

Freedom of Information (Jersey) Law 2011

DECISION NOTICE

JOIC Reference	CAS-04810-C0B4K1
Date of Decision Notice	20 August 2025
Scheduled Public Authority	Office of the Chief Executive
Address	Ministerial Offices Government of Jersey Union Street St Helier Jersey JE2 3DN
Date of Request	16 January 2024
Date of Response	27 February 2024
Date of request for Internal Review	9 June 2024
Date of Internal Review Response	22 July 2024
Date of appeal to Information Commissioner	30 July 2024

Summary/Decision

1. On 16 January 2024, the Complainant requested certain information from the office of the Chief Executive (the **SPA**) about a business licence application. Specifically the Complainant requested *"copies of any and all records (including (but not limited to) emails) relating to any (a) meetings (b) deliberations, and/or (c) decisions of the HAWAG (Housing and Work Advisory Group), including (but not limited to) formal minutes and informal meeting notes, relating to any applications for new business licences determined in the month of November 2016 and which resulted in a business licence being granted for the carrying on of a "family office" undertaking (the Request).*

2. The SPA wrote to the complainant on 27 February 2024 (the **Response**) stating that certain of the information sought in the Request was being withheld (the **Withheld Information**), citing the exemptions at Art.25 and Art.31 of the Freedom of Information (Jersey) Law 2011 (the **FOI Law**).
3. Following receipt of certain questions from the Complainant, the SPA issued a revised response on 15 May 2024 (the **Revised Response**). The Complainant did not agree with the Revised Response and requested an internal review 9 June 2024 (the **IR Request**).
4. The SPA issued the outcome of the Internal Review on 22 July 2024 (the **IR Response**). The Complainant did not agree with the IR Response and issued an appeal to the Information Commissioner (the **Commissioner**) on 30 July 2024 (the **Appeal**).
5. The Commissioner's decision is to that the appeal is partially upheld. The SPA must provide the Complainant with the information set out in this Decision Notice, within 35 days¹.

The Role of the Information Commissioner

6. It is the duty of the Commissioner to decide whether a request for information made to a SPA has been dealt with in accordance with the requirements of Part 1 of the FOI Law.
7. This Decision Notice sets out the Commissioner's decision.

The Request

8. The Complainant's Request was in the following terms:

"Please provide copies of any and all records (including (but not limited to) emails) relating to any (a) meetings (b) deliberations, and/or (c) decisions of the HAWAG (Housing and Work Advisory Group), including (but not limited to) formal minutes and informal meeting notes, relating to any applications for new business licences determined in the month of November 2016 and which resulted in a business licence being granted for the carrying on of a "family office" undertaking.

It should be a relatively simple matter to determine whether any new business licences were granted in November 2016 for the carrying on of a "family office" undertaking and, if so, the name of those business(es). This information should then enable searches to be carried out to identify any relevant records.

At this stage, I do not request or require the disclosure of the name of any business(es). Such names which could be redacted (e.g. replaced with references to "Company X" or similar)."

9. On 27 February 2024 the SPA provided the Response in the following terms:

"Searches were undertaken and it was established that one business licence was granted within the parameters of this request.

Extensive cross-departmental reviews were subsequently undertaken to enable collation of all relevant data.

¹ See para.64 of the [Art.44 Code of Practice](#)

Please see attached the application form and four extracted emails. Personal information has been redacted under Article 25 of the Freedom of Information (Jersey) Law 2011.

A further email chain has been withheld under Article 31 of the Freedom of Information (Jersey) Law 2011; and an email redaction was also made on this basis.

Consideration was given to whether any of the records found, could be provided, or whether disclosure would, or would be likely to, prejudice the business licence process, and thereby the commercial interests of the Scheduled Public Authority ("SPA") holding the information and /or potentially other business applicants in the future, amongst other matters noting that

- the SPA needs a space to be able to discuss applications for licences made to it;*
- the scope of the correspondences (once personal information is redacted) seemed relatively anodyne and may not greatly add to public understanding of the business licence process;*
- the applicant, on submission of the business plan, would have had a reasonable expectation of such plan not being published in response to a Freedom of*

Information request, particularly as it is marked "Draft – Strictly Private and Confidential" (albeit such markings are not conclusive proof of confidentiality);

- Article 26 of the Control of Housing and Work (Jersey) Law 2012 requires an undertaking to provide the Minister with anything such Minister determines appropriate when making a licence application, but the value of any business plan, if drafted with a view to it being made / potentially made publicly available, may be reduced, adversely affect the island's licensing process.*

The Business Plan has been withheld. The document was reviewed and marked up with certain redactions under Article 25 of the Freedom of Information (Jersey) Law 2011 to determine if an extract of the same might be provided.

However, it was determined in this case that the level of public interest in providing such a document was outweighed by the public interest in keeping the same confidential.

The level of public interest in release of the correspondence attached to this response (redacted to delete personal information) was also considered finely balanced on the basis that it might only be considered to contribute in a very modest way to the public's understanding of the business licence process.

However, in this particular case, the disclosure of the correspondence just outweighed the commercial interest in keeping such correspondences confidential.

Articles applied

Article 25 - Personal information

(1) Information is absolutely exempt information if it constitutes personal data of which the applicant is the data subject as defined in the Data Protection (Jersey) Law 2018.

(2) Information is absolutely exempt information if –

(a) it constitutes personal data of which the applicant is not the data subject as defined in the Data Protection (Jersey) Law 2018; and

(b) its supply to a member of the public would contravene any of the data protection principles, as defined in that Law.

Article 31 - Advice by the Bailiff, Deputy Bailiff or a Law Officer

Information is qualified exempt information if it is or relates to the provision of advice by the Bailiff, Deputy Bailiff or the Attorney General or the Solicitor General.

Public Interest Test

It was noted that the public interest in disclosing correspondence when this Article is being applied must weigh particularly heavily in favour of disclosure in order to outweigh the inherent right to privilege. It is not considered that the public interest in disclosing advice related to whether or not to grant a licence to a business, is sufficient to outweigh the public interest in maintaining the exemption.

Other Article considered: Article 33 (Commercial Interests)"

10. On 28 February 2024, the Complainant emailed the Central Unit (at 13:04) asking for confirmation "...*(a) that it was determined that the **whole** of that email chain was exempt under Article 31 of the Freedom of Information (Jersey) Law 2011; (b) whether or not the Attorney General's consent to disclose the email chain was sought*".
11. A response from the Central Unit was sent to the Complainant on 8 March 2024 (at 16:46) advising that *"Yes, the whole of the email chain was exempted under Article 31 of the Freedom of Information (Jersey) Law 2011" and that "Article 10(2) of the Freedom of information (sic) (Jersey) Law 2011 has been applied, in doing so, all aspects of the Freedom of Information (Jersey) Law 2011 were adhere to during the consideration and provision of your response."*
12. On 10 March 2024, the Complainant emailed Central Unit (at 19:04) seeking further clarification as follows:

"I should be grateful if the further following two matters could please be clarified by the SPA, since they are relevant to my decision as to whether to request an internal review of the response.

1. *"Email 20161005" (provided in redacted form, as part of the response), which was an email sent on 5 October 2016 at 16:20, appears to have had two PDFs attached:*

(a) cmd-clmh-5flr-01@gov.je_20160927_135749.pdf

(b) cmd-clm -5flr-01@gov.je_20160927_133538.pdf

Can you please confirm whether or not these attachments were provided as part of the response to the FOI request and, if so, identify which documents they are. If not, can you please provide copies. If one of the attachments was the "Business Plan" (referred to in the response to the FOI Request), please can you confirm this; a copy of the Business Plan is not requested.

2. *The name of the sender(s) of "Email 20161005" and "Email 20161117" has been redacted. Can you please clarify whether the purported basis for this redaction is Article 25 or, alternatively, provide copies of these emails without the name of the sender(s) redacted. It is noted that the Director of Corporate Policy has been publicly identified on many occasions, see for example:*

<https://statesassembly.gov.je/scrutinyquarterlyhearingstranscripts/2016/corporate%20services%20-%20quarterly%20hearing%20-%20chief%20minister%20%2013%20june%202016.pdf>

<https://www.bbc.co.uk/news/world-europe-jersey-24905451>

<https://jerseyeveningpost.com/news/2015/05/12/yes-there-will-be-compulsory-redundancies-chief-ministerswarning-for-civil-servants/>

<https://www.blglobal.co.uk/BusinessNews.aspx?id=new-look-for-2014-manpower-returns-in-jersey>

His email address has also not been redacted in previous FOI responses. See, for example:

<https://www.gov.je/Freedom%20of%20Information%20library/ID%20FOI%20Emails%20FOI-CP%20Redacted%2020190319.pdf>

I should be grateful for your prompt response..."

13. A response from the Central Unit was sent to the Complainant on 15 March 2024 (at 17:26):

"We write in response to your email of 10th March 2024.

We have been advised as follows:

1.

The two PDF attachments you reference were:

i) the Applicant Form, which was included (in redacted form) in the documents issued, and

ii) the Business Plan which was reviewed and then withheld as detailed in the original response.

2.

In respect of the redaction of the name of the Director of Corporate Policy –

This redaction was made in line with Freedom of Information guidelines which state that only individuals above a certain level within the Government of Jersey hierarchy are subject to disclosure as part of an FOI response.

We appreciate you highlighting the error in the previous lack of redaction in a document disclosed as part of a Freedom of Information response, this is now in the process of being corrected."

14. On 10 April 2024 the Complainant emailed the Central Unit (at 18:59) asking for a copy of the "Freedom of Information Guidelines" referred to in its response cited above and at 19:15 asking for additional clarification about which exemption had been applied to email 2016117.

15. The Central Unit provided the Complainant with a copy of the guidelines referenced on 15 May 2024 (at 16:36). (It did not provide a response to the Complainant in respect of his other query of 10 April.)

16. The Complainant issued their IR Request on 9 June 2024, as follows:

"...

I request that the internal review be carried out by a Panel constituting persons independent from those who prepared the initial response; further, that the Panel does not contain any

individuals who may have been involved in the decision making process to which the information relates, since it is submitted that they cannot be considered independent given they be perceived to have an additional incentive to seek to withhold relevant information.

Inadequate / incomplete searches

It appears that not all relevant documents have been disclosed.

As part of its internal review, the Panel is requested to check that adequate searches were carried out. In particular, but without limitation, it appears that certain emails and notes of the Director of Corporate Policy (as he then was), Paul Bradbury, may have been incorrectly omitted from the response.

It is suggested that, without limitation: (a) a fresh search should be undertaken for documents responsive to the name of the company (omitting "Limited"); and (b) a fresh search should be undertaken for documents responsive to the surname of the individual listed in the "Application for a Business Licence" as the "Beneficial Owners".

It is suggested that the search could be focussed on documents from the months of September 2016 (since the Application appears to have been submitted in that month), October 2016 and November 2016.

The Panel is requested to arrange for such searches to be carried out and to produce any responsive information identified as a result of such searches.

Article 31

The Panel is requested to review the decision to withhold information (stated in the response as constituting an entire email chain, plus a redaction to another email) on the basis of Article 31.

To the extent that Article 31 is considered applicable, it is submitted that the Panel should make enquiries of the Attorney General as to whether he consents to the exemption being waived.

The fact that the Attorney General was consulted is apparent from the response. Therefore, the only question is whether the content of the communications with the Attorney General should be provided.

It is submitted that there is significant public interest in understanding how the Attorney General may be consulted in relation to business licence applications, even in circumstances where particulars of the company and/or individuals involved are withheld.

In considering the public interest test, it is not clear that due regard was given to (amongst other things) the historic nature of the correspondence with the Attorney General and therefore that its disclosure is less likely to cause prejudice.

The response refers to "privilege". However, since Article 32 was not relied on, it does not seem that the communications with the Attorney General are considered subject to legal professional privilege.

In respect of the email chain that has been withheld in its entirety, the Panel should consider whether the email chain could be (at least) disclosed in part, so that (for example) the dates of the communications with the Attorney General are at least apparent.

Should the Panel, having concluded its internal review, determine to withhold any information, I should be grateful if the Panel could please provide in writing the reasons for its determination, including as much detail as possible."

17. The results of the Internal Review were communicated to the Complainant on 22 July 2024 as follows:

"Internal Review Response

An internal review was conducted by two senior members of staff independent to the original decision process.

The panel reviewed the original request, received on 16th January 2024 and the response provided on 27th February 2024 and initially noted the wide scope of the information sought; for all business applications made to HAWAG in November 2016.

The applicant, within their Internal Review request, requested that additional investigations be carried out by the SPA in pursuit of information, however the Panel noted that the Internal Review process is in place to undertake an examination of the material provided in response to the original request and to enable a fresh decision to be taken in reconsideration of relevant factors, and not to extend the parameters of the request at this point.

The Panel then moved to ask the following questions:

- 1. Was the right information searched for and reviewed?*
- 2. Were correct exemptions applied?*

The Panel reviewed the redacted and unredacted correspondence provided in response to the original request and considered whether adequate searches of information had been undertaken and the validity of redaction and exemptions.

Having received the clarifications sought and having undertaken a review, the Panel concluded that the response reviewed the necessary documentation held by Government, and applied exemptions in an appropriate manner, therefore the original response is upheld".

The Investigation

Scope of the case

18. On 30 July 2024, the Complainant contacted the Commissioner to appeal against the Internal Review Response. The Complainant asked the Commissioner to review the Complainant's Request and the responses received from the SPA to ascertain whether what had been provided was in accordance with the FOI Law and whether the exemptions cited by the SPA were appropriately applied. Specifically:

"The Complainant requests that the Commissioner review the Response and the Internal Review and conclude whether or not: (a) the GoJ carried out adequate searches; and (b) the GoJ's decision to withhold information on the basis of the exemptions specified is in accordance with the provisions of the FOI Law.

For the reasons expanded on below, the Complainant has concerns that: (a) the GoJ did not carry out adequate searches, and therefore has not provided all the relevant information it holds; and (b) exemptions have been incorrectly applied to withhold relevant information.

The Complainant does not seek to appeal: (1) the redactions made to the Application Form; (2) the decision to withhold the Business Plan in its entirety; or (3) the redactions made to the disclosed emails, except the redactions of the names of GoJ employees (purportedly on the basis of Article 25) and the redaction to email "2016117" purportedly made on the basis of Article 31."

19. The Commissioner has set out in this Notice the issues he has had to consider in respect of the relevant exemptions cited by the SPA.
20. In coming to a decision on this matter, the Commissioner has considered all the relevant submissions, or parts of submissions, made to him by both the Complainant and the SPA. He is satisfied that no matter of relevance has been overlooked.

Chronology

21. On 14 August 2024, the Commissioner wrote to the SPA to advise that the Complainant had made an Appeal to the Commissioner, pursuant to Art.46 of the FOI Law. The SPA was asked to provide their written submissions in response to the complaint made by the Complainant.
22. The SPA responded to that letter on 4 October 2024, providing detailed explanations as to why it considered the Art.25 and Art.31 exemptions had been appropriately applied in this case and also providing information about the veracity of the searches undertaken by the SPA to respond to the Request. It also provided the Commissioner with a copy of any information that had been withheld from the Complainant (including unredacted versions of the information provided to the Complainant as part of the Response and Revised Response). Further queries were raised by the Commissioner on 14 October 2024. Regrettably, no response has been received from the SPA in response to those additional queries and despite chasers from the Commissioner.

Analysis

Art.3 – INFORMATION HELD

The Complainant's Position

23. As noted above, the Complainant was concerned that the SPA had not carried out appropriate searches in response to the Request. The Complainant believed that emails and notes of the then Director of Corporate Policy may have been omitted and asked for new searches to be undertaken. Specifically, the Complainant asked:

"the Commissioner submit to critical examination the Panel's assertion that the "the response reviewed the necessary documentation held by Government". In particular, the Complainant asks that the Commissioner carefully consider whether the GoJ reviewed how reasonable its search was, in light of the information located and disclosed by the GoJ (i.e. the Application Form indicating the name of the company and its "Beneficial Owner"). The Complainant believes that, upon identifying the company and its "Beneficial Owner", the GoJ should then have used this information to search for information falling within the parameters of the Request.

The Complainant submits that the GoJ should be requested to provide the Commissioner with a reasoned and detailed account of how the GoJ determined that it does not hold further information falling within the scope of the Request. The Commissioner must be convinced that the GoJ has proved on the balance of probabilities that its searches were appropriate and thorough and that the GoJ has searched those areas where it is reasonable to expect that the GoJ would find the information (if it existed).

If the GoJ is unable to properly evidence the searches and enquiries conducted and prove that they were reasonable, the Complainant would expect the Commissioner to ask the GoJ to carry out further searches and enquiries."

The SPA's Position

24. The SPA said that it has carried out appropriate searches relevant to the Request submitted by the Complainant, indicating that *"whether the right information was searched for as part of the original FOI response was a matter considered (in detail) by the internal review panel. They determined that the searches previously conducted were, in their view, reasonable. Accordingly no new searches were required. If the internal review panel had determined the information was not searched for correctly or sufficiently thorough, such that additional searches were necessary, these would have been conducted and any findings (if any) I respect of the same have been brought back to the panel"*.
25. The SPA advised that the scoping process took in the region of 7.5 hours and that to conduct further searches in the manner suggested by the Complainant (such as against the name of the beneficial owners) would likely have increased the results returned.
26. The SPA also noted that the Complainant's Request was specifically drawn; it *"was not for all information about the business licence application, or for all information about the beneficial owners of the relevant business which the SPA might hold, it was for HAWAG records, related to such new business licence application"* and that *"it is reasonable to consider any information about the beneficial owners of a business licence to be out of scope if it was not in and of itself a record / email / minute / note of a meeting, deliberation or decision of HAWAG about an application for new business licence."*

Analysis

27. In terms of any emails (or other documentation) relating to the Request for *"all records (including (but not limited to) emails) relating to any (a) meetings (b) deliberations, and/or (c) decisions of the HAWAG (Housing and Work Advisory Group), including (but not limited to) formal minutes and informal meeting notes, relating to any applications for new business licences determined in the month of November 2016 and which resulted in a business licence being granted for the carrying on of a "family office" undertaking"*, the Commissioner was provided with information regarding the searches undertaken by the SPA following receipt of the Request, in the usual way.
28. Specifically, the SPA explained that upon receipt of the Request, initial enquires were made of Customer and Local Services (**CLS**) to determine the names of any new business application which might have been approved/discussed by HAWAG in November 2016 and which resulted in a business licence being granted for the carrying on of a family office undertaking.
29. CLS confirmed that only a single entity fitted the criteria set out in the Request. Electronic searches were then carried out using the name of the relevant business and the email account of Paul Bradbury. This is because he was known to have supported HAWAG at the relevant time. Physical searches of his laptop were also carried out. These searches were overseen by a member of the Central Freedom of Information Unit (**Central Unit**).
30. Where there is any dispute about whether a SPA holds information, the issue will be decided according to the balance of probabilities and whether it is more likely than not that a public authority holds (or does not hold) requested information). It will rarely be absolutely certain either way, and that information relevant to a request does not remain undiscovered somewhere within a public authority's records. In the UK, it is accepted that the UK ICO is, as a general principle, entitled to accept "the word of the public authority and not to investigate further" where there is no evidence of an inadequate search, any reluctance to carry out a proper search or of

any motive to conceal information it actually holds – “Were this to be otherwise, the IC, with its limited resources and its national remit, would be required to carry out a full scale investigation, possibly onsite, in every case in which a public authority is simply not believed by the requester” (see *Oates v Information Commissioner (EA/2011/0138)*, at paragraph 11).

31. In *Yallop v Information Commissioner (EA/2023/0094)* (9 October 2023), the Tribunal held that a reasonable search would have included asking an official and their private office about the source of evidence that had been requested under FOIA, which the public authority had not done. This was despite the evidence being described as “anecdotal” in statements made four years before the FOIA request. An appropriate and reasonable search for information included, as a minimum, searching in the places where it was reasonable to expect that the public authority would find the information.
32. The Complainant’s concern was predominantly focused on a (non-evidenced) belief that Mr Bradbury’s emails etc had been omitted from the initial searches.
33. The Commissioner is satisfied that the SPA’s approach to searches in respect of this Request were appropriate and reasonable in the circumstances and, specifically, that Mr Bradbury’s emails were searched in response to the Request. There is no substance in the Complainant’s belief that they were not.

ABSOLUTE EXEMPTIONS

Art.25 – Personal Information

The Complainant’s position

34. The Complainant’s position is as set out in the IR Request and also very fully in the appeal document provided to the Commissioner. Specifically, the Complainant considers that Art.25 has been incorrectly applied in respect of certain GoJ employees and has asked the Commissioner to consider the Withheld Information and the specific instances where the Art.25 exemption has been applied in such instances. (The Complainant does not appeal the application of the Art.25 exemption to non-GoJ employees, however.)

The SPA’s position

35. In addition to explanations provided in its Request Response, and Internal Review Response, the SPA was invited to provide submissions to this office and to advise the Commissioner of the contents of the Withheld Information. It provided the Commissioner with copies of that information in unredacted format.
36. It is clear that the Withheld Information contains information about individuals other than the Complainant namely:
 - a. Government of Jersey (**GoJ**) employees below a certain Tier level; and
 - b. Non-Government of Jersey employees linked to certain business applications that had been submitted to HAWAG.
37. As noted in para.34 above, the Complainant has only appealed the SPA’s reliance on the Art.25 exemption insofar as it applies to GoJ employees.
38. The SPA contends that the Withheld Information constitutes personal data of the GoJ employees and to release their information would breach Art.8(1)(a) of the DPJL 2018. That article reads as follows:

"8 Data protection principles

(1) A controller must ensure that the processing of personal data in relation to which the controller is the controller complies with the data protection principles, namely that data are

(a) processed lawfully, fairly and in a transparent manner in relation to the data ("lawfulness, fairness and transparency")."

39. In particular, the SPA submits that it is not fair in these particular circumstances to release the Withheld Information relating to the relevant individuals noting particularly that whilst in some exceptional circumstances, there is an obligation

Analysis

40. The full text of Art.25 of the FOI Law can be found in the Legal Appendix at the end of this Decision Notice.

41. Art.25 specifies that personal data is exempt from disclosure if its disclosure would breach any of the data protection principles contained within the relevant data protection legislation in force at the time the decision to withhold the information was made.

42. Art.2 the Data Protection (Jersey) Law 2018 (**DPJL 2018**) defines personal data as follows:

"(1) Personal data means any data relating to a data subject.

(2) A data subject is an identified or identifiable, natural, living person who can be identified, directly or indirectly, by reference to (but not limited to) an identifier such as –

(a) a name, an identification number or location data;

(b) an online identifier; or

(c) one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of the person.

(3) The following matters must be taken into account in deciding whether the person is identified or identifiable –

(a) the means reasonably likely to be used by the controller or another person to identify the person, taking into account factors such as the cost and amount of time required for identification in the light of the available technology at the time of processing and technological factors;

(b) whether the personal data, despite pseudonymization, is capable of being attributed to that Person 2y the use of information other than that kept separately for the purposes of pseudonimization."

43. The Commissioner has previously considered the concept of what constitutes personal data in an FOI context. Specifically looking at whether the data used, or is to be used, to inform or influence actions or decisions affecting an identifiable individual and whether that data impacts or has the potential to impact on an individual, whether in a personal, family, or business or professional capacity.

44. The SPA has indicated that the relevant individuals are likely to be identified from the requested information and the Commissioner has had sight of the unredacted information specifically, emails 20161005, 20161018 and 20161117.
45. The Commissioner is satisfied that the Withheld Information falls within the definition of personal data to the extent that it names certain third-party individuals – namely GoJ employees) and their email addresses.
46. The fact that information constitutes the personal data of identifiable living individuals does not automatically exclude it from disclosure under the FOI Law. The second element of the test is to determine whether disclosure would contravene any of the principles set out at Art.8 of the DPJL 2018.

Would disclosure of the Withheld Information contravene Art.8(1)(a) of the DPJL 2018?

47. The Commissioner has had to consider whether to release the Withheld Information would breach one of the principles set out at Art.8 of the DPL 2018. In this case, the SPA considers that it is not fair to release the Withheld Information into the public domain and refers to Art.8(1)(a) of the DPL 2018 in this regard. Specifically, in their response to the Commissioner, the SPA said that:

"Data Protection (Jersey) Law principle 8(1)(a) – the need to process data lawfully, fairly and in a transparent manner would be breached if we were to publish the names of all Government individuals in any correspondence.

It is considered appropriate that senior members of Government, and on some occasions other members of Government's details are published. However, whilst such matters are considered on a case-by-case basis, generally speaking it is not considered lawful or fair or appropriate to publish individuals below chief officer / those directly reporting to chief officer as per Government policy referred to above, It is considered such persons have a general expectation of privacy..."

48. Art.9 of the DPJL 2018 sets out the requirements for lawful processing by providing that "processing shall be lawful only if and to the extent that at least one of the" conditions specified in Schedule 2 of the DPJL 2018 applies.
49. The Commissioner considers that the lawful basis most likely applicable in this case is the basis set out at Schedule 2 Part 2 para.4(d) of the DPJL 2018 which states:

"The processing is necessary for –

...

(d) the exercise of any other functions of a public nature with a legal basis in Jersey law to which the controller is subject and exercised in the public interest by any person".

50. In deciding whether disclosure of personal data would breach Art.8(1)(a) of the DPL 2018, the Commissioner takes into account a range of factors including:
 - a. The reasonable expectations of the individual in terms of what would happen to their personal data. Such expectations could be shaped by:
 - i. What the public authority may have told them about what would happen to their personal data;

- ii. Their general expectations of privacy, including the effect of Art.8 of the European Convention on Human Rights (ECHR);
- iii. The nature or content of the information itself;
- iv. The circumstances in which the personal data was obtained;
- v. Any particular circumstances of the case, e.g. established custom or practice within the public authority;
- vi. Whether the individual consented to their personal data being disclosed or, conversely, whether they explicitly refused;
- vii. The consequences of disclosure (if it would cause any unnecessary or unjustified damage or distress to the individual concerned); and
- viii. The balance between the rights and freedoms of the data subject and the legitimate interest of the public.

51. Notwithstanding the data subject's reasonable expectations or any damage or distress caused to them by disclosure, it may still be appropriate to disclose the Withheld Information if it can be argued that the processing is necessary, and the rights of affected data subjects can be protected.

52. As previously noted at para.45 of the Commissioner's Decision Notice CAS-04797:

"In its own guidance note, the Government of Jersey records that:

"In early 2017 the Office of the Information Commissioner issued a decision notice on an appeal which clearly stated that the application of a blanket exemption of Article 25 on names and related data of officers below the rank of Chief Officer was unacceptable.

As a blanket decision cannot be made on the grounds of seniority, there will need to be a judgement given in each instance. Where there is a genuine doubt about whether a disclosure should be made FOI officers should err on the side of caution and protect identity in the first instance...

Names are personal data within the meaning of the DPL but whether the surrounding information is also the personal data of that individual will involve consideration of whether the information is of biographical significance and relates to the individual. Just because an individual has been copied to an email or forwarded something on, the content of that email would not automatically be that individual's personal data unless it relates to them in a biographical capacity and focuses on them as an individual.

The Commissioner will consider whether or not the redactions applied by an SPA are appropriate in each instance particularly correspondence which has emanated from/involved other employees within a States of Jersey department."

Commissioner's Decision

53. The Commissioner has considered the information withheld by the SPA pursuant to Art.25 of the FOI Law and concluded that the exemption has been improperly applied to the name of the then Director of Corporate Policy in respect of emails 20161005, 2016117 and 20161018. This is because:

- a. The personal information is limited to this individuals name, job title and email address all of which are in the public domain (and which have been released previously as part of other FOI requests.
 - b. The individual occupied (and continues to occupy) a senior position within the GoJ and was involved in the business licence application.
 - c. At all times the individual was acting in their role within the SPA and in a professional capacity.
 - d. The possibility for adverse consequences in terms of disclosure have not been articulated by the SPA to the Commissioner. No risk to safety has been identified.
 - e. The SPA did not seek consent from the affected individual (although the SPA questioned the validity of any consent if given, given the apparent power imbalance between employer and employee)
 - f. The Commissioner does not consider that disclosure would have an excessive or disproportionate affect on the individual's legitimate interests.
54. The Commissioner also considers that despite its own guidance, the SPA did not properly consider the application of this exemption and simply applied such in a blanket fashion purely based on the individual's apparent GoJ Tier status. The Commissioner has said (now on multiple occasions) that this is not correct and each case must be considered on a case-by-case basis.
55. Accordingly, any information previously redacted to refer to the name of the Director of Corporate Policy in emails 20161005, 20161018 and 20161117 must be provided to the Complainant.

QUALIFIED EXEMPTIONS

Art.31 – ADVICE PROVIDED BY A LAW OFFICER

The Complainant's Position

56. In their appeal, the Complainant notes that:

"The original Response stated that an entire email chain had been withheld under Article 31. The Revised Response also noted that an email redaction had been applied on the basis of Article 31. It is presumed that the email redacted on the basis of Article 31 is email "2016117" although it is noted that none of the emails were annotated to indicated which exemption(s) had been applied.

Without reviewing the redacted email (or the withheld email chain), the Complainant is unable to assess whether or not Article 31 has been correctly applied. The Complainant requests that the Commissioner review the withheld information, in order to assess whether Article 31 has been correctly applied.

As a general comment, the Complainant notes that Article 31 is strictly limited to information that "is or relates to the provision of advice by the Bailiff, Deputy Bailiff or the Attorney General or the Solicitor General" (emphasis added).

Furthermore, even if the withheld information does constitute such "advice" by the Attorney General (or one of the other official expressly named in Article 31) the public interest must still be considered. If the legislature had intended Article 31 to be an absolute exemption, it would have provided for this in the FOI Law; instead, Article 31 is a qualified exemption only.

There is no presumption, accordingly, in favour of withholding information under Article 31; on the contrary, as the Commissioner has previously noted, the principle behind the FOI Law is to release information unless there is good reason not to.

Factors favouring disclosure include the general public interest in accountability and transparency, as well as any specific public interest. In the present case, there is specific public interest in information about the role that the Attorney General (an unelected official) has played in reviewing and approving applications for business licences being released to the public. Such information is of value to the public even though the name of the relevant applicant may be redacted; it is insight into the process which would be provided, rather than the specifics of a case, that is in the public interest.

The Complainant submits that one further factor weighing in disclosure may be the fact that any "advice" that was provided, would have been provided approximately 8 years ago, and therefore its sensitivity may be diminished (in comparison to advice that was provided more recently). As a general rule, sensitivity (and therefore the prejudice that may be caused by publication) diminishes as information ages..."

The SPA's Position

57. The SPA contends that Art.31 reflects the longstanding constitutional convention that government does not reveal whether Law Officers have or have not advised on a particular issue, or the content of such advice without the Law Officers' consent. The purpose of this confidentiality is to protect fully informed decision making by allowing Government to seek legal advice in private, without fear of adverse inferences being drawn from either the content of the advice or the fact that it was sought. It ensures that Government is neither discouraged from seeking advice in appropriate cases, nor pressurised to seek advice in inappropriate cases. In its response to the Commissioner's request for information, the SPA has provided its rationale as to why it considers Art.31 applies to this aspect of the Complainant's Request.

Analysis

58. The Commissioner understands that the Law Officers are the principal legal advisers to the GoJ, including the SPA. The core function of the Law Officers is to advise on legal matters, helping the Government to act lawfully and in accordance with the rule of law. The Commissioner considered the operation of Art.31 in previous decision notices and does not replicate same here.

59. The Commissioner has seen and considered the information withheld pursuant to Art.31 of the FOI Law.

60. The exemption given at Art.31 is a qualified exemption. This means that even where the exemption is engaged, information is only exempted if the public interest in maintaining the exemption outweighs the public interest in disclosing the requested information. The focus here is whether the SPA was correct in concluding that the public interest in maintaining the exemption outweighed the public interest in disclosure.

61. The SPA has argued that, this is principally a private interest on the part of the Complainant, not evidence of public interest more generally and certainly not sufficient to displace the exemption.

62. Factors which may be relevant in balancing the public interest arguments may include whether a large number of people are affected, lack of transparency in the SPA's actions and misrepresentation of any advice given.

63. The Commissioner does not consider the public interest to be sufficiently strong in these particular circumstances to override the convention and the exemption from disclosure provided for at Art.31 of the Law. Whilst the timeframe relating to the request is historic, the Commissioner does

not consider that factor to support the Complainant's suggestion that the exemption should not apply and no cogent evidence has been supplied to show that these are exceptional circumstances such as to find that the usual privilege that exists in the context of the government seeking advice from the LOD should be overridden.

Commissioner's Decision

64. The Commissioner is satisfied that the exemption was appropriately deployed in the applicable circumstances to email 20161117.

The Decision

65. The Commissioner considers that in respect of appropriateness of the SPA's response to the Request, that it took appropriate and reasonable steps to search for and locate information relevant to the request and the SPA also appropriately applied the Art.31 exemption in respect of email 20161117.

66. However, in respect of emails 20161005, 20161018 and 20161117, the SPA inappropriately applied Art.25 of the FOI Law in respect of the individual identified as the then Director of Corporate Policy and must provide new copies of those emails within 35 days to the Complainant. The SPA is required to provide the case officer with confirmation that this action has been completed, along with copies of the correspondence sent to the Complainant, to be submitted to the Commissioner's officer

67. Accordingly, the complainant's appeal is partially upheld.

Right of Appeal

68. An aggrieved person has the right to appeal against this Decision Notice to the Royal Court of Jersey.

69. Any Notice of Appeal should be served within 28 (calendar) days of the date on which the Decision Notice is issued.

Dated this 20 day of August 2025

Signed... 

Mr Paul Vane
Information Commissioner
Office of the Information Commissioner
5 Castle Street
St Helier
Jersey

8 General right of access to information held by a scheduled public authority

If a person makes a request for information held by a scheduled public authority –

- (a) the person has a general right to be supplied with the information by that authority; and
- (b) except as otherwise provided by this Law, the authority has a duty to supply the person with the information.

9 When a scheduled public authority may refuse to supply information it holds

- (1) A scheduled public authority may refuse to supply information it holds and has been requested to supply if the information is absolutely exempt information.
- (2) A scheduled public authority must supply qualified exempt information it has been requested to supply unless it is satisfied that, in all the circumstances of the case, the public interest in supplying the information is outweighed by the public interest in not doing so.
- (3) A scheduled public authority may refuse to supply information it holds and has been requested to supply if –
 - (a) a provision of Part 3 applies in respect of the request;
 - (b) a fee payable under Article 15 or 16 is not paid; or
 - (c) Article 16(1) applies.

13 Time within which a scheduled public authority must deal with a request for information

- (1) A scheduled public authority must deal with a request for information promptly.
- (2) If it supplies the 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 prescribed 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^[4].

18 Where a scheduled public authority refuses a request

The States may, by Regulations, prescribe the manner in which a scheduled public authority may refuse a request for information.

25 Personal information

(1) Information is absolutely exempt information if it constitutes personal data of which the applicant is the data subject as defined in the Data Protection (Jersey) Law 2005.

(2) Information is absolutely exempt information if –

(a) it constitutes personal data of which the applicant is not the data subject as defined in the Data Protection (Jersey) Law 2018; and

(b) its supply to a member of the public would contravene any of the data protection principles, as defined in that Law.^[3]

(3) In determining for the purposes of this Article whether the lawfulness principle in Article 8(1)(a) of the Data Protection (Jersey) Law 2018 would be contravened by the disclosure of information, paragraph 5(1) of Schedule 2 to that Law (legitimate interests) is to be read as if sub-paragraph (b) (which disapplies the provision where the controller is a public authority) were omitted.^[4]

31 Advice by the Bailiff, Deputy Bailiff or a Law Officer

Information is qualified exempt information if it is or relates to the provision of advice by the Bailiff, Deputy Bailiff or the Attorney General or the Solicitor General.