

GUIDANCE NOTE

How we deal with Appeals

The Freedom of Information (Jersey) Law, 2011

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INTRODUCTION

This guidance explains how we deal with appeals made about Scheduled Public Authorities (“**SPAs**”) under Article 46 of the Freedom of Information (Jersey) Law, 2011 (“the **Law**”).

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COMPLAINTS MADE TO THE INFORMATION COMMISSIONER

Under Article 46 of the Law, any person who is unhappy with the way in which you have dealt with an applicant's request for an internal review of your handling of the applicant's original request, has the right to make an appeal to the Information Commissioner.

We will usually ask the applicant for copies of the original request, any refusal notice and any internal review decision that you have sent to them.

When an appeal has been made to us, we will contact you to explain that we have received an appeal and tell you what we expect you to do. However, where you have withheld information from the applicant, we won't usually ask you to send all of it to us immediately.

Our aim is to resolve cases as soon as possible or, in any event, within six months of receiving them.



WHAT WE EXPECT YOU TO DO

Before we become involved we expect you will already have considered the issues around withholding the information in detail and shared them with the applicant during your internal review. If you have done so, then our investigation will be quicker and easier.

We will assign a case officer to the case. They will be your point of contact throughout our investigation.

The case officer will ask you to reconsider the case and provide a submission to us in response to the issues raised by the applicant. The case officer may also ask you to answer specific questions.

Your submission should include details about what information the applicant requested from you, why any exemption applies and, where applicable, how the public interest in maintaining that exemption outweighs the public interest in disclosure.

When you are reconsidering the case, we want you to recheck your reasoning by looking at the following resources:

- Our guidance;
- The common questions relating to particular exemptions or exceptions; and
- Any relevant decision notices.

In your submission it will be useful if you include:

- Information about the context of the request, and the role of any staff named within the information provided or withheld;
- Copies of documents that back up the points you have made in your submission;
- Background about the information under consideration that will help us understand its context and sensitivity;
- Any legal advice you have received that may help your authority's arguments (although you are not obliged to provide this type of legal advice to the Information Commissioner);
- Your view on whether it might be possible to release the information in a redacted version; and your view on whether the case may be open to informal resolution, for example whether you would be willing to release some or all of the information to the applicant or whether there is some other action you could take which would satisfy them.

It is important to remember that it is your responsibility to satisfy the Information Commissioner that the requested information should not be disclosed and that you have complied with the Law. This is your opportunity to explain your decision to the Information Commissioner.



IF YOU CHANGE YOUR VIEW

ABOUT THE CASE

When you reconsider the request and review our resources, it is possible that you may change your view about the request.

Informal resolution

Even after we are involved, you can discuss the request with the applicant – particularly if this is likely to lead to you resolving the request informally. If you resolve a request without our involvement, please let us know as soon as possible, so that time is not incurred by the Information Commissioner unnecessarily.

Releasing the information

If you realise that you could resolve the request by full or partial disclosure of the information then you should do so, informing the case officer at the earliest opportunity.

This may mean that the applicant will withdraw their application to us. However occasionally the applicant will not, because they still want the Information Commissioner to issue a decision notice. In these cases the Information Commissioner must issue a decision, unless the Information Commissioner thinks that the case is, for example, frivolous or vexatious or for any of the other reasons set out at Article 46(4) of the Law.

Changing the exemption that you have relied on

During your review you may decide that you need to substitute one exemption with another - that is, if you decide that an exemption which you originally relied on does not apply but another one does.

We will consider new exemptions which are applied for the first time during the investigation, but it is your responsibility to tell us, and the applicant, why the new exemption applies.

How long you have to respond

You will have 10 working days (from the date the SPA is notified of the application for an appeal) to make your final submission to the Information Commissioner and we will clearly indicate the deadline to you. It is your responsibility to meet this deadline and make sure you have arrangements in place to allow you to fully cooperate with our investigation.

If you think you won't be able to meet the deadline, it is essential that you contact your case officer immediately.



Failure to reply to the Information Commissioner's enquiries can result in the Information Commissioner bringing such matters to the attention of the Chief Minister pursuant to the provisions set out in an existing Memorandum of Understanding dated 24 November 2014. The Chief Minister may then direct the Information Commissioner to formally request that you supply the information requested, which must be supplied by you 'as quickly as possible and in any event within 5 working days.' Failure to supply information can also result in the case being decided purely on the information we already have and with the SPA not having availed itself of the opportunity to put its side of the story.

Our investigation

After receiving your final submission, the Information Commissioner's case officer will examine and consider it to help us make an objective assessment of the issues which led to the complaint.

Depending on the complaint, the case officer may consider:

- What searches you did to determine that you did not hold the information;
- The exemptions that you applied and whether you applied them correctly;
- The factors that you considered in gauging the public interest in the information;
- What, if any, potential harm there would be in releasing the information; and
- our reasons for refusing the request on the basis that it was not valid, was vexatious or repeated.

The case officer will also take into account any relevant case law, legislative requirements, developing precedent, along with any other relevant guidance. Wherever possible the case officer will make a decision based on your submission without seeking further information from you.



THE INFORMATION COMMISSIONER'S DECISION

After concluding the investigation, the case officer will draft a decision notice for consideration and approval by the Information Commissioner.

The decision notice will set out the Information Commissioner's final decision in relation to the Law. If the Information Commissioner decides you have met your obligations under the Law we will class the complaint as 'not upheld'; or if you have failed to comply we will class the complaint as 'upheld' and, where relevant, we will tell you what steps you now need to take.

The Information Commissioner cannot withdraw or amend a decision notice after it is issued.

Receiving the Information Commissioner's decision

We will send copies of the decision notice to both the applicant and your Chief Officer or equivalent by post and email (if so desired). Although we will send the decision notices out at the same time to the applicant and the SPA, we can't be held responsible for when they are received.

If you would also like to receive a copy by email, usually on the day the decision is issued, you must give your case officer an email address to send it to.

If you fail to comply with a decision notice

If we believe that you haven't complied with the steps we specified in a decision notice within 35 days, then the Information Commissioner can (pursuant to Article 48 of the Law) ask the Royal Court to look into the case. The court may then deal with the SPA as if it has committed a contempt of court, or substitute the Information Commissioner's decision with another that he/she could have made.

Appeals against the Information Commissioner's decision

If you or the applicant wishes to appeal against the Information Commissioner's decision, you can appeal to the Royal Court pursuant to Article 47 of the Law. You must make an appeal within 28 calendar days of the Information Commissioner giving notice of the decision to the applicant.

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IF YOU WANT YOUR --- INFORMATION SENT BACK

We will need to retain information during our own appeal process and that which may subsequently be undertaken by the Royal Court. However the Information Commissioner will discuss with you whether you wish any supplied information to be returned to you or destroyed/disposed of by secure or other agreed means.

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INFORMATION REQUESTS

ABOUT THE CASE

If we receive any information requests about the case, we have a duty under the Law to consider such requests. It is in the public interest that we are open, transparent and accountable for the work that we do. It is also important that we do not undermine the trust and confidence of those who write to us. If you do have reasons why information sent to us in the course of an investigation should not be shared with anyone else, you should explain this to your case officer as part of your submission.

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CONTACTING US

Your case officer is your first point of contact to discuss any issues or outstanding queries. You will find their contact details on the correspondence they have sent to you.

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MORE INFORMATION

This guidance has been developed with assistance of the Office of the Information Commissioner in the United Kingdom. The guidance will be reviewed and considered from time to time in line with new decisions of the Jersey Information Commissioner and the Royal Court.

It is a guide to our general recommended approach, although individual cases will always be decided on the basis of their particular circumstances.

If you need any more information about this or any other aspect of freedom of information, please contact us:

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Email: enquiries@jerseyoic.org

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