INTRODUCTION

1. The DPJL is based around six principles of ‘good information handling’. These principles give people (the data subjects) specific rights in relation to their personal information and place certain obligations on those organisations that are responsible for processing it.

2. The Data Protection Authority (Jersey) Law 2018 (AL) establishes the Data Protection Authority (the Authority), which will replace the Office of the Information Commissioner. The Information Commissioner (the Commissioner) is the Chief Executive Officer of the Authority.

3. This is part of a series of guidance to help organisations fully understand their obligations, as well as to promote good practice.

Investigation Policy

JUNE 2018 • V1 • WWW.JERSEYOIC.ORG
CONTENTS

Investigation of Complaints 3
Progress of Investigation 3
Determinations on completion of investigation 4
Recommendations and Determinations on completion of inquiry 4
Sanctions following breach determination 4
Administrative Fines 5
Appendix 1 6
More Information 10
Investigation of Complaints

An individual may make a complaint to the authority in a form approved by the authority under Article 19 of the Data Protection Authority (Jersey) Law 2018.

The Authority has a range of investigative powers that can be used to handle complaints and will decide on the most appropriate manner in which to investigate the complaint.

This process can be dependent on such things as the substance of the complaint, the potential for damage caused to individual(s), any undue delay in making the complaint, and whether the complainant has exercised, or tried to exercise their rights already.

Progress of Investigation

Upon receipt of a complaint, The Authority will, provide written acknowledgement of receipt of the complaint and as soon as practicable and in any event within 8 weeks, make a determination whether or not to investigate the complaint.

The Authority must investigate the complaint unless-

The complaint in completely unfounded
The complaint is frivolous, vexatious, unnecessarily repetitive or otherwise excessive; or
The Authority determines that it is inappropriate to investigate the complaint, having regard to any other action taken by the Authority.

Where a complaint is investigated, the Authority must give the complainant and the controller or processor concerned,

» (a) Written notice that the complaint is being investigated. This must be done as soon as practicable and in any event within 8 weeks of receiving the complaint.
» (b) And, at least once within 12 weeks of the written notice under (a) above provide written notice of the progress and if possible the outcome of the investigation.

However, where the Authority considers that giving the notice within the time specified by paragraph (3) is likely seriously to prejudice the investigation, the Authority may delay giving the notice, in which case it must give the notice (including an update as to the progress of and, where applicable the outcome of the investigation) as soon as it is possible to do so without seriously prejudicing the investigation.

If the Authority determines not to investigate a complaint, the Authority must give the complainant written notice of its determination and the reasons for it within 8 weeks.
Determinations on completion of investigation

On completion of an investigation, the Authority must determine whether or not any breaches have occurred under the Data Protection (Jersey) Law 2018 or the Freedom Of Information (Jersey) Law 2011.

If the authority makes such a determination, the Authority must also determine whether or not to impose a sanction on the controller or processor, and if so which one or more than one to impose.

As soon as practicable after making a determination, the Authority must give the controller or processor concerned, and the complainant, written notice of

(a) The determination and the reasons for it; and

(b) The right to appeal under Article 32.

Recommendations and Determinations on completion of inquiry

If the Authority makes a breach determination against a controller or processor, the Authority must also determine whether or not to impose a sanction, and or whether to impose and administrative fine.

As soon as practicable after making such a determination, the Authority must give the controller or processor concerned a written notice of the determination and the reasons for it, and the right to appeal.

Sanctions following breach determination

If the Authority makes a breach determination against a controller or processor, they may by written notice take any or all of the following sanctions against the recipient-

(a) Issue a reprimand to the recipient

(b) Issue a warning to the recipient that the intended processing or other act or omission is likely to contravene the Data Protection Law;

(c) make an order under paragraph (3)

(3) The Authority may order the recipient to do all or any of the following –

(a) bring specified processing operations into compliance with the Data Protection Law, or take any other specified action required to comply with that Law, in a manner and within a period specified in the order;

(b) notify a data subject of any personal data breach;

(c) comply with a request made by the data subject to exercise a data subject right;

(d) rectify or erase personal data in accordance with Article 31 or 32 of the Data Protection Law;

(e) restrict or limit the recipient’s processing operations, which may include –

   (i) temporarily restricting processing operations in accordance with Article 33 of the Data Protection Law,

   (ii) ceasing all processing operations for a specified period or until a specified action is taken, or

   (iii) suspending any transfers of personal data to a recipient in any other jurisdiction; and

(f) notify persons to whom the personal data has been disclosed of the rectification, erasure or temporary restriction on processing, in accordance with Articles 31 to 33 of the Data Protection Law.
Administrative Fines

Subject to Article 27 the Authority may order a controller or processor to pay to the Authority an administrative fine.

Fines for breaches under article 26(1)(a) and (b) must not exceed £5,000,000 and fines for breaches under article 26(1)(c) and (d) must not exceed £10,000,000.
APPENDIX 1

Information Matters

In today’s business world, most organisations and Government of Jersey take data protection and freedom of information very seriously, and the majority of issues are resolved without ever needing to raise a concern with us.

However, if you have contacted an organisation about an information matter and in keeping with the guidance provided in our ‘Information Rights’ section you are unhappy with the outcome, we may be able to help you do something about it.

You can raise the matter formally with us through our online form

If you would just like to talk to us about a data protection or freedom of information concern please use the same form or email or telephone us. Our contact details are here.
Your right to raise a complaint with the Jersey Office of the Information Commissioner

Under article 19 of the Data protection Authority (Jersey) Law 2018, individuals may make a complaint to the Jersey Office of the Information Commissioner.

This applies where the individual believes that a controller or processor has or is likely to use or process your data outside of the Law and the breach affects or is likely to affect any right in respect of personal data relating to an individual.

If you believe an organisation has;

- or is likely to use your information outside of the Law
- allowed your information to be breached/shared unlawfully
- taken actions likely to affect your individual rights

Step 1
Raise your concern with the organisation

Step 2
Complain to Jersey Office of the Information Commissioner, using the online pro-forma or in writing to us.
Your right to raise a concern with an organisation

You have the right to be confident that organisations handle your personal information responsibly and in line with good practice.

If you have a concern about the way an organisation is handling your information; if it:

• is not keeping your information secure;
• holds inaccurate information about you;
• has disclosed information about you;
• is keeping information about you for longer than is necessary; or
• has collected information for one reason and is using it for something else,

We believe that the organisation responsible should deal with it. We expect them to take your concern seriously and work with you to try to resolve it.

Our guide gives you additional help.

If you’re concerned about the way an organisation is handling your information, because it:

- is not keeping your information secure
- holds inaccurate information about you
- has disclosed information about you
- is keeping information about you for longer than is necessary
- has collected information for one reason and is using it for something else

Write to them to raise your concerns.
Your right to access information from a public body

The Freedom of Information (Jersey) Law, 2011, provides you with rights to access official information that is held by a scheduled public authority (SPA).

A SPA is a Government of Jersey Department or agency, which is listed in Schedule 1 of the Law. Under the Law you have a right to: ‘Ask for any information’ you think a SPA may hold and everyone has equal rights to access this information.

Your information right covers any recorded information that is held by a SPA in Jersey, which includes printed documents, computer files, letters, emails, photographs, and sound or video record.

Our guide gives you additional help.

Link to Infographic
MORE INFORMATION

Letting us know

Data protection is the fair and proper use of information about people. It’s part of the fundamental right to privacy – but on a more practical level, it’s really about building trust between people and organisations. It’s about treating people fairly and openly, recognising their right to have control over their own identity and their interactions with others, and striking a balance with the wider interests of society.

Please do not hesitate to let us know if you feel we could have responded to you in a more effective manner or to pass on any suggestions, compliments or if you wish to complain about us.

If you need any further information about this, or any other aspect of the Data Protection (Jersey) Law or, please contact us or see our website www.jerseyoic.org

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

If you have a Complaint about us please write to;

Complaints
The Data Protection Authority
2nd Floor
5 Castle Street
St Helier
Jersey JE2 3BT