

ANNUAL REPORT 2015

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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 jurisdictions.

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 in approach across the Channel Islands

Governance statement

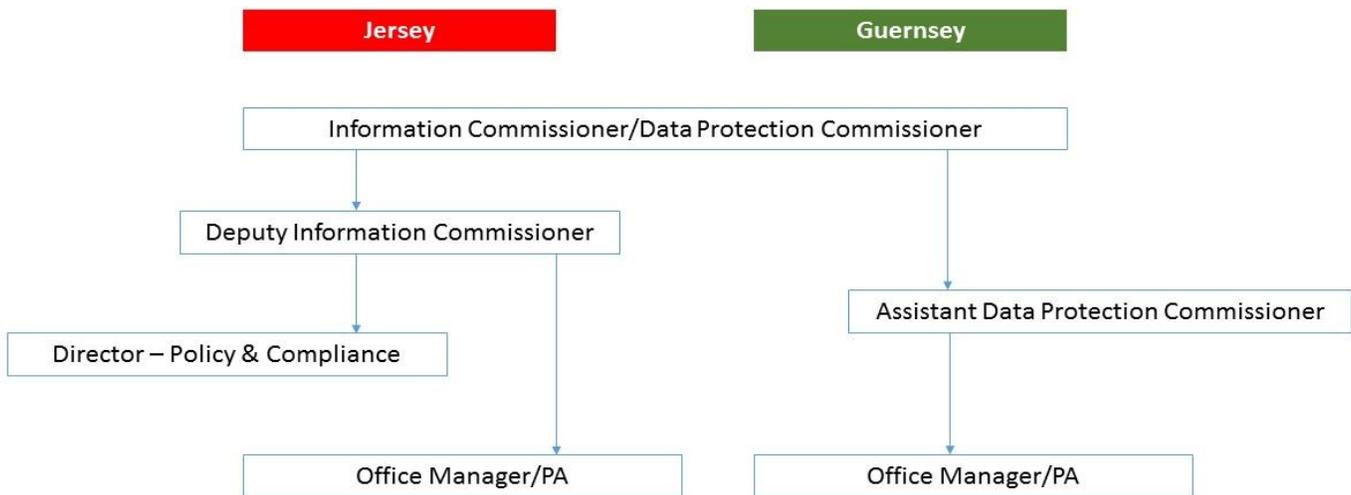
The position of Data Protection Commissioner and Information Commissioner are established in the Data Protection (Bailiwick of Guernsey) Law, 2001, the Data Protection (Jersey) Law 2005 and the Freedom of Information (Jersey) Law 2011. Under the terms of the EU Directive 95/46 the Commissioner must be independent of government and this has been enshrined in legislation. In Guernsey the sponsoring department for the office is the Office *of the* Committee *for* Home Affairs. 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 2016 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 2016. Long term funding for Freedom of Information (Fol) in the Jersey office has recently been agreed, as well as resourcing to cover preparation for the implementation of the new General Data Protection Regulation ("GDPR").
 2. The impending GDPR no longer contains the requirement for data controllers to notify and pay a fee for doing so, removing a significant income stream for all data protection authorities. It also places additional pressures on those authorities as to how the offices continue to be resourced within the context of major EU reform, future cuts in government expenditure together with increasing workloads and expectations. This is of very serious concern and will be the subject of review in 2015/2016.
 3. The offices have taken the extremely important step of moving away from relying upon 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 continue to 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 2016.

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, how that information is going to be handled, 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 a fair and lawful way.

The **Freedom of Information (Jersey) Law 2011** gives people a general right of access to information held by most public authorities in Jersey. 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 by requiring the disclosure of information in those areas.

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 fourth report as Data Protection Commissioner for the Channel Islands.

The two Channel Island offices continue to work very effectively together with an increasingly seamless approach. 2015 saw implementation of the new IT system across the Islands which unveiled rebranding of the Jersey office as Information Commissioner with regulatory oversight of the new Freedom of Information (Jersey) Law 2011 (Fol).

It has been yet another extremely busy year with casework taking up most of our time across the Islands.

One important event for us this year saw us host the annual conference of small jurisdiction data protection authorities in Guernsey. We were delighted to host this conference which provides a unique opportunity for those of us working in small offices in this field to share experiences and learning.



*BIDPA 2015:
"A UNIQUE OPPORTUNITY FOR THOSE OF US
WORKING IN SMALL OFFICES IN THIS FIELD TO SHARE
EXPERIENCES AND LEARNING."*

The strength of having a pan-Island office is highlighted by a number of key areas in which our office is involved. We are pleased to sit on the e-safety committees of both Islands and it is clear that this inclusive approach uses resources and shares information in an increasingly effective and efficient manner. The risks facing the younger generation in this internet era are all too real and working together with a multi-disciplinary and multi-skilled team is a significant step that can deliver meaningful outcomes for the community.

The move in Jersey to implement freedom of information legislation highlighted the need for robust independent regulatory oversight and saw the Jersey office move to its own offices and no longer use the States of Jersey IT systems as a platform for data. Such moves serve to reinforce the importance of true independence.

The first year of FoI was managed effectively by this office and whilst there were a significant number of enquiries directed to us, the number of appeals was low. A cultural change has been required by government to ensure the spirit as well as the letter of the law is applied, recognising the importance of transparency and accountability in the way it conducts its business. Whilst the FoI journey has been more painful for some departments than others, it is clear that where departments have engaged positively with the importance of data governance – recognising that the way in which data about all of us is handled is an important question – they have been well placed to respond to the increased demands resulting from FoI. Data Protection and FoI are different sides of the same coin and the value for departments in investing in high levels of governance will be numerous; it will ensure that information collected by government about us and our families is treated properly, it will ensure that the public have information they are entitled to in order to hold decision makers to account and it will also enhance efficiency in these economically difficult times.

Whilst Guernsey has not indicated a desire to enshrine FoI into law, they have introduced a new Code of Practice for Access to Official Information which provides the public with rights of access to government information. This is an important step and is to be welcomed. It is something that must be proactively managed, both in terms of ensuring the public are aware of their rights as well as supporting departments in delivering on their obligations. Whilst it is certainly true that FoI legislation does not come without significant cost implications, the danger with a Code is that the process is insufficiently robust and that appeal routes are insufficiently equitable. Our office does not have oversight of the Code but we have a clear interest in encouraging the highest standards of data governance and would urge the States of Guernsey not to neglect their duties in this regard.

The EU Directive from which our legislation stems dates back to 1995 which is a long time ago, especially in respect of technology and the way in which information now plays such a huge part in all our lives – both personally and professionally. The digital revolution impacts privacy in unprecedented ways and in turn challenges those charged with protecting information rights. The challenges my office faces in light of those changes are no different to those of all other data protection authorities. Some consider privacy to be an obsolete concept in an era that sees so many of us putting every detail of our lives online. But I remain convinced that whilst often contested and difficult to articulate, privacy is a fundamental part of what it is to be human. It is not about a faceless bureaucrat telling individuals what is right or wrong for them, it is about empowering those individuals and allowing them control over their own information. Every search we do online, every purchase we make, every contact with government – we leave an ever increasing and largely permanent digital footprint behind us. With extraordinary developments in ‘big data’ and the ‘internet of things’, what happens to that data is more important than ever.

Governments too are going digital, keen to deliver more efficient, joined up public services. Data has become an economic tool in its own right and it is not uncommon to hear of it referred to as the ‘new oil’. Certainly data is opening up new opportunities on an extraordinary scale. The real revolution is arguably not so much the technology, but the data itself. It is not hard to find reference being made to the unprecedented opportunities data provides for the economy, for government and for the citizen. But those opportunities should not be sought at the cost of our rights. I believe strongly that handling data within a robust framework of effective regulation is an enabler for innovation, not a blocker.

If government and industry is going to ask us for more and more of our information, it is more important than ever that we have trust and confidence that they are handling that data properly.

In light of these changes, 2015 saw work continue in the EU on reform of data protection regulation. The EU position is extremely important for the Channel Islands in that it affects the ease with which data can move across our borders. Both Jersey and Guernsey are recognised as ‘adequate’ jurisdictions for the purposes of the EU Data Protection Directive 95/46. This protects the flow of data to the Islands – something vital for so many business sectors. The new EU Regulation, which will be implemented across EU Member States in 2018, is the biggest reform in this area for decades. It has been drafted in response to the internet era and the unprecedented challenges that poses for data privacy and security. The new Regulation is likely to view third countries, such as ourselves, in much the same way as the Directive does. European jurisdictions will face data transfer restrictions to third countries who do not have high quality data protection regulation. The Channel Islands are clear that securing adequacy is essential and preparatory work has commenced to put in place a work-plan for implementation of new legislation. Governments in any jurisdiction seeking reform in this area must not underestimate the size of that task but the prize will be unhindered access to the European Single Market for local business.

For the local economy to benefit fully from the developing opportunities data provides, a number of key factors must align – effective regulatory framework, a pragmatic and consistent regulator, a clearly articulated digital strategy for the Islands, investment in digital skills and a high level engagement on cyber security threats. A package for the Islands engaging with all these aspects has the possibility of creating a successful platform for our economy for the future.

It is clear that once we embark along this new path our office will need significant change. We will not be able to carry on doing what we have always done. The Regulation is a game changer for us, for government, for business and for the citizen. I am committed to taking the Channel Islands successfully into the next chapter of information rights to secure its economic position as well as to secure effective rights for its citizens. But faced with the scale of reform required I would wish to send a clear message to government – do not legislate for what you are not prepared to fund.

These are extremely challenging times for our office and my staff continue to deliver at a consistently high level and it is certainly true in my case that alongside every leader is a fabulous team. The work we do is not always welcomed or popular and I am always impressed by the determination of my staff to work with upmost integrity and professionalism whilst under extreme pressure. I would take this opportunity to thank them all.

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 European international stage as well regulated jurisdictions, 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

JANUARY 2015

Freedom of Information (Jersey) Law 2011 comes into force.

FEBRUARY 2015

Officers attended London conference on 'Social Media – Legal Risks and How to Address Them.'

MARCH 2015

Officers attended the Freedom of Information conference in London.

MAY 2015

Officers attended the Spring Conference of European Data Protection Commissioners in Manchester, England.

JUNE 2015

The annual meeting of British and Irish Data Protection Authorities (BIDPA) held in Guernsey.

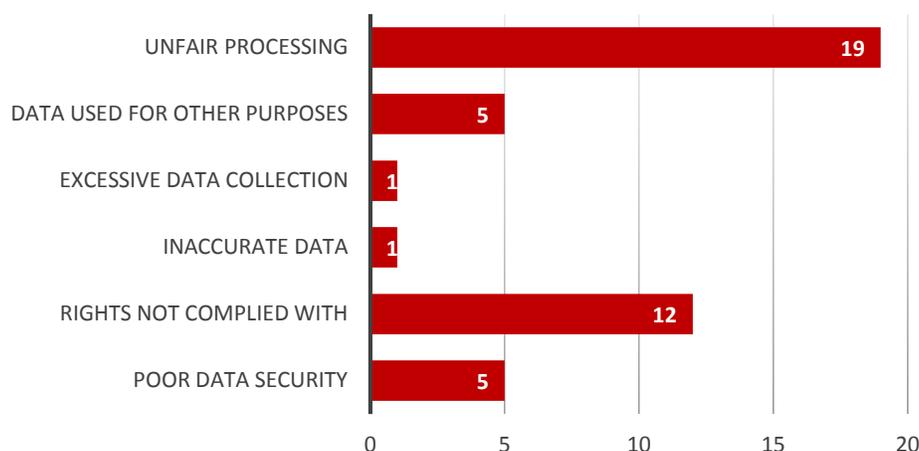
OCTOBER 2015

Officers attended the International Conference of Privacy and Data Protection Commissioners in Amsterdam, Netherlands.

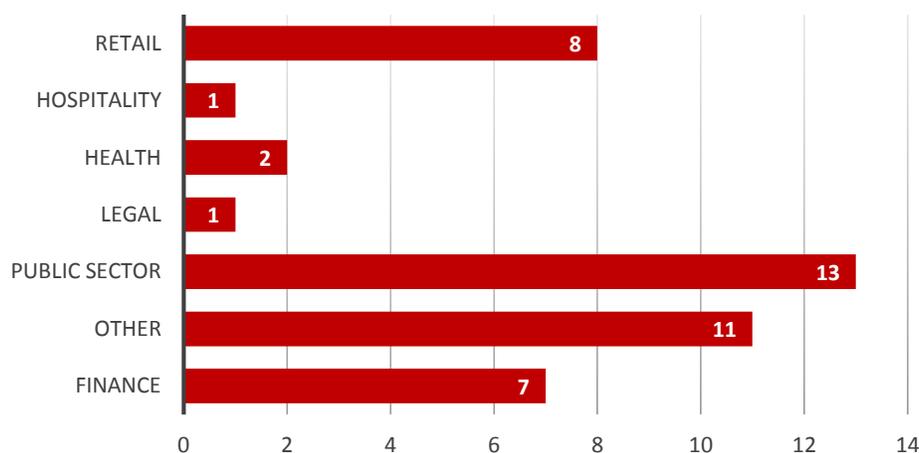
Operational performance

Complaints (Jersey)

What did people complain about?



Who did people complain about?



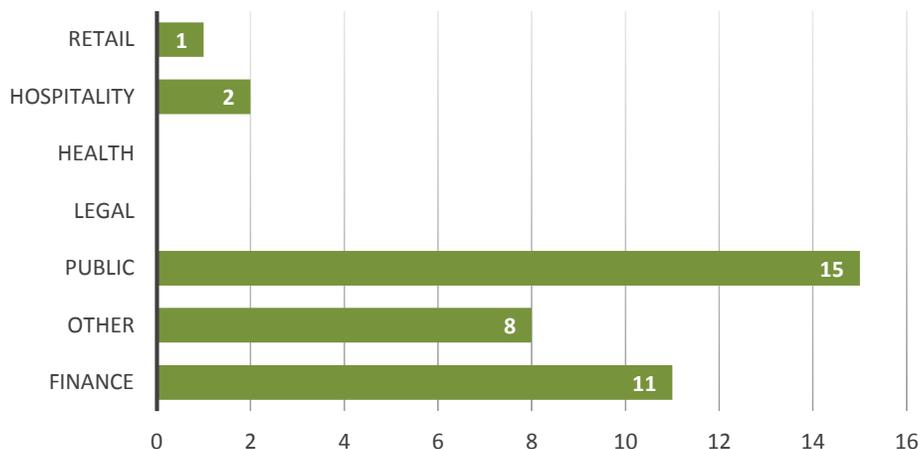
A total of 43 complaints were recorded in Jersey during 2015. Whilst this represents a decrease on the previous year, the complexity and depth of investigation required has increased very significantly. Complaints about unfair processing saw a significant drop from the previous year, however the pattern of complaints by subject shows a similar trend to 2014. The most noticeable rise was in relation to allegations of data being used for other purposes. As expected, Jersey’s biggest sectors received the most complaints, however, an increase in the number of complaints against the retail industry is concerning.

Complaints (Guernsey)

What did people complain about?



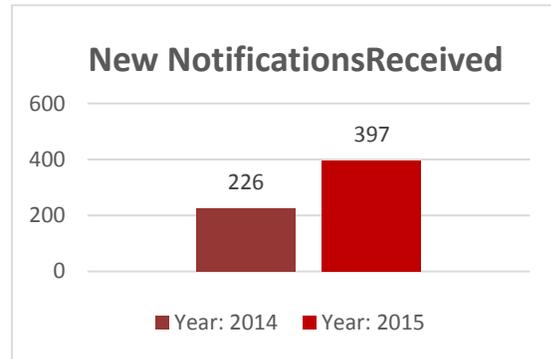
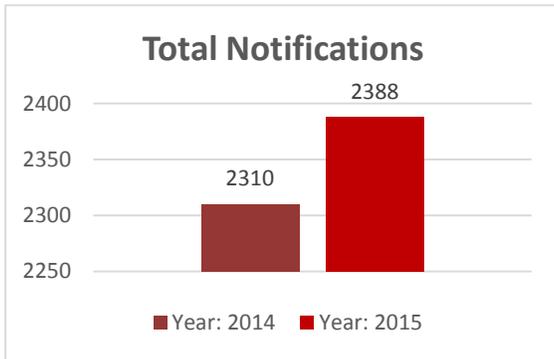
Who did people complain about?



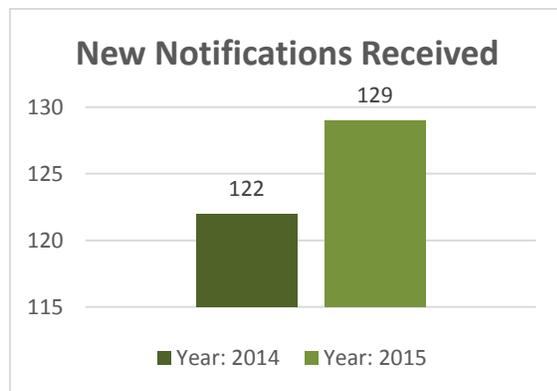
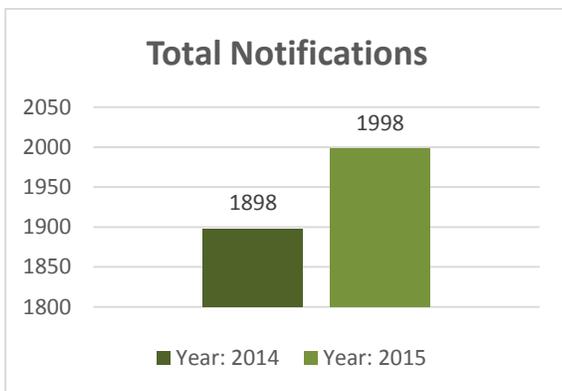
Complaints in Guernsey doubled on the previous year from 18 to 37.

Similar to Jersey, the public sector and 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 the non-compliance with subject access requests.

Notifications (Jersey)



Notifications (Guernsey)



With regard to notifications, both Islands recorded significant increases in both the number of new notifications received and the total of live notifications active at the end of 2015. This is encouraging and demonstrates the required attention being paid to data protection compliance by local companies.

Guidance given

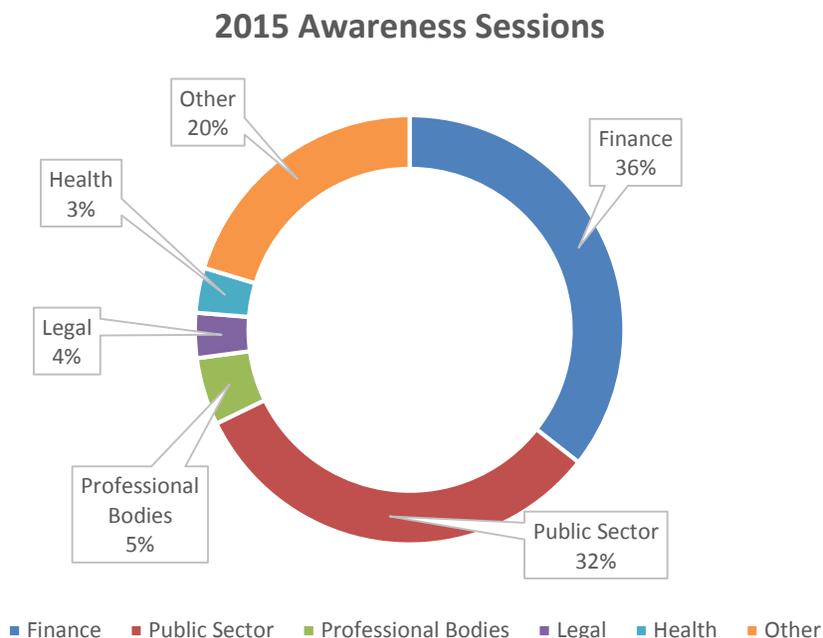
Guidance documents

The beginning of 2015 saw the release of a number of guidance documents prepared to assist individuals and scheduled public authorities with requests made under the newly implemented 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.

Work continued on updating and consolidating data protection guidance across the two Islands. This work is continuing into 2016.

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 2015, a total of 52 sessions were delivered across the two Islands, and a breakdown of those sessions is detailed below:



Enforcement actions

In Jersey there was a decrease in complaints made to us during 2015, one of which resulted in regulatory action being taken in the form of an undertaking and no enforcement notices were issued. In Guernsey the number of complaints made to us increased in 2015, however no undertakings or enforcement notices were issued.

With regard to criminal proceedings, the Commissioner undertook four criminal investigations into alleged offences under the Data Protection (Jersey) Law 2005. All cases were successfully resolved without the need for referral to the Attorney General. In Guernsey, two criminal investigations under Section 55 of the Data Protection (Bailiwick of Guernsey) Law, 2001 were undertaken by the Guernsey Police, both of which are still ongoing.

European developments

Developments in Europe in respect of the General Data Protection Regulation and Law Enforcement Directive continue to be closely followed by the Channel Islands and we liaise closely with the Channel Islands Brussels Office. 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, and a separate Directive covering the area of criminal justice.

EU Data Protection Reform Package

The EU data protection reform package consists of two laws; a general **regulation** covering the bulk of personal data processing in the EU and a **directive** on the processing of personal data for the prevention, investigation, detection or prosecution of criminal offences or enforcement of criminal penalties.

The new regulation retains the principles of data protection law as set out in the 1995 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. The Channel Islands will be implementing legislation to reflect these changes to ensure the continued protection of the free flow of data to and from the Islands. The extra-territorial nature of the GDPR means that it will apply to any business or organisation that provides goods or services to or seeks to profile European citizens. Many companies based in the Channel Islands will be affected and need to start preparing early for the significant changes from 2018. Updates on GDPR will be on our website and can be found at www.dataci.je/gdpr or www.dataci.gg/gdpr. Companies who meet the demands of clients and regulators in respect of data governance will have an edge in this fast evolving digital and e-commerce world.

The main changes contained within the GDPR:

Broader definitions

The legislation captures more processing than is the case at present. Genetic and biometric data are explicitly defined as personal data and will be subject to stringent compliance requirements.

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 required to notify data protection authorities and data subjects of serious 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 with it parental consent requirements.

The One Stop Shop Approach

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

CJEU Ruling puts US data transfers in the spotlight

2015 also saw a landmark case brought to the European Court of Justice (ECJ) invalidating the key agreement that allowed for the transfer of data from the European Union to the United States known as ‘Safe Harbour’. The Safe Harbour agreement allowed data into the US from the EU provided that certain privacy protections were in place that met EU standards. It allowed big companies to effectively self-certify, promising to protect EU data once it was in the US.

After the US surveillance revelations exposed by ex NSA employee Edward Snowden, an Austrian student, Mr Max Schrems, filed a complaint against Facebook. He argued that Snowden's leaks demonstrated the lack of protection for the data held by Facebook and the case went before the ECJ, the EU's top court who found in favour of Schrems. The resulting uncertainty around EU-US transfers has also caused concern for other 'adequacy' mechanisms and it seems clear that there will be significant scrutiny for all such decisions going forward.

Cyber Security

2015 saw a number of high profile cyber-attacks across the globe. Certainly this form of risk for companies handling data has grown dramatically and is continuously evolving. These attacks inevitably raise concerns over the ways companies store and use customer data. Following the cyber-attack on the TalkTalk website, the Department for Culture, Media and Sport launched an inquiry into cyber security on 3rd November 2015. The nature of globalisation and the internet means that geographic boundaries are no protection from these threats. The Channel Islands are as vulnerable as any other jurisdiction and must respond accordingly.

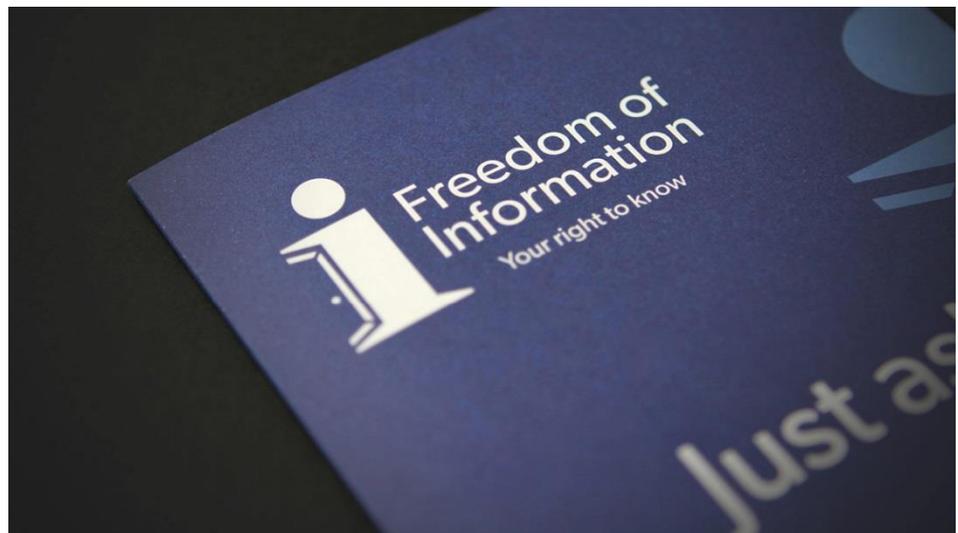
Freedom of Information

The Freedom of Information (Jersey) Law 2011 provides public access to information held by Scheduled Public Authorities ('SPAs'). It creates a legal basis which entitles members of the public to request information from SPAs. The Law covers any recorded information that is held by a SPA in Jersey. SPAs are listed within Schedule 1 of the Law as:

1. The States Assembly including the States Greffe
2. A Minister
3. A committee or other body established by resolution of the States or by or in accordance with standing orders of the States Assembly
4. A department established on behalf of the States
5. The Judicial Greffe
6. The Viscount's Department
7. Andium Homes Limited (registered as a limited company on 13th May 2014 under Registration number 115713).
8. The States of Jersey Police Force
9. A Parish (effective from 1st September, 2015)

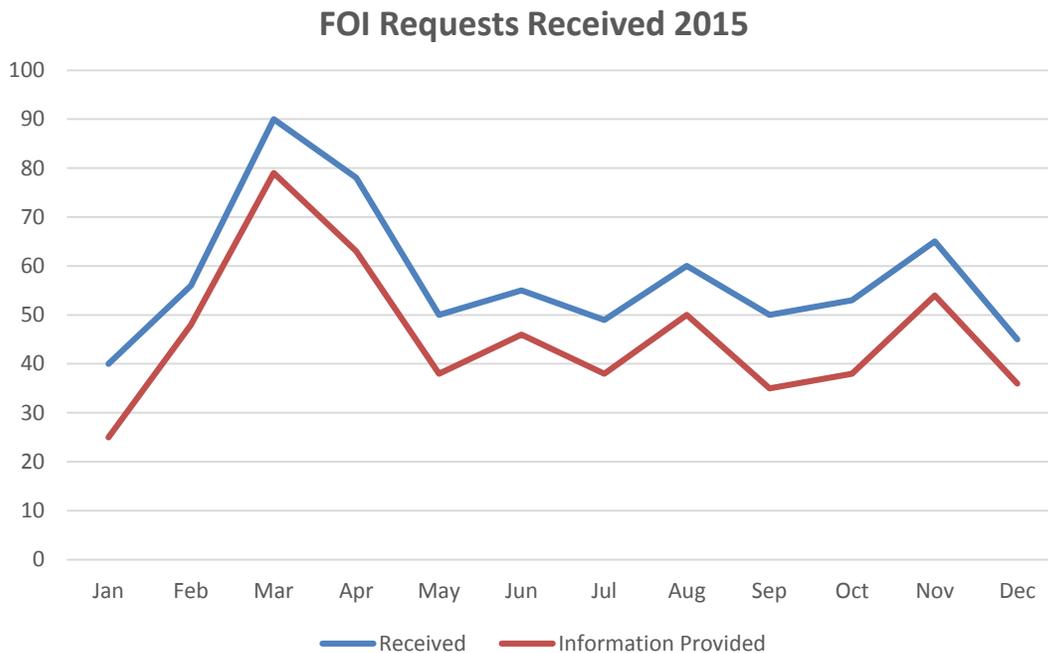
Recorded information includes printed documents, computer files, letters, emails, photographs, and sound or video recordings. It is defined in the law as meaning 'information recorded in any form.'

The Law does not give people access to their own personal data (information about themselves) such as their health records or credit reference file. If a member of the public wants to see information that a SPA holds about them, they should make a subject access request under the Data Protection (Jersey) Law 2005.



The Law came into force on 1 January 2015. A total of 691 requests were received by the Central FOI Unit during the year with information being provided for 550 of these. Responses are published on the States of Jersey website (www.gov.je/Government/FreedomOfInformation/Pages/index.aspx).

As 2015 was the first year that the Law was in force, there are no comparable statistics from the previous year. However, the following graph shows a breakdown of the total number of FOI requests received on a month-by-month basis.



Financial statements (Jersey)

Income and Expenditure Account for the year ended 31 December 2014

	Note	£	2015 £	£	2014 £
Income:					
Registry fees			<u>119,575</u>		<u>115,500</u>
Total income			119,575		115,500
Contribution from the States of Jersey			273,700		252,656
Carry forward for FoI implementation/costs			<u>100,000</u>		<u>0</u>
Net income			493,275		368,156
Operating expenses:					
Manpower costs:					
Staff salaries, social security and pension contributions		203,368		197,516	
Supplies and services:					
Computer system and software costs		12,468		11,983	
Website development costs		1,158		0	
Specialist PR services		5,132		0	
Pay Offshore admin fees		593		813	
Administrative costs:					
Printing and stationery		1,374		291	
Books and publications		2,110		3,108	
Telephone charges		2,684		1,253	
Postage		188		312	
Legal costs		47,772		20,479	
Meals and Entertainment		0		26	
Conference and course fees		9,417		10,903	
Pan-Island travel expenses		13,189		7,435	
Other administrative costs		12,343		12,900	
Premises and maintenance:					
Utilities (incl. Electricity and water)		2,472		10,016	
Rent		<u>32,067</u>		<u>25,882</u>	
Total operating expenses			<u>333,867</u>		<u>302,917</u>
Excess of income over expenditure			159,408		65,239

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 2015

	Note	£	2015 £	£	2014 £
Income:					
Registry fees			<u>88,301</u>		<u>89,994</u>
Total income			88,301		89,994
Contribution from the States of Guernsey			<u>112,000</u>		<u>113,245</u>
Net income			200,301		203,239
Operating expenses:					
Manpower costs:					
Staff salaries, social security and pension contributions	1	146,408		131,252	
Supplies and services:					
Computer system and software costs		10,609		8,120	
Furniture and office equipment		1,026		698	
Administrative costs:					
Post and stationery		628		1,455	
Printing and publications		2,255		1,079	
Telephone charges		1,652		1,337	
Advertising and publicity		250		930	
Meals and Entertainment		273		0	
Conference and course fees	2	16,146		9,712	
Consultants		4,967		0	
Other administrative costs		0		0	
Premises and maintenance:					
Utilities (incl. Electricity and water)		3,254		5,320	
Rent	3	<u>0</u>		<u>17,118</u>	
Total operating expenses			<u>187,468</u>		<u>177,021</u>
Excess of income over expenditure			12,833		26,218

Statement of recognised gains and losses

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

- 1 The difference in spending from 2014 is due in part to the receipt of a credit note in 2014 that lowered the amount paid to the States of Jersey for the Commissioner's pay and the additional responsibility allowance awarded to Guernsey staff.
- 2 The increase in this category is related to the costs incurred hosting the annual BIDPA conference in June 2015.
- 3 The ODPC no longer incurs rent having moved from private sector rented office space at the end of 2014 to States owned accommodation.



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