

Freedom of Information (Jersey) Law 2011

DECISION NOTICE

JOIC Reference	CAS-02503
Date of Decision Notice	7 July 2021
Scheduled Public Authority	Justice and Home Affairs
Address	19-21 Broad Street St Helier Jersey
Date of Request	7 December 2019
Date of First Response	9 January 2020
Date of request for Internal Review	9 January 2020
Date of Internal Review	26 February 2020
Date of appeal to Information Commissioner	2 March 2020

Summary/Decision

1. On 7 December 2019, the Complainant requested certain information from Justice and Home Affairs (the **SPA**) relating to disciplinary complaints made against the Chief Officer and the Deputy Chief Officer of the States of Jersey Police (**SOJP**) for the period January 2000 – December 2019 (the **Request**).
2. The SPA wrote to the complainant on 9 January 2020 (the **Response**) stating that the information sought in the Request was being withheld (the **Withheld Information**), citing the exemptions at Arts.23, 25 and 26 of the Freedom of Information (Jersey) Law 2011 (the **Law**). The Complainant did not agree with the Response and requested an internal review later that same day (the **IR Request**).

3. The SPA responded to the IR Request on 26 February 2020 (the **Internal Review**).
4. The Complainant did not agree with outcome of the Internal Review and issued an appeal to the Information Commissioner (the **Commissioner**) on 2 March 2020 (the **Appeal**).
5. The Commissioner's decision is to that the appeal is not upheld. There are no further steps the SPA needs to take.

The Role of the Information Commissioner

6. It is the duty of the Commissioner to decide whether a request for information made to a SPA has been dealt with in accordance with the requirements of Part 1 of the Law.
7. This Decision Notice sets out the Commissioner's decision.

The Request

8. The Complainant's Request was in the following terms:

"A.

What formal procedures were in place for dealing with allegations of disciplinary misconduct by the two highest-ranking officers of the States of Jersey Police (Chief Officer and Deputy Chief Officer, including other officers filling those roles on a temporary or acting basis), prior to the entry into force of the "States of Jersey Police Force (Chief Officer and Deputy Chief Officer) (Jersey) Regulations 2017"? Please provide links to all relevant documentation available on-line (legislation, regulations, standing orders, ministerial decisions, etc.)

B.

How many complaints were made in accordance with the procedure(s) referred to in 'A', in each year from 2000 to 2017 inclusive? For each complaint, please indicate:

- *dates on which the complaint was made and on which the complaints procedure was completed*
- *whether the complainant was the Chief Officer / Deputy Chief Officer; also, whether the officer held that post on an acting or temporary basis*
- *whether the complainant was a person reporting possible criminal activity / a crime victim / an alleged criminal offender / a suspect / a witness / other (if 'other', please explain*
- *whether the complainant was normally resident in Jersey / a seasonal worker / a visitor or tourist / other (if 'other', please explain)*
- *the broad motive(s) for the complaint, classified using the forms of conduct listed in items 2 to 13 of the Discipline Code set out in Schedule 1 of the "Police (Complaints and Discipline Procedure) (Jersey) Order 2000)"*

- *the outcome: complaint dismissed (if so, on what grounds?) / complaint upheld (wholly or partially). If upheld, what sanctions were taken against the CO or DCO*
- *who investigated the complaint: Minister for Justice and Home Affairs / States of Jersey Police (SOJP / a UK police force / other (if 'other', who?)).*

C.

*How many complaints have been made in 2018 and 2019 to [12 December 2019] in accordance with the new Regulations that came into force in 2017? For each complaint, please provide details as listed in question 'B'..." (the **Requested Information**).*

9. On 9 January 2020 the SPA provided the Response in the following terms:

"A.

Discipline matters prior to 2017 and the introduction of the States of Jersey Police Force (Chief Officer and Deputy Chief Officer) (Jersey) Regulations 2017, were dealt with under the Disciplinary Code for the Chief Officer of Police

A copy of the superseded Disciplinary Code for the Chief Officer of Police is attached for reference.

All relevant documentation available on line is considered publicly available and is therefore exempt from release under Article 23 (Accessible by Other Means) of the Freedom of Information (Jersey) Law 2011 (the FOI Law).

B.

Information submitted by either a complainant or Police Officer in relation to a complaint is considered exempt from release under Article 25 (Personal Information) and Article 26 (Information supplied in confidence) of the FOI Law.

Notwithstanding the application of such exemptions as absolute exemptions (therefore not requiring a public interest test), where there is an over-riding public interest in disclosure of information, information has subsequently been made public by the Government of Jersey.

Links to the relevant reports are provided below:

[Operation Haven report - 12 November 2008](#)

[Napier report - 12 November 2008](#)

[Operation Belfong report - 9 June 2017.](#)

C.

Since 2017, investigations into complaints against senior officers are undertaken further to the procedure detailed within the States of Jersey Police Force (Chief Officer and Deputy Chief Officer) (Jersey) Regulations 2017.

Information is submitted by either a complainant or Chief/Deputy Chief Officer in relation to a complaint is considered exempt from release under Article 25 (Personal Information) and Article 26 (Information supplied in confidence) of the FOI Law).

Notwithstanding the application of such exemptions as absolute exemptions (therefore not requiring a public interest test), where there is an over-riding public interest in disclosure of information, information would subsequently be made public by the Government of Jersey...."

10. The Complainant wrote to the SPA seeking an internal review later that same day. That letter ran to some seven pages and is not replicated in full here as such would make this decision notice unwieldy. Suffice to say the Complainant did not agree with the SPA's reliance on Arts.23, 25 and 26 of the Law.
11. The results of the Internal Review were communicated to the Complainant on 26 February 2020¹:

"2&3

The Internal Review panel requested sight of all relevant information. It was noted to the panel that the information requested was only available for the period from 2007 to date. After discussion the panel noted that this should have been made clear in the original response. After review of the available information, and subsequent discussion of the original response, it was agreed to partially uphold the original response.

In relation to the period 2007 to 2017, no additional recorded complaints were located, other than those detailed in the publicly available documentation. The further details requested in question 2, in relation to the identity of the complainant and such specific details, are withheld under Article 25 (Personal Information) of the Freedom of Information (Jersey) Law 2011.

On a wider note, the Panel noted that, in relation to the published complaints reports, the decision was taken by the relevant parties before commencement of the work, that each report would be made public. The rationale applied was that the public interest in such cases outweighed the individuals' right to privacy. Confidentiality was also outweighed by the public interest and the existing public knowledge.

Notwithstanding such decisions, the following quote, taken from the confidentiality clauses (1.2) of the Disciplinary Code for the Chief Officer of Police (superseded) is pertinent;

¹ The response to 'A' is not subject to the appeal so not replicated here.

The outcome of any particular case arising under the Code will not, as a general rule, be publicised, but it is accepted that following the outcome of a particular case, the Home Affairs Minister and/or the States Employment Board and/or the Chief Officer, might decide that public disclosure is appropriate.

Precedent is not created by such a decision, as each determination to publish would be made on the explicit basis of the relevant complaint. It would not always be the case that public interest would outweigh personal prejudice.

The Panel discussed the changes implemented under the 2017 Law and noted that any formal complaints/allegations made against the Chief Officer/Deputy Chief Officer would be investigated. These may be settled at any of the incremental steps of the complaint process. There would not necessarily be a sufficient weight of public interest in every complaint to outweigh the rights of an individual. It would be the obligation of the Minister to decide on the relative weight of public interest against personal prejudice. It should always be acknowledged that the weight of potential prejudice is substantially higher in a small island than in a larger jurisdiction.

Given the small number of individuals involved, release of current statistical information could be directly applied to individuals – and therefore is deemed personal information. It is the consideration of the reviewers that the above arguments apply equally to release of statistical data and there could be considered a greater possibility of prejudice with release of statistical data. Purely statistical data would carry no explanation of claims made or resulting actions.

The review panel considered that both Article 25 (Personal Information) and Article 26 Information supplied in confidence) had been correctly applied to question 3.”

The Investigation

Scope of the case

12. On 2 March 2020, the Complainant contacted the Commissioner to appeal against the Internal Review. The Complainant asked the Commissioner to review the Complainant's Request and the responses received from the SPA in order to ascertain whether what had been provided was in accordance with the Law. Specifically, they indicated that:

*"4. The **principal objective** of this Appeal is that the Responders shall be required to provide information requested in the above mentioned FOI Request, specifically in respect of complaints against the CO or Deputy CO of the SOJP in the period from 2018 to date (that is, since the Regulations came into force)...*

21. *The principal grounds for this Appeal are, in summary:*

a. That the Responders have improperly applied the absolute exemptions of Article 25 (Personal Information) and Article 26 (Information supplied in confidence) of the Law, in relation to the provision of data for the period since the new Regulations came into force.

b. That, whereas the Law and all relevant guidelines and best practice require that full disclosure shall be the 'default' response to any valid Request, the Responders (including the Internal Review Panel) have pursued a strategy of concealment, including that of information which does not meet the requirements for any form of exemption whatsoever."

c. That there are reasons to suppose that the failure to properly respond to the Request is a continuation of the obstructive strategy adopted by the Home Affairs Minister...

d. That, through the failings of the Responders, the present Appellant and the public at large have been denied the opportunity to be properly informed as to the conduct of the Island's most senior police officers, and to monitor the implementation of provisions of Jersey Law including, specifically, the modernised Regulations governing conduct of those officers and related disciplinary measures that came into force in 2018..."

13. The Commissioner has set out in this Notice the particular issues he has had to consider in respect of the relevant exemptions cited by the SPA.
14. In coming to a decision on this matter, the Commissioner has considered all the relevant submissions, or parts of submissions, made to him by both the Complainant and the SPA. He is satisfied that no matter of relevance has been overlooked.
15. The Commissioner is grateful, particularly, to the Complainant who set out a fulsome and articulate appeal document which aided the Commissioner greatly in his review of this matter.

Chronology

16. On 24 July 2020, the Commissioner wrote to the SPA to advise that the Complainant had made an Appeal to the Commissioner, pursuant to Art.46 of the Law. The SPA was asked to provide their written submissions in response to the complaint made by the Complainant and to advise the Commissioner of the contents of the Withheld Information.
17. The SPA responded to that letter on 7 August 2020, providing detailed explanations as to why it considered the Art.25 and Art.26 exemptions had been appropriately applied in this case.
18. Further questions were raised by the Commissioner on 10 and 12 August 2020 to which the SPA ultimately responded on 20 November 2020. The Commissioner had some further questions that were answered in December 2020.
19. On 14 December 2020, certain of the Withheld Information was released to the Complainant following a review by the SPA.
20. On 5 January 2021, the Complainant indicated to the Commissioner that they remained unhappy with the SPA's response to their Request and indicated that they wished for the appeal to continue.

Analysis

PARTS A AND B OF THE REQUEST

21. Parts A and B of the Request does not form part of the Complainant's appeal and so falls outside the scope of this Decision Notice. (Specifically, whilst the Complainant considered that the information provided for this time period is not very satisfactory, "*as a Requester I shall have to accept it "as is"...*")

PART C OF THE REQUEST

22. The scope of Part C of the Complainant's Request is as set out at para.9 above. In short, they sought information regarding complaints made against the Chief Officer and Deputy Chief Officer of the States of Jersey Police (**SOJP**) under the States of Jersey Police Force (Chief Officer and Deputy Chief Officer) (Jersey) Regulations 2017, such as came into force on 21 February 2017 (the **SOJP Regulations**).
23. The SPA initially declined to provide the information citing two exemptions: Art.25 Personal Data and Art.26 Information supplied in confidence.

The Complainant's Position

24. The Complainant argued that Arts.25 and 26 of the Law were inappropriately applied in this case.
25. Specifically, they contend that the release of purely statistical information cannot identify any individual. In any event, the Complainant considers that it is in the public interest for such information to be published "*Such disclosure was and still is entirely consistent with the need for public scrutiny of the Island's highest-ranking public officials who, merely by taking on such prominent roles in society, assume also the risks associated with any failure to satisfy pre-established standards of conduct and/or performance*".

The SPA's Position

26. indicating that such constituted the personal data of the relevant individuals and that it would be a contravention of the Data Protection (Jersey) Law 2018 to release such to the Complainant because the release of that information would be unfair.

Art.25 – Personal Information

27. The full text of Art.25 of the Law can be found in the Legal Appendix at the end of this Decision Notice.
28. Art.25 specifies that personal data is exempt from disclosure if its disclosure would breach any of the data protection principles contained within the relevant data protection legislation in force at the time the decision to withhold the information was made.

29. The first step for the Commissioner is to determine whether the Withheld Information constitutes personal data as defined. If it does not, then Art.25 of the FOI Law cannot apply.
30. Secondly, and only if the Commissioner is satisfied that the requested information is personal data, he must establish whether disclosure of the data would breach any of the data protection principles.

Analysis

31. Art.2 the Data Protection (Jersey) Law 2018 (**DPJL 2018**) defines personal data as follows:

- "(1) *Personal data means any data relating to a data subject.*
- (2) *A data subject is an identified or identifiable, natural, living person who can be identified, directly or indirectly, by reference to (but not limited to) an identifier such as –*
- (a) *a name, an identification number or location data;*
 - (b) *an online identifier; or*
 - (c) *one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of the person.*
- (3) *The following matters must be taken into account in deciding whether the person is identified or identifiable –*
- (a) *the means reasonably likely to be used by the controller or another person to identify the person, taking into account factors such as the cost and amount of time required for identification in the light of the available technology at the time of processing and technological factors;*
 - (b) *whether the personal data, despite pseudonymization, is capable of being attributed to that person by the use of information other than that kept separately for the purposes of pseudonimization."*

32. The Commissioner refers to the guidance note provided by the UK Information Commissioner (**ICO**) entitled "Determining what is personal data"². Whilst not binding in this jurisdiction, the Commissioner thinks that the guidance is of assistance in assessing whether or not the Requested Information is capable of constituting personal data. At para.5 of that note, it poses the question "*Is the data used, or is it to be used, to inform or influence actions or decisions affecting an identifiable individual?*" and, if the answer to that question is "yes" then "*the data is 'personal data' for the purposes of the DPA*". Similarly, at para.8 of the note it asks "*Does the data impact or have the potential to impact on an individual, whether in a personal, family, business or professional capacity*" and, if the answer to that question is "yes" then "*the data is 'personal data' for the purposes of the DPA*". The paragraph ends stating that "**What**

² <https://ico.org.uk/media/for-organisations/documents/1554/determining-what-is-personal-data.pdf>

is being considered here is whether the processing of the information has or could have a resulting impact upon the individual even though the content of the data is not directly about that individual, nor is there any intention to process the data for the purpose of determining or influencing the way that person is treated" (emphasis supplied).

33. In the present case, the Complainant has asked for disciplinary information about the Chief and Deputy Chief Officers for SOJP since the coming into force of the SOJP Regulations and at the point they issued their Request, the SOJP Regulations had only been in force for just under three years. They have asked for (amongst other things) information regarding dates of complaints, who the complaint was made about (Chief or Deputy), who made the complaint, what the complaint was about and the outcome.
34. The Commissioner is satisfied that the Withheld Information falls squarely within the definition of personal data relating, as it does, to information regarding any complaints made regarding the conduct of the Chief or Deputy Chief of SOJP, and what sanctions if any were imposed.
35. The fact that information constitutes the personal data of identifiable living individuals does not automatically exclude it from disclosure under the Law. The second element of the test is to determine whether disclosure would contravene any of the principles set out at Art.8 of the DPJL 2018.

Would disclosure of the Withheld Information contravene Art.8(1)(a) of the DPJL 2018?

36. The Commissioner has had to consider whether to release the Withheld Information would breach one of the principles set out at Art.8 of the DPL 2018. In this particular case, the SPA considers that it is not fair to release the Withheld Information into the public domain and refers to Art.8(1)(a) of the DPL 2018 in this regard.
37. Art.9 of the DPJL 2018 sets out the requirements for lawful processing by providing that "*processing shall be lawful only if and to the extent that at least one of the*" conditions specified in Schedule 2 of the DPJL 2018 applies. Special category data can only be processed if one of the more stringent conditions of Schedule 2 Part 2 of the DPJL 2018 can be met.
38. The Commissioner considers that the lawful basis most likely applicable in this case is the basis set out at Schedule 2 Part 2 para.14 of the DPJL 2018 which states:

"The processing is necessary for reasons of substantial public interest provided for by law and is subject to appropriate protections to protect the rights and interests of the data subject."
39. Notwithstanding the data subject's reasonable expectations or any damage or distress caused to them by disclosure, it may still be appropriate to disclose the Withheld Information if it can be argued that the processing is necessary for reasons of substantial public interest and the rights of affected data subjects can be protected.
40. Accordingly, in considering the application of Art.8(1)(a) of the DPJL 2018, it is necessary to consider the following:

- a. Is there a substantial public interest in the information?
- b. If so, do those interests override the fundamental rights and freedoms of the relevant data subject(s)?

41. There is no definition of 'substantial public interest' in the DPJL 2018 nor in the UK's Data Protection Act 2018 nor the General Data Protection Regulation. In her guidance note³, the UK ICO said:

"What are 'reasons of substantial public interest'?"

The term 'substantial public interest' is not defined in the DPA 2018 or the GDPR.

Some of the conditions assume that processing under that condition is always in the substantial public interest, eg ensuring equality, or preventing fraud. However, some only apply to the extent that the processing is "necessary for reasons of substantial public interest".

The public interest covers a wide range of values and principles relating to the public good, or what is in the best interests of society. Commercial or private interests are not the same as a public interest, and if you need to point to reasons of substantial public interest it is not enough to point to your own interests. Of course, you can still have a private interest - you just need to make sure that you can also point to a wider public benefit.

Substantial public interest means the public interest needs to be real and of substance. *Given the inherent risks of special category data, it is not enough to make a vague or generic public interest argument – you should be able to make specific arguments about the concrete wider benefits of your processing. For example, you may wish to consider how your processing benefits the public in terms of both depth (ie the amount of benefit experienced from the processing, even if by a small number of people) and breadth (the volume of people benefiting from the processing).*

You should focus on showing that your overall purpose for processing has substantial public interest benefits. *You do not need to make separate public interest arguments or show specific benefits each time you undertake that processing, or for each separate item of special category data, as long as your overall purpose for processing special category data is of substantial public interest. However, you must always be able to demonstrate that all your processing under the relevant condition is actually necessary for that purpose and complies with the data minimisation principle." (emphasis supplied).*

42. In Decision Notice 2018-01⁴, this office considered, in depth, the application of Art.25 of the Law. In respect of information that may be considered to be in the public interest the following is useful in the context of this appeal:

³ <https://ico.org.uk/for-organisations/guide-to-data-protection/guide-to-the-general-data-protection-regulation-gdpr/special-category-data/what-are-the-substantial-public-interest-conditions/>

⁴ <https://oicjersey.org/wp-content/uploads/2018/11/Decision-Notice-2018-01-FINAL.pdf>

"53. Ultimately, deciding how to apply article 25 of the FOI Law to cases, such as the present, involves balancing the privacy rights of the individual against the public interest in disclosure. Taking a proportionate approach involves two key considerations. The first is the nature and sensitivity of the information at issue. From the relevant decisions cited above, information about terms and conditions of employment set out at the time of the commencement of employment are arguably less sensitive than the details of a compromise agreement setting out the terms and conditions of an individual's departure of employment.

54. The second consideration concerns that nature of the public interest that disclosure of the information would serve. The term 'public interest' or 'interest of the public' appears in many statutes throughout the Commonwealth, but such statutes rarely, if ever, provide a definition of the term or any guidance for evaluating the circumstance of specific cases. This leaves it open to variation in interpretation. I agree with the SPA that the term public interest is more specific than 'what the public finds to be interesting'. It does not refer to interest in the sense of being entertaining. The term public interest concerns the public having a stake or right that is at issue rather than simply mere curiosity. This term applies in circumstances where an event or development is likely to affect tangibly the public in general. The fact that a topic receives media attention does not automatically mean that there is a public interest in disclosing the information that has been requested about it. As the Tribunal held in the case of House of Commons v. Information Commissioner, dealing with a request for ministerial expenses: 'The number of news articles on a particular topic may be an indication of public curiosity but is not a measure of the legitimate public interest'.

55. The most illustrative case providing factors to consider in determining the application of the public interest that I have been able to find is an administrative law decision of the former Commissioner for Information and Privacy for the Province of British Columbia, Canada, David Flaherty (Order 154-199710). This case involved a request by an applicant that a public body waive a fee assessed for access to records, in accordance with section 75 of the Freedom of Information and Protection of Privacy Act (FIPPA), on the grounds that the records 'related to a matter of public interest'. Former Commissioner Flaherty suggested that the following factors were relevant:

- a. has the information been the subject of recent public debate?*
- b. does the subject matter of the record relate directly to the environment, public health, or safety?*
- c. would dissemination of the information yield a public benefit by –*
 - I. disclosing an environmental, public health, or safety concern,*
 - II. contributing meaningfully to the development or understanding of an important environmental, health, or safety issue, or*
 - III. assisting public understanding of an important policy, law, program, or service?*

d. do the records show how the public body is allocating financial or other resources?

While the relevant provisions of FIPPA are not entirely analogous with the FOI Law, the above factors appear to me to be a sensible list of issues to consider when determining whether disclosure of information is in the public interest. Indeed, they are reflective of some of the issues that I must consider in the instant case."

43. Based on the above factors and having reviewed all the relevant information in this case, the Commissioner finds the matters finely balanced in respect of Part C of the Request.

44. On the one hand, there is significant force in the Complainant's arguments as set out in their Internal Review, where they refer to an extract from the Jersey Police Complaints Authority Report dated 2018 which states that "*No complaints against either the Chief Officer or Deputy Chief Officer were referred to the Authority in 2018*" and the Complainant considered that there was, accordingly, precedent for statistical information regarding the number of complaints against senior members of the force being made available (even if to confirm a negative). Similarly, the Commissioner has also noted further the following from the Report for 2017⁵:

"Previously, the Law did not provide for the oversight of complaints made against the Chief Officer or the Deputy Chief Officer of the States of Jersey Police and the Authority therefore did not have a role to play in such matters. However, the States of Jersey Police Force (Chief Officer and Deputy Chief Officer) (Jersey) Regulations 2017 came into force in February 2017 and the Authority has a formal role to play in the investigation of complaints against these 2 senior officers. No complaints against either the Chief Officer or the Deputy Chief Officer have been referred to the Authority."

The Reports go on to provide a break down of the nature of the complaint and the outcome.

45. Similarly, the Complainant rightly notes that there are other clear instances whereby details have been published regarding complaints regarding conduct of police officers (namely, the Operation Haven Report of 12 November 2008, the Napier report and the Operation Belfong report dated 9 June 2017. They say that there is clear public interest in knowing the kind of information that has been requested.

46. Conversely, there is similar force in the arguments advanced by the SPA that it is also publicly stated that "*each determination to publish would be made on the explicit basis of the relevant complaint. It would not always be the case that public interest would outweigh personal prejudice*" and it is noted that, in fact, the release of purely statistical data could be undesirable given that such "*would carry no explanation of claims made or resulting actions*".

47. As stated, the Commissioner has reviewed the Request and the Withheld Information. It is not possible to divulge the contents of the Withheld Information but, ultimately,

⁵ <https://statesassembly.gov.je/assemblyreports/2018/r.19-2018.pdf>

the Commissioner has determined that it has not been demonstrated that there is substantial public interest in disclosure of the Withheld Information such as to outweigh the fundamental rights and freedoms provided for in the DPJL 2018 for the following reasons:

- a. As noted in the Commissioner previous decision outlined above, *"the term public interest is more specific than 'what the public finds to be interesting'. It does not refer to interest in the sense of being entertaining. The term public interest concerns the public having a stake or right that is at issue rather than simply mere curiosity. This term applies in circumstances where an event or development is likely to affect tangibly the public in general"*. In this case, there is no suggestion that this interest is of interest to the public at large rather than of personal interest to the Requester and, in any event, the SPA has released certain information to the Complainant during the course of this appeal.
- b. The SPA has released certain information during the appeal process and, in the Commissioner's view, this has struck the correct balance.
- c. The Commissioner also appreciates that the complainant may have a personal interest in disclosure of the withheld information based on the circumstantial information related to this case. However, he does not consider that there is a pressing social need to interfere with the privacy rights of other individuals.
- d. As disclosure is not necessary, the Commissioner has decided that there is no lawful basis for this processing. It therefore does not meet the requirements of Art.8(1)(a) of the DPJL 2018.
- e. As the Commissioner has decided in this case that disclosure is not necessary for reasons of substantial public interest, he does not need to go on to conduct the balancing test and has not done so.

48. The Commissioner therefore considers that there is no Article 9 basis for processing and so the disclosure of the Withheld Information would not be lawful under the DPJL 2018 and is therefore exempt under Art.25 of the Law.

49. Accordingly, the Commissioner, having considered the Withheld Information pursuant to Art.25 of the Law, considers that the Art.25 exemption has been correctly engaged by the SPA in this respect. The Commissioner is unable to provide any further information in this Notice regarding the contents of the Withheld Information and the submissions provided by the SPA as that would likely, of itself, constitute a breach of the DPJL 2018.

Art.26 – Information supplied in confidence

50. Art.26 was dropped by the SPA during the appeal process.

Other matters

51. Whilst not the focus of the Complainant's appeal (and not matters that can properly be appealed, in any event), the Complainant raised certain other matters that are worthy of response as part of this notice.

Wilful obstruction

52. The Commissioner has not found any evidence to suggest that there has been any wilful obstruction on the part of the SPA in responding to the Complainant's Request. They deployed exemptions as they are entitled to do, and the Complainant challenged those exemptions as they are also so entitled and has asked the Commissioner for a review. There is no evidence of any unlawful conduct on the part of the SPA or any of those involved in the present process.

Names of those responding to FOI requests

53. The Complainant specifically complains that they have not been advised as to the identities of those who have made decisions relating to the Request, both at first instance and at the Internal Review stage and notes that much of the correspondence emanates from the Central FOI Unit.

54. It is a matter for the Government of Jersey as to the approach they wish to adopt in respect of communicating with individuals and there is nothing in the FOI Law compelling the identification to a requester of individuals of either those within the FOI Unit or who have been involved in the original responses and internal reviews.

The Decision

55. The Commissioner considers that in respect of Part C of the Request, the SPA appropriately applied the Art.25 exemption.

56. Accordingly, the complainant's appeal is not upheld and there are no further steps the Commissioner requires the SPA to take.

Right of Appeal

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

58. Information on how to do so can be found on www.jerseyoic.org.

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

Dated this 7th day of July 2021

Signed.....

Mr Paul Vane

Information Commissioner
Office of the Information Commissioner
5 Castle Street

St Helier
Jersey

8 General right of access to information held by a scheduled public authority

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

- (a) the person has a general right to be supplied with the information by that authority; and
- (b) except as otherwise provided by this Law, the authority has a duty to supply the person with the information.

9 When a scheduled public authority may refuse to supply information it holds

(1) A scheduled public authority may refuse to supply information it holds and has been requested to supply if the information is absolutely exempt information.

(2) A scheduled public authority must supply qualified exempt information it has been requested to supply unless it is satisfied that, in all the circumstances of the case, the public interest in supplying the information is outweighed by the public interest in not doing so.

(3) A scheduled public authority may refuse to supply information it holds and has been requested to supply if –

- (a) a provision of Part 3 applies in respect of the request;
- (b) a fee payable under Article 15 or 16 is not paid; or
- (c) Article 16(1) applies.

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

(1) A scheduled public authority must deal with a request for information promptly.

(2) If it supplies the information it must do so, in any event, no later than –

- (a) the end of the period of 20 working days following the day on which it received the request; or
- (b) if another period is prescribed by Regulations, not later than the end of that period.

(3) However, the period mentioned in paragraph (2) does not start to run –

- (a) if the scheduled public authority has, under Article 14, sought details of the information requested, until the details are supplied; or
 - (b) if the scheduled public authority has informed the applicant that a fee is payable under Article 15 or 16, until the fee is paid.
- (4) If a scheduled public authority fails to comply with a request for information –
- (a) within the period mentioned in paragraph (2); or
 - (b) within such further period as the applicant may allow,
- the applicant may treat the failure as a decision by the authority to refuse to supply the information on the ground that it is absolutely exempt information.
- (5) In this Article "working day" means a day other than –
- (a) a Saturday, a Sunday, Christmas Day, or Good Friday; or
 - (b) a day that is a bank holiday or a public holiday under the Public Holidays and Bank Holidays (Jersey) Law 1951^[4].

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.

25 Personal information

- (1) Information is absolutely exempt information if it constitutes personal data of which the applicant is the data subject as defined in the Data Protection (Jersey) Law 2005.
- (2) Information is absolutely exempt information if –
 - (a) it constitutes personal data of which the applicant is not the data subject as defined in the Data Protection (Jersey) Law 2018; and
 - (b) its supply to a member of the public would contravene any of the data protection principles, as defined in that Law.
- (3) In determining for the purposes of this Article whether the lawfulness principle in Article 8(1)(a) of the Data Protection (Jersey) Law 2018 would be contravened by the disclosure of information, paragraph 5(1) of Schedule 2 to that Law (legitimate interests) is to be read as if sub-paragraph (b) (which disapplies the provision where the controller is a public authority) were omitted.

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.