

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

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**DECISION NOTICE**

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<b>JOIC Reference</b>	CAS-04931-N1R9J6
<b>Date of Decision Notice</b>	9 July 2025
<b>Scheduled Public Authority</b>	Department for the Economy
<b>Address</b>	Ministerial Offices Government of Jersey Union Street St Helier Jersey JE2 3DN
<b>Date of Request</b>	22 July 2024
<b>Date of Response</b>	9 August 2024
<b>Date of request for Internal Review</b>	15 August 2024
<b>Date of Internal Review Response</b>	4 October 2024
<b>Date of appeal to Information Commissioner</b>	23 October 2024

**Summary/Decision**

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1. On 22 July 2024, the Complainant requested certain information from Department for the Economy (the **SPA**) about the legal basis for the establishment of the Economic, Crime and Confiscation Unit (the **ECCU**). Specifically, the Complainant requested "*copies of any documents setting out 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 States of Jersey Police (SOJP)*" (the **Request**).
2. The SPA wrote to the complainant on 9 August 2024 (the **Response**) stating that whilst it held information relevant to the request, all of the information identified was being withheld (the **Withheld Information**), citing the exemptions at Art.27 and Art.31 of the Freedom of

Information (Jersey) Law 2011 (the **FOI Law**). The Complainant did not agree with the Response and requested an internal review 15 August 2024 (the **IR Request**).

3. The SPA responded to the IR Request on 4 October 2024 (the **Internal Review 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 October 2024 (the **Appeal**).
5. The Commissioner's decision is that the appeal is partially upheld. Whilst the single identified document was properly withheld by the SPA, the Commissioner's decision is the SPA has failed to carry out adequate searches for the requested information and therefore, on the balance of probabilities, has not identified all information held within the scope of the Request.
6. The Commissioner requires the SPA to take the following steps to ensure compliance with the FOI Law:
  - a. The SPA must issue a fresh response to the Request following searches aimed at identifying all the information held within the scope of the Request.
7. The SPA must take these steps within 35 calendar days of the date of this Decision Notice. Failure to comply may result in the Commissioner making 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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8. 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.
9. This Decision Notice sets out the Commissioner's decision.

### **The Request**

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

*"It has been widely publicised that in 2017 there was established in Jersey a new specialist investigative body, the Economic Crime and Confiscation Unit (ECCU) to investigate and prosecute financial crime and asset recovery cases.*

*In a recent Memorandum of Understanding, it is stated that:*

*"The primary focus of ECCU is upon the investigation, prosecution, and recovery of the proceeds of money laundering, terrorist financing, fraud and sanctions evasion, especially those cases involving foreign predicate offences. ECCU has adopted the "Roskill Model" of investigation which involves lawyers and investigators working together from the start of a case."*

*See:*

*FC MOU.pdf (gov.je)*

*The so-called "Roskill Model" has its basis in the 'Roskill Report' (Fraud Trials Committee Report), which was published in the UK in 1986. As explained on the website of the UK's Serious Fraud Office (SFO):*

*"Its main recommendation was to set up a new organisation responsible for the detection, investigation and prosecution of serious fraud cases. The organisational structure it*

*proposed, in which investigators and prosecutors work together from the start of a case, is called the Roskill model and is the structure adopted for the SFO."*

See:

*SFO historical background and powers - Serious Fraud Office*

*As the SFO's website goes on to explain:*

*"The Criminal Justice Act 1987 (CJA) gave effect to the recommendations in the Fraud Trials Committee report. It created the Serious Fraud Office and its primary investigative tools, often referred to as "Section 2 powers"."*

*Section 1(1) of the UK's Criminal Justice Act 1987 states: "A Serious Fraud Office shall be constituted for England and Wales and Northern Ireland." That UK Act goes on to set out, amongst other things, the investigation powers of the Director of the SFO.*

*The Requester has not been able to locate any similar legislation in Jersey, authorising the creation of the ECCU or granting it legal responsibility for, and powers to carry out, criminal investigations.*

*Please can you provide copies of any documents setting out 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).*

*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. Such documentation is provided*

11. On 9 August 2024 the SPA provided the Response in the following terms:

*"The requested information is exempt under Articles 31 and 27 of the Freedom of Information (Jersey) Law 2011. Disclosure of such information, which was provided based on legal advice, is covered by Attorney General privilege.*

**Articles applied**

**Article 27 - National security**

*(1) Information which does not fall within Article 26A(1) is absolutely exempt information if exemption from the obligation to disclose it under this Law is required to safeguard national security.*

*(2) Except as provided by paragraph (3), a certificate signed by the Chief Minister certifying that the exemption is required to safeguard national security is conclusive evidence of that fact.*

*(3) A person aggrieved by the decision of the Chief Minister to issue a certificate under paragraph (2) may appeal to the Royal Court on the grounds that the Chief Minister did not have reasonable grounds for issuing the certificate.*

*(4) The decision of the Royal Court on the appeal shall be final.*

**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**

*Whilst it is accepted that there may be some public interest in disclosing the manner in which Jersey is seeking to combat money laundering, there are many competing arguments which suggest that on balance, there is greater public interest in keeping the document confidential, the same clearly forming part of and relating to the legal advice provided in such document.*

*The purpose of such confidentiality being to protect fully informed decision-making by allowing government to seek legal advice in private, without fear of any adverse inferences being drawn from the content of the advice or the fact that it was sought - or the scope of the same.*

*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, the disclosure of whether advice was or will be sought or, the disclosure of a high level summary of the scope of the content of such advice (by way of the release of a contents page or the chapter / section titles), could inhibit the manner in which Law Officers' advice is taken and / or provided and real weight ought to be afforded to this aspect of the Law Officers' Convention.*

*Further, it is not considered appropriate nor in the public interest to disclose in some (even if limited), headline detail the scope of the private advice which those investigating and or prosecuting financial crime may benefit from when undertaking the same."*

12. The SPA declined to provide the information requested, citing the exemptions provided for at Art.27 and Art.31 of the FOI Law.
13. The Complainant issued their IR Request on 15 August 2024 indicating that they did not agree with the SPA's reliance on Art.27 and Art.31 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:

*"This is a complaint about the response (the "**Response**") of the Scheduled Public Authority (the "**SPA**") to the Request (referenced above) and a request that an internal review of the Response be carried out, without delay.*

*The Complainant requests that the internal review is carried out in accordance 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 and that a copy of this request is provided to the Internal Review Panel.*

*The Request sought "copies of any documents setting out 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)."*

*The SPA has refused to provide the requested information on the basis that it is exempt under Article 27 (National security) and Article 31 (Advice by the Bailiff, Deputy Bailiff or a Law Office) of the Freedom of Information (Jersey) Law 2011 (the "FOI Law"). It is not apparent from the Response whether all of the requested information is said to be fully exempt under both exemptions cited, or whether some of the information is said to be exempt under Article 27 and/or Article 31 only.*

*It has been confirmed to the Complainant that the SPA was the Department for the Economy, although it is understood that the response also covered Justice and Home Affairs and the States of Jersey Police.*

*If searches for relevant information held by Justice and Home Affairs and the States of Jersey Police were not in fact carried out, the Internal Review Panel should now require such searches to be undertaken and any relevant information located should be considered for disclosure.*

*Before considering the specific exemptions cited to withheld information, the Complainant invites the Internal Review Panel to take a step back and consider what the Request relates to. This will also be relevant for consideration of the public interest test, to the extent applicable.*

*The Request seeks information about the legal basis for the establishment of the Economic Crime and Confiscation Unit ("ECCU") and for vesting in the ECCU legal jurisdiction for carrying out criminal investigations.*

*In broad terms, the Complainant seeks to understand the legal basis for the existence and operation of the ECCU.*

*One would have thought that this would be relatively uncontroversial information to provide. Indeed, it is surprising that this information has not already been made available to the public.*

*In the UK, for example, the Serious Fraud Office (SFO) explains on its website the legal basis for its existence and powers.*

*In Jersey, however, it appears that the legal basis for the ECCU's existence has never been explained to the public.*

*This is clearly a matter of public interest.*

*The ECCU consumes a significant (and growing) amount of public resources.*

*The Law Officers' Department Business Plan 2024 indicates that the ECCU has at least 20 dedicated staff members, consisting of: 2 Senior Legal Advisers; 7 Legal Advisers; 1 Principal Economic Crime Investigator; 1 Senior Crimes Investigator; 6 Civilian Investigators; 1 ECCU Accountant; 1 Analyst; and 1 Paralegal.*

*The same business plan also refers to "[f]urther expansion of the ECCU team".*

*The information in the business plan is striking for at least a couple of reasons.*

*First, it is evident that the ECCU is now bigger than the entire Criminal Courts team, which has 18 members in contrast to ECCU's 20. The Law Officers' Department as a whole is stated as consisting of 100 individuals, so the ECCU (with its 20 individuals) now consists of 20% of the entire Law Officers' Department, with that number seemingly set to grow further in the coming years.*

*Second, in contrast to the other parts of the Law Officers' Department, it is clear that the ECCU is considered with investigating crime, not only providing advice and acting as the Island's independent prosecution service. The business plan refers to: "Further expansion of the ECCU team in order to provide such advice and carry out investigations" (emphasis added). At least 8 members of the ECCU are described as "Investigators".*

*All of this comes at a time when the budget of the States of Jersey Police (the "SOJP") – the public authority legally tasked with investigating crime – is under significant pressure. Certainly, the budget of the SOJP has not grown at the pace of that of the ECCU.*

*In the circumstances, it hardly seems unreasonable for the public to be informed what is the legal basis for the ECCU and its jurisdiction for carrying out investigations.*

*This is particularly so given the prominence of the ECCU in MONEYVAL's Fifth Round Mutual Evaluation Report of Jersey (the "MONEYVAL Report"). There are 152 references to "ECCU" in the MONEYVAL REPORT, which notes that the ECCU is "responsible for conducting complex financial crime investigations, especially those cases with an international aspect" (emphasis added).*

*Notably on many occasions in the MONEYVAL Report the ECCU is mentioned as separate from the LOD (i.e. the Law Officers' Department), which suggests that MONEYVAL may have been under the impression that ECCU was a separate "investigative agency" (a phrase used on numerous occasions in the report to refer to ECCU).*

*To further confuse matters, in at least one place in the MONEYVAL Report there is a reference to "ECCU (police)".*

*It is stated in the Law Officers' Department Business Plan, however, that ECCU is part of the Law Officers' Department, and elsewhere the MONEYVAL Report notes that the "ECCU sits within the Law Officers Department (LOD) Criminal Division under the oversight of the AG".*

*Providing the requested information should help to clarify matters.*

*Significantly, despite its prominence in the MONEYVAL Report, that report does not contain any information about the legal basis for ECCU's establishment and investigations.*

*The requested information should help to fill this obvious lacuna.*

*The ECCU is said to be "under the oversight of the [Attorney General]", Jersey's Chief Prosecutor, but it also contains police investigators. The public might rightly wonder therefore whether ECCU is also legally accountable to the Chief Officer of the SOJP and what, if any, legal safeguards exist to maintain separation between investigative and prosecutorial functions.*

*The Complainant is not aware that any legislation has been passed to authorise the establishment of the ECCU (unlike the UK's SFO). The establishment of the ECCU does not seem to have been debated in the States Assembly.*

*Considering all of the above, the SPA's decision to cite exemptions to withhold the requested information may be considered somewhat unsettling.*

*In a country committed to the rule of law, one would expect the legal basis for investigative agencies to be clearly set out and accessible to members of the public. At present, it is simply not clear to the public what is the legal basis for the ECCU.*

*The SPA evidently has information that would assist with illuminating such matters – otherwise it would not have cited exemptions to withhold this information - but it has instead elected to keep the public in the dark.*

*As noted further below, the Internal Review Panel will need to consider whether this is really in the public interest.*

## **Article 27 (National security)**

*The Response states that the information is exempt under Article 27 of the FOI Law. However, there is no attempt to explain why this is the case.*

*If there is a credible explanation, why has this not been provided? Even if certain details may be sensitive, it would be reasonable to expect at least a gist of the reasoning to be provided.*

*The obvious inference to be drawn from the complete lack of explanation is that there is in fact no credible basis for the assertion that withholding information about the legal basis for the establishment of the ECCU and for vesting in the ECCU legal jurisdiction for carrying out criminal investigations is required to safeguard national security.*

*This is a high bar, and mere assertion is not sufficient.*

*Quite rightly, the existence of the ECCU is not a secret. Indeed, as is clear from the above, existence of the ECCU has been widely publicised by the Government of Jersey. The ECCU's detailed operating protocol has also been released to the public – see*

*ID FOI 7240 JFCU Operating Protocol - Redacted 20240307.pdf (gov.je)*

*It would be a surprising state of affairs if withholding the ECCU's "operating protocol" is not required to safeguard national security (as is evidently the case, given that it has been published), but withholding information about the legal basis for the existence of that "investigative agency" is so required.*

*Notably, the decision to withhold information about the legal basis for ECCU appears to be unique.*

*The UK's SFO sets out on its website the legal basis for its existence.*

*Even the Secret Intelligence Service (SIS, commonly known as MI6), sets out on its website details of the legislation that governs what it does and the oversight of its operations – see [SIS | About Us](#)*

*The same is the case for the Security Service (MI5) – see [Law, oversight and ethics | MI5 - The Security Service](#)*

*This leads to the obvious question: why is the ECCU so different? If the SFO, MI6 and MI5 can all provide clear information about the legal basis for their establishment and powers, why is withholding similar information relating to the ECCU required for national security?*

*The Internal Review Panel is invited to address this question in its response, if it determines to continue to withhold the information on the basis of Article 27.*

*At present, the decision to withhold the information on the basis of Article 27 may lead to an inference that there is in fact no proper legal basis for the establishment of ECCU and/or for it carrying out criminal investigations; the perceived "threat" to national security being the revelation of this fact.*

*If this is not the case, it is clearly in the interests of Jersey's national security for the matter to be clarified, by disclosure of the requested information.*

*If the SPA is relying on a certificate signed by the Chief Minister certifying that the exemption is required to safeguard national security as conclusive evidence of that fact, the Internal Review Panel should make this clear.*

*Article 27(3) of the FOI Law provides that a person aggrieved by the decision of the Chief Minister to issue such a certificate may appeal to the Royal Court on the grounds that the Chief Minister did not have reasonable grounds for issuing the certificate.*

*Accordingly, if such a certificate is relied on, the Response should state this in order that the decision may then be challenged.*

### **Article 31**

*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).*

*Even if some of withheld information does constitute such "advice" by the Attorney General (or one of the other officials expressly named in Article 31), the Attorney General is permitted to waive such privilege.*

*The Internal Review Panel should enquire with the Attorney General whether he is willing to do so.*

*It may be considered a matter of concern if the Attorney General was not prepared to waive his privilege (to the extent it applies) in order to allow the public to understand the legal basis for the ECCU's existence.*

*In any event, even if the Attorney General declines to waive any applicable privilege, the public interest must still be considered and can nevertheless require disclosure.*

*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, for the reasons explained above, there is clear specific public interest in the requested information being disclosed. It is inimical to the public interest for an "investigative agency" to exist and operate in Jersey, whilst the legal basis for it doing so has not been explained to the public.*

*This is even more so given that the Attorney General has been stated to have "oversight" of the ECCU.*

*The result of the SPA citing Article 31 to withhold the requested information is that the Attorney General's "privilege" is effectively being used to withhold information that is necessary to hold the Attorney General publicly accountable. This is self-evidently not in the public interest.*

*In the case of both of the exemptions cited by the SPA (i.e. Articles 27 and 31), the Internal Review Panel should also consider whether such exemptions justify withholding all of the requested information, or only part of that information. It is not correct to apply exemptions in a "blanket fashion". It may be, for example, that some documents could be disclosed, with specific parts redacted."*

14. The results of the Internal Review were communicated to the Complainant on 4 October 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 Review Panel, having reviewed and discussed the identified information which is the subject of the internal review are content, in line with the initial response that:*

*i) The information is absolutely exempt under Article 27 of the Freedom of Information (Jersey) Law 2011, and*

*ii) The information is qualified exempt under Article 31 of the Freedom of Information (Jersey) Law 2011, and*

*iii) It would not be appropriate nor in the public interest to disclose some or any of the information."*

## **The Investigation**

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### **Scope of the case**

15. On 23 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 12 November 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 to provide copies of the Withheld Information.
19. The SPA responded to that letter on 9 December 2024 (having asked for an extension on 26 November 2024), providing detailed explanations as to why it considered the Art.27 and 31 exemptions had been appropriately applied in this case, but declining to provide a copy of the Withheld Information, citing National Security as its reasons for not providing a copy of such 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 2024. Thereafter further correspondence passed between the Commissioner and the SPA as set out below.

## **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) 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 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 a single document that it considered fell within the scope of the Request but has withheld it under the provisions of Art.27 and Art.31 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.

24. The Complainant identified in their original Request the SPAs that might actually hold such information *"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"*. Having reviewed the Withheld Information on 16 April 2025, the Commissioner asked the SPA to provide details of the searches it carried out to ensure that any information held within the scope of the Request would have been identified. The SPA was asked to provide contemporaneous evidence of the searches it had carried out and information about any interactions with any other SPAs that may have held information related to the Request. Specifically, the SPA was asked to provide:

*"A detailed account of the searches conducted to identify information relevant to the FOI request. This should include:*

- o The specific search terms used;*
- o The date range covered by the searches*
- o Details of any consultations undertaken with staff, and other departments in the course of identifying the relevant information.*
- o Supporting documentary evidence as available."*

25. On 30 April 2025, the SPA (via the Central Unit) replied as follows:

*"...*

- o The specific search terms used; **"ECCU MOU"***
- o The date range covered by the searches **September 2016 – date of FOI Request.***
- o Details of any consultations undertaken with staff, and other departments in the course of identifying the relevant information. **Answered in PDF attached.***
- o Supporting documentary evidence as available. **Nothing further for the search undertaken."***

26. In light of the response provided, on 7 May 2025 the Commissioner asked the SPA to explain the rationale for the search term used, date range searched and whether any contemporaneous notes had been made/kept by the other SPAs involved in responding to the Request.

27. On 16 May 2025, the SPA (via the Central Unit) explained that:

*"The subsequent search for this latest submission followed on from a discovery discussion at which the possibility of GoJ holding the ECCU MoU was discussed.*

*This document was contained in an archive folder that would not have come up through the standard cryoserver search. No other documents meeting the search terms were identified.*

*No contemporaneous note of the search was taken."*

28. This response, again, generated further question from the Commissioner on 11 June 2025, as follows:

*"Following a review of the responses provided by the SPA, we are finding difficulty in understanding the nature and extent of the searches undertaken to locate the information requested by the Requestor.*

*The SPA has indicated that no contemporaneous notes were taken during the search process. In the absence of such notes, the Commissioner must be satisfied that appropriate and reasonable searches were conducted to identify all relevant material within the scope of the FOI request.*

*Accordingly, we would be grateful if you could clarify the following points:*

- *Was the Cryoserver searched? If so, what search parameters were used? If the Cryoserver was not searched please explain why not?*
- *Which email accounts were included in the search?*
- *Were any manual searches conducted, such as reviews of physical files digital folders?*
- *When the SPA contacted "other relevant departments", as referenced in the response dated 9 December 2024, what was the nature and method of this communication?*
- *In the absence of contemporaneous notes, what evidence can the SPA provide to confirm that these departments were contacted at the time the searches were conducted?*
- *The response below states: "This document was contained in an archive folder that would not have come up through the standard Cryoserver search." Could you please clarify how the SPA became aware of the document's location in the archive folder?*

*Based on the information provided by the SPA, we are not yet satisfied that appropriate searches were conducted to identify all relevant information within the scope of the FOI request. We would therefore appreciate your clarification on the above to assist in concluding this appeal."*

29. On 20 June 2025, the SPA (via the Central Unit) replied as follows (answers in blue):

- *"Was the Cryoserver searched? If so, what search parameters were used? If the Cryoserver was not searched please explain why not? Cryoserver searches were made initially. Nothing relating to ECCU was found in that search. As previously mentioned no contemporaneous notes were made and we cannot recall the exact search criteria used.*

- Which email accounts were included in the search? Searches were made in the email account of [Redacted] and [Redacted]
- Were any manual searches conducted, such as reviews of physical files digital folders? From initial discussions it was not believed that any documentation was held on any systems other than email. Therefore no other systems were searched.
- When the SPA contacted "other relevant departments", as referenced in the response dated 9 December 2024, what was the nature and method of this communication? The request was shared via a secure sharepoint site asking the other departments to provide any information held in relation to this FOI
- In the absence of contemporaneous notes, what evidence can the SPA provide to confirm that these departments were contacted at the time the searches were conducted? We have the sharepoint message that was shared and the answer received. The Department for the Economy cannot evidence searches carried out by other SPA's
- The response below states: "This document was contained in an archive folder that would not have come up through the standard Cryoserver search." Could you please clarify how the SPA became aware of the document's location in the archive folder?

*Based on the information provided by the SPA, we are not yet satisfied that appropriate searches were conducted to identify all relevant information within the scope of the FOI request. We would therefore appreciate your clarification on the above to assist in concluding this appeal. In the previous response, it was explained that the possible awareness of this document came up following a discovery discussion. Therefore searches were carried out and the documents were discovered. It was apparent that searches using the search terms "Establishment of the ECCU or similar. Therefore, following discovery discussions the emails accounts of the two people mentioned were checked and this was when the documentation was located by [Redacted]."*

30. On 25 June 2025 the Commissioner asked for a copy of the Sharepoint messages referred to and they were provided by the SPA (via the Central Unit) later that same day. The screenshot showed three messages showing that an employee within the SPA had sent a message to colleagues at the States of Jersey Police and Justice and Home Affairs simply asking whether they had any information relevant to the Request. A response was received from States of Jersey Police simply stating that "...We only have MOUS... We don't have any info that covers the actual legal basis for ECCU". Upon further enquiry, it transpired that no separate response was received from Justice and Home Affairs and the SPA presumed that SOJP had responded on their behalf.

#### Commissioner's Decision

31. Having reviewed the evidence available, the Commissioner's view is that the SPA did not take sufficient steps to ascertain what information was held in its records at the time of the Complainant's Request. Noting the Request as articulated by the Requester, the Commissioner considers that the single search term applied by the SPA was unduly restrictive and not likely to capture the information that had been requested by the Complainant. The same can be said for the date range that was applied, the rationale for this was not explained by the SPA, despite the Commissioner's questioning in this regard.

32. Due to the passage of time, the piecemeal response to the SPA's belated enquiries during his investigation, and the complete lack of contemporaneous evidence relating to the searches conducted at the relevant time, the Commissioner cannot be satisfied that the SPA identified all the information that it holds within the scope of the Request.

33. Accordingly, the Commissioner requires the SPA to issue the Complainant with a fresh response to their Request following searches aimed at identifying all the information held within the scope of the Request. If the SPA locates information within the scope of the Request, that information should either be disclosed to the Complainant or an adequate refusal notice should be provided.
34. When carrying out the fresh searches, the Commissioner also requires the SPA to appropriately document the searches carried out and which must include, as a minimum, the following information:
  - a. Details of the systems searches (name of platforms, software, etc.)
  - b. Who carried out the searches
  - c. When the searches were carried out
  - d. What search terms were used
  - e. What results were generated (including by use of screenshots or otherwise).

### **EXEMPTIONS APPLIED**

35. The SPA sought to apply the exemptions cited at Art.27 and 31 to the Withheld Information.
36. The Commissioner viewed the Withheld Information on 7 April 2025 and does not consider that either exemption was applied correctly but this is because the document identified is, in the Commissioner's view, actually out of scope of the terms of the Request.
37. The Complainant's Request was very clearly defined asking for "*... copies of any documents setting out 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).*"
38. The Withheld Information was not, in fact, focused on the legal establishment of the ECCU and therefore out of scope of the original Request. It was therefore properly not disclosed to the Complainant.
39. Accordingly, the Commissioner has not considered it necessary to review the exemptions cited at Art.27 and Art.31 of the FOI Law.

### **The Decision**

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40. The Commissioner considers that in respect of the Withheld Information the SPA misapplied Art.27 and Art.31 as the information was actually technically out of scope. This is because it did not fall within the scope of the actual Request which was very clearly articulated.
41. However, the Commissioner cannot be satisfied that on the balance of probabilities, the SPA has identified all the information it holds within the scope of the request and so the Commissioner requires the SPA to issue the Complainant with a fresh response to their Request following searches aimed at identifying all the information held within the scope of the Request. If the SPA locates information within the scope of the Request, that information should either be disclosed to the Complainant or an adequate refusal notice should be provided. This must be done within 35 calendar days. A copy of the SPA's response must also be provided to the Commissioner's office at the same time it is sent to the Complainant.
42. Accordingly, the complainant's appeal is partially upheld.

**Right of Appeal**

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

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

Dated this 9 day of July 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.

## **27 National security**

(1) Information which does not fall within Article 26A(1) is absolutely exempt information if exemption from the obligation to disclose it under this Law is required to safeguard national security.

(2) Except as provided by paragraph (3), a certificate signed by the Chief Minister certifying that the exemption is required to safeguard national security is conclusive evidence of that fact.

(3) A person aggrieved by the decision of the Chief Minister to issue a certificate under paragraph (2) may appeal to the Royal Court on the grounds that the Chief Minister did not have reasonable grounds for issuing the certificate.

(4) The decision of the Royal Court on the appeal shall be final.

## **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.