

GUIDANCE NOTE

Time limits for compliance under the Freedom of Information Law

Article 13 and Article 44 Code of Practice
The Freedom of Information (Jersey) Law, 2011



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INTRODUCTION

1. The Freedom of Information Law 2011 (“the **Law**”) gives rights of public access to information held by Scheduled Public Authorities (“**SPAs**”).
2. An overview of the main provisions of the Law can be found in The Guide to Freedom of Information.
3. This is part of a series of guidance, which goes into more detail than the Guide, to help SPAs to fully understand their obligations and promote good practice.
4. This guidance outlines the time limits for complying with a request made under the Law.
5. Guidance issued by the Information Commissioner may include references to cases and decisions linked to operation of the Freedom of Information Act 2004 (“the **U.K. Act**”). Such references are provided as additional context to relevant areas given the lack of case law regarding the interpretation of the Freedom of Information (Jersey) Law 2011 (“the **Law**”). It should be noted, however, that judgments from the Courts of England and Wales (which includes any decisions from the Information Tribunal) are not binding in Jersey (albeit that they may be viewed by the Royal Court as being persuasive). There are, however, differences between the Law and the UK Act and so the judgments which have flowed following an interpretation of the UK Act may not be directly applicable in this jurisdiction.



OVERVIEW

- Article 13 and the Article 44 Code of Practice (“the Article 44 Code of Practice”) of the Law sets out the time frames within which a SPA must respond to a request for information.
- Article 13 states that SPAs must deal with a request for information ‘promptly’ and ‘if it supplies information it must do so, in any event, no later than:

The end of the period of 20 working days following receipt; or

If a period is described by Regulations, no later than the end of that period.

- The Article 44 Code of Practice states that: ‘Any request for information must be dealt with promptly and in any event within 20 working days. Any further extension, which may be to a combined maximum of 65 working days as defined within Regulations, should be limited in duration and completed as soon as possible.’
- It applies whenever:
 - » a person makes a request for information and has a right to be supplied with the information under Article 8(a) and
 - » a SPA has a duty, under Article 8(b), to supply the person with the information; or
 - » a SPA, when seeking to refuse a request under the Law, has a general duty to explain the reasons for doing so in a written refusal notice issued to an applicant.
- SPAs must therefore respond to any request promptly, and by the twentieth working day following the date of receipt of the request.
- A working day is any day other than a Saturday, Sunday, Christmas Day, Good Friday or a day which is a bank holiday under the Public Holidays and Bank Holidays (Jersey) Law 1951.
- Where required, a SPA may claim a reasonable extension of time. However, this must not extend beyond an additional 45 working days and it must be “reasonable in all the circumstances of the case”.
- If the SPA needs further details to identify or locate the information, then the 20 working days will commence the day after it receives the required clarification from the requester.
- Where the SPA requires a fee to process the request, the ‘clock’ will stop on the date it issues a Fees Notice to the applicant and restart once payment is received.
- If a SPA does not hold the information itself but advises an applicant that it may possibly be held by another SPA, the 20 working day clock starts for the second receiving SPA the day after it receives the request.



WHAT THE LAW SAYS

6. Article 13 of the Law states:

13.- (1) A Scheduled Public Authority must deal with a request for information promptly.

(2) If it supplies 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 described 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.

7. Article 13 of the Law sets out the timescales within which a SPA must respond to a request under the Law.

8. These timescales apply where the SPA has:

- a) A duty under Article 10 confirm or deny whether the information is held;
- b) A duty under Article 8(b) to provide information that is held to the applicant;
- c) A duty under the Code of Practice issued under Article 44 of the Law to notify to issue a written refusal notice explaining why a request has been refused.

9. Article 13 of the Law specifies that a SPA must comply ‘promptly,’ and no later than 20 working days after the date of receipt of the request.

10. However, there is provision for a SPA to claim a reasonable extension to the 20 day limit, up to an additional 45 working days, where it needs more time to consider the public interest test.

11. Article 13 also allows SPAs to claim extension in circumstances where it is considered reasonable to do so. The question of what is a ‘reasonable’ extension is not defined within the Law, but may be decided upon any appeal to the Information Commissioner.



REFUSING REQUESTS

12. If a SPA is relying on one of the exemptions in Parts 4 or 5 of the Law to either refuse to confirm or deny whether information is held, or to refuse to provide information, then under Article 13 and the Article 44 Code of Practice it has a duty to issue the applicant with a refusal notice within the time limit for compliance.
13. As outlined earlier, the time for compliance with Article 8 is defined by Article 13 and the Article 44 Code of Practice, which means that the notice must be issued promptly and within 20 working days of the date of receipt of the request.
14. More detailed information on issuing refusal notices can be found in our guidance 'Refusing a request: Writing a Refusal Notice.'
15. If only some of the requested information is exempt, then the authority will still have to comply with its Article 8 duties in respect to any information which is not covered, both promptly and within 20 working days.



THE OBLIGATION TO RESPOND PROMPTLY AND WITHIN 20 WORKING DAYS

Article 13.- (1) A Scheduled Public Authority must deal with a request for information promptly.

(2) If it supplies 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 described by Regulations, not later than the end of that period.

16. Article 13(1) states that a SPA must deal with a request for information 'promptly,' and that if it supplies the information it must do so, in any event, no later than 'the end of the period of 20 working days' or 'if another period is prescribed by Regulations, not later than the end of that period.'
17. This means that when a SPA is not relying upon a Part 4 or 5 exemption and does hold the requested information, it will need to provide the information promptly, within 20 working days, in order to comply with its obligations under Article 13 and the Article 44 Code of Practice.
18. If the SPA is not relying upon an exemption and does not hold the information then its only requirement under Article 13 and the Article 44 Code of Practice will be to inform the requester of this in writing promptly and within 20 working days.
19. It therefore follows that a general response (such as a holding letter or acknowledgement) issued within 20 working days, but which fails to either confirm that the information is not held, claim any exemption or actually provide information, will not be sufficient to fully comply with the requirements of Article 13 or the Article 44 Code of Practice in respect of time limits.
20. Whilst 20 working days is the normal timescale for compliance, there is provision within the Law for an SPA to extend or vary this time limit and where it can be claimed 'reasonable in all the circumstances' to do so.

Requirement to respond promptly

21. The obligation to respond promptly means that a SPA should comply with a request as soon as is practical.
22. Whilst this is linked to the obligation to respond within 20 working days, it should be treated as a separate requirement.



23. A SPA will therefore need to both respond promptly and in any event within 20 working days in order to comply with Article 13.
24. SPAs should regard the 20 working day limit as a 'long stop', in other words the latest possible date on which they may issue a response.
25. It also follows that a SPA which provides its response close to, or on, the final day of the 20 working day limit must be able to both account for and justify the length of time taken to comply with the request.



Example 1

In a Decision Notice issued by the UK Information Commissioner the complainant maintained that the University of Cambridge had failed to respond promptly to his request for information about the restrictions contained in its post dismissal compensation settlements. The university had disclosed some of this information on the 20th working day.

The university's submissions to the UK Information Commissioner showed that its HR team had been required to examine each agreement individually in order to provide definitive information, as the settlements had all been negotiated separately. The team had then held a meeting to discuss any issues concerning the information, at which point it was decided to take legal advice. The matter was subsequently referred to the university's in-house lawyers, who took around two weeks to draft their response. The university explained this turnaround time was down to the fact that its legal advisers had a heavy workload in providing advice to all departments of the institution, and also because they were not specialists in freedom of information, meaning they might be expected to have to conduct their own research before providing advice.

The UK Information Commissioner did not uphold the complaint, stating that:

'...the greater part of the time taken in responding to the complainant's request was taken up with the location and verification of the requested information by University's HR department and considerations by its legal team. Noting that neither department has a primary responsibility for freedom of information and is likely to be fully engaged with its daily tasks, the Commissioner is unable to conclude that these time periods were unreasonable in the circumstances.

For the reasons expressed above, therefore, the Commissioner concludes that the University's initial response to the complainant's request was provided promptly and there does not appear to have been undue delay in its handling of the request.'



CALCULATING THE DATE OF RECEIPT

26. The date of receipt will be either;

- a) The day on which the request is physically or electronically delivered to the SPA, or directly into the email inbox of a member of staff who has been so identified as being the main point of contact for the SPA who deals with requests under the Law; or
- b) If the SPA has asked the requester for further details to identify and locate the requested information, the date on which the necessary clarification is received. (Article 14.)

27. An exception to this will be where the request has been emailed to the point of contact, but who is absent from the office and which has generated an 'out of office' message with instructions on how to re-direct the message to another contact and/or with confirmation that the request has been forwarded to an alternative contact.

28. Where this is the case, the date of receipt will be the day the request arrives in the inbox of that alternative contact.

29. In accordance with paragraph 5 of the Article 44 Code of Practice, the Information Commissioner expects that any published information directing the public to contact points within the SPA should be regularly monitored during periods of absence of staff.

The definition of a working day

30. A working day is defined as '...any day other than a Saturday, Sunday, Christmas Day, Good Friday or a day which is a bank holiday under the Public Holidays and Bank Holidays (Jersey) Law, 1951.

31. Where SPAs are closed for privilege days in addition to bank holidays, these will not count as non-working days.

32. For the purposes of the Law, a 'working day' will end at midnight regardless of the opening hours of the SPA. Therefore, any request which arrives before that time should be regarded as having been received that day.



Requests received on non-working days

33. Article 13 of the Law defines the date of receipt as 'the day on which it received the request.'

34. As there is no requirement for this to be a working day, the date of receipt can also be a non-working day such as a weekend or bank holiday.

35. If the request is received on a non-working day, the clock will still start on the following working day.

36. However, if the following day is another non-working day then the clock will start on the next working day after that.



Example 2

A SPA which is closed at weekends receives a request on a Saturday. As the time for compliance only commences on the next working day, the clock will start on the following Monday.



Example 3

The same SPA receives a request on Easter Sunday. As the following Monday is a bank holiday, the clock will begin on the next working day after that, which in this case would be Tuesday.



THE EFFECT OF REQUESTING CLARIFICATION UNDER ARTICLE 14

37. Article 13(2) provides that the date of receipt will be the day on which the SPA receives the request. The 20 day period in which to respond will then commence with the first working day being the day following receipt.

38. However Article 13(3) also provides that:

Article 13- (3) However, the period mentioned in paragraph (2) does not start to run-

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

- (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.

39. This effectively means that where a SPA needs more details to identify and locate the requested information and has contacted the applicant for further clarification, the date of receipt will be the day the SPA receives the information it requires to comply with the request.

The 20 working day clock will start the day after the SPA receives the necessary clarification.



Example 4

On Monday 9 September a SPA receives a request for the following;

'Please provide me with all the information you hold about my ancestor John Smith, who served in the British Army during the 19th Century.'

Although the applicant has described the information he wants, his description is not sufficient to enable the SPA to identify and locate the correct record.

The SPA writes back to the applicant to explain that it requires further details about the dates, locations and regiment names in order to find the information.

On Tuesday 17 September the SPA receives the clarification it needs to locate the information.

In this case, therefore, the SPA would treat 17 September as being the date of receipt for the request.

The 20 working day clock will start on the following day, which in this case will be Wednesday 18 September.



40. Where a SPA does require further information to process a request, there should be no undue delay in contacting the applicant.
41. This point is emphasised in Part II paragraph 9 of the Code of Practice which states, ‘...it is important that the applicant is contacted as soon as possible, preferably by telephone or e-mail, where more information is needed to clarify what is sought.’

Advice and assistance provided under Article 12 and Time Limits

42. It is important to bear in mind that Article 13(3)(a) is only applicable in cases where the SPA cannot comply with the request without further information.
43. If the SPA does have enough information to identify and locate the information, and is offering advice and assistance for any another reason, for example to ask if the requester is interested in any other information, the clock does not stop but continues to run from the original date of receipt.
44. However, if the SPA has refused the request, and its offer of advice and assistance is designed to help the applicant submit a reworked version it can comply with, any revised request subsequently made by that requester should be treated as a new request and the time for compliance reset to 20 working days.



Example 5

On March 4 an applicant asks a SPA to provide; ‘

All the information you hold about every soldier named John Smith who served in the British Army during the 19th Century.’

The SPA believes it can identify and locate the information from the description provided, so the 20 working clock starts.

However, having considered the volume of the information caught by the request, the SPA estimates that the cost of complying will exceed the cost limits prescribed in Regulations and applies an Article 16(1) refusal.

On March 10 the SPA issues the applicant with a refusal notice. At the same time it offers advice and assistance to help him narrow the scope of the request.

The applicant takes the SPA’s advice and submits a more focused version of the request on March 15. This is effectively a new request so the time for compliance resets to 20 working days, with the ‘date of receipt’ being March 15.



PAUSING THE CLOCK FOR COLLECTION OF FEES

45. Article 13(3)(b) provides that the 20 working day period for response does not start until such time as any fee is paid in compliance with Regulations made under Article 16(1) of the Law.

Article 13(3)(b) of the Law provides that in relation to fees the 20 day response 'clock' does not start to run until the fee is paid:

“(3)(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.”

46. It is intended States policy that charges will not be made for public access to information in respect of requests which fall within the costs limit.

47. However, where the cost of responding to the request exceeds the cost limit, the SPA has the discretion to provide the information to the requester, but the whole request maybe subject to a fee, this in accordance with Article 4(1) of the Freedom of Information (Costs) (Jersey) Regulations 2014 and a Fees Notice should be provided to the applicant.

48. Under Article 16(2) and 13(3)(b) the period starting from the day the Fees Notice is given and ending on the day the payment is received can be disregarded from any calculation of the 20 working day time limit.

49. The Information Commissioner's interpretation of the wording 'the day on which the fees notice is given' is the date on which the notice is sent to the applicant.

50. The SPA should therefore pause the '20 working day clock' on the day it issues the Fees Notice. The clock will restart again the day after the fee is received.

51. If the applicant elects to pay by cheque then the clock will only restart once this has cleared. However, cheques should be banked promptly to ensure there is no undue delay in processing the request.



TRANSFERRING REQUESTS TO ANOTHER SPA

52. If information is not held by the SPA to whom the request has been directed (“the First SPA”) but they have reason to believe that some or all of the information requested is held by another SPA, the First SPA should consider what would be the most helpful way of assisting the applicant with his or her request.

In most cases this is likely to involve:

- a) The First SPA Contacting the applicant promptly and informing him or her that they do not hold the information requested but that it may be held by another SPA;
- b) Suggesting that the applicant re-applies to the SPA which the First SPA believes may hold the information; and
- c) Providing the applicant with contact details for that other SPA.
- d) The 20 working day clock then starts for the receiving second SPA and will start the day after it receives the request from the applicant.



EXTENSIONS TO CONSIDER THE APPLICANT'S REQUEST FOR INFORMATION

53. Under Article 2 of the Freedom of Information (Miscellaneous Provisions) (Jersey) Regulations 2014, a SPA may be allowed extra time in which to respond to the request. This extension is only available when it is considered “reasonable in all the circumstances of the case” and is not to exceed 65 working days following the day on which the request was received.
54. In terms of what is “reasonable” the Law does not provide any formal definition and much will depend on the individual circumstances of the request and this may be linked to a need to obtain legal advice, recover archived information or school holiday closure, making information unavailable.
55. It will be necessary for the SPA to justify the reasonable use of any extension which may be the subject of later review by the Information Commissioner should any appeal process occur.



GOOD PRACTICE

56. SPAs may wish to consider the following good practice advice to help them handle requests promptly and efficiently;

- a) It may be helpful to provide and publicise a separate e-mail address for FOI requests, although there will still be a duty to deal with requests received anywhere within the authority.
- b) To cover periods of absence, it would be advisable for staff to use the automated out of office facility for emails and to provide alternative contact details and for such emails to automatically be forwarded to another individual within the SPA.
- c) Where an alternative contact has been provided in an 'out of office message', that contact should advise the original recipient of the action taken in respect of the request.
- d) It would be good practice to acknowledge receipt of requests and to refer to the 20 working day time limit, so that applicants know their request is being dealt with.

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MORE INFORMATION

57. 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.
58. It is a guide to our general recommended approach, although individual cases will always be decided on the basis of their particular circumstances.
59. If you need any more information about this or any other aspect of freedom of information, please contact us:

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