

STATES OF JERSEY



DRAFT FREEDOM OF INFORMATION (JERSEY HERITAGE TRUST) (JERSEY) REGULATIONS 201-

**Lodged au Greffe on 14th August 2014
by the Chief Minister**

STATES GREFFE



Jersey

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REPORT

The Freedom of Information (Jersey) Law 2011 (the “Law”) repeals the provisions in the Public Records (Jersey) Law 2002 (“Public Records Law”) which make a public record held by the Trust available to the public.

Article 17 of the Law provides for Regulations to determine the manner in which a request for information that has been transferred to the Jersey Heritage Trust (“Trust”) shall be dealt with. Accordingly, these Regulations make provision for dealing with requests for public records which are transferred by a public institution under the Public Records Law.

When a request for information concerns public records transferred to the Trust by a scheduled public authority on or after the date that the Law comes into force (“commencement date”) the scheduled public authority must comply with the provisions set out in Regulation 2. The scheduled public authority must indicate to the Archivist whether such a record, or any part of such a record, contains exempt information or qualified exempt information within the meaning of the Law. The Law makes provision restricting disclosure of such information in response to a Freedom of Information request in certain circumstances. A record or part of a record which contains such information is referred to in these Regulations as an “exempt record”. Conversely, a record or part of a record which does not contain such information is referred to in these Regulations as a “non-exempt record”.

If a person makes a request to the Trust for a non-exempt record, the person is entitled to have a reasonable opportunity to examine it and to be supplied with an extract or copy of it. The Archivist can refuse to allow such rights to be exercised or place conditions on how such rights are to be exercised for specified reasons including the need to promote preservation of the record. These provisions are similar to the repealed provisions in the Public Records Law concerning access to public records by the public.

However, if the Trust receives a request for an exempt record, the Trust must pass the request to the scheduled public authority concerned within 5 working days. The scheduled public authority must then respond to the request in accordance with the Law and the Trust must make the exempt record available to it for this purpose.

In respect of public records that are transferred on or after the commencement date by a public institution which is not a scheduled public authority, the provisions in the Law concerning the rights of the public to be supplied with information do not apply to such bodies. Therefore, when such a public institution transfers a public record to the Trust under the Public Records Law, the public institution may indicate that the a

record or part of a record is to be treated as if it were a non-exempt record and, in such case, the provisions regarding access set out in Regulation 3 will apply to it. If no such indication is given and the Trust receives a request for such a record, the Trust must pass the request to the public institution within 5 working days of receiving it and the Trust must make the record available to the public institution for the purpose of responding to the request.

In respect of public records that were transferred to the Trust before the commencement date, if such a record would have been available to the public under the Public Records Law immediately before that date, such a record will be treated as if it were a non-exempt record and a person who requests such a record will have the rights set out in Regulation 3 in relation to it. However, if such a record would not have been so available and the public institution is a scheduled public authority, the record is treated as an exempt record in accordance with Regulation 4. But if such a record would not have been so available and the public institution is not a scheduled public authority, the Trust must pass the request to the public institution within 5 working days in order to allow the public institution to deal with the request and must make the record available to the public institution for this purpose.

Financial and manpower implications

There are no financial or manpower implications for the States arising from these draft Regulations.

Explanatory Note

These Regulations make provision for dealing with requests for public records which are transferred to the Jersey Heritage Trust (“Trust”) by a public institution under the Public Records (Jersey) Law 2002 (“Public Records Law”). The Freedom of Information (Jersey) Law 2011 (“FOI Law”) repeals the provisions in the Public Records Law which make a public record held by the Trust available to the public.

Regulation 1 is an interpretation provision.

Regulation 2 deals with public records transferred to the Trust under the Public Records Law by a scheduled public authority on or after the date that the FOI Law comes into force (“commencement date”). Under the FOI Law a scheduled public authority, as defined in Schedule 1 to the FOI Law, must comply with the provisions in that Law regarding requests for information by members of the public. Under *Regulation 2*, upon transfer of the record to the Trust, the scheduled public authority must indicate to the Archivist employed by the Trust whether such a record, or any part of such a record, contains exempt information or qualified exempt information (as defined in the FOI Law). The FOI Law makes provision restricting disclosure of such information in response to an FOI request in certain circumstances. A record or part of a record which contains such information is referred to in these Regulations as an “exempt record”. Conversely, a record or part of a record which does not contain such information is referred to in these Regulations as a “non-exempt record”.

Regulation 3 provides that if a person makes a request to the Trust for a non-exempt record, the person is entitled to have a reasonable opportunity to examine it and to be supplied with an extract or copy of it. (Such rights are referred to in these Regulations as “access rights”.) The Archivist can refuse to allow such rights to be exercised or place conditions on how such rights are to be exercised for specified reasons including the need to promote preservation of the record. These provisions are similar to the repealed provisions in the Public Records Law concerning access to public records by the public.

Regulation 4 provides that if the Trust receives a request for an exempt record, the Trust must pass the request to the scheduled public authority concerned within 5 working days. The scheduled public authority must then respond to the request in accordance with the FOI Law and the Trust must make the exempt record available to the scheduled public authority for this purpose.

Regulation 5 deals with public records that are transferred to the Trust on or after the commencement date by a public institution (as defined in the Public Records Law) which is not a scheduled public authority. The provisions in the FOI Law concerning the rights of the public to be supplied with information do not apply to such bodies. When such a public institution transfers a public record to the Trust under the Public Records Law, the public institution may indicate that the record or part of the record is to be treated as if it were a non-exempt record and, in such cases, the provisions regarding access set out in *Regulation 3* will apply to it. If no such indication is given and the Trust receives a request for such a record, the Trust must pass the request to the public institution within 5 working days of receiving it and the Trust must make the record available to the public institution for the purpose of enabling it to respond to the request.

Regulation 6 makes provision for records that were transferred to the Trust before the commencement date. If such a record would have been available to the public under the repealed provisions in the Public Records Law referred to above immediately

before that date, such a record will be treated as if it were a non-exempt record and a person who requests such a record will have the access rights set out in *Regulation 3* in relation to it. If such a record would not have been so available and the public institution is a scheduled public authority, the record is treated as an exempt record in accordance with *Regulation 4*. If such a record would not have been so available and the public institution is not a scheduled public authority, the Trust must pass the request to the public institution within 5 working days in order to allow the public institution to deal with the request and must make the record available to the public institution for this purpose.

Regulation 7 sets out the title of these Regulations and provides that they will come into force on the same date that the FOI Law comes into force. That Law is to come into force by an Appointed Day Act.



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Arrangement

Regulation

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Made [date to be inserted]
Coming into force [date to be inserted]

THE STATES, in pursuance of Articles 17 and 53 of the Freedom of Information (Jersey) Law 2011¹, have made the following Regulations –

1 Interpretation

- (1) In these Regulations –
- “access rights” has the meaning in Regulation 3(1);
 - “commencement date” means the date that the Freedom of Information Law comes into force;
 - “Freedom of Information Law” means the Freedom of Information (Jersey) Law 2011²;
 - “exempt record” means a record or part of a record which a public institution has indicated comprises absolutely exempt information or qualified exempt information in accordance with Regulation 2;
 - “non-exempt record” means a record or part of a record transferred to the Trust as described in Regulation 2 and in respect of which no indication has been given in accordance with Regulation 2 that the record or part of the record contains exempt or qualified exempt information;
 - “Public Records Law” means the Public Records (Jersey) Law 2002³;
 - “request” means a request that fulfils the requirements of subparagraphs (a) to (d) of Article 2(1) of the Freedom of Information Law;
 - “transferring institution” means, in relation to a public record, the public institution which transfers or transferred that record to the Trust under Article 20 of the Public Records Law.
- (2) Words and expressions used in these Regulations which are defined in the Public Records Law have the same meaning as in that Law.

2 Transfer of public records to the Trust by a scheduled public authority

- (1) If a public institution which is a scheduled public authority transfers a public record to the Trust under Article 20 of the Public Records Law on or after the commencement date, it shall indicate to the Archivist upon transfer whether the record contains absolutely exempt information or qualified exempt information.
- (2) If the record partly contains absolutely exempt information or qualified exempt information, the public institution shall indicate which part of the record contains such information.

3 Availability of non-exempt records on request

- (1) A person who makes a request to the Trust for a non-exempt record is entitled –
 - (a) to have a reasonable opportunity to examine the record, or to take an extract or copy of it, in a form appropriate to the medium of the record; and
 - (b) to be supplied with an extract or copy of the record (in a form appropriate to the medium of the record),such rights being referred to in these Regulations as “access rights”.
- (2) If a person wishes to exercise access rights in a particular form or manner, he or she may exercise those rights in that form or manner unless the Archivist refuses to allow such exercise because –
 - (a) it would interfere unreasonably with the operations of the Archivist;
 - (b) it would not be appropriate to the medium of the record; or
 - (c) it would be detrimental to the preservation of the record.
- (3) A person who is supplied with an extract or copy of a record in accordance with paragraph (1) may be required by the Archivist to pay a reasonable fee for such extract or copy.
- (4) The Archivist may make exercise of access rights subject to such conditions as he or she may determine either generally or in any particular case in order to promote the preservation of the record.
- (5) The Archivist may refuse to allow a person to exercise access rights, or cut short the exercise of such rights, if such a person does not comply with any condition under paragraph (4) to which such exercise is subject.

4 Procedure for exempt records

- (1) If a person makes a request to the Trust for an exempt record, the Trust shall pass the request to the transferring institution within 5 working days.
- (2) Upon receipt of the request, the transferring institution shall respond to the request in accordance with the Freedom of Information Law as if –
 - (a) the request had been made to it directly;

- (b) the date of the request to it was the date that the request was passed to it by the Trust;
 - (c) where appropriate, references in that Law to whether or not the authority holds information included the holding of the exempt record by the Trust.
- (3) The Trust shall make the exempt record in its original form available to the transferring institution in order to enable it to respond to the request.

5 Transfer of public records to the Trust by other public institutions

- (1) If a public institution which is not a scheduled public authority transfers a public record to the Trust under Article 20 of the Public Records Law on or after the commencement date, the public institution may indicate to the Archivist that the record, or part of the record, may be treated as if it were a non-exempt record.
- (2) If a transferring institution makes an indication as described in paragraph (1), a person who makes a request to the Trust for that record shall be entitled to exercise access rights in respect of that record, or part of that record, in accordance with Regulation 3.
- (3) If a transferring institution does not make an indication as described in paragraph (1) and a person makes a request to the Trust for that record, the Trust shall –
- (a) pass the request to the transferring institution within 5 working days of receiving the request; and
 - (b) make the record, or part of the record, available to the transferring institution in its original form in order to enable the transferring institution to respond to the request.

6 Public records transferred to the Trust before the commencement date

- (1) This Regulation applies in relation to a public record that is transferred to the Trust under Article 20 of the Public Records Law by a public institution before the commencement date.
- (2) If, immediately before the commencement date –
- (a) such a public record or part of a public record would have been available for public access under Part 5 of the Public Records Law; and
 - (b) a person makes a request to the Trust for that record,
- such record or part of the record will be treated as if it were a non-exempt record and the person shall be entitled to exercise access rights in respect of that record or part of the record in accordance with Regulation 3.
- (3) If –
- (a) immediately before the commencement date, such a public record or part of a public record would not have been available for public access under Part 5 of the Public Records Law; and

- (b) the transferring institution is a scheduled public authority and a person makes a request to the Trust for that record,

such record or part of record shall be treated as if it were an exempt record and the procedure in Regulation 4 shall apply to the request.

- (4) If –

- (a) immediately before the commencement date, such a public record or part of a public record would not have been available for public access under Part 5 of the Public Records Law; and

- (b) the transferring institution is not a scheduled public authority and a person makes a request to the Trust for that record,

the Trust shall pass the request to the transferring institution within 5 working days of receiving the request and the Trust shall make the record, or part of the record, available to the transferring institution in its original form in order to enable the transferring institution to respond to the request.

7 Citation and commencement

These Regulations may be cited as the Freedom of Information (Jersey Heritage Trust) (Jersey) Regulations 201- and shall come into force on the same date that the Freedom of Information (Jersey) Law 2011⁴ comes into force.

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- ¹ *L.17/2011*
² *L.17/2011*
³ *chapter 15.580*
⁴ *L.17/2011*