

FREEDOM OF INFORMATION (JERSEY) LAW 2011

DECISION NOTICE

JOIC Reference	CAS-05460
Date of Decision Notice	17 August 2026
Scheduled Public Authority	States of Jersey Police
Address	Police Headquarters 5 La Route du Fort Saint Helier Jersey JE2 4HQ

Summary

1. The Complainant requested information from the States of Jersey Police (the **SPA**) about the legal basis for the establishment of the Economic Crime and Confiscation Unit (**ECCU**) and vesting in it powers otherwise the responsibility of the SPA (the **Request**).
2. The SPA responded (the **Request Response**) stating that certain of the information sought in the Request was being withheld (the **Withheld Information**), citing the exemption at Arts.31 and 42(a) of the Freedom of Information (Jersey) Law 2011 (the **FOI Law**). The Complainant did not agree with the Response and requested an internal review (the **IR Request**). The SPA upheld the previous decision that had been made (the **IR Response**).
3. The Complainant issued an appeal to the Information Commissioner (the **Commissioner**) on 24 October 2025 (the **Appeal**).
4. The Commissioner investigated and found that the SPA had partially failed to comply with the FOI Law in responding to the Complainant's request because it had not carried out appropriate searches in response to the Complainant's Request. However, the SPA had properly applied the exemptions cited and there is no information that falls for disclosure to the Complainant. Accordingly, whilst the Commissioner's decision is to that the appeal is partially upheld that is purely in respect of the insufficient scoping of the initial searches and there are no further steps the SPA needs to take in relation to this matter (the SPA having rectified the position during the course of the appeal process).

The Request

5. The Complainant's Request dated 30 July 2025 was in the following terms:

"Please can you provide copies of any documents setting out the legal basis for the establishment of the ECCU [Economic Crime and Confiscation Unit] and for vesting in the ECCU legal jurisdiction for carrying out criminal investigations, which is otherwise the responsibility of the States of Jersey Police (SOJP).

It is thought likely that: (a) the Department for the Economy; (b) Justice and Home Affairs; and (c) the States of Jersey Police, should have relevant information.

There is a clear public interest in such information being released, not least because of the considerable amount of public funds spent on (and by) the ECCU."

6. On 11 September 2025 the SPA provided its Response in the following terms:

"The States of Jersey Police (SoJP) has partially applied Article 31 (Advice by the Bailiff, Deputy Bailiff or a Law Officer) and Article 42(a) (prevention, detection or investigation of crime) of the Freedom of Information (Jersey) Law 2011.

Notwithstanding the above, the following recorded information is considered suitable for release;

As the Attorney General's powers to investigate financial crime are limited, this Agreement is underpinned by both parties' expectation that any person appointed as an ECCU investigator by the LOD will be sufficiently qualified and experienced to be capable of being designated as an "investigating officer" by the Chief Officer of SoJP pursuant to Article 26 and Schedule 2 to the SOJPF Law [States of Jersey Police Force Jersey Law 2012].

Articles applied

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

As Article 31 is a class-based qualified exemption, there is a requirement to undertake a public interest test.

Article 31 of the FOI Law recognises the longstanding constitutional convention that SoJP does not reveal whether Law Officers have or have not advised on a particular issue, or the content of any such advice. The underlying purpose of this confidentiality is to protect fully fear of any adverse inferences being drawn from either the content of the advice or the fact that it was sought. It ensures that officers are neither discouraged from seeking advice in appropriate cases, nor pressured to seek advice in inappropriate cases. The request for information about whether or not advice was sought or will be sought falls within the Article 31 exemption.

Article 42 - Law enforcement

Information is qualified exempt information if its disclosure would, or would be likely to, prejudice-

(a) the prevention, detection or investigation of crime, whether in Jersey or elsewhere;

(b) As Article 42(a) is a prejudice-based qualified exemption, there is a requirement to undertake a prejudice test as well as a public interest test.

Prejudice test

Further to the information disclosed above, additional material has been identified which offers greater insight into the nature of the relationship between SoJP and ECCU. It is assessed that the disclosure of this material would be likely to prejudice the conduct of ongoing investigations and may also compromise the integrity of future investigative processes.

Public Interest Test

While there is a general public interest in promoting transparency and accountability in the operations of public authorities, it is considered that, in this instance, the public interest in maintaining the confidentiality of the identified material outweighs the interest in disclosure.

The material in question provides detailed insight into the working relationship between SoJP and ECCU. Disclosure of this information would likely prejudice the effectiveness of ongoing investigations and could compromise future investigative processes. It may also risk undermining the operational integrity and independence of law enforcement and prosecutorial functions.

Furthermore, disclosure could erode trust between agencies, discourage the free and frank exchange of information, and potentially deter cooperation in sensitive matters. These outcomes would not serve the public interest and could have long-term implications for the administration of justice.

On balance, it is therefore concluded that the public interest favours non-disclosure of the material."

7. Following further questioning from the Complainant regarding the "Agreement" referred to in the Response, on 12 September 2025, the SPA issued an amended version of the Response, the relevant extract from which is as follows:

"...As the Attorney General's powers to investigate financial crime are limited, this [Data Sharing] Agreement is underpinned by both parties' expectation that any person appointed as an ECCU investigator by the LOO will be sufficiently qualified and experienced to be capable of being designated as an "investigating officer" by the Chief Officer of SoJP pursuant to Article 26 and Schedule 2 to the SOJPF Law [States of Jersey Police Force Jersey Law 2012]..."

8. The Complainant issued their IR Request on 3 October 2025. 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:

"I am writing to request an internal review of the above-referenced response of the States of Jersey Police (SOJP).

The public interest in the release of information relating to the legal basis (or otherwise) for the Economic Crime and Confiscation Unit (ECCU) - which is part of the Law Officers' Department, not the SOJP - carrying out criminal investigations is overwhelming.

The limited information released by the SOJP to date confirms that "the Attorney General's powers to investigate financial crime are limited".

Notwithstanding this fact, the Attorney General has spent (and is continuing to spend) very significant public funds establishing and maintaining his own team of investigators within a unit referred to as the ECCU.

The establishment of the ECCU was not approved by the States Assembly.

It is not clear, therefore, what the legal basis is (if any) for the Attorney General spending public funds establishing a unit for carrying out his own criminal investigations.

The public is entitled to know what the legal basis (if any) for the ECCU and its expenditure of public funds is, given that the States Assembly has passed legislation giving the SOJP the powers and responsibility for investigating crime. The public interest is particularly strong in circumstances where the SOJP is itself facing "continuing financial pressures, which pose significant risks to both resourcing and the wellbeing of officers and staff" (see the SOJP's Annual Report 2024) and there are legitimate questions to answer about the allocation of resources to the Law Officers' Department, to carry out functions properly reserved for the SOJP.

The Law Officers' Department is responsible for providing the independent public prosecution service for the Island.

As the Law Officers' Department is now also investigating crime, it appears that investigative and prosecutorial functions are being carried out by the same body, without the approval of the States Assembly.

If the information withheld by the SOJP reveals that there is in fact, as appears may case, no legal basis for the ECCU carrying out criminal investigations, there is a strong public interest in this information being disclosed.

Given that the Attorney General is responsible for the ECCU, it is troubling that the SOJP has sought to rely on an exemption relating to advice from the Attorney General to withhold information. Article 31 is not an absolute exemption; it is subject to a public interest test and, in circumstances where the information relates to the legal basis (or otherwise) of the Attorney General's own actions, there is a strong public interest in overriding the confidentiality that may normally attach to his advice. Otherwise, Article 31 could be used to cover-up information about instances where the Law Officers act without proper legal authority.

The SOJP has also withheld information about the legal basis of ECCU on the basis that it would be likely to prejudice the conduct of ongoing investigations. It is difficult to see how information about the legal basis of the ECCU would be likely to prejudice ongoing investigations, unless that information reveals that the ECCU has and/or is operating without a proper legal basis. In such a case, the public interest in revealing that fact must outweigh the public interest in withholding the information. There can be no public interest in investigations that are carried out without a proper legal basis, as such investigations would undermine the rule of law and there is a strong public interest in upholding the rule of law.

To the extent the withheld information relates to specific identifiable cases, the internal review panel may consider whether redaction could be used so that some, but not all, of the information is released.

I should be grateful if you could please confirm receipt of this request and ensure that it is given prompt attention."

9. The IR Response was communicated to the Complainant on 24 October 2025 as follows:

"This internal review has been conducted by an official of appropriate seniority who has not been involved in the original decision. As part of their review, they will be expected to understand the reasons behind the original response, impartially determine whether the response should be revised, and how so, considering the request and the information held, any relevant exemptions, or other relevant matters under the Law.

The Internal Reviewer was asked to review the original response and confirm the following:

Does the FOI request relate to a body to which the Law applies, or information held by a body covered by the Law?

Answer-Yes

If the answer is no, all the other questions are not applicable.

Further questions if above is a yes:

- i. Was the right information searched for and reviewed?*
- ii. Was the information supplied appropriately?*
- iii. Was information appropriately withheld in accordance with the articles applied and were the public interest test/ prejudice test properly applied?*

Having considered all relevant information available, the Internal Reviewer upheld the decision.

For information, ECCU investigations are wholly independent of States of Jersey Police".

The Investigation

Scope of the case

10. On 24 October 2025, the Complainant contacted the Commissioner to appeal against the IR 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. They also raised concerns about the adequacy of the searches carried out by the SPA and whether the SPA had identified all material potential relevant to the Request.

11. The relevant statutory provisions are Arts.8, 31 and 42(a) of the FOI Law.

Role of the Information Commissioner

12. 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.
13. 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 and sets out his decision.
14. 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

15. On 30 October 2025, 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 and to provide the Commissioner with a copy of the Withheld Information.
16. The SPA responded to that letter on 7 November 2025, providing detailed explanations as to why it considered the Art.31 and 42 exemptions had been appropriately applied in this case. Following on from that additional queries were raised by the Commissioner, with a final response provided on 16 March 2026 .

Commissioner's Analysis and Findings

17. The Withheld Information initially provided to the Commissioner by the SPA in relation to this case comprised two (2) documents that the SPA considered exempt from disclosure, citing Arts.31 or Art.42 to various aspects of that Withheld Information. As will become apparent, the Commissioner also considered issues relating to the sufficiency of certain searches carried out by the SPA and whether it had likely correctly identified information held in scope of the Request.
18. Before turning to the Commissioner's analysis and findings, the Commissioner considers it helpful at this juncture to remind the parties of the scope of the Commissioner's powers under the FOI Law, which are simply to determine whether or not the SPA has complied with its obligations in terms of responding to the Request made by the Complainant. In other words, the extent of the Commissioner's role in this appeal is to consider whether information relevant to the Request was appropriately searched for and identified by the SPA and if so, whether any exemptions were appropriately applied to any information withheld.
19. It is not the Commissioner's role to make any enquiries into the lawfulness of ECCU's operating model or to make any observations or comment about why any information may not exist, even if the Complainant thinks that information ought to.

ACCESS TO INFORMATION HELD

Art.8 – General right to be supplied with information

20. Art.8 of the FOI Law provides that:

"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."

The Complainant's Position

21. The Complainant's position is as set out in their initial Request, IR Request and also very fully in their nineteen (19) page appeal document provided to the Commissioner. It would make this Decision Notice unwieldy to replicate the Complainant's submissions in full but, in short, the Complainant expressed some surprise at the fact that the SPA only apparently identified some two (2) documents that contained information considered partially in scope of the Request.
22. Specifically, in their written submissions to the Commissioner, the Complainant noted that *"The SPA was a signatory to a Memorandum of Understanding signed in 2017 (the 2017 MoU) and was also a signatory to a subsequent Memorandum of Understanding – the "MoU: Financial Crime Investigation & Criminal Asset Recovery in Jersey" in force from 24 July 2023 (the 2023 MoU). It would be reasonable to assume that, prior to the signing of the 2017 MoU and the 2023 MoU by the SOJP, the SPA would have received information about the legal basis for the ECCU (if such legal basis exists. No such information has been disclosed, however."*
23. The Complainant went on to suggest that the Commissioner should ask questions of the SPA about the veracity of the searches in order to be satisfied that the searches were *"that its searches were appropriate and thorough, and that the SPA has searched areas where it is reasonable to expect that the SPA would find the information"*.

The SPA's Position

24. In addition to explanations provided in its Request Response and IR Response, the SPA was invited (in the usual way) to provide submissions to this office including about the steps it had taken following receipt of the Request to locate any information that was potentially within scope.
25. The SPA's initial position was that it had carried out appropriate searches and that it had not identified any information held by it (other than as identified) in scope of the Request.

Analysis

26. The Commissioner has sought to determine whether, on the balance of probabilities, the SPA holds any further information within the scope of the Request and the SPA was asked to explain the steps taken to identify information potentially relevant to the Request. Specifically, it was asked to provide:
- *"What searches have been carried out to check information was held within the scope of the request and why these searches have been likely to retrieve any relevant information?"*
 - *Please describe thoroughly any searches of relevant paper/electronic records and include details of any staff consultations.*

- *If searches included electronic data, which search terms were used and please explain whether the search included information held locally on personal computers used by key officials (including laptop computers) and on networked resources and emails.*
- *Please identify who carried out the relevant searches.*
- *What date range or time period was covered by the searches conducted for relevant information?"*

27. In its letter of 7 November 2025, the SPA explained the searches undertaken. Specifically, it noted that electronic searches were conducted by the SPA's Information Governance Manager within Cryoserver and eDiscovery, and that separate requests were made *"to those senior officers who were leading or who had recently led the Joint Financial Crime Unit. That is the unit that would generally liaise with ECCU"*. The SPA explained that the keywords used at that time were *"legal basis", "legal jurisdiction" and "ECCU"* and that no limiting date range was applied. Those initial searches yielded over 13,000 items and in light of that (and rather than applying any exemption that may have been available under Art.16 of the FOI Law in respect of time limits), the SPA identified certain officers *"most likely to hold relevant information and approach them directly"*. Five (5) officers were identified, their roles being:

- a. The Chief Officer's Personal Assistant
- b. The individual who had recently held the position of Head of Crime Services
- c. The current Head of Crime Services
- d. The individual who had recently held the position of the JFCU
- e. The current Head of the JFCU.

28. It was as a result of those direct approaches that two (2) documents were identified, with one (1) document being withheld entirely under Art.31 of the FOI Law, and the other partially withheld under Art.42 (those two (2) documents constituting the Withheld Information).

29. On 24 November 2025, the Commissioner sought further information from the SPA about the rationale for the searches carried out including why the individuals listed in para.27 above were identified as potentially holding information relevant to the Request and data parameters applied. Specifically, the Commissioner asked whether the identified individuals were in post at the time preceding ECCU's establishment and whether the search terms deployed were likely to have been used by those involved in ECCU's setup, at the relevant time.

30. The SPA responded to that correspondence on 8 December 2025, indicating that in light of the Commissioner's questioning, it had re-run searches for the period 1 January 2015 to 1 January 2018, focusing on senior officers who were in post at the time immediately preceding ECCU's creation including the then Chief Officer, Deputy Chief Officer and Detective Inspector of Financial Crime. As a result of those new searches, additional documentation was identified as potentially being in scope of the Request.

31. On 11 December 2025, the Commissioner sought access to the information that had been identified as potentially being in scope and asked further questions about whether ECCU

had previously existed in another format (or whether it was referred to in any other way), and on 9 January 2026, the SPA responded to that letter.

32. The Commissioner provided the SPA with follow up questions on 23 February 2026 to which the SPA responded on 16 March 2026.

Commissioner's Decision

33. The Complainant's Request is very clearly focused on seeking access to any information held by the SPA which records *"the legal basis for the establishment of the ECCU...and for vesting in the ECCU legal jurisdiction for carrying out criminal investigations, which is otherwise the responsibility of the States of Jersey Police (SOJP)"*.
34. Bearing the precise wording in mind, it is clear from the narrative above that the SPA had not conducted relevant searches (either in terms of appropriate individuals or relevant date range) at the outset to identify information potentially within scope of the Complainant's Request in that it had initially focused on officers currently in post, and had not considered officers who were in post in/about the time ECCU was established and when any discussions about ECCU's setup were likely to have taken place. The SPA accordingly reran the searches voluntarily and as part of this appeal process using more appropriate search parameters.
35. As noted in previous Decision Notice CAS-04796:

"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)."

36. The SPA provided the Commissioner with evidence of the fresh searches conducted during the course of the appeal process and whilst the Commissioner is satisfied that the fresh searches conducted by the SPA during the appeal process were ultimately appropriate in scope so as to identify any potentially relevant material, the Commissioner must unfortunately conclude that the SPA did not carry out reasonable and proportionate searches in the first instance and therefore upholds this aspect of the Complainant's appeal.

QUALIFIED EXEMPTIONS

Art.31 – Advice by the Bailiff, Deputy Bailiff or Law Officer

The Complainant's Position

37. The Complainant provided comprehensive submissions on the application of Art.31 of the FOI Law and explained why the Commissioner should scrutinise the SPA's rationale in terms of the applicability of that exemption. The Complainant could not, of course, provide any

comments directly focused on how Art.31 had been applied to the Withheld Information, but did provide broad comments about its general applicability including in terms of the public interest test. Specifically, the Complainant noted that:

"...If the ECCU is to continue to expand, seemingly at the expense of other agencies such as the SOJP, it is undoubtedly in the public interest for information about the legal basis for the ECCU's existence, and its apparent jurisdiction to carry out criminal investigations in place of the SOJP, to be made available to the public.

The public is entitled to know what the legal basis (if any) for the ECCU and its expenditure of public funds is, given the States Assembly has passed legislation giving the SOJP (not the ECCU) the powers and responsibility for investigating crime...

The ECCU is said to be "under the oversight of the [Attorney General]", Jersey's Chief Prosecutor; but (as is noted above) it also appears to contain police investigators. The public might rightly wonder, therefore, whether (and, if so, to what extent) the ECCU is legally accountable to the Chief Officer of the SOJP. Further, and importantly, it is presently unclear if any legal safeguards exist to maintain separation between investigative and prosecutorial functions..."¹

38. The Complainant goes on to note that the LOD "appears" to be carrying out prosecutorial functions without the approval of the States Assembly (which the Complainant appears to suggest is necessary) and also notes that in their opinion, the Art.31 exemption does not extend to advice given by those working within Law Officer's Department.

The SPA's Position

39. The SPA's position on the application of Art.31 was set out comprehensively in their Request Response and IR Response, which was essentially echoed in their written submissions to the Commissioner.

Analysis

40. 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 SOJP to act lawfully and in accordance with the rule of law. The Commissioner has considered the operation of Art.31 in previous decision notices² and does not replicate the same here.
41. The Commissioner has seen and considered information withheld by the SPA pursuant to Art.31 of the FOI Law.
42. 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.

¹ Complainant's submission, pages 9 and 10.

² 9 January 2019, 18 October 2019, 23 December 2024, and, most recently, 4 April 2025 in CAS-04796.

43. The SPA has argued that there is no evidence of public interest more generally and certainly not sufficient to displace the exemption.
44. 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.
45. 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 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 advice provided from the Law Officer should be overridden.

Commissioner's Decision

46. The Commissioner has reviewed the relevant information and is satisfied that the Art.31 exemption has been appropriately applied by the SPA and the public interest in maintaining the Art.31 exemption outweighs the legitimate public interest in disclosure of the information withheld under this exemption.

Art.42 – Law Enforcement

The Complainant's Position

47. As noted above, the Complainant has also asked the Commissioner to review the Withheld Information in order to ascertain whether the SPA correctly relied on Art.42(a) of the FOI Law and in their submissions rehearsed the relevant test that needs to be applied by the Commissioner. In essence, the Complainant does not agree with the SPA's contention that disclosing information about the legal basis for the establishment of the ECCU could prejudice ongoing police investigations when information about its existence and way it operates are already in the public domain. The Complainant noted that they did not seek "*detailed operational information; rather it seeks fundamental information about the legal basis for the ECCU*"³ and also noted that similar agencies in other jurisdictions actively disclose information about the statutory regime underpinning their existence and this therefore raises questions about whether the SPA can legitimately say that it is not in the public interest for this information not to be in the public domain.
48. Of course, the Complainant has not seen the information withheld under this provision and has only been able to provide generalised comments on the Art.42 exemption.

The SPA's Position

49. The SPA set out in its Request Response and IR Response why it considered that Art.42 was properly engaged in this case in relation to the single document that was originally identified (additional aspects of the Data Sharing Agreement).
50. It expanded on its rationale in its response to the Commissioner's request for additional information.

Analysis

³ Complainant's submission, page 15.

51. Art.42(a) of the FOI Law provides that:

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

(a) the prevention, detection or investigation of crime, whether in Jersey or elsewhere;..."

Commissioner's Decision

52. The Commissioner has reviewed the information withheld by the SPA pursuant to Art.42 of the FOI Law.

53. As to the parts of the original document withheld pursuant to Art.42 of the FOI Law (the Data Sharing Agreement), the Commissioner has reviewed that information and does not, in fact, consider that it is within scope in that it is not information about the legal basis for the establishment of ECCU or the vesting of powers in it. It is therefore actually out of scope.

The Decision

54. The Complainant's appeal is partially upheld on the basis that the initial searches undertaken by the SPA were insufficient to identify potentially relevant material, but the other aspects of the Complainant's appeal are rejected. There is no information available that falls to be disclosed to the Complainant and, accordingly, no further steps the SPA needs to take in respect of this matter.

Right of Appeal

55. An aggrieved person (i.e. either the Complainant or the SPA) has the right to appeal against this Decision Notice to the Royal Court of Jersey.

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

57. Information on how to appeal may be obtained from:

Judicial Greffe
Royal Court House
Royal Square
St Helier
Jersey
JE1 1JG

Dated this 17 day of August 2026

Signed..... 

Mr Paul Vane

Information Commissioner
Office of the Information Commissioner
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St Helier
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