

STATES OF JERSEY



FREEDOM OF INFORMATION (JERSEY) LAW: SECOND CONSULTATION

**Presented to the States on 18th June 2007
by the Privileges and Procedures Committee**

STATES GREFFE

REPORT

On 6th July 2005, the States agreed by 31 votes to 17 to request the Privileges and Procedures Committee to bring forward for approval the necessary draft legislation to give effect to the decision that the existing Code of Practice on Public Access to Official Information should be replaced by a Law, to be known as the Freedom of Information (Jersey) Law 200-

Members will be aware that work has been continuing on the draft Freedom of Information Law, and on 26th April 2006 a consultation document (R.33/2006) was presented to the States. The deadline for responses to the consultation was June 2006, with a view to an early debate. The Committee requested the Corporate Services Scrutiny Panel to consider the financial and manpower consequences of the proposed Law in response to a request from the Council of Ministers that the full resource implications of the introduction of the Law be investigated by an expert following concerns that this might be considerable. The Committee believed that this review would fall within the remit of the Corporate Services Scrutiny Panel in accordance with Standing Order 136(c), and asked whether it would be prepared to review the draft Law.

Following consideration of the responses and further study of the draft Law, the Committee decided to request that a simpler version of the Law be prepared in response to concerns raised. Given the decision that a simpler Law would be more appropriate, the request to the Corporate Services Scrutiny Panel was left in abeyance. The revised draft Law was received by the Privileges and Procedures Committee on 10th January 2007.

Senator S. Syvret was the Committee representative concerned with FOI issues at that time, and he reviewed the proposed exemptions in the revised draft Law and raised a number of queries. These were reviewed by the Assistant Law Draftsman concerned and presented to the Committee together with associated documents on 11th April 2007.

The Committee approved the revised draft and agreed to pursue the request of the Council of Ministers that the full resource implications be investigated. The Deputy of St. Peter, as a member of PPC and of the Panel, referred the Committee's request to a Panel meeting for consideration. There was initial concern that the Panel was fully committed and unable to undertake a review at this time, but following further consultation the Panel agreed on 7th June 2007 that it would be in the public interest to undertake a focussed review of the resource implications of the draft Law with a view to informing the States' decision on this matter. The Panel agreed to advise the Committee that this matter would be covered in the first quarter of 2008.

The Committee is of the view that it is important to obtain the information which the Council of Ministers and members require in relation to the financial and manpower consequences of the Law prior to debate, and although the Committee would welcome an earlier start on this work, it fully appreciates that the Panel has a significant programme of work and is unable to include this in its programme at this time. It is therefore prepared to wait for the report of the Panel in the early part of 2008.

In the meantime, the Committee would like to seek any further comments from members, officers and the public in relation to the revised draft Law, which it will share with the Panel to assist it in its review.

Derek Gray
Chairman, Privileges and Procedures Committee



Jersey

DRAFT FREEDOM OF INFORMATION (JERSEY) LAW 200-

Explanatory Note

With a few exemptions, this Law will give people the right to be supplied with any information held by a public authority.

The exemptions are either absolute exemptions, where the public authority may refuse to supply the information, or qualified exemptions, where the public authority must supply the information unless it is satisfied that the public interest in supplying the information is outweighed by the public interest in not doing so.

In either case the public authority is still free to supply the information if it wants to do so and is not otherwise prohibited from doing so.

PART 1 deals with interpretation.

Article 1 defines certain words and phrases used in the Law, in particular “public authority”, which is widely defined.

PART 2 sets out the general right of access a person has to information held by a public authority and how access may be obtained.

Article 2 provides the general right of a person to be supplied with information in the possession of a public authority, subject to specified exemptions.

Article 3 requires a public authority to help a person who wants to make an application to it for information.

Article 4 allows a public authority to ask for further details about the information requested.

Article 5 provides that a public authority may charge a fee for supplying information but need not do so.

Article 6 specifies the time in which a public authority must comply with a request for information.

Article 7 sets out the way in which a public authority may provide the information requested.

Article 8 allows a public authority not to comply with vexatious requests - normally those designed solely to cause administrative difficulty or inconvenience.

Article 9 allows a public authority not to comply with repeated requests.

Article 10 allows Regulations to be made to deal with the situation where a requested record of a public authority has been transferred to the Jersey Heritage Trust.

Article 11 allows Regulations to be made prescribing the action a public authority must take if it decides to refuse a request for information.

Article 12 allows Regulations to be made requiring public authorities to adopt publication schemes.

Article 13 put a time limit on all exemptions.

PART 3 deals with information that is absolutely exempt information.

Article 14 set out the general rule that a public authority may refuse to supply information specified in the Part.

Article 15 exempts information that is reasonably accessible by other means (e.g. by purchase at the States’

bookshop).

Article 16 exempts information where its disclosure is otherwise prohibited by legislation, a Community obligation or court action.

Article 17 exempts information provided in confidence where its disclosure would be actionable.

Article 18 exempts information needed to safeguard national security. The Chief Minister may issue a certificate that is conclusive evidence that this provision applies to specified information. The justification for the issue of the certificate can be challenged in the Royal Court (*see Article 42*).

Article 19 exempts information which, if disclosed, would infringe the privileges of the States Assembly.

Article 20 exempts information that may otherwise be obtained under Rules of Court.

Article 21 exempts personal information that may otherwise be obtained under the Data Protection (Jersey) Law 2005.

PART 4 deals with information that is qualified exempt information.

Article 22 makes it clear that a public authority must supply information specified in this Part unless it is satisfied, in all the circumstances, that the public interest in supplying the information is outweighed by the public interest in not doing so.

Article 23 gives communications with Her Majesty qualified exemption.

Article 24 gives information that has legal professional privilege qualified exemption.

Article 25 gives trade secrets and information that could prejudice commercial interests qualified exemption.

Article 26 gives to information that could prejudice the economic or financial interests of Jersey qualified exemption.

Article 27 gives, for a finite time, information used to formulate States policy qualified exemption. The term "States' policy" means a decision made or a policy adopted by the Council of Minister, a Minister or a person to whom a Minister has delegated a function.

Article 28 gives audit information qualified exemption.

Article 29 gives information qualified exemption if its disclosure could endanger the physical or mental health of a person or a person's safety.

Article 30 gives information qualified exemption if its disclosure could prejudice ongoing pay and condition negotiations between a public authority and its employees.

Article 31 gives advice given by Law Officers qualified exemption.

Article 32 gives information qualified exemption if its disclosure would prejudice the defence of the British Islands.

Article 33 gives information qualified exemption if its disclosure would prejudice international relations.

Article 34 gives information qualified exemption if its disclosure would prejudice law enforcement.

PART 5 deals with the Information Commissioner and the Information Tribunal.

Article 35 and Schedule 1 make the present Data Protection Commissioner and the Data Protection Tribunal into the Information Commissioner and the Information Tribunal for both the Data Protection Law and the Freedom on Information Law.

Article 36 sets out the general functions of the Information Commissioner under the Freedom of Information Law.

Article 37 requires the Information Commissioner, in consultation with the Privileges and Procedures Committee, to prepare an annual report, which the Committee will lay before the States Assembly.

Article 38 gives an applicant for information a right to appeal against any action taken by a public authority in respect of the application.

Article 39 provides a right of appeal to the Information Tribunal against a decision of the Information Commissioner.

Article 40 provides how the Tribunal must deal with appeals.

PART 5 provides for miscellaneous and supplemental provisions.

Article 41 and Schedule 2 provide for consequential amendment to other legislation.

Article 42 provides for an appeal to the Royal Court against a certificate by the Chief Minister that, on national security grounds, information need not be supplied.

Article 43 allows the States to make Regulations to amend other legislation that restricts access to information held by public authorities.

Article 44 makes it an offence to alter information after it has been requested with the intent of preventing its disclosure.

Article 45 saves any existing power a public authority may have to disclose information.

Article 46 provides that defamatory information supplied by a public authority on a request made under the Law does not make the authority liable for any civil action against it.

Article 47 provides that each administration of the States is to be treated as a separate entity.

Article 48 exempts the States Assembly and any associated bodies and each administration of the States from prosecution under the Law.

Article 49 provides for the citation of the Law and for it to come into force 28 days after it is registered.



Jersey

DRAFT FREEDOM OF INFORMATION (JERSEY) LAW 200-

Arrangement

Article

PART 1

INTERPRETATION

1 Interpretation

PART 2

ACCESS TO INFORMATION HELD BY PUBLIC AUTHORITIES

2 General right of access to information held by public authorities

3 Duty to provide advice and assistance

4 Public Authority may request additional details

5 Fees

6 Time for compliance with request

7 Means of supplying information

8 Vexatious requests

9 Repeated requests

10 Special provisions relating to public records transferred to The Jersey Heritage Trust

11 Refusal of requests

12 Publication schemes

13 Removal of exemptions by effluxion of time

PART 3

ABSOLUTELY EXEMPT INFORMATION

14 Information a public authority may refuse to supply

15 Information accessible to applicant by other means

16 Other prohibitions on disclosure

17 Information provided in confidence

18 National security

19 States Assembly privileges

20 Court information

21 Personal information

PART 4

QUALIFIED EXEMPT INFORMATION

22 Primary duty of public authority to supply information

23 Communications with Her Majesty etc. and honours

<u>24</u>	<u>Legal professional privilege</u>
<u>25</u>	<u>Commercial interests</u>
<u>26</u>	<u>The economy</u>
<u>27</u>	<u>Formulation of States policies and decisions</u>
<u>28</u>	<u>Audit functions</u>
<u>29</u>	<u>Health and safety</u>
<u>30</u>	<u>Employment</u>
<u>31</u>	<u>Advice by a Law Officer</u>
<u>32</u>	<u>Defence</u>
<u>33</u>	<u>International relations</u>
<u>34</u>	<u>Law enforcement</u>

PART 5

THE INFORMATION COMMISSIONER AND THE INFORMATION TRIBUNAL

<u>35</u>	<u>The Information Commissioner and the Information Tribunal</u>
<u>36</u>	<u>General functions of the Information Commissioner</u>
<u>37</u>	<u>Annual report of Information Commissioner</u>
<u>38</u>	<u>Application for decision by the Information Commissioner</u>
<u>39</u>	<u>Appeals against decision of the Information Commissioner</u>
<u>40</u>	<u>Appeal proceedings</u>

PART 6

MISCELLANEOUS AND SUPPLEMENTAL

<u>41</u>	<u>Amendments to other enactments</u>
<u>42</u>	<u>Appeals against national security certificate</u>
<u>43</u>	<u>Power to amend or repeal enactments prohibiting disclosure of information</u>
<u>44</u>	<u>Offence of altering, etc. records with intent to prevent disclosure</u>
<u>45</u>	<u>Saving of existing powers</u>
<u>46</u>	<u>Defamation</u>
<u>47</u>	<u>Application to the administrations of the States</u>
<u>48</u>	<u>States exempt from criminal liability</u>
<u>49</u>	<u>Citation and commencement</u>

SCHEDULE 1

PROVISIONS CONSEQUENT ON ARTICLE 35(1) AND (2)

SCHEDULE 2

ENACTMENTS AMENDED

<u>1</u>	<u>Data Protection (Jersey) Law 2005</u>
<u>2</u>	<u>Data Protection (Appeals) (Jersey) Regulations 2006</u>
<u>3</u>	<u>Data Protection (Credit Reference Agency) (Jersey) Regulations 2005</u>
<u>4</u>	<u>Lloyds TSB (Jersey) Law 1997</u>
<u>5</u>	<u>Public Records (Jersey) Law 2002</u>
<u>6</u>	<u>Royal Bank of Canada (Jersey) Law 2000</u>



Jersey

DRAFT FREEDOM OF INFORMATION (JERSEY) LAW 200-

A LAW to make provision for the disclosure of information held by public authorities; and for connected purposes.

Adopted by the States [date to be inserted]

Sanctioned by Order of Her Majesty in Council [date to be inserted]

Registered by the Royal Court [date to be inserted]

THE STATES, subject to the sanction of Her Most Excellent Majesty in Council, have adopted the following Law –

PART 1

INTERPRETATION

1 Interpretation

- (1) In this Law, “information” means information recorded in any form.
- (2) In this Law, “public authority” means –
 - (a) the States Assembly;
 - (b) a minister;
 - (c) a committee or other body established by resolution of the States or by or in accordance with the standing orders of the States Assembly;
 - (d) a Department referred to in Article 1 of the Departments of the Judiciary and the Legislature (Jersey) Law 1965;
 - (e) an administration of the States;
 - (f) a body corporate or a corporation sole established by the States by an enactment;
 - (g) the States of Jersey Police Force;
 - (h) a corporation owned by the States
 - (i) A corporation in which the States have a controlling interest;
 - (j) each parish.
- (3) The States may amend paragraph (2) by Regulations.
- (4) In this Law, information is held by a public authority if –
 - (a) it is held by the authority, otherwise than on behalf of another person; or
 - (b) it is held by another person on behalf of the authority.
- (5) In this Law, “request for information” means a request for information made under this Law that –

- (a) is in writing;
 - (b) states the name of the applicant and an address for correspondence; and
 - (c) describes in adequate detail the information requested.
- (6) In this Law, a request for information is to be taken as made in writing if it –
- (d) is transmitted by electronic means;
 - (e) is received in legible form; and
 - (f) is capable of being used for subsequent reference.
- (7) In this Law, the information held at the time when the request is received is the information that is to be taken to have been requested.
- (8) However, account may be taken of any amendment or deletion made between the time when the request for the information is received and the time when it is to be communicated but only if the amendment or deletion would have been made regardless of the receipt of the request.
- (9) In this Law a disclosure of information means a disclosure of the information under this Law.

PART 2

ACCESS TO INFORMATION HELD BY PUBLIC AUTHORITIES

2 General right of access to information held by public authorities

- (1) A person who makes a request for information held by a public authority has a general right to be supplied with that information.
- (2) However, the public authority may refuse to supply the information if this Law states that the information –
 - (a) is absolutely exempt information; or
 - (b) is qualified exempt information.
- (3) In the case of qualified exempt information, a public authority must usually supply the information but may refuse to do so in the circumstances set out in Article 22(3) (public interest).
- (4) Nothing in this Article is to be taken as prohibiting a public authority from supplying information it is requested to supply.

3 Duty to provide advice and assistance

A public authority must make every reasonable effort to ensure that a person who makes, or wishes to make a request to it for information is supplied with sufficient advice and assistance to enable the person to do so.

4 Public Authority may request additional details

A public authority is not required to supply information that it has been requested to supply if –

- (a) it reasonably requires further details of the information in order to identify and locate it;
- (b) it has informed the applicant of the requirement; and
- (c) the applicant has failed to supply the details.

5 Fees

- (1) A public authority to which a request for information has been made may, within the period for

complying with the request, give the applicant a written notice that states that a fee of an amount specified in the notice will be charged by the authority if it complies with the request.

- (2) The public authority need not comply with the request until the fee is paid.
- (3) A public authority need not comply with a request for information if it estimates that the cost of doing so would exceed such amount as is prescribed by Regulations.
- (4) If –
 - (a) a request is made to a public authority for information; and
 - (b) the public authority is not required to comply with the request by virtue of paragraph (3), the public authority may nevertheless do so on payment of a fee determined by the public authority.
- (5) A fee imposed under this Article –
 - (a) must be determined by the public authority in the manner prescribed by Regulations; but
 - (b) where provision is made by or under another enactment as to the way in which it is to be determined, must be determined in that way.
- (6) Regulations made for the purpose of paragraph (5)(a) may, in particular, provide–
 - (a) that no fee is to be payable in cases prescribed by the Regulations; and
 - (b) that any fee is not to exceed such maximum as may be specified in, or determined in accordance with, the Regulations.
- (7) Regulations made for the purpose of paragraph (3) may also provide that, in such circumstances as the Regulations prescribe, where 2 or more requests for information are made to a public authority –
 - (a) by one person; or
 - (b) by different persons who appear to the public authority to be acting in concert or in pursuance of a campaign,the estimated cost of complying with any of the requests is to be taken to be the estimated total cost of complying with all of them.
- (8) A public authority may waive the whole or any part of a fee if it considers it appropriate to do so.
- (9) Regulations made for the purposes of this Article may create offences and impose penalties for the provision of false or misleading information in connection with an application for information.

6 Time for compliance with request

- (1) A public authority must supply requested information promptly and, in any event, not later than –
 - (a) the end of the period of 20 working day following the day on which the public authority received the request; but
 - (b) if another period is prescribed by Regulations, not later than the end of that period.
- (2) However, the period mentioned in paragraph (1) does not start to run–
 - (a) if the public authority has informed the applicant that a fee is payable - until the fee is paid; or
 - (b) if the public authority has sought details of the information requested - until the details are supplied.
- (3) If a public authority fails to comply with a request for information –
 - (a) within the period for complying with the request mentioned in paragraph (1); or
 - (b) within such further period as the applicant may allow,the applicant may, for the purpose of Article 38(1)(b), treat the failure as a refusal by the public authority to supply the information requested.
- (4) In this Article “working day” means any 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.

7 Means of supplying information

A public authority may comply with a request for information by supplying it by any reasonable means.

8 Vexatious requests

- (1) A public authority need not comply with a request for information if it considers the request to be vexatious.
- (2) A request is not vexatious simply because the intention of the applicant is to obtain information –
 - (a) to embarrass the provider or some other public authority; or
 - (b) for a political purpose.
- (3) 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 a bad or illegitimate reason, which may include a desire to cause administrative difficulty or inconvenience.

9 Repeated requests

- (1) This Article applies if –
 - (a) an applicant has previously made a request for information to a public authority that it has complied with; and
 - (b) the applicant makes a request for information that is identical or substantially similar.
- (2) The public authority need not comply with the request unless a reasonable interval has elapsed between compliance with the previous request and the making of the current request.

10 Special provisions relating to public records transferred to The Jersey Heritage Trust

An application for information that has been transferred by a public authority to The Jersey Heritage Trust shall be dealt with in the manner prescribed by Regulations.

11 Refusal of requests

A refusal of a request for information must be dealt with by a public authority in the manner prescribed by Regulations.

12 Publication schemes

Regulations may require public authorities to adopt and maintain schemes that require them to publish information.

13 Removal of exemptions by effluxion of time

- (1) Information mentioned in –
 - (a) Article 19 (States Assembly privileges);

- (b) Article 20 (court records);
- (c) Article 23 (communications with Her Majesty);
- (d) Article 24 (legal professional privilege);
- (e) Article 25 (commercial interests);
- (f) Article 26 (the economy);
- (g) Article 27 (formulation of States policy);
- (h) Article 28 (audit functions); or
- (i) Article 30 (employment),

ceases to be exempt information at the end of the period of 30 years beginning with the year following that in which the record containing the information was created.

- (2) Information that would otherwise be exempt information under this Law ceases to be exempt information after the end of the period of 100 years beginning with the year following that in which the record containing the information was created.
- (3) In this Article –
 - (a) records created at different dates that are kept together in one file or other assembly for administrative purposes are to be treated as having been created when the latest of those records was created;
 - (b) “year” means a calendar year.

PART 3

ABSOLUTELY EXEMPT INFORMATION

14 Information a public authority may refuse to supply

- (1) The information mentioned in this Part is absolutely exempt information.
- (2) Accordingly, a public authority may refuse to comply with a request made to it under this Law to supply the information.

15 Information accessible to applicant by other means

Information is absolutely exempt information if it is reasonably accessible to the applicant, whether free of charge or on payment, otherwise than under this Law.

16 Other prohibitions on disclosure

Information is absolutely exempt information if its disclosure by the public authority holding it –

- (a) is prohibited by or under an enactment;
- (b) is incompatible with a Community obligation that applies to Jersey; or
- (c) would constitute or be punishable as a contempt of court.

17 Information provided in confidence

Information is absolutely exempt information if –

- (a) it was obtained by the public authority from another person (including another public authority); and

- (b) the disclosure of the information to the public by the public authority holding it would constitute a breach of confidence actionable by that or any other person.

18 National security

- (1) Information is absolutely exempt information if exemption from the obligation to disclose it under this Law is required to safeguard national security.
- (2) A public authority is not required to confirm or deny that it has information to which paragraph (1) applies.
- (3) Except as provided by Article 42 (appeal to the Royal Court), a certificate signed by the Chief Minister certifying that exemption is required to safeguard national security is conclusive evidence of that fact.

19 States Assembly privileges

- (1) Information is absolutely exempt information if exemption from the obligation to disclose it under this Law is required to avoid an infringement of the privileges of the States Assembly.
- (2) A certificate signed by the Greffier of the States certifying that exemption is required to avoid an infringement of the privileges of the States Assembly is conclusive evidence of that fact.

20 Court information

- (1) Information is absolutely exempt information if it is held by a public authority only by virtue of being contained in a document –
 - (a) filed with, or otherwise placed in the custody of, a court; or
 - (b) served upon, or by, a public authority,in proceedings in a particular cause or matter.
- (2) Information is absolutely exempt information if it is held by a public authority only by virtue of being contained in a document created by –
 - (a) a court; or
 - (b) a member of the administrative staff of a court,in proceedings in a particular cause or matter.
- (3) Information is absolutely exempt information if it is held by a public authority only by virtue of being contained in a document –
 - (a) placed in the custody of; or
 - (b) created by,a person conducting an inquiry or arbitration, for the purposes of the inquiry or arbitration.
- (4) In this Article –
 - “court” includes a tribunal or body exercising the judicial power of the States of Jersey;
 - “proceedings in a particular cause or matter” includes an inquest or post-mortem examination;
 - “inquiry” means an inquiry or a hearing held under a provision contained in, or made under, an enactment;
 - “arbitration” means any arbitration to which Part 2 of the Arbitration (Jersey) Law 1998 applies.

21 Personal information

- (1) Information is absolutely exempt information if it constitutes personal data of which the applicant is the data subject.
- (2) Information is also absolutely exempt information if –
 - (a) it constitutes personal data that do not fall within paragraph (1); and
 - (b) either the first condition mentioned in paragraph (3) or the second condition mentioned in paragraph (4) is satisfied.
- (3) The first condition is –
 - (a) where the information falls within any of paragraphs (a) to (d) of the definition of “data” in Article 1(1) of the Data Protection (Jersey) Law 2005 that the disclosure of the information to a member of the public would contravene any of the data protection principles or Article 10 of that Law (right to prevent processing likely to cause damage or distress); and
 - (b) in any other case - that the disclosure of the information to a member of the public would contravene any of the data protection principles if the exemptions in Article 33A(1) of the Data Protection (Jersey) Law 2005 (which relate to manual data held by public authorities) were disregarded.
- (4) The second condition is that by virtue of any provision of Part 4 of the Data Protection (Jersey) Law 2005 the information is exempt from Article 7(2)(a) of that Law (data subject’s right of access to personal data).
- (5) Words and phrases used in this Article and defined in the Data Protection (Jersey) Law 2005 have the same meaning in this Article as they have in that Law.

PART 4

QUALIFIED EXEMPT INFORMATION

22 Primary duty of public authority to supply information

- (1) The information mentioned in this Part is qualified exempt information.
- (2) Accordingly, the primary duty of a public authority is to comply with a request made to it to supply the information.
- (3) However, it may refuse to do so if it is satisfied that, in all the circumstances, the public interest in supplying the information is outweighed by the public interest in not doing so.

23 Communications with Her Majesty etc. and honours

Information is qualified exempt information if it relates to –

- (a) communications with Her Majesty, with any other member of the Royal Family or with the Royal Household; or
- (b) the conferring by the Crown of an honour or dignity.

24 Legal professional privilege

Information is qualified exempt information if it is information in respect of which a claim to legal professional privilege could be maintained in legal proceedings.

25 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 public authority holding it).

26 The economy

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

- (a) the economic interests of Jersey; or
- (b) the financial interests of the States of Jersey.

27 Formulation of States policies and decisions

- (1) Information is qualified exempt information if it relates to the formulation or development of States' policy.
- (2) The "formulation or development of States' policy" means the formulation or the development of information intended or designed to facilitate the making of a decision or the adoption of a policy by –
 - (a) the Council of Ministers;
 - (b) a Minister; or
 - (c) a person to whom a function of a Minister has been delegated.
- (3) Once a decision has been made or a policy adopted, information used to provide an informed background to the taking of the decision or the adoption of the policy is not qualified exempt information by virtue of this Article.

28 Audit functions

- (1) Information is qualified exempt information if it is held by a public authority to which this Article applies if its disclosure would, or would be likely to, prejudice the exercise of any of the authority's functions in relation to any of the matters referred to in paragraph (2)(a) or (b).
- (2) This Article applies to a public authority that has functions in relation to –
 - (a) the audit of the accounts of other public authorities; or
 - (b) the examination of the economy, efficiency and effectiveness with which other public authorities use their resources in discharging their functions.

29 Health and safety

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

- (a) endanger the physical or mental health of an individual; or
- (b) endanger the safety of an individual.

30 Employment

Information is qualified exempt information if its disclosure would, or would be likely to prejudice pay and conditions negotiations that are being held between a public authority and its employees.

31 Advice by a Law Officer

Information is qualified exempt information if it relates to the provision of advice by a Law Officer.

32 Defence

- (1) Information is qualified exempt information if its disclosure would, or would be likely to, prejudice –
 - (a) the defence of the British Islands or any of them; or
 - (b) the capability, effectiveness or security of any relevant forces.
- (2) In paragraph (1)(b) “relevant forces” means –
 - (a) the armed forces of the Crown; and
 - (b) any forces co-operating with those forces, or any part of any of those forces.

33 International relations

- (1) Information is qualified exempt information if its disclosure would, or would be likely to, prejudice relations between Jersey and –
 - (a) the United Kingdom;
 - (b) any other State;
 - (c) an international organisation; or
 - (d) an international court.
- (2) Information is qualified exempt information if its disclosure would, or would be likely to, prejudice –
 - (a) any Jersey interests abroad; or
 - (b) the promotion or protection by Jersey of any such interest.
- (3) Information is also qualified exempt information if it is confidential information obtained from –
 - (a) a State other than Jersey;
 - (b) an international organisation; or
 - (c) an international court.
- (4) In this Article, information obtained from a State, organisation or court is confidential while –
 - (a) the terms on which it was obtained require it to be held in confidence; or
 - (b) the circumstances in which it was obtained make it reasonable for the State, organisation or court to expect that it will be so held.
- (5) In this Article –

“international court” means an international court that is not an international organisation and that is established –

 - (a) by a resolution of an international organization of which the United Kingdom is a member; or
 - (b) by an international agreement to which the United Kingdom is a party;

“international organization” means an international organization whose members include any 2 or more States, or any organ of such an organization;

“State” includes the government of a State and any organ of its government, and references to a State other than Jersey include references to a territory of the United Kingdom outside the United Kingdom.

34 Law enforcement

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

- (a) the prevention or detection of crime;
- (b) the apprehension or prosecution of offenders;
- (c) the administration of justice;
- (d) the assessment or collection of a tax or duty or of an imposition of a similar nature;
- (e) the operation of immigration controls;
- (f) the maintenance of security and good order in prisons or in other institutions where persons are lawfully detained.

PART 5

THE INFORMATION COMMISSIONER AND THE INFORMATION TRIBUNAL

35 The Information Commissioner and the Information Tribunal

- (1) The Data Protection Commissioner is to be known instead as the Information Commissioner.
- (2) The Data Protection Tribunal is to be known instead as the Information Tribunal.
- (3) Schedule 1 has effect.

36 General functions of the Information Commissioner

- (1) The Information Commissioner must encourage public authorities to follow good practice in their observance of this Law.
- (2) The Information Commissioner must provide the public with information about this Law.

37 Annual report of Information Commissioner

- (1) The Information Commissioner must, each year, in consultation with the Privileges and Procedures Committee, prepare a general report on the exercise by the Commissioner of his or her functions under this Law during the preceding year.
- (2) The Committee must lay the report before the States Assembly.

38 Application for decision by the Information Commissioner

- (1) A person may apply to the Information Commissioner for a decision on –
 - (a) whether a request for information has been dealt with in accordance with Part 2 or Regulations made under that Part; or
 - (b) whether a refusal to supply information, other than absolutely exempt information, was justified.
- (2) The Information Commissioner must make the decision as soon as practicable.
- (3) However, the Information Commissioner need not do so if the Commissioner is satisfied that –
 - (a) the applicant has not exhausted any complaints procedure provided by relevant the public authority;

- (b) there has been undue delay in applying;
 - (c) the application is frivolous or vexatious; or
 - (d) the application has been withdrawn, abandoned or previously determined by the Commissioner.
- (4) The Information Commissioner must –
- (a) if paragraph (3) applies- notify the applicant that no decision will be made and the grounds for not doing so; or
 - (b) in any other case - serve notice of the Commissioner’s decision on the applicant and the public authority.
- (5) Paragraph (6) applies if the Information Commissioner decides that a public authority –
- (a) has failed to comply with a requirement of Part 2 or Regulations made under that Part; or
 - (b) was not justified in refusing to supply any information requested.
- (6) The Commissioner must specify in the notice served under paragraph (4)(b)–
- (a) the Commissioner’s reasons for the decision;
 - (b) any steps to be taken by the public authority to comply with the requirement or to supply the information;
 - (c) the period within which those steps must be taken; and
 - (d) the right of appeal to the Information Tribunal conferred by Article 39.
- (7) The period mentioned in paragraph (6)(c) must not expire before the end of the period within which an appeal to the Information Tribunal can be brought.
- (8) If an appeal to the Information Tribunal is brought, no step that is affected by the appeal need be taken pending the determination or withdrawal of the appeal.
- (9) If a public authority fails to take any steps it is required to take by virtue of a notice served on it under paragraph (4)(b), the Information Commissioner may certify in writing to the Royal Court that the public authority has failed to comply with that notice.
- (10) The Court may inquire into the matter and may deal with the authority as if it had committed a contempt of court after hearing –
- (a) any witness who may be produced against or on behalf of the public authority; and
 - (b) any statement that may be offered in defence.
- (11) This Article does not confer any right of action in civil proceedings in respect of a failure to comply with a duty imposed by or under this Law.

39 Appeals against decision of the Information Commissioner

- (1) If the Information Commissioner has made a decision in respect of a complaint against a public authority, the person who made the complaint or the public authority may appeal to the Information Tribunal against the decision.
- (2) If on the appeal the Information Tribunal considers –
 - (a) that the decision is not in accordance with this Law; or
 - (b) to the extent that the decision involved an exercise of discretion by the Information Commissioner, that the Commissioner ought to have exercised the discretion differently,
 the Information Tribunal shall allow the appeal.
- (3) In any other case the Information Tribunal shall dismiss the appeal.
- (4) On the appeal, the Information Tribunal may review a finding of fact on which the decision was based.

- (5) Any party to an appeal to the Information Tribunal may appeal from the decision of the Information Tribunal on a point of law to the Royal Court.

40 Appeal proceedings

Schedule 6 to the Data Protection (Jersey) Law 2005 has effect (so far as applicable) in relation to appeal under Article 39.

PART 6

MISCELLANEOUS AND SUPPLEMENTAL

41 Amendments to other enactments

- (1) The enactments mentioned in Schedule 2 are amended as set out in that Schedule.
- (2) The States may, by Regulations, make further consequential amendments to other enactments.

42 Appeals against national security certificate

- (1) This Article applies in respect of a certificate under Article 18(3).
- (2) An applicant whose request for information is affected by the issue of the certificate may appeal to the Royal Court against the certificate.
- (3) If on the appeal the Royal Court finds that, applying the principles applied by the Court on an application for judicial review, the Chief Minister did not have reasonable grounds for issuing the certificate, the Court may allow the appeal and quash the certificate.

43 Power to amend or repeal enactments prohibiting disclosure of information

- (1) This Article applies to an enactment that prohibits the disclosure of information held by a public authority that, by virtue of Article 16, is capable of preventing the disclosure of information under Part 2.
- (2) The States may by Regulations amend the enactment to remove or relax the prohibition.
- (3) In paragraph (1)–
“enactment” means any enactment whether passed before or after this Law;
“information” includes unrecorded information.
- (4) Regulations made under this Article may –
 - (a) make such modifications of enactments as are consequential upon, or incidental to, the amendment of the enactment containing the prohibition;
 - (b) contain transitional provisions and savings.

44 Offence of altering, etc. records with intent to prevent disclosure

- (1) If –
 - (a) a request for information has been made to a public authority; and
 - (b) under Part 2 of this Law or Article 7 of the Data Protection (Jersey) Law 2005, the applicant would have been entitled to be supplied with the information,a person to whom this paragraph applies is guilty of an offence if he or she alters, defaces, blocks,

erases, destroys or conceals a record held by the public authority, with the intention of preventing the authority from supplying the information to the applicant.

- (2) Paragraph (1) applies to the public authority and to a person who is employed by, is an officer of, or is subject to the direction of, the public authority.
- (3) A person guilty of an offence under this Article is liable to a fine.
- (4) Proceedings for an offence under this Article shall not be instituted except by or with the consent of the Attorney General.

45 Saving of existing powers

Nothing in this Law limits the powers of a public authority to disclose information held by it.

46 Defamation

If information supplied by a public authority to an applicant under this Law was supplied to the public authority by a third person, the publication to the applicant of defamatory matter contained in the information is privileged unless the publication is shown to have been made with malice.

47 Application to the administrations of the States

- (1) In this Law each administration of the States is to be treated as a person separate from any other administration of the States.
- (2) However, paragraph (1) does not enable an administration of the States to claim for the purposes of Article 17(b) that the disclosure of information by it would constitute a breach of confidence actionable by another administration of the States.

48 States exempt from criminal liability

- (1) None of the following is liable to prosecution under this Law –
 - (a) the States Assembly;
 - (b) a committee or other body established by the States or by or in accordance with the standing orders of the States Assembly;
 - (c) an administration of the States.
- (5) However, Article 45 applies to a person acting on behalf of or employed by a body mentioned in paragraph (1) as it applies to any other person.

49 Citation and commencement

- (1) This Law may be cited as the Freedom of Information (Jersey) Law 200.
- (2) It shall come into force 28 days after its registration.

SCHEDULE 1

(Article 35(3))

PROVISIONS CONSEQUENT ON ARTICLE 35(1) AND (2)

- (1) The corporation known as the Data Protection Commissioner, that, by virtue of Article 6(1) of the Data Protection (Jersey) Law 2005, became and was to be regarded as one with the office originally established by Article 2(1)(a) of the Data Protection (Jersey) Law 1987 as the office of Data Protection Registrar, continues for the purposes of the Data Protection (Jersey) Law 2005 and this Law as a corporation but, by virtue of Article 35(1) of this Law, under the name Information Commissioner.
- (2) The Data Protection Tribunal established by Article 2(1)(b) of the Data Protection (Jersey) Law 1987, that, by virtue of Article 6(4) of the Data Protection (Jersey) Law 2005, was continued under the same name for the purposes of that Law, continues for the purposes of that Law and this Law but –
 - (a) by virtue of Article 35(2) of this Law, under the name Information Tribunal; and
 - (b) by virtue of Article 6(3) of the Data Protection (Jersey) Law 2005, as amended by paragraph (3) of Schedule 2 of this Law, with the inclusion of the 2 additional members specified in that Article.
- (3) A reference in any enactment (other than this Law), instrument or document to the Data Protection Commissioner shall be construed in relation to any time after the commencement of this Law, as a reference to the Information Commissioner.
- (4) A reference in any enactment (other than this Law), instrument or document to the Data Protection Tribunal shall be construed in relation to any time after the commencement of this Law, as a reference to the Information Tribunal.

SCHEDULE 2

(Article 41)

ENACTMENTS AMENDED

1 Data Protection (Jersey) Law 2005

- (1) In Article 1(1)–
 - (a) in the definition “Commissioner” for “Data Protection Commissioner” there is substituted “Information Commissioner”;
 - (b) in the definition of “data”, the word “or” at the end of paragraph (b) is omitted and after paragraph (c) there is inserted–

“or

 - (d) is recorded information held by a public authority and does not fall within any of paragraphs (a) to (c)”;
 - (c) after the definition of “processing” there is inserted –

“ ‘public authority’ has the same meaning as in the Freedom of Information (Jersey) Law 200;” and
 - (d) for the definition “Tribunal” there is substituted –

“ ‘Tribunal’ means the Information Tribunal referred to in Article 6”.
- (2) After Article 1(6) there is inserted–

“(7) In paragraph (d) of the definition of ‘data’ in paragraph (1), the reference to information ‘held’ by a public authority shall be construed in accordance with Article 1(4) of the Freedom of Information (Jersey) Law 200.”.
- (3) For Article 6 there is substituted–

“6 Commissioner and Tribunal

- (1) There is a Commissioner, known as the Information Commissioner, for the purposes of this Law and of the Freedom of Information (Jersey) Law 200.
 - (2) There is a Tribunal, known as the Information Tribunal, for the purposes of this Law and of the Freedom of Information (Jersey) Law 200.
 - (3) The Tribunal shall consist of a president, and 6 other members, appointed by the States.
 - (4) The 6 other members shall be appointed on the basis that they represent the interests of data subjects, data controllers, public authorities and those likely to seek information from public authorities.
 - (5) Of those 6 other members, one or more shall be appointed as vice-presidents by the States.
 - (6) Schedule 5 shall have effect”.
- (4) After Article 9 there is inserted–

“9A Unstructured personal data held by public authorities

- (1) In this Article ‘unstructured personal data’ means any personal data falling within paragraph (d) of the definition of ‘data’ in Article 1(1), other than information that is

recorded as part of, or with the intention that it should form part of, a set of information relating to individuals to the extent that the set is structured by reference to individuals or by reference to criteria relating to individuals.

- (2) A public authority is not obliged to comply with paragraph (1) of Article 7 in relation to any unstructured personal data unless the request under that Article contains a description of the data.
 - (3) Even if the data are described by the data subject in his or her request, a public authority is not obliged to comply with Article 7(1) in relation to unstructured personal data if the authority estimates that the cost of complying with the request so far as relating to those data would exceed the appropriate limit.
 - (4) Paragraph (3) does not exempt the public authority from its obligation to comply with Article 7(1) insofar as it requires the public authority to inform an individual if the unstructured personal data are being processed by or on behalf of the public authority unless the estimated cost of complying with that requirement alone in relation to those data would exceed the appropriate limit.
 - (5) In paragraphs (3) and (4) ‘the appropriate limit’ means such amount as may be prescribed by Regulations.
 - (6) Any estimate for the purposes of this Article must be made in accordance with Regulations under Article 5 of the Freedom of Information (Jersey) Law 2000”.
- (5) In Article 16(1), for the word “and” at the end of paragraph (f) there is substituted—
“(fa) where the data controller is a public authority, a statement of that fact; and”.
- (6) After Article 33 there is inserted—

“33A Manual data held by public authorities

Personal data falling within paragraph (d) of the definition of ‘data’ in Article 1(1) are exempt from –

- (a) the first, second, third, fifth, seventh and eighth data protection principles;
 - (b) the sixth data protection principle except so far as it relates to the rights conferred on data subjects by Articles 7 and 14;
 - (c) Articles 10 to 12;
 - (d) Article 13, except so far as it relates to damage caused by a contravention of Article 7 of the fourth data protection principle and to any distress which is also suffered by reason of that contravention;
 - (e) Part 3; and
 - (f) Article 55”.
- (7) In Article 34 after the word “enactment” there is inserted “other than an enactment contained in the Freedom of Information (Jersey) Law 2000”.
- (8) After Article 35 there is inserted—

“35A States Assembly privilege

Personal data are exempt from –

- (a) the first data protection principles, except to the extent it requires compliance with the conditions in Schedules 2 and 3;
- (b) the second, third, fourth and fifth data protection principles;

- (c) Article 7; and
- (d) Articles 10 and 12(1) to (3),

if the exemption is required for the purpose of avoiding an infringement of the privileges of the States Assembly.”.

- (9) After Article 56(6) there is inserted–

“(6A) A record is not a relevant record to the extent that it relates, or is to relate, only to personal data falling within paragraph (d) of the definition of ‘data’ in Article 1(1)”.

- (10) After Article 63 there is inserted–

“63A Application to States Assembly

- (1) Except as provided by Article 35A, this Law applies to the processing of personal data by or on behalf of the States Assembly.
 - (2) Where the purposes for which and the manner in which any personal data are, or are to be, processed are determined by or on behalf of the States Assembly the data controller in respect of those data for the purposes of this Law shall be the Greffier of the States.
 - (3) Nothing in paragraph (2) is to be taken to render the Greffier of the States liable to prosecution under this Law but Article 55 and paragraph 13 of Schedule 9 shall apply to a person acting on behalf of the States Assembly as they apply to any other person.”.
- (11) In paragraph 5(c) of Schedule 2 for “the States” there is substituted “the States Assembly”.
 - (12) In paragraph 7(c) of Schedule 2 for “the States” there is substituted “the States Assembly”.
 - (13) For the heading of Schedule 5 for the Law there is substituted–

“SCHEDULE 5

(Article 6(6))

INFORMATION COMMISSIONER AND INFORMATION TRIBUNAL”

- (14) For paragraph 1(1) of Schedule 5 there is substituted–

“(1) The Commissioner shall be a corporation sole by the name of the ‘Information Commissioner’.”.

- (15) Schedule 6 is amended–

- (a) by omitting from paragraph 2 “under Article 28(6) or 48” and substituting “under Article 28(6) or Article 48 of this Law or Article 40 of the Freedom of Information (Jersey) Law 2000”;
- (b) by omitting from paragraph 5 “under Article 28(6) or 48” and substituting “under Article 28(6) or Article 48 of this Law or Article 40 of the Freedom of Information (Jersey) Law 2000”.

2 Data Protection (Appeals) (Jersey) Regulations 2006

In Regulation 2 for “Data Protection Tribunal” there is substituted “Information Tribunal”.

3 Data Protection (Credit Reference Agency) (Jersey) Regulations 2005

In paragraph 5 of the Schedule for “Data Protection Commissioner” there is substituted “Information Commissioner”.

4 Lloyds TSB (Jersey) Law 1997

In Article 8(5) for “Data Protection Commissioner” there is substituted “Information Commissioner”.

5 Public Records (Jersey) Law 2002

- (1) In Article 1(1) the definition “open access period” is omitted.
- (2) In Article 9(c) for “in accordance with this Law” substitute “in accordance with the Freedom of Information (Jersey) Law 200”.
- (3) In Article 11(o) “subject to Article 27(5);” is omitted.
- (4) In Article 22(3), for everything after “a record that” there is substituted “contains information that is exempt information for the purposes of the Freedom of Information (Jersey) Law 200.”.
- (5) Parts 5 and 6 are repealed.
- (6) Articles 39 and 40 are repealed.

6 Royal Bank of Canada (Jersey) Law 2000

In Article 5(5) for “Data Protection Commissioner” there is substituted “Information Commissioner”.