is not otherwise referred to in (a) to (e) above.

An Appeal may be made on the grounds that in all circumstances of the case the decision was not reasonable.

53. The Commissioner must decide the appeal as soon as is practicable but may decide not to do so if satisfied that:
- a) The applicant has not exhausted any internal complaints procedure provided by the SPA;
  - 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.



54. On deciding an appeal the Commissioner must serve a notice of his/her decision (“the Decision Notice”) on the applicant and the SPA. The Decision Notice must specify:
- a) The decision and, without revealing the information requested, the reasons for the decision; and
  - b) The existence of the right of appeal to the Royal Court conferred by Article 47 of the Law.

### **The Process Relating to an Appeal to the Commissioner under Article 46 of the Law**

55. At all stages of dealing with a request for information under the Law, a SPA should maintain a full and detailed record of all activities and decisions taken in relation to the provision of a response to the applicant, including any rationale adopted by the SPA for refusing a request. SPAs are reminded that all elements of the decision making process may be the subject of review and consideration by the Commissioner and the Royal Court pursuant to Articles 46, 47 or 48 of the Law and are urged to keep detailed and accurate records of the decision making process.
56. SPAs are also reminded that a copy of the SPA’s records regarding the determination of the request decision will be required to be disclosed to the Commissioner on receipt of any appeal from an applicant under Article 46 of the Law. In addition to the SPA’s decision, the Commissioner will also require disclosure of the information which is the subject matter of the request, whether or not such has been disclosed to the applicant.
57. When an Article 46 appeal has been made to the Commissioner, written notification will be sent to the nominated point of contact within the relevant SPA whose original decision is being appealed. This notification will include a formal request for disclosure of all relevant documentation and which must be sent to the Commissioner no later than ten working days following receipt of the notification.
58. Once the SPA has received notification from the Commissioner that the original decision is the subject of an appeal under Article 46 of the Law, the SPA are required to make written submission in response to the Commissioner’s notification, which submission must include:
- a) A full copy of the records made by the SPA detailing the receipt, processing and response to the initial request made under the Law;
  - b) A copy of the information requested by the applicant (whether or not such was ultimately disclosed to the applicant at the first instance); and
  - c) A written submission to the Commissioner outlining the full details and explanation of the case which is made on behalf of the SPA in response to the Appeal.

### **Memorandum of Understanding (“MOU”) between the Chief Minister’s Department (“CMD”) and the Commissioner.**

59. If a SPA, following receipt of an appeal notification from the Commissioner, fails to adhere to the terms of this Code of Practice and either fails to provide any/adequate/complete disclosure of records relating to the request then the issue may be addressed by reference to an existing Memorandum of Understanding dated 21st November 2014 between the Commissioner and the Chief Minister.





60. The terms of the MOU state that in cases where the relevant SPA has failed to provide disclosure in accordance with the Code of Practice then the Commissioner may, in writing, notify the Chief Minister of the SPA's failure to disclose, or fully disclose, the requested information.
61. The MOU then provides that where the CMD considers the request made to the SPA by the Commissioner to be reasonable in all circumstances, the CMD will instruct the Commissioner to contact the relevant SPA(s) (via the nominated contact where known) and the SPA will:
- a) Provide a reasoned explanation, together with additional background information, as quickly as possible and in any event within 5 working days of being contacted by the Commissioner (unless the Commissioner otherwise agrees) as to why the SPA has failed to adhere to the Code of Practice; and either
  - b) Provide the Commissioner with the information originally requested by the applicant as quickly as possible and in any event within 5 working days of being contacted by the Commissioner, unless the Commissioner otherwise agrees; or
  - c) Inform the Commissioner, giving reasons, that it is not able to provide the reasoned explanation and other relevant information within the time periods set out in this paragraph and provide an indication of when it expects to be able to do so.
62. Where information is disclosed to the Commissioner by the SPA, it will not be held for longer than is necessary for the discharge of the Commissioner's statutory functions. Once the Commissioner has determined the appeal and, in consultation with the SPA, the Commissioner will arrange for the return or other agreed disposal of the information supplied by the SPA and shall at no point release that information to the applicant.

### **The issue of a Decision Notice connected to the Appeal**

63. The Commissioner must serve a notice ("the Decision Notice") of his/her decision on the applicant and the relevant SPA. That Decision 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 of the Law.
64. When issuing a Decision Notice, the Commissioner can require a SPA to take such steps as are considered necessary to comply with the decision. In doing so the Commissioner may direct that the SPA complies with any required steps within 35 calendar days of the Decision Notice being served.
65. Article 47 enables both the applicant and the SPA to appeal to the Royal Court against a decision made by the Commissioner under Article 46. The Commissioner considers that the 35 day compliance period will afford the SPA sufficient time to consider any appeal to the Royal Court against the Decision Notice and in light of the statutory time period for appeal of 28 days, provided by Article 47 of the Law.
66. The appeal may be made on the grounds that in all the circumstances of the case the Commissioner's decision was not reasonable.



67. The decision of the Royal Court on the appeal shall be final.

68. In respect of an appeal in respect of a decision by the Commissioner not to decide an appeal, the Royal Court may direct the Commissioner to decide the appeal.

69. In all other cases, the Royal Court shall;

- a) Allow the appeal;
- b) Substitute for the Commissioner's decision any other decision that the Commissioner could have made; or
- c) Dismiss the appeal.

#### **Failure of a SPA to comply with a notice by the Information Commissioner**

70. Where a Decision Notice has been served and a SPA has subsequently failed to comply with the Decision Notice after:

- a) Failing to appeal under Article 47; or
- b) Having appealed, lost the appeal the Commissioner, under Article 48 of the Law, may certify in writing to the Royal Court the SPA's failure to comply with any one or more of the requirements of the Decision Notice.

71. In response the Royal Court may inquire into the matter and hear any witness or receive any statement that may be offered in defence by the SPA. The Court may then do either or both of the following:

- a) Deal with the SPA as if it had committed a contempt of court; and/or
- b) Substitute for the Commissioner's Decision Notice such other notice that the Commissioner could have made.



# MORE INFORMATION

---

**Jersey Office of the Information Commissioner**  
**2nd Floor**  
**5 Castle Street**  
**St Helier**  
**Jersey JE2 3BT**

**Telephone number:** +44 (0) 1534 716530

**Email:** [enquiries@jerseyoic.org](mailto:enquiries@jerseyoic.org)