

**Freedom of Information (Jersey) Law 2011**

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**DECISION NOTICE**

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<b>JOIC Reference</b>	CAS-04913-B8Z1X8
<b>Date of Decision Notice</b>	8 October 2025
<b>Scheduled Public Authority</b>	External Relations
<b>Address</b>	Ministerial Offices Government of Jersey Union Street St. Helier Jersey JE2 3DN
<b>Date of Request</b>	7 May 2024
<b>Date of Initial Response</b>	11 June 2024
<b>Date of Additional Response</b>	30 July 2024
<b>Date of request for Internal Review</b>	11 August 2024
<b>Date of Internal Review Response</b>	2 October 2024
<b>Date of appeal to Information Commissioner</b>	3 October 2024

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**Summary/Decision**

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1. On 7 May 2024, the Complainant requested certain information from External Relations (the **SPA**) about certain correspondence that had passed between (then) Senator Ian Gorst and Lord Ahmad (a Minister of State, Foreign, Commonwealth and Development Office) (the **Request**).
2. The SPA wrote to the Complainant on 11 June 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, 31 and 41 of the Freedom of Information (Jersey) Law 2011 (the **FOI Law**). Later that same day, the Complainant queried the sufficiency of the searches carried out

by the SPA and asked for additional searches to be carried out. The SPA responded on 30 July 2024 and provided further information to the Complainant (albeit with certain redactions applied) (the **Additional Response**)

3. The Complainant requested an internal review later that same day (the **IR Request**).
4. The SPA responded to the IR Request on 2 October 2024 (the **Internal Review Response**) and issued the Complainant with some additional documentation (albeit with certain redactions that had been applied).
5. The Complainant did not agree with the outcome of the Internal Review and issued an appeal to the Information Commissioner (the **Commissioner**) on 3 October 2024 (the **Appeal**).
6. The Commissioner's decision is that the appeal is partially upheld. The SPA must provide the Complainant with the information set out in Appendix 2 of this Decision Notice within 35 days. Failure to comply may result in the Commissioner making a written certification of this fact to the Royal Court of Jersey pursuant to Art.48(3) of the FOI Law and may be dealt with as a contempt of court.

### **The Role of the Information Commissioner**

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7. 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.
8. This Decision Notice sets out the Commissioner's decision.

### **The Request**

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

*"On 1 April 2022, correspondence was sent on behalf of Senator Ian Gorst, for the attention of Lord Ahmad, a Minister of State, Foreign, Commonwealth and Development Office, as part of "co-ordinated efforts" by the UK and Jersey authorities to freeze assets in Jersey, through the imposition of financial sanctions and obtaining of court orders.*

*Please provide a copy of that correspondence, including the letter from Senator Gorst addressed to Lord Ahmad sent on 1 April 2022, and any related correspondence (including, without limitation, internal email correspondence and attachments) from the period 24 February 2022 to 30 April 2022 (inclusive)".*

10. On 11 June 2024 the SPA provided the Response in the following terms:

*"Email searches were performed using the auditable email archive service of the Government of Jersey on the account of Deputy Ian Gorst.*

*All emails were reviewed and those in scope are attached.*

 [Correspondence Redacted.pdf](#)

*Correspondence has been withheld in accordance with Articles 31 and 41 of the Freedom of Information Jersey Law (2011).*

*Some information has been redacted in accordance with Article 25 of the Freedom of Information (Jersey) Law 2011.*

## **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 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 2005; 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**

*With regard to the public interest arguments, HM Treasury v IC [2009] EWHC 1811 Blake J recognised that when engaged, the Convention will carry significant weight in the public interest test. The Convention has been considered by the Office of the Information Commissioner and was held to be part of Jersey law.*

*Whilst it is recognised that the strong public interest in protecting Law Officers' advice may still be overridden in some cases if there are particularly strong factors in favour of disclosure, conversely, disclosing the advice or whether advice was or will be sought could inhibit the Law Officers from (1) giving frank advice (2) inhibit government bodies in taking advice for fear of its publication; and (3) inhibit the full disclosure to the Law Officers of all material relevant to the advice being sought and therefore real weight ought to be afforded to this aspect of the Law Officers' Convention.*

*Disclosing either the legal advice or the fact of whether specific advice was sought to the public is not a greater consideration of public interest that requires disclosure of the advice or confirmation of what advice was given. It does not outweigh the three principles set out above which require the long-standing Law Officer Convention to be maintained. Therefore, the balance is in favour of maintaining the exemption and it is not considered the public interest in disclosure outweighs the preservation of the Convention on this occasion.*

### **Article 41 - International relations**

*(1) Information is qualified exempt information if its disclosure would, or would be likely to, prejudice relations between Jersey and –*

*(a) the United Kingdom;*

*(b) a State other than Jersey;*

*(c) an international organization; or*

*(d) an international court.*

*(2) Information is qualified exempt information if its disclosure would, or would be likely to, prejudice –*

*(a) any Jersey interests abroad; or*

*(b) the promotion or protection by Jersey of any such interest.*

*(3) Information is also qualified exempt information if it is confidential information obtained from –*

*(a) a State other than Jersey;*

*(b) an international organization; or*

*(c) an international court.*

*(4) In this Article, information obtained from a State, organization or court is confidential while –*

*(a) the terms on which it was obtained require it to be held in confidence; or*

*(b) the circumstances in which it was obtained make it reasonable for the State, organization or court to expect that it will be so held.*

*(5) In this Article –*

*"international court" means an international court that is not an international organization and that was established –*

*(a) by a resolution of an international organization of which the United Kingdom is a member; or*

*(b) by an international agreement to which the United Kingdom was a party;*

*"international organization" means an international organization whose members include any two or more States, or any organ of such an organization;*

*"State" includes the government of a State and any organ of its government, and references to a State other than Jersey include references to a territory for whose external relations the United Kingdom is formally responsible.*

### **Public Interest Test**

*The public interest in respect of Article 41 is weighted in favour of maintaining the exemption unless equally strong countervailing public interest arguments favour the disclosure of the information. It is recognised that there is a public interest in providing transparency about the island's network of international agreements. However, having considered the public interest, the Scheduled Public Authority concluded that the public interest in disclosing this information at this time is outweighed by the public interest considerations in withholding the information, in support of the Island's interests and to avoid any potential prejudice to the Island's relationship with the United Kingdom and other jurisdictions."*

11. On 11 June 2024, the Complainant emailed the Central Freedom of Information Unit (the **Central FOI Unit**) with a request that the SPA:

a. Carry out searches on additional email accounts;

- b. Carry out searches for any "*related correspondence*" (noting that such had formed part of the original Request); and
  - c. Clarify whether any information had been withheld in its entirety and, if so, the basis for doing so.
12. On 30 July 2024, the Central FOI Unit (on behalf of the SPA), emailed the Complainant confirming that, further to the Complainant's request of 11 June 2024, additional correspondence had been located. This additional correspondence was provided to the Complainant, albeit with certain redactions applied (the **Additional Response**).
13. The Complainant issued their IR Request on 11 August 2024 indicating that they did not agree with the SPA's reliance on Arts.25, 31 and 41 of the FOI Law. Specifically, in their IR Request, the Complainant set out the following reasons why they did not consider that the Response had been provided in compliance with the FOI Law, as follows:

*"I am writing to request that an internal review of the response (the "**Response**") of the Scheduled Public Authority (the "**SPA**") to the Request (referenced above) please be carried out, with the minimum of delay.*

*Consistent with the Office of the Information Commissioner - Code of Practice on the discharge of Scheduled Public Authorities' functions under the Freedom of Information (Jersey) Law 2011, issued in accordance with Article 44 of the Law (the "**Code of Practice**"), I request that the internal review:*

- be a fair, thorough and independent review of the process adopted and decisions taken by the SPA pursuant to the Freedom of Information (Jersey) Law 2011 (the "**FOI Law**");*
- enables a fresh decision to be taken on reconsideration of all the factors relevant to the request;*
- be undertaken by someone senior to the original decision maker; and*
- takes into account (amongst other things) any further matters raised during the investigation of the complaint (including the matters set out in this letter).*

*I should be grateful if a copy of this letter could please be presented to the members of the Internal Review Panel appointed, in order that the matters set out herein may be given full and careful consideration as part of the Internal Review Panel's independent review of the Response.*

*As part of the internal review, I would ask that the Internal Review Panel carefully review (amongst other things) whether appropriate searches were carried out to identify all relevant information. Further comments regarding this matter are set out below.*

*I would also ask that the Internal Review Panel critically consider whether the exemptions cited have in fact been properly applied to withhold information. Further (non-exhaustive) comments regarding each of the exemptions cited (Articles 25, 31 and 41) follow.*

### **Adequate searches**

*Upon receipt of a request for information under the FOI Law, the SPA must carry out appropriate searches to determine what information it holds. I continue to have concerns that the SPA may not have carried out appropriate searches and, as a result, may not have identified (and, consequently, not have provided in the Response) all of the relevant information held.*

*The Response stated: "Email searches were performed using the auditable email archive service of the Government of Jersey on the account of Deputy Ian Gorst."*

On 11 June 2024, I raised (via the Central Freedom of Information (FOI) Unit) concerns about (1) the custodians searched and (2) the scope of the searches.

In respect of the custodians, I noted that the Request was not limited to Deputy Gorst's emails. The Request was a request for information, whether held by Deputy Gorst or any other relevant person within the Government of Jersey. Accordingly, I expected reasonable searches for responsive information would have been carried out on other potentially relevant accounts (not just that of Deputy Gorst). I also expected searches not to have been limited solely to the email archive, but also to have encompassed searches of other document storage facilities and hard copy documentation.

In respect of the scope of the searches, I noted that it appeared that the searches may have focussed only on the letter sent to Lord Ahmad on 1 April 2022. The Request, however, also sought "related correspondence" from the period 24 February 2022 to 30 April 2022 (inclusive). I raised concerns that searches for related correspondence were not carried out and/or that an overly restrictive interpretation of "related" may have been adopted. I also noted that "related" was intended to cover not only emails about the letter to Lord Ahmad, but also correspondence relating to the same subject matter as that letter.

To the extent that there was other correspondence (whether internal or otherwise), relating to the "co-ordinated efforts" by the UK and Jersey authorities to freeze assets in Jersey, through the imposition of financial sanctions and obtaining of court orders, I believe that such correspondence should also have been considered as responsive to the request and disclosed.

On 30 July 2024, it was confirmed to me that it had been established that further correspondence was releasable. Copies of certain further emails (with redactions) were accordingly disclosed.

Regrettably, no detail was provided about the further searches undertaken by the SPA. As a result, it remains unclear:

- (i) whether the SPA widened its search to include further custodians;
- (ii) whether the SPA ran searches on the Cryoserver, to locate information that may not otherwise have been retained in individual email accounts (and which therefore would not have been located by searches of email accounts);
- (iii) whether other storage systems (for example, shared file and document storage systems) were searched, as well as email accounts;
- (iv) whether hard copy files were searched;
- (v) whether the scope of the searches was as requested, i.e. all correspondence relating to the subject matter of the letter to Lord Ahmad, as well as relating to the letter itself;
- (vi) whether an overly restrictive interpretation of "correspondence" was taken by the SPA, despite the fact that "correspondence" (if properly interpreted) should encompass both written letters and also email communications. (The Merriam-Webster dictionary defines correspondence as "communication by letters or email" - see <https://www.merriamwebster.com/dictionary/correspondence>)

At present, I have concerns that relevant correspondence relating to the subject matter may have been omitted from the Response. Without limitation, it is reasonable to believe that there may have been: (a) follow-on correspondence from Jersey's initial proposal to the UK to impose asset freezes under the Russia sanctions regime, including correspondence identifying the need to specifically sanction certain individuals; (b) correspondence commenting on the fact that individuals that Jersey had proposed be subject to asset-freezes had subsequently been sanctioned by the UK. The fact that no such correspondence has been

*disclosed contributes to concerns that the searches carried out were inadequate and/or relevant information was incorrectly withheld.*

*Given previous contacts between the Government of Jersey and the role that the UK's Home Office plays in implementing and enforcing certain sanctions, it is also reasonable to believe that there may have been relevant correspondence with the Home Office (including, without limitation, with Damian Hinds, MP, then Minister of State (Minister for Security and Borders) at the Home Office, during the relevant period). Again, no such correspondence has been disclosed, which is another reason for concerns that the SPA may have failed to identify and/or incorrectly withheld relevant information.*

*As part of the internal review, I would ask the Internal Review Panel to carefully review the searches carried out by the SPA, and the scope of those searches, and consider whether additional searches should reasonably have been carried out. This is not a request that the parameters of the Request be expanded; rather the Internal Review Panel is asked to consider whether the SPA adequately searched for material responsive to the Request.*

*If the scope of the search actually carried out by the SPA was narrower than that I have suggested would have been appropriate (i.e. if the SPA did not search for correspondence relating to the subject matter of the letter to Lord Ahmad, as well as relating to the letter itself, and/or if the SPA adopted a narrow definition of "correspondence"), but the Internal Review Panel nevertheless believes that the scope of the search was adequate (contrary to my submissions otherwise), I should be grateful if this could please be noted in the internal review response.*

#### **Article 25 (Personal Information)**

*The Response states that some information has been redacted in accordance with Article 25 of the FOI Law. The Response should have stated whether information was withheld under Article 25(1) and/or Article 25(2) of the FOI Law. It is understood that the redactions to the documents disclosed were made only in reliance on Article 25 of the FOI Law. If some of the redactions were made in reliance on Articles 31 and/or 41, this should have been noted in the Response and should now be clarified in the internal review response, to avoid further misunderstanding. In such case, it would also be helpful if the redactions (to the extent maintained, if at all, following the internal review) could be annotated to indicate the specific exemption relied on (if such exemption is other than Article 25).*

*I am concerned that information may have been withheld under Article 25(2) of the FOI Law in circumstances when it should not have been.*

*I accept that names of individuals per se constitute their personal data. As is clear from the disclosure of the names of certain individuals, however, that is not by itself sufficient to withhold the information. The SPA must consider whether disclosing such personal data would be unfair.*

*I am concerned that the SPA may have erroneously applied a blanket policy to withhold the names of individuals if they are below a certain level of seniority or if they work for other public bodies, such as the Law Officers' Department or the UK Government. Such a blanket approach has previously been criticised by the Commissioner – see <https://jerseyoic.org/media/gvidrvzt/pdf-decision-notice-final-version-2-57259.pdf>, OIC Reference 202-03-57259 - where it was noted (at paragraph 62) that "It is not sufficient to simply identify an individual as being of a particular rank and claim an exemption in every single instance and redact their details."*

*The Internal Review Panel is requested to carefully scrutinise the decision to withhold the name of each individual, individually; as noted by the Commissioner, a blanket policy is not the correct approach to take.*

*It appears that the names of certain employees of the Government of Jersey have been redacted. From the documents disclosed, it seems clear that those individuals were involved in relevant email correspondence in their capacity as public officials; not private individuals. In circumstances where the individuals were carrying out their public functions, they cannot reasonably have expected that their names would remain private. Such individuals must have had the expectation that their actions in their capacity as public officials would be subject to scrutiny.*

*The Internal Review Panel should carefully consider in respect of each individual the extent to which their role is a public facing role, as this is a relevant factor as to whether an individual could reasonably be said to have had an expectation of privacy in respect of their work. By way of example, Mr Dan Marcos, Head of International Compliance, has been featured in the Press, promoting his role – see <https://jerseyeveningpost.com/news/2022/03/27/kremlin-crackdownisland-firms-go-onto-high-risk-list/> - and has given public presentations to over 300 members of industry (see <https://www.jerseyfsc.org/news-andevents/watch-our-sanctions-webinar/>).*

*Attorney Generals of Jersey (past and present) are clearly public figures. See, for example, <https://statesassembly.gov.je/members/RobertMacRae> It is difficult to see any reasonable basis for withholding the name of an Attorney General on the basis of Article 25.*

*Members of the Law Officers' Department are also often in public facing roles. This is particularly the case Crown Advocates, who frequently appear in public in court and are named in reports of court proceedings and associated judgments. Again, it is difficult to see how such individuals could have a reasonable expectation of privacy when carrying out their duties as public officials.*

*It is apparent that the name of Lord Ahmad of Wimbledon has also been redacted. Lord Ahmad is a public figure and, at the relevant time, was a Minister at the UK's Foreign, Commonwealth and Development Office (FCDO) – see <https://www.gov.uk/government/people/lord-ahmad-ofwimbledon>. It cannot be reasonably said that Lord Ahmad had a expectation of privacy when carrying out this senior government role. As such, disclosure of his name would not be in breach of the data protection principles and, accordingly, the redaction of his name is not in accordance with Article 25.*

*The over-zealous redaction of Lord Ahamad's name contributes to concerns about the overall approach taken by the SPA to redacting information on the basis of Article 25.*

*There is undoubtedly a legitimate interest in disclosing the names of the individuals involved in the correspondence, namely the principle of accountability and transparency.*

*Further, the Response does not indicate that there would be any significant adverse consequences from disclosure of the names of the individuals whose names have been redacted. It seems improbable that the SPA would be able to credibly point to any such adverse consequences, given that the names of individuals (and their roles) are likely to be a matter of public record – in most cases because of publication by the individual themselves (for example, on social media websites such as LinkedIn) and/or the public organisation that employs them. Concerns that an individual may have about public scrutiny of their actions as public officials cannot be considered valid concerns; indeed, such public scrutiny is one of the intended consequences of the public's ability to request information under the FOI Law and is firmly in the public interest.*

*For all of the reasons stated above, I believe that the names of public officials and politicians should not have been withheld.*

*In contrast to public officials that work for the Government of Jersey, the UK Government or other public bodies, and politicians, I accept that private third parties would generally have had an expectation that their names would be kept private and, accordingly, do not seek to challenge the redaction of any such individual's names.*

### **Article 31**

*The Response states that correspondence has been withheld in accordance with Article 31 of the FOI Law.*

*I note 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 persons 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, it is noted that Law Officers' Department has pro-actively courted publicity for the role it has played in freezing assets, publishing a press release that garnered worldwide interest from international media, and thereby already disclosing its involvement.*

*There may be other factors favouring disclosure that are apparent to the Internal Review Panel, upon review of the withheld information. The Internal Review Panel is urged not to approach the review from the perspective of trying to "justify" the SPA's approach and/or with the goal of withholding information; the Internal Review Panel must approach the review with an open-mind and actively seek to identify factors that favour disclosure, as well as any factors favouring the application of the exemption under Article 31.*

*Even if some information may be legitimately withheld under Article 31 (which, for the avoidance of doubt, is not accepted), consideration should be given to whether all (or just some) of the information withheld was properly exempt. Exemptions should not be applied in a blanket fashion. For example, correspondence may contain (amongst other things) advice from the Attorney General, but also other material that does not constitute such advice. In such case, the proper approach is to disclose the correspondence with appropriate redactions, rather than withhold the correspondence in its entirety.*

### **Article 41**

*The Response states that correspondence has been withheld in accordance with Article 41 of the FOI Law. However, the Response does not state which part(s) of Article 41 are engaged and is therefore deficient.*

*In the absence of this information, I have been denied a proper opportunity to challenge the decision. To the extent the Internal Review upholds the decision to withhold information in reliance on Article 41, it should clearly state which part of Article 41 is being relied upon.*

*The Response is also deficient because it does not state whether it is the SPA's position that disclosure of the "would" prejudice, or instead only "would be likely to" prejudice.*

*Article 41 is a prejudice-based exemption. This means that it can only be properly relied on where disclosing the information would, or would be likely to, cause harm. To demonstrate the harm, the SPA must satisfy a prejudice test.*

*The Commissioner has previously issued a detailed guidance on the prejudice test. The Commissioner's guidance notes that consideration of the prejudice test should involve the following three steps:*

*(a) Identify the "applicable interests" within the relevant exemption.*

*(b) Identify the "nature of the prejudice". This means: (i) show that the prejudice claimed is "real, actual or of substance"; (ii) show that there is a "casual link" between the disclosure and the prejudice claimed.*

*(c) Decide on the "likelihood of the occurrence of prejudice".*

*The Response does not adequately: (a) identify the applicable interests; (b) identify the nature of the prejudice; or (c) decide on the likelihood of the occurrence of prejudice.*

*Indeed, it is not clear from the Response that the prejudice test has been considered by the SPA, as the only comments provided in the Response relate to the public interest test. The Response does not contain any mention of the prejudice test.*

*The Commissioner's guidance notes, in respect of step 2, that "there must be more than a mere assertion or belief that disclosure would lead to prejudice. There must be a logical connection between the disclosure and the prejudice in order to engage the exemption".*

*The same guidance also notes, "If a SPA is withholding information under a prejudice-based exemption, it should always make a choice between would or would be likely to and state this in its refusal notice."*

*As is noted above, the Response does not include this information, failing to state (amongst other things) whether the SPA believes that disclosure "would" or "would be likely to" prejudice. This gives rise to concerns that the SPA has not properly understood and/or applied the prejudice test.*

*If the Internal Review Panel reasonably believes that the prejudice test is satisfied, I would ask that the reasons for this are clearly set out in the internal review response.*

*In the absence of an explanation of why the SPA asserts that Article 41 is engaged, I have been denied a proper opportunity to challenge the application of this exemption.*

*It is clear, nevertheless, that an important factor to consider is the context of the information. As the UK's Information Commissioner's Office (ICO) has noted, in relation to the equivalent exemption under the UK Freedom of Information Act 2000 (Section 27), "differences in culture and social customs, religion and the type of government of other states will be relevant. Disclosing potentially controversial information about one state may not have any material impact on international relations, but disclosing relatively bland information about a different state may have a significant impact."*

*The UK and Jersey are both established democracies, with robust (and similar) freedom of information laws, and a recognition that transparency in government is important. The Government of Jersey's Council of Ministers has publicly committed to openness,*

transparency and accountability in government, and the UK Government can reasonably be expected to be aware of this. The UK Government has similarly stated that "Greater transparency across government is at the heart of our commitment to let you hold politicians and public bodies to account" (see <https://www.gov.uk/government/collections/transparency>). This is not a situation where the other state may, in contrast to Jersey, expect a high degree of secrecy in relation to the dealings of its government.

Moreover, Jersey and UK have a particularly strong relationship. The Government of Jersey's website states the following about Jersey's relationship with the UK: "The United Kingdom is Jersey's closest international partner. Deep social, cultural, economic, and constitutional links have been built and maintained between the two jurisdictions over hundreds of years." Accordingly, the context is not one where relations are fragile or unpredictable, and thereby more susceptible to disturbance; quite the contrary is the case.

Considering the relevant context, in particular the extremely close, and long-standing, ties between the Jersey and UK, it would stretch credulity to suggest that releasing information about co-operation between Jersey and the UK to freeze assets in Jersey would cause any real prejudice to relations between Jersey and the UK.

This is particularly so given that both the Government of Jersey and the UK Government have already actively taken very public steps to promote and publicise the co-ordination between Jersey and the UK, which the Request relates to. One example of this is an article published in the Jersey Evening Press with the headline "Jersey 'on front line' of anti-Russian sanctions", which contains the following: "'Co-ordinated efforts' between Jersey and the UK also led to the assets of [ ... ] being frozen last week, said Senator Gorst" ( see <https://jerseyeveningpost.com/news/2022/04/20/jersey-onfront-line-of-antirussian-sanctions/>).

The UK's Foreign Secretary (the Rt Hon Elizabeth Truss) also publicly disclosed and promoted the co-ordination with the Jersey authorities, releasing a press release on 14 April 2022 stating (amongst other things) that: "these sanctions have been co-ordinated with action taken by the Jersey authorities earlier this week to impose a formal freezing order on assets suspected to be connected to [ ... ], valued in excess of £5 billion." See: <https://www.gov.uk/government/news/uk-hits-key-russian-oligarchs-withsanctions-worth-up-to-10bn>

In light of the UK's active promotion of its co-ordination with Jersey in relation to freezing of assets, it would not be reasonable to believe that disclosing information relating to that co-ordination would prejudice Jersey's relations with the UK or the interests of Jersey abroad.

Indeed, it is clear from the actions it took that the Government of Jersey (as well as the UK Government) did not believe that publicising the coordination would prejudice Jersey-UK relations; on the contrary, it evidently believed that such publicity would enhance relations, since active steps were taken by both the Jersey and UK Governments to promote this coordination through considered statements to the Media.

Contrary to any suggestion that releasing the information would harm relations between Jersey and UK, based on the contemporaneous actions of the Jersey and UK Governments (rather than the SPA's post-factum attempts to limit disclosure) the more reasonable conclusion is that releasing further information about this coordination would be likely to strengthen Jersey-UK relations (to the extent it would have any affect at all, which is not accepted, given the deep and long-standing relationship between Jersey and UK).

*If the prejudice test is not satisfied, then there is no need to consider the public interest test, as information cannot be withheld on the basis of Article 41 if the prejudice test is not satisfied.*

*If, the Internal Review Panel considers that the prejudice test is satisfied, it must then go on to consider the public interest test, since Article 41 is a qualified exemption only. In considering the public interest, the Internal Review Panel should have at the forefront of their considerations that the principle behind the FOI Law is to disclose information unless there is good reason not to.*

*From the Response, it appears that the SPA has only given (at most) cursory consideration to the public interest. The Response states: "The public interest in respect of Article 41 is weighted in favour of maintaining the exemption unless equally strong countervailing public interest arguments favour the disclosure of the information. It is recognised that there is a public interest in providing transparency about the island's network of international agreements. However, having considered the public interest, the Scheduled Public Authority concluded that the public interest in disclosing this information at this time is outweighed by the public interest considerations in withholding the information, in support of the Island's interests and to avoid any potential prejudice to the Island's relationship with the United Kingdom and other jurisdictions."*

*It is apparent from desktop searches that this wording is effectively taken from a "template" response, which has been previously used in response to other (unrelated) requests – see, for example, <https://www.gov.je/government/freedomofinformation/pages/foi.aspx?ReportID=6378>. The use of generic wording suggests that little consideration may have been given to the actual circumstances of this case. Rather, it appears that the decision to withhold information may have been taken without due consideration of the particular circumstances.*

*Moreover, the wording used in the Response indicates that the SPA has incorrectly started from a presumption that, unless there are public interest arguments favour disclosure, information should be withheld. This is an entirely backward approach. As with Article 31, if the legislature had intended Article 41 to be an absolute exemption, it would have provided for this in the FOI Law; instead, Article 41 is a qualified exemption only. There is no presumption, accordingly, in favour of withholding information under Article 41. As noted above, the Commissioner has previously emphasised that the principle behind the FOI Law is to release information unless there is good reason not to.*

*There are clear reasons for believing that the public interest in disclosure outweighs the public interest in withholding the requested information. As the Response itself notes, there is public interest in providing transparency about Jersey's relations with other States. In the present case, releasing the information would increase public knowledge about relations with the UK authorities. This is clearly a matter of public interest, as is apparent from the fact that the Government of Jersey maintains its own webpage setting out information about Jersey's relationship with the UK.*

*It is clear that the co-ordination between the Jersey and the UK in relation to sanctions is also considered a specific matter of public interest by the Government of Jersey. In written evidence submitted to the Justice Committee of the UK's House of Commons, the Government of Jersey specifically chose to emphasise this co-ordination, stating: "The Government of Jersey remains in lockstep with the UK in the implementation of sanctions, including those introduced to combat the deplorable actions of Russia against Ukraine. We work closely with the FCDO and the Office of Financial Sanctions Implementation (OFSI) in this respect, and as a matter of common practice, follow the UK in implementing autonomous sanctions issued by the UK, in Jersey."*

*The Government of Jersey has also chosen to specifically highlight the coordination with the UK in freezing assets. See for example, the Jersey Evening Press article noted above. This is further evidence that the Government of Jersey believed that releasing information about this coordination was a matter of public interest.*

*Given that the Government of Jersey (as well as the UK Government) has voluntarily taken steps to publicise the "co-ordination", there is a clear and strong public interest in favour of information relating to this co-ordination being made available to the public, in order that the public can have a fuller picture of what this involved. The SPA's decision to withhold information, means that the public has been "drip-fed" only certain information that has been cherry-picked by the SPA; this is self-evidently contrary to the public interest.*

*In the circumstances, there are strong reasons for believing that the SPA has erred in determining that the public interest favours withholding the information. If the Internal Review Panel nevertheless determines that it is in the public interest to continue to withhold the information, it would be in the interest of transparency if it provides a significantly more detailed explanation of why this is the case, as opposed to the generic assertions provided by the SPA to-date.*

*Even if the Internal Review Panel determines that some information may be legitimately withheld under Article 41, consideration should be given to whether all (or just some) of the information withheld was properly exempt.*

*As is noted above in relation to Article 31, exemptions should not be applied in a blanket fashion. Correspondence may contain (amongst other things) certain information that it is determined is properly exempt under Article 41, whilst also containing other information that does not satisfy the necessary prejudice and/or public interest tests. In such case, the proper approach would be to disclose the correspondence with appropriate redactions, rather than withhold the correspondence in its entirety.*

## **Conclusion**

*For the reasons set out above, it is submitted that the Internal Review Panel should carefully review (amongst other things) whether appropriate searches were carried out to identify all relevant information.*

*Further, it is submitted that information should not have been withheld from the Response. Alternatively, only part (and not the whole) of the information that has been withheld should have been withheld.*

*Accordingly, the Internal Review Panel is requested to require disclosure of the information previously withheld. Alternatively, if the Internal Review Panel determines that the exemptions properly apply to some (but not all) of the withheld information, then the SPA should continue to withhold only that information and should disclose the remainder of the information previously withheld."*

14. The results of the Internal Review were communicated to the Complainant on 2 October 2024 as follows:

*"The panel reviewed the initial response and Internal Review request, dated June 2024, and then moved to ask the following questions:*

*i) Was the right information searched for and reviewed?*


*ii) Was personal data appropriately redacted in accordance with Article 25 of the Freedom of Information (Jersey) Law 2011?*

*iii) Was information appropriately withheld in accordance with Article 31 of the Freedom of Information (Jersey) Law 2011 (where it is or relates to the provision of advice by the Bailiff, Deputy Bailiff or the Attorney General or the Solicitor General) and was the public interest test properly applied?*

*iv) Was information appropriately withheld in accordance with Article 41 of the FOI Law (where its disclosure would, or would be likely to, prejudice relations between Jersey and another state/ international organisation etc.), has the prejudice test been properly applied, and was the public interest test properly applied?*

*The Panel, having undertaken their necessary investigations and considered all of the information provided, instructed the Scheduled Public Authority to provide revised redactions to the documents previously released, as attached.*

 [Correspondence - Original - IR revised redactions Redacted.pdf](#)

 [Revised response Correspondence 1 - IR revised redactions Redacted.pdf](#)".

## **The Investigation**

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### **Scope of the case**

15. On 3 October 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.
16. 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.
17. 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**

18. On 17 October 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. On the 1 November 2024 the SPA was asked to provide their written submissions in response to the complaint made by the Complainant and a copy of the Withheld Information, in the usual way and in accordance with para.58 of the Art.44 Code of Practice<sup>1</sup>.
19. The SPA responded to that letter on 2 December 2024, explaining why it considered the relevant exemptions had been appropriately applied in this case. However, it declined to provide a copy of the Withheld Information, citing National Security as its reasons for not providing a copy of that information to the Commissioner in the usual way. Following further correspondence, the Commissioner was provided with access to the Withheld Information at the Government of Jersey Offices, such inspection taking place on 7 April 2025. Thereafter, further correspondence passed between the Commissioner and the SPA as set out below.

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<sup>1</sup> <https://jerseyoic.org/media/0i5huir0/joic-code-of-practice-1.pdf>

## **Analysis**

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### **ACCESS TO INFORMATION HELD BY A SCHEDULED PUBLIC AUTHORITY**

#### **Art.8 General right to be supplied with information held by a scheduled public authority**

20. Art.8 of the FOI provides that:

*"If a person makes a request for information held by a scheduled public authority – (a) (b) the person has a general right to be supplied with the information by that authority; and except as otherwise provided by this Law, the authority has a duty to supply the person with the information."*

#### **The Complainant's Position**

21. The Complainant is unclear whether sufficient searches have been carried out to identify any information relevant to their Request and has asked the Commissioner to check the SPA's compliance with the requirements of the FOI Law.

#### **The SPA's Position**

22. The SPA's position is that it has identified all relevant information within the scope of the Request but has withheld certain of it under the provisions of Art.25, Art.31 and Art.41 of the FOI Law.

#### **Analysis**

23. The Commissioner has sought to determine whether, on the balance of probabilities, the SPA holds any further information within the scope of the Request.

#### **Commissioner's Decision**

24. The Complainant's Request was very clear seeking correspondence sent by (then) Senator Ian Gorst to Lord Ahmad on 1 April 2022, *"and any related correspondence (including, without limitation, internal email correspondence and attachments) from the period 24 February 2022 to 30 April 2022 (inclusive)"*.

25. Upon questioning and in the usual way, the SPA provided the Commissioner with evidence of the searches undertaken which included details of the systems searched, search terms were used and the results generated.

26. Having considered the information supplied by the SPA, the Commissioner is satisfied that the SPA ultimately carried out appropriate searches in this case.

### **ABSOLUTE EXEMPTIONS**

#### **Art.25 – Personal Information**

#### **The Complainant's Position**

27. The Complainant's concerns about the application of the Art.25 exemption is well-articulated in their IR Request. In short, those concerns were repeated to the Commissioner in that the Complainant considered that the SPA had been over-zealous in its application of certain redactions that have been applied to the emails disclosed and such as are available via the links at para.14 above.

### The SPA's Position

28. The SPA's Position is set out in the Response cited at para.10 above and is not repeated. In its submissions to the Commissioner the SPA elaborated on these arguments with specific reference to the Withheld Information, indicating that it considered that to release the information of certain named individuals (both GoJ employees below Tier 2 and third parties outside GoJ) would contravene Art.8(1)(b), Art.8(1)(c) and Art.8(1)(f) of the Data Protection (Jersey) Law 2018 (**DPJL 2018**).

### Analysis

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

30. 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.

31. Art.2 the 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."*

32. 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 it to be used, to inform or influence actions or decisions affecting an identifiable individual and whether the data impacts or have the potential to impact on an individual, whether in a personal, family, business or professional capacity.

33. 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.

34. The Commissioner is satisfied that certain of the Withheld Information falls within the definition of personal data to the extent that it names certain third-party individuals (both individuals within and outside GoJ), email addresses and professional titles.
35. 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)(b), Art.8(1)(c) or Art.8(1)(f) of the DPJL 2018?*

36. 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 DPJL 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)(b), Art.8(1)(c) and Art.8(1)(f) of the DPL 2018 in this regard.
37. The SPA has not set out for each individual which of the Art.8 principles would be infringed by disclosure.
38. 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.
39. 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."*

40. 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.

41. 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.

#### Commissioner's Decision

42. According to the SPA, there are two categories of individuals to whom the Art.25 exemption has been deployed:

- a. Employees of GoJ at Tier 2 or below; and
- b. Individuals external to GoJ.

#### *GoJ employees*

43. The Commissioner's guidance is abundantly clear (as are previous decisions) that the Art.25 exemption should not be applied made on the grounds of an employee's seniority yet in its response to the Commissioner on 2 December 2024 it was stated that "*All employees over Tier (sic) 2 are disclosed as standard*" and on 25 April 2025 that "*In line with the Government of Jersey's Freedom of Information policy and data protection principles, the names and contact details (including email addresses) of senior officers above Tier 2 are not routinely disclosed in response to Freedom of Information requests...*"

44. The GoJ is aware of a Decision Notice issued in [2016](#) in which it was very clearly stated that the application of a blanket exemption of Art.25 on names and related data of officers below the rank of Chief Officer is not acceptable. By way of reminder, at para.62 of that Decision Notice, then Commissioner Martins stated that:

*"The Commissioner considers that a SPA should consider the information and the individual named therein and consider whether or not the data is personal data. **It is not sufficient to simply identify an individual as being of a particular rank and claim an exemption in every single instance and redact their details**" (emphasis supplied).*

45. Despite this very clear guidance, it is clear that the Art.25 exemption continues to be applied by the GoJ in a blanket fashion to any employee below Tier 2 level and that no analysis appears to be undertaken about whether the information is personal data (as properly defined) and, if it is, whether disclosure would actually infringe the relevant data protection principles.

46. 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 certain of the Withheld Information and in respect of four named individuals (Person A, Person B, Person C, and Person D).

47. In respect of Person A:

- a. The personal information is limited to Person A's name, job title, and email address all of which are in the public domain.
- b. Person A occupied (and continues to occupy) a senior position within the GoJ and at the relevant time had a senior position in respect of international relations.
- c. At all times Person A 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 (it was not considered practicable to do so as part of the procedural process).
- f. The Commissioner does not consider that disclosure would have an excessive or disproportionate adverse effect on the legitimate interest of Person A.
- g. Any information previously redacted to refer to Person A (identified in the confidential annex to this Decision Notice) must be provided to the Complainant.

48. In respect of Person B:

- a. The personal information is limited to Person B's name, job title, and email address all of which are in the public domain.
- b. At the time, Person B occupied a senior position within the GoJ, namely at Director Level.
- c. At all times Person B 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 (it was not considered practicable to do so as part of the procedural process).
- f. The Commissioner does not consider that disclosure would have an excessive or disproportionate adverse effect on the legitimate interest of Person B.
- g. Any information previously redacted to refer to Person B (identified in the confidential annex to this Decision Notice) must be provided to the Complainant.

*Third parties external to the GoJ*

49. There are two individuals whose name has been redacted in certain correspondence; Person C and Person D.

50. In respect of Person C, the SPA simply sought to argue that this individual was not an employee of the GoJ:

- a. The personal information is limited to Person C's name, job title, and email address all of which are in the public domain.
- b. Person C occupied (and continues to occupy) a senior position within the GoJ's UK office.
- c. At all times Person C was acting in their role 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 (it was not considered practicable to do so as part of the procedural process).
- f. The Commissioner does not consider that disclosure would have an excessive or disproportionate adverse effect on the legitimate interest of Person C.
- g. Any information previously redacted to refer to Person C (identified in the confidential annex to this Decision Notice) must be provided to the Complainant.

51. In respect of Person D, no arguments were provided at all by the SPA about why their information should be withheld. Within the redacted emails, Person D is simply referred to within body correspondence (save for in a single instance where their email address is disclosed). Accordingly:

- a. The personal information is generally limited to Person D's name and function, which information is all in the public domain.
- b. Person D occupied (and continues to occupy) a senior position within the UK parliament.
- c. At all times Person D was referred to with reference to their role 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 (it was not considered practicable to do so as part of the procedural process).
- f. The Commissioner does not consider that disclosure would have an excessive or disproportionate adverse effect on the legitimate interest of Person D.
- g. Any information previously redacted to refer to Person D (identified in the confidential annex to this Decision Notice) must be provided to the Complainant.

52. For other individuals (not identified in this Decision Notice, which comprise six individuals), the Commissioner is satisfied that Art.25 has been applied appropriately, such individuals not occupying any decision making roles (rather purely administrative).

## **QUALIFIED EXEMPTIONS**

### **Art.31 – Advice from the Bailiff, Deputy Bailiff or Law Officer**

#### **The Complainant's Position**

53. The Complainant's position is well articulated in IR Request which is set out at para.13 and is not repeated. The Complainant essentially restated this position in their appeal document submitted to the Commissioner.

#### **The SPA's Position**

54. 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

55. 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.
56. The Commissioner has seen and considered the information withheld pursuant to Art.31 of the FOI Law.
57. 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.
58. 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.
59. 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.
60. 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

61. The Commissioner is satisfied that the exemption was appropriately deployed in the applicable circumstances.

#### **Art.41 – International Relations**

##### The Complainant's Position

62. In their appeal, the Complainant essentially reiterated their comments made in their IR Request as set out at para.13 above, stating that:

*"The Request relates to correspondence between Jersey and the UK; a relationship that is highly unlikely to be prejudiced by disclosure of correspondence showing those jurisdictions co-operating in relation to the imposition of sanctions, given the close historic and ongoing ties between the UK and Jersey. This is especially so given that such co-operation, both generally and in this specific case, has already been widely promoted and publicised by both the Government of Jersey (including, specifically, the Minister that authored the 1 April 2022 letter, then Senator Ian Gorst (now Deputy Gorst) and the UK Government (specifically, the FCDO, the UK government department for which Lord Ahmad was a minister – see the statement of Elizabeth Truss on 14 April 2022)."*

63. The Complainant went on to refer to certain matters raised within a MONEYVAL report dated 24 July 2024 as supporting their stance, nothing that:

*"It is clear from the 2024 MONEYVAL Report that Jersey is continuing to publicise (and promote) the fact that it made asset-freeze proposals to the UK under the Russia sanctions regime. The publication of further information confirming the fact that Jersey made asset-freeze proposals to the UK further highlights that this information cannot reasonably be considered to remain confidential or sensitive (and therefore release of related information cannot reasonably be believed to be prejudicial)."*

64. The Complainant also suggests that even if Art.41 does apply, it may only apply to some but not all of the information withheld under this exemption and that some information may be capable of disclosure:

*"If the 1 April 2022 letter to Lord Ahmad contains a sentence or sentences along the lines of "We therefore recommend that it is considered to designate / impose sanctions on ...", it is difficult to comprehend how publication of at least this part of the letter could be said to be likely to prejudice relations between Jersey and UK, given that (as outlined above, and also in the IR Request) it has already been widely publicised that the Jersey authorities made a number of asset-freeze proposals to the UK under the Russia sanctions regime."*

65. The Complainant also felt that due to the time that had passed since the letter had been sent (some 2.5 years), that any prejudice would have likely diminished.
66. In terms of the public interest test, the Complainant said, in essence, that the public should not have to blindly follow assurances given by politicians that they had taken certain steps in relation to sanctions – the public should be able to see tangible evidence of such activities for themselves. They noted that Deputy Gorst had mentioned (as part of his election campaign in 2022) that he had implemented and enforced sanctions against Russia and in support of Ukraine and Deputy Gorst would not likely have mentioned this if it was thought that such would prejudice relations between Jersey and the UK.

#### The SPA's Position

67. The SPA's position is set out in the Response cited at para.10 above and is not repeated. In its submissions to the Commissioner the SPA elaborated on these arguments with specific reference to the Withheld Information that had been withheld pursuant to this exemption. Specifically, it explained how disclosure *"would have a prejudicial effect in terms of the relationship with the UK"* and that *"It would damage the relationship between Jersey and the UK by undermining the Island's reputation (both in the UK and internationally). It would likely damage the relationship with other jurisdictions as Jersey's reputation as a trusted partner would be undermined. Partners could not be confident that information that had been shared with them, or that they had shared with Jersey, would not be released to the public."* In other words, the SPA was saying that disclosure of the Withheld Information *"would"* prejudice relations with the UK and also *"would likely"* damage relationships with other jurisdictions.
68. The SPA did not consider that there were any public interest arguments in favour of disclosing the information that had been withheld under Art.41 of the FOI Law whereas it identified a number of arguments why the exemption should be maintained essentially focused on the fact that releasing details of asset-freezing designations would undermine the effective implementation of sanctions in Jersey. Specifically, the SPA noted in its submissions to the Commissioner that:

*"The SPA does not consider that there are any public interest arguments in favour of disclosing the information. There is a public interest in knowing that the Jersey authorities are working with the UK and other partners to implement sanctions. However, the details of this work must be kept confidential..."*

*The Minister and his officers must be able to make asset-freezing designation proposals to the UK in pursuance of the implementation of sanctions against Russia (or under any UK or UN sanctions regime), without having to be concerned that this information will be released as part of an FOI request.*

*Releasing the details of asset-freezing designations proposals would undermine the effective implementation of sanctions in Jersey in a number of ways:*

- it would damage the relationship between Jersey and the UK and undermine the Island's reputation as a trusted partner (both in the UK and internationally)*
- it would undermine the confidence of the private sector, and financial crime agencies, to provide confidential information to the Minister.*
- it would undermine the confidence of officials to provide confidential and candid advice to the Minister on matters relating to sanctions implementation. As such, it would negatively impact ability of the Minister to make decisions to effectively implement sanctions.*
- it would have the potential to undermine the foreign policy objectives of the UK and the mandate of the UN to protect and enhance global security, as officials and the Minister could not be confident that any information provided in pursuance of these goals would be protected."*

69. The SPA made further submissions in confidence which the Commissioner is not able to reproduce here, but which he has taken into account in reaching his decision.

#### Analysis

70. This is the first occasion since the FOI Law came into force that a SPA has sought to rely on the exemption contained at Art.41 of the FOI Law. Art.41 of the FOI Law states that:

#### **"41 International relations**

*(1) Information is qualified exempt information if its disclosure would, or would be likely to, prejudice relations between Jersey and –*

- (a) the United Kingdom;*
- (b) a State other than Jersey;*
- (c) an international organization; or*
- (d) an international court.*

*(2) Information is qualified exempt information if its disclosure would, or would be likely to, prejudice –*

- (a) any Jersey interests abroad; or*
- (b) the promotion or protection by Jersey of any such interest.*

*(3) Information is also qualified exempt information if it is confidential information obtained from –*

- (a) a State other than Jersey;*
- (b) an international organization; or*
- (c) an international court.*

(4) *In this Article, information obtained from a State, organization or court is confidential while –*

- (a) the terms on which it was obtained require it to be held in confidence; or*
- (b) the circumstances in which it was obtained make it reasonable for the State, organization or court to expect that it will be so held.*

(5) *In this Article –*

*"international court" means an international court that is not an international organization and that was established –*

*(a) by a resolution of an international organization of which the United Kingdom is a member; or*

*(b) by an international agreement to which the United Kingdom was a party;*

*"international organization" means an international organization whose members include any two or more States, or any organ of such an organization;*

*"State" includes the government of a State and any organ of its government, and references to a State other than Jersey include references to a territory for whose external relations the United Kingdom is formally responsible."*

71. The Commissioner has seen and considered the information withheld pursuant to Art.41 of the FOI Law.

72. The exemption given at Art.41 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.

73. In order for a prejudice-based exemption, such as Art.41, to be engaged, the Commissioner considers that three criteria must be met:

- a. Firstly, the actual harm which the scheduled public authority alleges would, or would be likely, to occur if the withheld information was disclosed has to relate to the applicable interests within the relevant exemption.
- b. Secondly, the scheduled public authority must be able to demonstrate that some causal relationship exists between the potential disclosure of the information being withheld and the prejudice which the exemption is designed to protect. Furthermore, the resultant prejudice which is alleged must be real, actual or of substance.
- c. Thirdly, it is necessary to establish whether the level of likelihood of prejudice being relied upon by the scheduled public authority is met – i.e., disclosure would be likely to result in prejudice or disclosure would result in prejudice. In relation to the lower threshold the Commissioner considers that the change of prejudice occurring must be more than a hypothetical possibility; rather there must be a real and significant risk. With regard to the higher threshold, in the Commissioner's view this places a stronger evidential burden on the scheduled public authority. The anticipated prejudice must be more likely than not.

74. Considerations are:

- a. whether disclosure would be likely to have a negative impact on international relations (even a relatively trivial matter might have this effect, though it depends on the government concerned;

b. whether the information was provided in confidence.

75. Furthermore, the Commissioner has noted the comments of the Information Tribunal of England and Wales which suggested that in the context of section 27(1), prejudice can be real and of substance '*if it makes relations more difficult or calls for a particular damage limitation response to contain or limit damage which would not have otherwise have been necessary*'<sup>2</sup>. Whilst such decisions are not directly applicable and binding in this jurisdiction, given the similarities in the respective legislation the Commissioner considers it appropriate and helpful to pay regard to such findings, in appropriate

#### Commissioner's Decision

76. With regard to the first criterion of the three limb test described above, the Commissioner accepts that the potential prejudice described by the SPA clearly relates to the interests which the exemption contained at Art.41(1)(a) of the FOI Law is designed to protect.

77. He is also satisfied that the arguments in totality demonstrate a causative link between disclosure of the Withheld Information under this exemption and the interests that would/would likely be prejudiced as described at Art.41(2)(a). With regard to the third criterion, having duly considered the arguments put forward the SPA, the Commissioner's view is that the lower level of "*would be likely to*" has been demonstrated. In short, the Commissioner accepts that disclosing sensitive diplomatic communications with the UK would be likely to damage the relationship between Jersey and the UK and, similarly, would also be likely to damage international relations between Jersey and other states on similar matters.

78. Whilst the Commissioner acknowledges that prejudice may diminish over time, this is not always the case and whilst the information withheld under this article is some 2.5 years old, he accepts that the explanations provided by the SPA in respect of its continued sensitivity and the likelihood that disclosure of the information now would still likely prejudice Jersey's international relations.

79. The Commissioner does not accept the Complainant's assertions that because broad mention of the fact that Jersey implemented sanctions against Russia has been made in publicly available documents in the past that means that prejudice is unlikely to occur or that any prejudice is reduced. Governments, regulators and other authorities may well publicly state their broad principles in terms of enforcement or policy activity/areas of focus, but that doesn't then mean that specific activities undertaken in furthering those objectives then draw such activities in to the public domain. The Commissioner agrees with the SPA's stance in this regard.

80. As noted above, Art.41 is a qualified exemption and therefore subject to the public interest test set out in Art.9(2) of the FOI Law. The Commissioner has therefore gone on to consider whether, in all the circumstances of the case, the public interest in maintaining Art.41(1)(a) and 41(2)(a) of the FOI Law as cited by the SPA, outweigh the public interest in disclosing the information.

81. The Complainant made only limited submissions in respect of why they considered disclosure to be in the public interest, simply noting that the public should be able to see tangible evidence of such activities and not simply have to rely on a politician saying that those things have taken place. The Commissioner does not accept this submission in respect of this particular matter. There are, quite rightly, governmental activities that go on (including in sensitive areas dealing with sanctions) that are not appropriate to place in the public domain and which in so doing could undermine the very issues those processes are designed to protect.

82. Accordingly, whilst the Commissioner accepts the broad premise that disclosing the requested information would help the public to demonstrate what actions have actually been taken in terms of sanctions, the Commissioner does not consider that this is sufficient to displace the exemption

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<sup>2</sup> Campaign against Arms Trade v the Information Commissioner and Ministry of Defence EA/2007/0040

and accepts the SPA's arguments that there is a strong public interest in ensuring continued diplomatic relations between Jersey and the UK (and other states) and the ability to exchange sensitive communications on sanctions and related matters, and that this outweighs the public interest argument advanced by the Complainant.

83. The Commissioner does not consider the passing of time to be a relevant consideration in this case and is satisfied that the exemption was appropriately exercised by the SPA.

### **The Decision**

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84. In respect of the Withheld Information, the Commissioner has concluded that certain of the Withheld Information was improperly held pursuant to Art.25 and the SPA must provide the information in respect of Persons A, B, C, and D as identified in Confidential Appendix 2 of this Decision Notice, 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 office.

85. The Commissioner has also concluded that the SPA appropriately applied the Art.31 and Art.41 exemptions to the information withheld pursuant to these provisions.

86. Accordingly, the Complainant's appeal is partially upheld.

### **Right of Appeal**

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

88. Information on how to do so can be found on [www.jerseyoic.org](http://www.jerseyoic.org).

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

Dated this 8 day of October 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<sup>[4]</sup>.

## **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.<sup>[3]</sup>

(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.<sup>[4]</sup>

## **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

## **41 International relations**

(1) Information is qualified exempt information if its disclosure would, or would be likely to, prejudice relations between Jersey and –

- (a) the United Kingdom;
- (b) a State other than Jersey;
- (c) an international organization; or
- (d) an international court.

(2) Information is qualified exempt information if its disclosure would, or would be likely to, prejudice –

- (a) any Jersey interests abroad; or

- (b) the promotion or protection by Jersey of any such interest.
- (3) Information is also qualified exempt information if it is confidential information obtained from –
  - (a) a State other than Jersey;
  - (b) an international organization; or
  - (c) an international court.
- (4) In this Article, information obtained from a State, organization or court is confidential while –
  - (a) the terms on which it was obtained require it to be held in confidence; or
  - (b) the circumstances in which it was obtained make it reasonable for the State, organization or court to expect that it will be so held.
- (5) In this Article –
  - “international court” means an international court that is not an international organization and that was established –
    - (a) by a resolution of an international organization of which the United Kingdom is a member; or
    - (b) by an international agreement to which the United Kingdom was a party;
  - “international organization” means an international organization whose members include any two or more States, or any organ of such an organization;
  - “State” includes the government of a State and any organ of its government, and references to a State other than Jersey include references to a territory for whose external relations the United Kingdom is formally responsible.

## **Appendix 2**

Person A = [REDACTED]

Person B = [REDACTED]

Person C = [REDACTED]

Person D = [REDACTED]