

Freedom of Information (Jersey) Law 2011

DECISION NOTICE

JOIC Reference	CAS-04797-M4X8F6
Date of Decision Notice	29 April 2025
Scheduled Public Authority	Infrastructure and Environment Department
Address	Ministerial Offices Government of Jersey Union Street St Helier Jersey JE2 3DN
Date of Request	8 May 2024
Date of Response	6 June 2024
Date of request for Internal Review	11 June 2024
Date of Internal Review Response	9 July 2024
Date of appeal to Information Commissioner	23 July 2024

Summary/Decision

1. On 8 May 2024, the Complainant requested certain information from the Infrastructure and Environment Department (the **SPA**) about data protection impact assessments (**DPIAs**) and data sharing/ processing agreements held by the SPA. Specifically, the Complainant *requested "screen shots of the folder list of DPIA's from the old P drive filing system"* and *"copy of the spread sheet containing a list of data sharing/processing agreements that is held in the old P drive filing"* (the **Request**).
2. The SPA wrote to the Complainant on 6 June 2024 (the **Response**) stating that all the information sought in the Request was deemed commercially sensitive and was being withheld (the **Withheld Information**), under at Art.33(b) (Commercial Interests) of the Freedom of Information (Jersey)

Law 2011 (the **FOI Law**). The Complainant did not agree with the Response and requested an internal review on 11 June 2024 (the **IR Request**).

3. The SPA responded to the IR Request on 9 July 2024 (the **IR Response**) and upheld the previous decision that had been made.
4. The Complainant did not agree with the outcome of the Internal Review and issued an appeal to the Information Commissioner (the **Commissioner**) on 23 July 2024 (the **Appeal**).
5. During the course of the Appeal process, the SPA indicated that it also sought to rely on Art.21(3) of the FOI Law. The SPA advised the Commissioner that it considered that the request was vexatious. The Complainant was advised of the SPA's latter reliance on Art.21(3) on 24 January 2025 and on 27 January 2025, the Complainant advised the Commissioner they did not agree that the Request was vexatious.
6. The Commissioner's decision is that the appeal is rejected.

The Role of the Information Commissioner

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

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

"[REDACTED]

...I require information from the Information Governance Team in I&E. I require screen shots of the folder list of DPIA's from the old P drive filing system. I do not need you to re-construct the data - its (sic) just screenshots, containing no personal data. I am aware that the data that was on the P drive system has been moved - but see no reason why a screen shot of it cannot be taken.

I also require a copy of the spread sheet containing a list of data sharing/processing agreements that is held in the old P drive filing. Again, other than staff names (which I am happy for you to redact) there is no personal data held in this document. Nor does the document contain any details of the how data is shared. It does not contain details of system security or how department data can be accessed. It is merely a list of Data Sharing/Processing agreements stating who I&E are sharing data with and why. Again, I'm aware that the spreadsheet that was on the P drive system has been moved - but see no reason I should not be able to have a copy of this document."

10. On 6 June 2024, the SPA provided the Response in the following terms:

"Exact details of the DPIA's and the spread sheet containing a list of data sharing / processing agreements are deemed commercially sensitive and are exempt under Article 33(b) (Commercial Interests) of the Freedom of Information (Jersey) Law 2011.

Article 33 is a qualified exemption; therefore, a public interest test has been applied and is shown at the end of this response.

Article applied

Article 33 - Commercial interests

Information is qualified exempt information if –

(a) it constitutes a trade secret; or

(b) its disclosure would, or would be likely to, prejudice the commercial interests of a person (including the scheduled public authority holding the information).

Prejudice / public interest test

Article 33 (b) allows an authority to refuse a request for information where its disclosure would, or would be likely to, prejudice the commercial interests of a person (including the scheduled public authority holding the information). Whilst it is accepted that the public may have an interest in the details of Government of Jersey files, it is considered the exact details are commercially sensitive and that the release of this data could affect any future projects."

11. The SPA declined to provide the information requested, citing at that point, the exemption provided for at Art.33(b) of the FOI Law.
12. The Complainant issued their IR Request on 11 June 2024 indicating that they did not agree with the SPA's reliance on Art.33(b) 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:

"[REDACTED]...

Article 33 is a qualified exemption and as such the department must demonstrate that the release of the data requested would, or would be likely to, prejudice the commercial interests of a person (including the scheduled public authority holding the information).

The author of the original response has not provided any form of reasonable explanation as to "how and why" the commercial interests of the various Business Units in I&E, would be affected if folder names of DPIAs, or a list of DSA/DPAs, were to be released. Nor has the author set out any real form of public interest test to support the information being withheld.

Instead, the author has simply stated that 'Whilst it is accepted that the public may have an interest in the details of Government of Jersey files it is considered the exact details are commercially sensitive and that the release of this data could affect any future projects'

The exemption is clear, in that the department must demonstrate that commercial interests "would, or would be likely to be" prejudiced if the information were to be released, not that they merely "could" or might be. I therefore assert this exemption to have been incorrectly applied.

In addition to this, my request does not ask for 'exact details,' rather it asks for folder and document names. My request does not ask for the contents of these documents, nor for any 'exact details' from within them. Once again, I therefore assert that this exemption has been incorrectly applied.

I would also draw your attention to Guidance from the UK Information Commissioner who states:

"Although publishing a DPIA is not a requirement of UK GDPR, you should actively consider the benefits of publication. As well as demonstrating compliance, publication can help

engender trust and confidence. We would therefore recommend that you publish your DPIAs, where possible, removing sensitive details if necessary."

Given this guidance, it is clear that application of this exemption for mere folder and document names has been incorrectly and arbitrarily applied.

The link below is just one example of several you might find on UK Government authority websites where the publishing of the names of all their DPIA's is routine. Furthermore, the public are invited to ask for full copies of the documents via the FOI process. So again, I assert that to apply this exemption to mere folder and document names is incorrect.

<https://www.rdash.nhs.uk/about-us/governance/information-governance/gdpr-compliance/#dpia>

In order for this request to have been 'fairly and lawfully' considered, it would have undoubtedly been necessary for all of the relevant I&E Business Units to be contacted so that they could put forward their case as to why their Commercial Interests would be affected by the release of document and folder names.

Given that the response provided lacks any justification in relation to 'how and why' commercial interests would be prejudiced, and it does not contain any 'clear or defined public interest test', I would suggest that Business Units were not contacted in accordance with due process, and that this exemption has been arbitrarily applied.

I therefore request that the original response is reviewed so that the information requested be released as soon as possible."

13. The results of the Internal Review were communicated to the Complainant by the SPA on 9 July 2024 as follows:

"This review has been completed by two senior staff members of the Government of Jersey, independent of the original decision-making process.

The original response has been reviewed and assessed to identify whether the application of the exemption had been applied correctly and whether it was appropriate to withhold information.

The Panel's decision is that Article 33 (Commercial interests) of the Freedom of Information (Jersey) Law 2011 applies to this matter and that the information if released would be likely to prejudice I&E and more broadly, Government's contracting processes.

The Panel, having considered all aspects of this case, have concluded that the request had the potential to make public:

- a list of every data processing impact assessment (DPIAs) which Infrastructure & Environment (I&E) has undertaken – which should at least include all processing arrangements which I&E considers may result in a high risk to the rights and freedoms of others but may also include DPIAs undertaken for other reasons;*
- a list of any / all data sharing agreements I&E has entered into whether intra-government or with non-Government persons /entities (it being notable that this may not capture the entirety of intra-Government arrangements as some may be dealt with under other mechanisms (such as memorandums of understanding) and whilst a data sharing agreement may be best practice, it is not strictly required for controller to controller arrangements); and*

- a list of any / all data processing agreements I&E has with entities which are its processors - i.e. identifying a number of those entities who it contracts with.

Some of those arrangements would be "commercially sensitive." As a result we would need to check each contract to determine whether or not a detail relating to it could be disclosed. As the Applicant themselves notes some substantive interactions within I&E, but also further within Government and with third parties (contractual counterparties) would also likely be required, were any such lists to be published..

Whilst it is accepted that publication of (accurate) lists may aid transparency and certain explanations and warnings about the extent to which any published lists (based on old system files) were "complete" or not could be included, it is considered that this step would inevitably be likely to lead to additional Government of Jersey management time / resource being spent on questions and queries regarding the lists published and the updating and maintaining of this area on an initial and ongoing basis.

Publication of the requested lists by Infrastructure & Environment might also be considered to set a precedent for other Government Departments, amplifying the negative resource / management time costs which may be incurred.

Article applied

Article 33 - Commercial interests

Information is qualified exempt information if –

(a) it constitutes a trade secret; or

(b) its disclosure would, or would be likely to, prejudice the commercial interests of a person (including the scheduled public authority holding the information).

Prejudice / public interest test

Article 33 (b) allows an authority to refuse a request for information where its disclosure would, or would be likely to, prejudice the commercial interests of a person (including the scheduled public authority holding the information). Whilst it is accepted that the public may have an interest in the details of Government of Jersey files, it is considered the exact details are commercially sensitive and that the release of this data would be likely to negatively affect Infrastructure & Environment's future management / operations as discussed above.

The Investigation

Scope of the case

14. On 23 July 2024, 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 Art.33 exemption cited by the SPA was appropriately applied.
15. As noted at para.23 below, on 16 January 2025 the SPA advised the Commissioner that it wished to classify the Request as Vexatious. The Complainant was notified of this additional matter and resisted the suggestion that the Request was vexatious. Accordingly, the Commissioner must also consider whether the SPA is entitled to rely on Art.21 of the FOI Law to refuse the Request.

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 31 July 2024, the Commissioner wrote to the SPA to advise that the Complainant had made an Appeal to the Commissioner, pursuant to Art.46 of the FOI Law. The SPA was asked to provide their written submissions in response to the complaint made by the Complainant and a copy of the Withheld Information, in the usual way and in accordance with para.58 of the Art.44 Code of Practice¹.
19. The SPA responded to that letter on 16 August 2024 (addressed from the Central FOI Unit), providing extensive explanations as to why it considered the Art.33(b) exemption had been appropriately applied in this case. The SPA further explained that it had concerns about the motives of the Complainant, in that given the reference in the Request to "*internal drives*" the Requestor may be a government employee/prior employee and the SPA considered the Request may be driven primarily by private, rather than public interest. As is often the case, the responses provided by the SPA raised additional queries, and the Commissioner wrote to the SPA on the 23 August 2024 seeking further information and requesting a response.
20. Regrettably, the Commissioner was required to chase for responses to the additional questions raised. Emails chasing a response were sent to the manager of the Central FOI Unit on the following dates:
- a. 17 September 2024: The Central FOI Unit responded on the 18 September 2024 indicating that a response would be provided during the next week
 - b. 27 September 2024: The Central FOI Unit did not acknowledge or respond to this email.
 - c. 11 October 2024: The Central FOI Unit acknowledged the Commissioner's email but did not provide a reason for the on-going delay.
 - d. 28 October 2024: The Commissioner asked the SPA (via the Central FOI Unit) to respond within a time frame (the SPA responded on the 29 October 2024 stating "*they were finalising the response and would provide an update next week as soon as the staff member dealing with the case returns from annual leave*").
21. The SPA (via the Central FOI Unit) finally responded to the Commissioner's email of 23 August 2024 on the 7 November 2024. In that response, the SPA provided the required information and, in addition, additional information about the Complainant and their motivation for making the Request. Specifically, it considered that they believed that the Complainant had previously sought to access the requested information previously via other means and been advised repeatedly that this was not information to which they were entitled. (Whilst the SPA had not been provided with the identity of the Complainant, they considered that the specificity of the Request was such that it could only likely have emanated from an individual with knowledge of the SPA's internal systems.)
22. In response to the issues raised by the SPA in their letter of 7 November 2024, further queries were raised by the Commissioner on the 22 November 2024. Despite the Commissioner's request

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

that a response be provided by close of business on 6 December 2024, no response was forthcoming. Accordingly, the Commissioner sent email chasers to the SPA (via the Central FOI Unit) on the following dates:

- a. 10 December 2024;
- b. 17 December 2024; and
- c. 18 December 2024.

23. On the 16 January 2025 the SPA advised the Commissioner that it now wished to apply an additional exemption and asked the Commissioner to consider "*whether this request can be deemed vexatious under Article 21(3) of the FOI Law*". In that response, the SPA (via the Central FOI Unit) indicated that its view was that the Complainant "*has no real interest in the information sought*" and that "*the information is being sought for an illegitimate reason - to cause administrative difficulty or inconvenience. In this case placing a significant burden on the SPA to review the content of all existing DPIAs and contracts to ascertain if any non-exempt information may be disclosed.*"
24. On the 16 January 2025, the Commissioner wrote to the SPA (via the Central FOI Unit) requiring the SPA to notify the Complainant of the application of the new exemption and on the 24 January 2025 the SPA wrote to the Complainant with such notification.
25. On the 27 January 2025, the Complainant provided observations to the Commissioner on the application of the new exemptions, which prompted the Commissioner to raise further queries with the SPA on the 5 February 2025. The SPA provided a full response to those queries on 6 March 2025.

Analysis

Art.21 – A scheduled public authority need not comply with vexatious requests

The SPA's Position

26. As noted at para.23 above, the SPA sought late in the process to suggest that the Request was vexatious, this on the basis that the Complainant had no real interest in the information sought and that it was being sought for an illegitimate purpose. Specifically, the Complainant had previously sought the requested information in January 2024 (outside the freedom of information framework) and been told at varying times in the months thereafter that they were not entitled to that information.
27. The SPA considered that the FOI Law was therefore being used improperly by the Complainant.

The Complainant's Position

28. The Complainant explained to the Commissioner that they did not agree that the Request was vexatious. Specifically, the Complainant said that:

"...the information I requested consisted of 2 simple things: A screen shot of the folder names that DPIAs are stored in and a copy of a spreadsheet listing the Data Sharing Agreements that the Regulation Directorate of I&E hold. The information should have taken less than 1 hour to locate, apply redaction and send through.

I [REDACTED] see absolutely no reason whatsoever why the information requested should have been withheld in its entirety by way of arbitrary application of a Commercial Interests Exemption. [REDACTED] I was not asking for copies of full documents, merely the names of

them. Likewise, the SPA has always had the option of redacting any data within the Spreadsheet that they were unsure should be released.

There is clearly a legitimate public interest in knowing that Data Protection Impact Assessments and Data Sharing Agreements are being carried out in accordance with the Data Protection (Jersey) Law 2018 and to suggest that the request is 'vexatious and designed to create administrative difficulty for the SPA' is completely ludicrous. In fact, I deliberately asked for a screen shot of the DPIA folders in order to save the SPA any unnecessary administration.

I don't believe the SPA to have acted within the spirit of Law from the outset as they have failed to apply a 'requester blind' stance when considering whether the requested data should be released. [REDACTED]

So to conclude, I believe that the SPA's application of Article 21(3), to information that is in the public interest, and will take less than an hour to process, to be yet another deliberate and last ditch attempt to block the release of the requested information. I have never submitted repeated or complex requests to this SPA, or to any other SPA. I believe the SPAs sudden application of Article 21(3) is an attempt to try and 'save face' to avoid them having to admit the information should never have been withheld in its entirety in the first place."

Analysis

29. Art.21 of the FOI Law states that a scheduled public authority is not obliged to comply with a request for information if it considers that the request is vexatious.
30. The word "vexatious" is not defined in the FOI Law. However, as the Commissioner's guidance on Art.21² of the FOI Law states, it is established that Art.21 is designed to protect scheduled public authorities by allowing them to refuse any requests which have the potential to cause a disproportionate or unjustified level of disruption, irritation or distress, but only in circumstances where the requester has:
 - a. No real interest in the information; AND
 - b. The information is being sought for an illegitimate reason, which may include a desire to cause administrative difficulty or inconvenience.
31. The FOI Law gives individuals a greater right of access to official information in order to make bodies more transparent and accountable. As such, it is an important constitutional right. Therefore, engaging Art.21 is a high hurdle.
32. However, the Commissioner recognises that dealing with unreasonable requests can strain resources and get in the way of delivering mainstream services or answering legitimate requests. These requests can also damage the reputation of the legislation itself.
33. The emphasis on protecting scheduled public authorities' resources from unreasonable requests was acknowledged by the Upper Tribunal (UT) in England, in the leading case on section 14(1) (the equivalent provision under the Freedom of Information Act 2000), *Information Commissioner vs Devon County Council & Dransfield [2012] UKUT 440 (AAC)* (28 January 2013) (**Dransfield**). Whilst not directly applicable in this jurisdiction, the Commissioner considers the findings of assistance in this jurisdiction, particularly as there is no precedent in Jersey on this issue. It is referred to in the Commissioner's guidance note³.

² <https://jerseyoic.org/media/ncenxhfn/joic-21a-dealing-with-vexatious-requests.pdf>

³ See para.21 of the Commissioner's Guidance Note on "[Dealing with vexatious requests \(Article 21\)](#)".

34. Although the Dransfield case was subsequently appealed to the English Court of Appeal, it established that the key question for a public authority to ask itself is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation, or distress. The four broad themes considered by the UT in Dransfield were:
- a. the burden (on the public authority and its staff);
 - b. the motive (of the requester);
 - c. the value or serious purpose (of the request); and
 - d. any harassment or distress (of and to staff).
35. However, the UT emphasised that these four broad themes are not a checklist and are not exhaustive. It stated: "*all the circumstances need to be considered in reaching what is ultimately a value judgement as to whether the request in issue is vexatious in the sense of being a disproportionate, manifestly unjustified, inappropriate or improper use of FOIA*" (paragraph 82).

Commissioner's Decision

36. In cases where a scheduled public authority is relying on Art.21, it is for that scheduled public authority to demonstrate why it considers that a request is a disproportionate, manifestly unjustified, inappropriate, or improper use of the FOI Law.
37. Based on the information at hand at the time of writing this decision notice, the Commissioner finds that, on balance, the Request does meet the threshold criteria to be considered vexatious under Art.21.
38. For ease, the Commissioner has structured his reasoning with reference to the four broad themes in Dransfield.

Burden

39. In its submissions, the SPA referred to previous requests made by this individual for the information requested, albeit outside the scheme provided for in FOI Law. Whilst the Complainant has sought the requested information via other means previously, including asking others to seek information on their behalf (which requests were also refused), the Complainant has not made any formal requests previously under the FOI Law itself.
40. Whilst the SPA has suggested "*an extensive*" exercise would need to be undertaken to identify what information from the P Drive could be extracted to satisfy the Complainant's Request, it was not able to provide any further information about the extensiveness or complexity of that exercise, nor the time likely needed to carry this out. However, it admitted that it has not examined each DPIA or DSA/DPA to analyse each document to see whether there was anything contained within the relevant agreements specifically prohibiting the release of any information. The Commissioner has seen the Withheld Information and without revealing the contents of it, is satisfied that this exercise would need to be undertaken.
41. The SPA also suggests that providing screenshots now could lead to similar requests being advanced in the future (noting that screenshots are a static representation of a moment in time) and/or additional queries about certain relationships identified. As noted in para.52 of the Commissioner's guidance note, a Complainant's past pattern of behaviour may also be a relevant consideration. For instance, if the SPA's experience of dealing with their previous requests suggests that they will not be satisfied with any response and will submit numerous follow up enquiries no matter what information is supplied, then this evidence could strengthen any argument that the purpose of the request is illegitimate. However, no substantive evidence has been provided in support such a stance, which is purely theoretical at this stage (the

Commissioner has not been advised that the Complainant has made any previous request of a similar nature under the FOI Law).

Motive

42. The Complainant said that they felt that the Request had not been dealt with applicant blind which is what the FOI Law requires and believed that their identity has been shared with those tasked with responding the Request and this has influenced the SPA's approach to the Request and decision to classify such as vexatious.
43. In most cases, requests under the FOI Law must be considered without reference to the requester's identity or motives; the usual focus being on whether the information is suitable for disclosure into the public domain, rather than the effects of providing such to the individual requester. Anyone can make a request under the FOI Law, and they do not need to provide reasons about why they want the information or justify their request. However, a requester's identity and motives can be relevant in circumstances where a SPA has concerns that the request is vexatious. As noted in Dransfield (at para.34 thereof):

"...the motive of the requester may well be a relevant and indeed significant factor in assessing whether the request itself is vexatious...the proper application of section 14 cannot side-step the question of the underlying rationale or justification for the request..."

44. In this case, the SPA said that the Complainant had previously been told that this was not something they were entitled to see and declined to provide them with the information sought. The Complainant's identity and motivation are, therefore, relevant factors in this case.
45. When notified of the SPA's latter reliance on Art.21 of the FOI Law and reasons for it, the Complainant's submissions about the suggestion that the request was vexatious was that they did not consider the test was met in this case. They denied that they had made repeated or complex requests and felt that the SPA's decision to withhold the Requested Information was not legitimate and they had concerns that the Request was not dealt with via the usual internal process.

Value (or serious purpose)

46. There is no suggestion that the Complainant has requested this for anything other than a serious purpose. The SPA, however, considers that the purpose is a private one, and of no real value to the public at large. This is, accordingly, a private interest in the information as opposed to something in the broader public interest.
47. The Commissioner does not doubt that the Request has purpose to the Complainant, but he must decide whether the Request and the information sought by them are likely to add material value to discourse about the SPA's approach to the conducting of DPIAs or who information is shared with.
48. Firstly, the information requested is historical. It is clear from the Complainant's Request that they were aware of the data being contained in an "old" drive and that the information they were asking for was likely historic. On that basis, the value of having sight of out-of-date information casts some doubt on the value of that information being provided to them.
49. Secondly, the Commissioner has noted the wording of the Request and the Complainant's suggestion that it was content for the information to be provided to them alone and that it need not be published online as part of any disclosure log. This does suggest that the Request is more of a privately motivated interest and intended to benefit only the Complainant rather than anyone

else although they have also suggested in their correspondence with the Commissioner that the Requested Information is clearly in the public interest.

Harassment or distress

50. The SPA has not suggested that the Complainant has requested the information to harass staff or to cause distress and the Commissioner does not consider this to be relevant to this case.

Balancing exercise

51. The provisions of Art.21 are cumulative; the SPA must be able to show that the Complainant has no real interest in the information sought AND that the information is being sought for an illegitimate reason.
52. Whilst the Commissioner has considered the burden of this request to the SPA, mainly in terms of the work that would need to be done in terms of reviewing the underlying DPIAs/DSAs/DPAs, the Commissioner considers the primary focus of Art.21 to be that of motive and purpose.
53. When assessing purpose, and value, in his guidance note⁴, the Commissioner notes as follows:

"38. The Law is generally considered to be applicant blind, and SPAs cannot insist on knowing why an applicant wants information before dealing with a request.

39. However, this doesn't mean that a SPA cannot take into account the wider context in which the request is made and any evidence the applicant is willing to volunteer about the purpose behind their request.

40. The SPA should therefore consider any comments the applicant might have made about the purpose behind their request, and any wider value or public interest in making the requested information publicly available.

41. Most applicants will have some serious purpose behind their request, and it will be rare that a SPA will be able to produce evidence that their only motivation is to cause disruption or annoyance. It is considered good advice that:

"SPAs should be wary of jumping to conclusions about there being a lack of any value or serious purpose behind a request simply because it is not immediately self-evident."

42. However, if the request does not obviously serve to further the applicant's stated aims or if the information requested will be of little wider benefit to the public, then this will restrict its value, even where there is clearly a serious purpose behind it."

54. Context and history are also important. As the Commissioner points out in his guidance to SPAs regarding Art.21⁵:

"49. The context and history in which a request is made will often be a major factor in determining whether the request is vexatious, and the SPA will need to consider the wider circumstances surrounding the request before making a decision as to whether Article 21(1) applies.

50. In practice this means taking into account indicators such as: a) Other requests made by the requester to that SPA (whether complied with or refused). b) The number and subject

⁴ <https://jerseyoic.org/media/ncenxhfn/joic-21a-dealing-with-vexatious-requests.pdf>

⁵ Ibid.

matter of those requests. c) Any other previous dealings between the SPA and the applicant..."

55. The Commissioner notes the Complainant's previous interactions with the SPA and attempts to access this information via another route. On the one hand, it appears to the Commissioner that the Complainant does have an interest in the information sought as they have been persistent in their attempts to access it. On the other hand, the fact that the Request submitted by the Complainant suggested that they were happy for any Response not to be published does not support the Complainant's later comments (made to the Commissioner) that there is wider public interest in the information requested; the indication being that this is information to benefit them, as opposed to the public more widely.
56. Having noted the information provided by the parties, the Commissioner is of the opinion that there were obvious difficulties between the Complainant and the SPA and whilst the Commissioner considers this to be a borderline case, and the fact that the very late reliance on Art.21 was deployed some seven (7) months after the Request was made and responded to, he does conclude that the request is vexatious based on its motive and purpose. As the Tribunal has acknowledged in Dransfield, this is *"ultimately a value judgement,"* having assessed the circumstances from which the request emerged.
57. Accordingly, the Commissioner does consider that the SPA was entitled to latterly rely on Art.21 of the FOI Law and the Complainant's appeal is accordingly rejected.

OTHER MATTERS

58. Having concluded that the Request is vexatious, the Commissioner has not therefore gone on to consider whether the SPA was correct to rely on Art.33 of the FOI Law in terms of the Requested Information. He does, however, have some broader observations regarding certain procedural issues encountered as part of this appeal; most notably the SPA declining to provide information requested by the Commissioner.
59. In their Request, the Complainant sought screenshots of names of the folders and a list of documents on the relevant spreadsheet, which the SPA originally sought to withhold under Art.33 of the FOI Law on the basis that disclosure of even a list as requested *"would be likely to prejudice the commercial interests of the Infrastructure and Environment Department ("the SPA") and also potentially would be likely to disclose the commercial interests of other Government Departments / SPAs"* and that *"We consider the publication of a screenshot and / or the attached extract of the Excel spreadsheet would be likely to have a prejudicial effect on I&E and other Departments. The chance of such prejudice occurring not necessarily being more likely than not, but still being significant and weighty."* The SPA also explained that disclosure of the Withheld Information would/would be likely to prejudice the SPA's commercial interests, or those of other parties:

"[REDACTED]..., it is considered that some arrangements which I&E may have entered into, are likely to have confidentiality terms attaching to them, which would prevent any details relating to such arrangement from being made public (including as to the existence of such arrangement).

That a screen shot could not therefore be taken which included DPIAs of those confidential agreements.

That an extensive exercise would need to be undertaken to identify what information from the P drive could be extracted to satisfy the Applicant's request."

60. The SPA was asked to provide information about the content of certain DPIAs including whether there was anything contained within the body of the document suggesting that such could be

released into the public domain. It was also asked to provide information about the contractual arrangements in place between the SPA and any third parties in respect of data sharing, including whether any terms would prevent information about such matters being placed in the public domain.

61. Unfortunately, the SPA initially declined to provide the information required by the Commissioner, considering that the questions were out of scope of the appeal and that certain questions were *"not relevant."*
62. This response was disappointing as the relevance of the requested information was patently obvious noting that it is for the SPA to show that disclosure of the information in question would/would likely harm a person's commercial interests, to show what harm would occur if the information was disclosed and it may be that even the mentioning of parties' names could be prohibited by the terms of certain contractual arrangements or that prejudice could be caused if that information was placed into the public domain.
63. Whilst ultimately, the purpose of the questioning and its relevance was tacitly accepted by the SPA, the Commissioner wishes to remind all SPAs that when information is requested, it must be provided. The Commissioner's officers only request information that is directly relevant to matters and will never seek more information than is needed to determine an appeal. If a SPA has queries about the rationale behind a request or considers that the request was unclear, the SPA should seek clarity from the Commissioner's officer in the first instance not simply refuse to provide the information requested.
64. Consistent refusals to provide information may lead to the Commissioner invoking the provisions of the Memorandum of Understanding dated 21 November 2014 between the Commissioner and the Chief Minister.

The Decision

65. The Commissioner considers that in respect of the Request, the SPA has responded to the request for information appropriately in this case and that the exemption provided for at Art.21 of the FOI Law was appropriately deployed.
66. Accordingly, the complainant's appeal is rejected.
67. There are no further steps the SPA needs to take in this matter.

Right of Appeal

68. An aggrieved person has the right to appeal against this Decision Notice to the Royal Court of Jersey.
69. Information on how to do so can be found on www.jerseyoic.org.
70. Any Notice of Appeal should be served within 28 (calendar) days of the date on which the Decision Notice is issued.

Dated this 29 day of April 2025

Signed..... 

Mr Paul Vane

Information Commissioner

Office of the Information Commissioner

5 Castle Street

St Helier

Jersey

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

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

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

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

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

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

- (1) A scheduled public authority must deal with a request for information promptly.
- (2) If it supplies the information it must do so, in any event, no later than –
 - (a) the end of the period of 20 working days following the day on which it received the request; or
 - (b) if another period is prescribed by Regulations, not later than the end of that period.
- (3) However, the period mentioned in paragraph (2) does not start to run –
 - (a) if the scheduled public authority has, under Article 14, sought details of the information requested, until the details are supplied; or
 - (b) if the scheduled public authority has informed the applicant that a fee is payable under Article 15 or 16, until the fee is paid.
- (4) If a scheduled public authority fails to comply with a request for information –
 - (a) within the period mentioned in paragraph (2); or

(b) within such further period as the applicant may allow,

the applicant may treat the failure as a decision by the authority to refuse to supply the information on the ground that it is absolutely exempt information.

(5) In this Article "working day" means a day other than –

(a) a Saturday, a Sunday, Christmas Day, or Good Friday; or

(b) a day that is a bank holiday or a public holiday under the Public Holidays and Bank Holidays (Jersey) Law 1951^[4].

18 Where a scheduled public authority refuses a request

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

21 A scheduled public authority need not comply with vexatious requests

(1) A scheduled public authority need not comply with a request for information if it considers the request to be vexatious.

(2) In this Article, a request is not vexatious simply because the intention of the applicant is to obtain information –

(a) to embarrass the scheduled public authority or some other public authority or person; or

(b) for a political purpose.

(3) However, a request may be vexatious if –

(a) the applicant has no real interest in the information sought; and

(b) the information is being sought for an illegitimate reason, which may include a desire to cause administrative difficulty or inconvenience.

33 Commercial interests

Information is qualified exempt information if –

(a) it constitutes a trade secret; or

(b) its disclosure would, or would be likely to, prejudice the commercial interests of a person (including the scheduled public authority holding the information).