



ANNUAL REPORT 2014



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Our mission

Statement of Purpose

To fully discharge our statutory duties, as an independent body, to enhance information governance across the Channel Islands ensuring continued recognition as a well-regulated jurisdiction.

To assist organisations meet their obligations; to regulate where the required standard has not been met and to ensure that individuals are confident and able to exercise their information rights.

Areas of Focus

Develop
Educate
Lead
Influence
Visible
Enforce
Regulate

DEVELOP – ensuring our staff are highly skilled and motivated, working effectively and efficiently across the Islands.

EDUCATE – working with key organisations and individuals to promote awareness and understanding of information rights and responsibilities.

LEAD – as the subject matter expert within the Channel Islands, ensuring the Islands’ continued recognition on the European and international stage

INFLUENCE – seeking to embed information rights in all relevant areas especially new laws and policies across the private and public sector

VISIBLE – conducting our work in an open and transparent manner, ensuring relevant and useful information is proactively published on our website

ENFORCE – taking targeted and meaningful regulatory action in a fair and consistent manner

REGULATE – making effective use of our statutory powers to achieve consistency across the Channel Islands

Governance statement

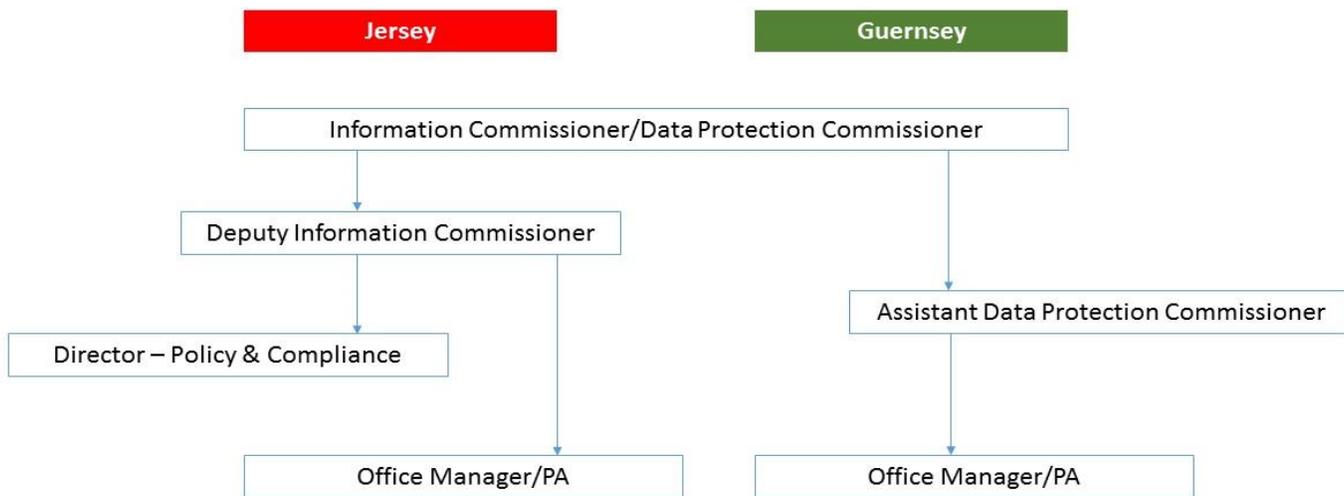
The position of Data Protection Commissioner and Information Commissioner are established in the Data Protection (Bailiwick of Guernsey) Law, 2001, the Data Protection (Jersey) Law 2005 and the Freedom of Information (Jersey) Law 2011. Under the terms of the EU Directive 95/46 the Commissioner must be independent of government and this has been enshrined in legislation. In Guernsey the sponsoring department for the office is the Home Department. In Jersey the sponsoring department for the office is the Chief Minister's Department. The Commissioner is accountable to the States for the exercise of statutory functions and is subject to States audit.

Risks

Risks are routinely assessed

1. Budgeting 2015 and beyond
 2. Proposed changes to EU data protection regulatory regime
 3. IT strategy
 4. Increasing pressure on resources
 5. Robust independence from government
-
1. The offices have an agreed budget for 2015. Long term funding for Freedom of Information (Fol) in the Jersey office has yet to be agreed. There also remains continuing uncertainty in light of the draft EU Regulation.
 2. The draft EU Regulation no longer contains the requirement for data controllers to notify and pay a fee for doing so. This will remove a significant income from all data protection authorities. It also places additional duties on the regulators in how the offices continue to be funded within the context of EU reform, future cuts in government expenditure together with increasing workloads and expectations is of serious concern and will be the subject of review in 2015.
 3. The offices have taken the extremely important step of moving away from government IT support. Independence is essential for a successful data protection and freedom of information regulator and ensuring our data is held securely and independently is crucial.
 4. An important element of our work is to ensure individuals are informed of their rights and empowered to raise concerns. If we do this well, we are then faced with managing the resulting enquiries and complaints. Not only does our workload expand year on year, the increased complexity of enquiries and cases is also noticeable. Managing the volume of work as well as expectations from those who require information or assistance from us at the same time as the offices are going through significant changes will be a challenge for us all.
 5. In order for us to be an effective regulator, we need to ensure a sustainable funding system as part of a clearer guarantee of independence. In both offices, steps have been taken to re-position ourselves as independent in respect of four key areas; IT, human resources, accounts and office accommodation. Work will continue in these areas in 2015.

Office structure



Your information rights

The **Data Protection (Jersey) Law 2005** and the **Data Protection (Bailiwick of Guernsey) Law, 2001** give citizens important rights including the right to know what information is held about them and the right to correct information that is wrong. The Data Protection Laws across the Channel Islands help to protect the interests of individuals by obligating organisations to manage the personal information they hold in an appropriate way.

The **Freedom of Information (Jersey) Law 2011** gives people a general right of access to information held by most public authorities. Aimed at promoting a culture of openness and accountability across the public sector, it enables a better understanding of how public authorities carry out their duties, why they make the decisions they do and how they spend public money.

The **Code of Practice for Access to Public Information – Guernsey**

In July 2013, the States of Guernsey agreed the Code of Practice on Access to Public Information. The Code contains the following core principles:

- A presumption of openness
- A corporate approach
- A culture of openness
- Proactive publication; and
- Effective record management.

The mechanism for requesting does not replace the process of applying for personal data under the Data Protection (Bailiwick of Guernsey) Law, 2001. Unlike this Law, our office has no statutory functions with regards appeals/complaints. All such matters are dealt with by the relevant department and may be referred to the Policy Council.

Commissioner's foreword

This is my third report as Data Protection Commissioner for the Channel Islands. Jersey and Guernsey made the decision to allocate responsibility for the Data Protection (Jersey) Law 2005 and the Data Protection (Bailiwick of Guernsey) Law, 2001 to a single position holder in 2011. Further enhancing co-operation and strategic consistency, such an approach is now being embraced in a number of areas across the Channel Islands.

The two offices continue to work very effectively together. With such small teams in each jurisdiction, it has enabled increased resilience and consistency. In 2014 work commenced on the pan-Island IT project which will see the launch of a new website and administration system. We are keen to standardise the regulatory approach and implementing IT that manages the workflow across the Islands will be a significant step forward. Whilst regulatory compliance is an important element of conducting business in the Channel Islands, it is in all our interests to ensure that fulfilling the statutory registration requirements is not a burden for businesses. Our new IT systems that sit outside of government will further enhance our independence and enable the collection and analysis of information relating to the functions of the offices. The ability to analyse complaints and enquiries will assist in highlighting areas of interest and concern and in turn assist in wider discussions around the formulation of new strategies and policies. Creating a pan-Island regulatory office that allows the Islands to respond effectively to a fast changing environment is a priority. The way in which data now plays a part in all our lives is evolving at an unprecedented rate and data protection regulators must be nimble and responsive to these changes and associated pressures.

Governments are increasingly using the internet as a means to deliver services and information and the Channel Islands are no exception. Across the Islands, we have seen momentum increase to develop a comprehensive e-government strategy which could see further expansion of the collection of personally identifiable information from the citizen. As a monopoly service provider, there is always the danger with governments that insufficient regard is given to questions of data security and privacy. Full engagement with these issues is essential if advances in technology are not going to mean a reduction in protections and controls for the data that sit behind it. This is why our office is determined to engage positively with government at this crucial time. Our aim is not to prevent advances in technology and service provision, but rather to emphasise that there is no excuse for poor information governance. Nothing in data protection prevents the achievement of a legitimate objective. What it does do is ensure that the objective is met in a way that fully respects the rights of individuals whose data are being processed. Public policy making and activity carries with it a unique and important responsibility in that it applies to everyone and is compulsory. If government is going to make a success of any new initiative it must have the trust and confidence of its citizens.

Governments in both Islands have also made positive progress in respect of wider information rights with preparation of a law in Jersey and a code in Guernsey which will provide unprecedented new rights for individuals to access government information. The Freedom of Information (Jersey) Law 2011 (Fol) is in force from January 2015 and the Code of Practice on Access to Official Information was approved in Guernsey in July 2013. Better access to information aims to make government more transparent and accountable, improve policy making and help the public better understand the decision making process. In turn this aims to increase public engagement in politics and enhance trust of the workings of government.

In Jersey, regulatory oversight of Fol is the responsibility of this office and we have worked hard to ensure we are fully prepared. At the end of summer the Jersey office moved out of Morier House, a States building, into offices of our own which ensures clearer independence from government. Such a move is crucial at this point as with the implementation of Fol the public deserve a regulatory oversight mechanism free from any direct or indirect influence or control of government. In Guernsey, oversight of the Code sits with Policy Council who must now put the words they drafted into action. We hope to see evidence of a real commitment to ensuring the community are made fully aware of their rights and departments of their responsibilities under the Code. Longer term I am of the view that Policy Council need to review the complaints procedure to provide a more independent mechanism in this area.

Embracing open government will require a change in culture across the Islands and this will not happen overnight. But it is increasingly recognised as an essential element of a modern democracy and both Islands have taken significant steps forward which now need to be followed by tangible and meaningful action.

In our globalised world in which ‘big data’ and the ‘internet of things’ play an increasing role many argue that privacy has no place. Notwithstanding the unprecedented publication of private details by citizens on the internet largely through social media platforms, I believe firmly that privacy rules will continue to be an essential and valuable part of our digital future if we are to retain the human values which form the foundations of our political, social and economic institutions. Indeed, perhaps now more than ever, data privacy and security can be a market differentiator for business in the digital economy. Companies that meet customer’s expectations of privacy will have an edge in the world of e-commerce. Equally, the lack of a coherent data protection policy has the potential to undermine e-commerce. With the Channel Islands new drive to embrace the opportunities the digital environment offers, we can be confident that in addition to the physical, political and social stability which is so attractive to business, the Islands continue to offer the highest standards of regulation which provide a workable regulatory framework for businesses as well as comprehensive rights for individual citizens. Together with the Channel Islands Brussels Office and relevant government departments, we continue to follow EU developments closely. An update on the draft EU Regulation is contained within this report. Businesses with a presence in the EU or that have EU citizens as clients would do well to ensure they review their data processing even at this early stage to ensure they are fully prepared for the changes ahead.

My team and I recognise that we work in a field whose true value to society is often difficult to articulate. Many mistake our insistence that all individuals, regardless of status, background or other traits are entitled to the rights afforded to them under law, as a tacit acceptance of the conduct or views of those individuals. Treating all individuals fairly and justly and in accordance with the rights afforded them in law may not always be popular but is essential if we are to do our job with integrity and without fear or favour. The internet has given us all unprecedented freedom to look at, as well as create information. In seeking to regulate some of that space we must avoid the common fallacy that freedom and discipline are inconsistent. Such discipline should form part of a democratic framework of decisions that are taken in the interests of society as a whole and based on an intelligent understanding that some order is not necessarily a bad thing if we are to reconcile the freedoms many of us seek with the rights of others.

The questions around how we as citizens, as human beings, respond to the fast changing technical environment will serve to influence and direct government and industry. We want to encourage individuals to be aware of their information rights and organisations to work to the highest levels of data governance. Further afield, we want to ensure the Channel Islands respond to the developments in Europe, safeguarding our position as jurisdictions well placed to provide the highest standard of regulatory framework for businesses and citizens alike.

As with other data protection authorities, we are facing growing financial and other resource constraints whilst at the same time seeing the demands placed upon us increase significantly. We need to ensure our legislation keeps pace with the fast evolving digital world, as well as committing adequate resources to effective supervision at a local as well as international level. Individuals must have confidence that there is effective oversight of their information rights in an increasingly complex environment. Doing that with the pressures already highlighted is a very real challenge and we propose to conduct a review into the way in which the offices are managing that workload, including the way in which they are structured and resourced. If government genuinely seeks to provide citizens with information rights there is going to be a cost. With our resources spread ever thinner and with increasing expectations from individuals, business and government, further cuts can only be made if such rights are scaled back. As Einstein said -

“Nothing is more destructive of respect for the government and the law of the land than passing laws which cannot be enforced”

Lastly I owe significant thanks to the staff in both Islands for their continued hard work and commitment. Both offices are going through a period of significant change and it is testament to the professionalism of all of the staff that those changes have been embraced and that we have made such positive strides. We are not complacent as there is always so much more to do and my team and I will continue to work hard to deliver an independent, high quality regulatory oversight mechanism across the Channel Islands.

Emma Martins

Data Protection Commissioner for Guernsey
Information Commissioner for Jersey

Our aims

Priorities

- To be a well-led and managed organisation, one that staff are proud to work for and that makes a real difference to the Islands.
- To ensure that the Channel Islands are recognised on the international stage as a well regulated jurisdiction, both now and once the EU Regulation is implemented.

What we want to achieve

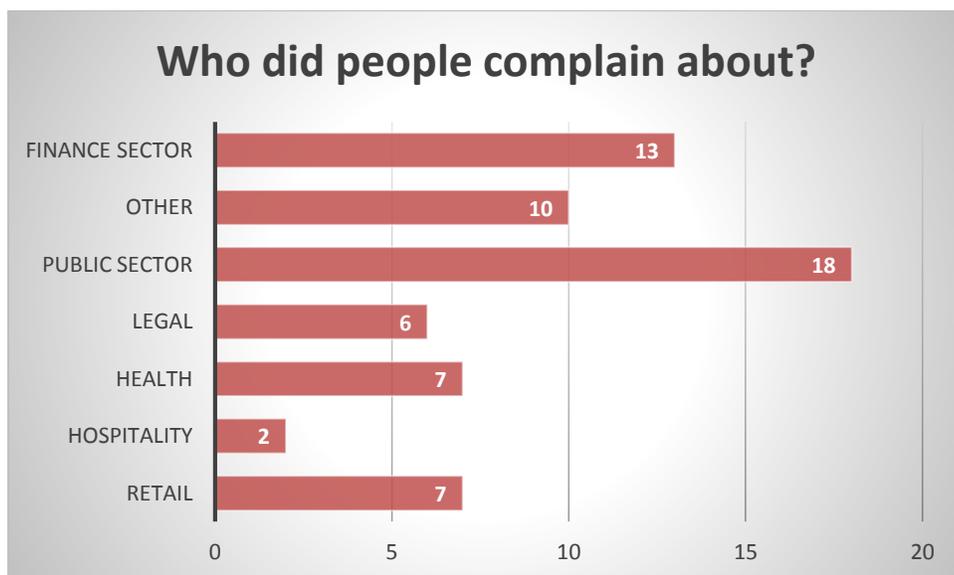
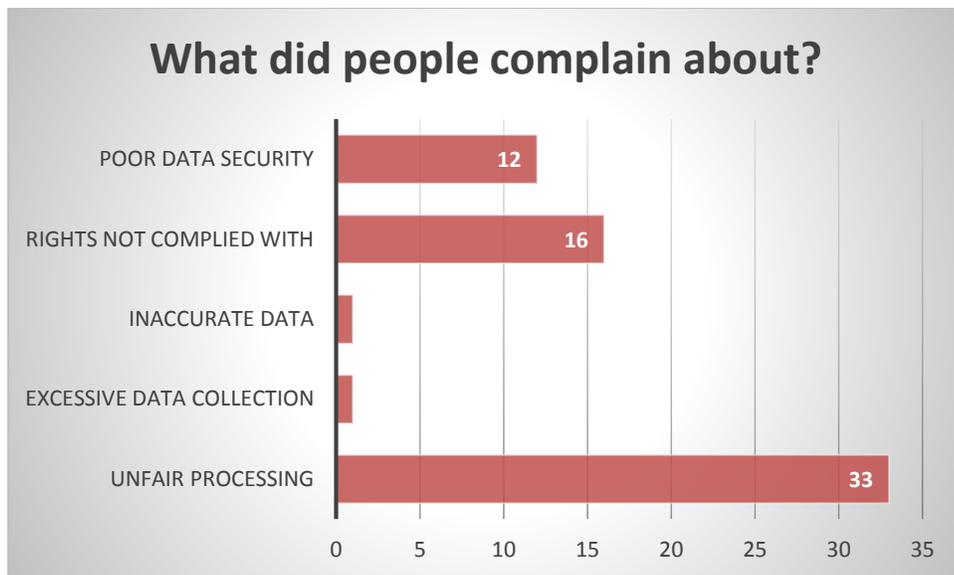
- To raise the profile of information governance, highlighting the role it plays in successful organisations while protecting the privacy of the individuals with which the organisation deals.
- To ensure that all those that handle personal information do so lawfully and responsibly.
- To encourage government organisations to embrace openness and transparency in all their activities whilst respecting an individual's right to privacy.
- To ensure that individuals are aware of their information rights and are confident in exercising them.
- To provide an effective and efficient notification service that is consistent across the Channel Islands.
- To ensure there exists a pan-Island mechanism for purposeful, targeted and meaningful regulatory activity.
- To reach a point where information rights are embedded in new laws, technology and public policy.
- To be a model of good regulation :-
 - Transparent
 - Accountable
 - Proportionate
 - Consistent
 - Targeted
 - Independent

Our year at a glance

<p>JANUARY 2014</p> <ul style="list-style-type: none"> • Pan-Island IT project commences 	<p>FEBRUARY 2014</p> <ul style="list-style-type: none"> • Finalisation of the General Practitioners Central Server Project. 	<p>MARCH 2014</p> <ul style="list-style-type: none"> • Interviews conducted as part of recruitment for new Director of Compliance and Policy in the Jersey office
<p>APRIL 2014</p> <ul style="list-style-type: none"> • Pan-Island strategy and process away day held to identify new common processes and efficiencies 	<p>MAY 2014</p> <ul style="list-style-type: none"> • Development starts on new website and CRM system 	<p>JUNE 2014</p> <ul style="list-style-type: none"> • New Director of Compliance and Policy appointed in Jersey office
<p>JULY 2014</p> <ul style="list-style-type: none"> • BIDPA (British and Irish Data Protection Authorities) annual meeting held in Dublin. • ‘Shaping Our Future’ event held by the States of Jersey. Office of the Information Commissioner (OIC) represented as part of Chief Ministers and FoI team. 	<p>AUGUST 2014</p> <ul style="list-style-type: none"> • Jersey office moves to new premises 	<p>SEPTEMBER 2014</p> <ul style="list-style-type: none"> • Pre-implementation work continues in advance of new FoI Law.
<p>OCTOBER 2014</p> <ul style="list-style-type: none"> • Testing starts on new website and CRM system. • OIC attend FoI Information Workshop in Wilmslow, Cheshire. 	<p>NOVEMBER 2014</p> <ul style="list-style-type: none"> • Codes of Practice and FoI guidance for general public and scheduled public authorities under development. 	<p>DECEMBER 2014</p> <ul style="list-style-type: none"> • Guernsey office moves to new premises. • FoI awareness briefings undertaken in Jersey by the OIC with local media representatives. • Finalisation of Codes of Practice and FoI guidance in advance of FoI Law implementation.

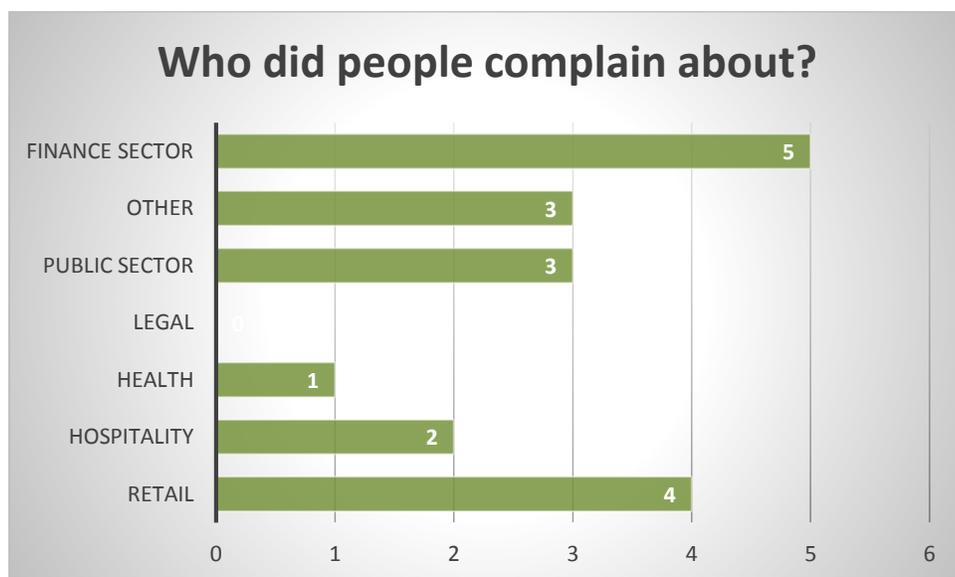
Operational performance

Complaints (Jersey)



A total of 63 complaints were recorded in Jersey during 2014, representing an increase of 17% on the previous year. Over half the complaints received related to issues of unfair processing. The most noticeable rise was in relation to allegations of poor data security which had increased by 10 percentage points on 2013. As expected, the Jersey’s biggest sectors received the most complaints, however increases were seen in both the health and legal sectors.

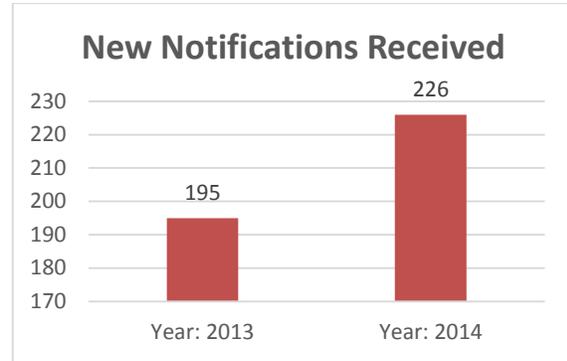
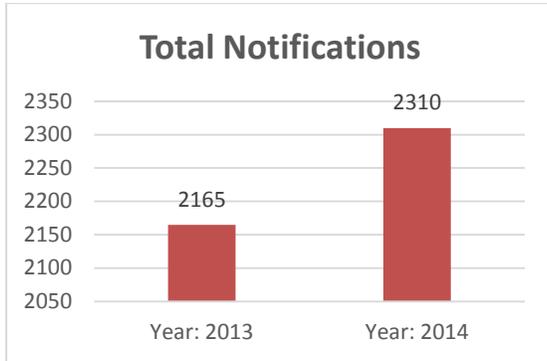
Complaints (Guernsey)



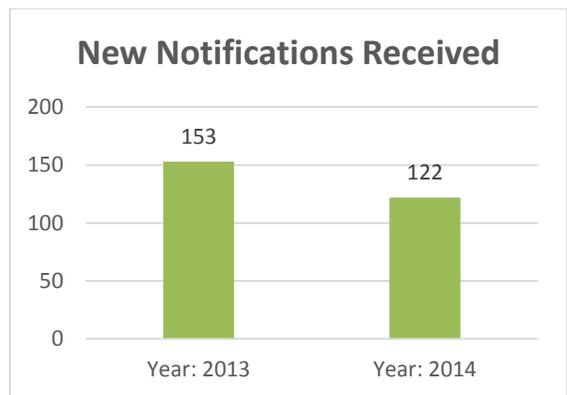
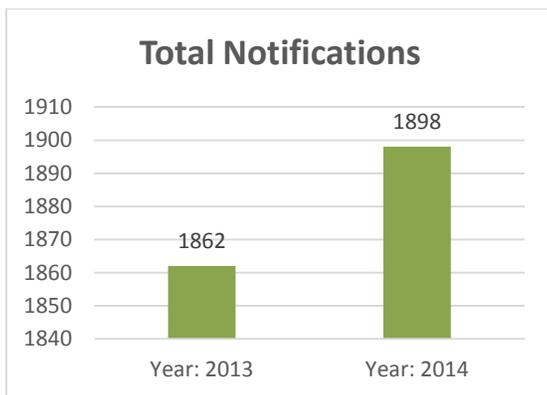
Complaints in Guernsey fell by almost half on the previous year from 34 to 18.

Similar to Jersey, the finance industry received the most complaints, and the largest area of alleged non-compliance was in relation to the rights of data subjects, in particular subject access requests.

Notifications (Jersey)



Notifications (Guernsey)



Guidance given

Guidance documents

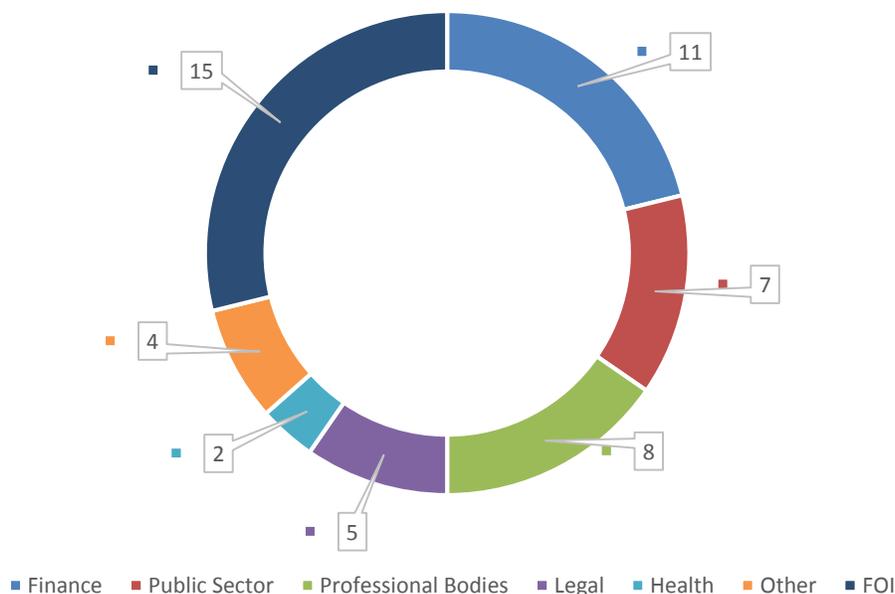
Our main efforts during 2014 were focused upon developing guidance in preparation for the implementation of the Freedom of Information (Jersey) Law 2011. This included a basic guide to Freedom of Information, advice on how to access information from scheduled public authorities and the responsibilities upon scheduled public authorities when handling requests under the new Law.

In terms of Data Protection guidance, work continued on updating and consolidating guidance across the two islands. It is envisaged that this work will be completed in 2015.

Awareness sessions

The Commissioner and her staff are regularly invited to undertake speaking engagements and provide awareness sessions to industry representatives and professional bodies. During 2014, a total of 52 sessions were delivered across the two islands, and a breakdown of those sessions is detailed below:

2014 Awareness Sessions



Enforcement actions

In Jersey there was an increase in complaints made to us during 2014, two of which resulted in regulatory action being taken in the form of undertakings and one resulted in the issuing of an enforcement notice. In Guernsey the number of complaints made to us fell in 2014 and no undertakings or enforcement notices were issued.

With regard to criminal proceedings, the Commissioner undertook one criminal investigation into the alleged unlawful obtaining of personal data (Article 55 of the Data Protection (Jersey) Law 2005). This investigation was successfully resolved without the need for referral to the Attorney General.

European developments

Developments in Europe especially in respect of the new draft data protection regulation continue to be closely followed by the Channel Islands. In 2012, the European Commission published its proposals for a strengthening of EU data protection law, reflecting the enhanced status given to data protection by the Lisbon Treaty. The Commission proposals provided for a directly applicable Regulation imposing strict obligations on data controllers and processors and enhanced rights for data subjects. The Commission proposed a separate Directive covering the area of criminal justice.

The proposed Regulation represents the most significant change in the data protection legal framework in decades. This new era of regulation will establish a number of new rights for citizens - such as the right to be forgotten and data portability, as well as increased responsibilities for those who handle data - such as compulsory breach notifications. It aims to create a single market for data in the European Union and safe jurisdictions such as the Channel Islands, further streamlining data flows for business and improving cooperation between regulators.

The right to be forgotten is a concept that has been much discussed in recent years. The issue has arisen from the desires of some individuals to determine the development of their life in an autonomous way, without being perpetually or periodically stigmatized as a consequence of a specific action performed in the past. There has been considerable controversy around the practicality of establishing a right to be forgotten to the status of an international human right, due in part to the vagueness of current rulings attempting to implement such a right. There are concerns about its impact on the right to freedom of expression, its interaction with the right to privacy, and whether creating a right to be forgotten would decrease the quality of the Internet through censorship and a rewriting of history. There are opposing concerns about problems such as revenge porn sites appearing in internet search listings for a person's name, or references to petty crimes committed many years ago indefinitely remaining an unduly prominent part of a person's digital footprint.

In May 2014, the European Court of Justice ruled against Google in a case brought by a Spanish man who requested the removal of a link to an old digitized newspaper article about an auction for his foreclosed home, for a debt that he had subsequently paid. He initially attempted to have the article removed by complaining to the Spanish Data Protection Agency, which rejected the claim on the grounds that it was lawful and accurate, but accepted a complaint against Google and asked Google to remove the results. Google sued in the National High Court which referred a series of questions to the European Court of Justice. The court ruled that search engines are responsible for the content they point to and thus, Google was required to comply with EU data privacy laws – a landmark case which throws the EU/US relationship into the spotlight.

A further example of such tension is the decision by US Magistrate Judge James Francis who stated that US companies, including Microsoft and Google, must turn over private information when served with a valid search warrant from US law enforcement agencies. Microsoft had sought to challenge a government search warrant which demanded one user's information from a server in Dublin as well as servers in the US, arguing that Ireland is beyond the borders of US law, but Judge Francis rejected Microsoft's motion. Privacy campaigners have warned that the decision, which affects all users of US internet services, shows 'stark contempt' for European citizens and is in direct conflict with EU rules on data protection. This further highlights the significance of data location for businesses and governments alike and something which the Channel Islands should be extremely alive to.

EU Data Protection Reform Package

The EU data protection reform package consists of two draft laws; a general **regulation** covering the bulk of personal data processing in the EU and a **directive** on processing data to prevent, investigate, detect or prosecute criminal offences or enforce criminal penalties.

The proposals for the new regulation retain the principles of data protection law as set out in the 1996 directive but updates them so as to keep pace with major changes in data processing brought about largely by the internet. It will have *direct effect* which means that once passed, it will not be subject to local implementation in each member state. This is intended to ensure that laws are applied consistently across the EU. It is likely that the Channel Islands will implement legislation reflecting these changes to ensure the continued protection of the free flow of data to and from the Islands. Importantly, non-EU data controllers (such as those in the Channel Islands) collecting data from EU data subjects will also be subject to the new regulation. Local companies will need to start taking steps to ensure they understand and are prepared for these changes as the regulation progresses. Some of the compliance requirements will require time to implement so it is vital that Channel Islands businesses who collect client data from the EU start that process in 2015. Companies who meet the demands of the clients and regulators will have an edge in this fast evolving digital and e-commerce world.

The main changes contained within the draft regulation:

Fines

Companies will be subject to fairly stringent sliding scale of fines. This increased emphasis on penalties, together with bad publicity and reputational damage in the event of a breach will no doubt be significant motivators for data controllers to take compliance seriously.

Consent

A key proposed change around consent is likely to mean data controllers are no longer able to rely on implied consent. Careful consideration around explicit consent and legitimate interests will be required by data controllers.

Notification

Data controllers will no longer have to notify data protection authorities that they are processing personal data – instead they will be required to make available upon request evidence demonstrating their data protection policies and procedures including ‘privacy by design and default’ as well as privacy impact assessments.

Data Breach Notification

Data Controllers will be expected to notify data protection authorities of data breaches. Data Processors will be required to assist data controllers in the event of a data breach or loss and will be deemed joint data controllers if they process personal data other than as instructed by the data controller.

Data Subjects Rights

The concept of the ‘right to be forgotten’ has become a popular sound-bite during negotiations around the draft. The reality is likely to be less explicit and proposes rights around the erasure of data with certain exemptions in areas such as public interest. There is also a new right for data subjects not to be subject to a ‘measure based on profiling’ which means data controllers may be prevented from profiling individuals based on automatic processing. For the first time, reference is made to the concept of a ‘child’ and it brings in parental consent requirements.

The One Stop Shop Approach

The draft proposes that data controllers and data subjects will have a ‘one stop shop’ in respect of regulators.

At the end of 2014, negotiations were continuing around the detail of the draft regulation with Council approval on general approach expected in 2015.

Financial statements (Jersey)

Income and Expenditure Account for the year ended 31 December 2014

	Note	£	2014 £	£	2013 £
Income:					
Registry fees			<u>115,500</u>		<u>102,500</u>
Total income			115,500		102,500
Contribution from the States of Jersey			<u>252,656</u>		<u>228,125</u>
Net income			368,156		330,625
Operating expenses:					
Manpower costs:					
Staff salaries, social security and pension contributions		197,516		215,029	
Supplies and services:					
Computer system and software costs		11,983		4,813	
Pay Offshore admin fees		813		465	
Administrative costs:					
Printing and stationery		291		957	
Books and publications		3,108		3,324	
Telephone charges		1,253		231	
Postage		312		152	
Legal costs		20,479		0	
Meals and Entertainment		26		92	
Conference and course fees		10,903		18,384	
Pan-Island travel expenses		7,435		0	
Other administrative costs		12,900		15,395	
Premises and maintenance:					
Utilities (incl. Electricity and water)		10,016		6,565	
Rent		<u>25,882</u>		<u>29,148</u>	
Total operating expenses			<u>302,917</u>		<u>294,555</u>
Excess of income over expenditure			65,239		36,070

Statement of recognised gains and losses

There were no recognised gains or losses other than those detailed above.

Financial statements (Guernsey)

Income and Expenditure Account for the year ended 31 December 2014

	Note	£	2014 £	£	2013 £
Income:					
Registry fees			<u>89,994</u>		<u>88,951</u>
Total income			89,994		88,951
Contribution from the States of Guernsey			<u>113,245</u>		<u>115,113</u>
Net income			203,239		204,064
Operating expenses:					
Manpower costs:					
Staff salaries, social security and pension contributions		131,252		140,427	
Supplies and services:					
Computer system and software costs		8,120		6,708	
Furniture and office equipment		698		436	
Administrative costs:					
Post and stationery		1,455		1,569	
Printing and publications		1,079		948	
Telephone charges		1,337		1,356	
Advertising and publicity		930		690	
Meals and Entertainment		0		0	
Conference and course fees		9,712		16,722	
Other administrative costs		0		0	
Premises and maintenance:					
Utilities (incl. Electricity and water)		5,320		6,347	
Rent		<u>17,118</u>		<u>17,118</u>	
Total operating expenses			<u>177,021</u>		<u>192,321</u>
Excess of income over expenditure			26,218		11,743

Statement of recognised gains and losses

There were no recognised gains or losses other than those detailed above.



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