

GUIDANCE NOTE

How to access information from a Scheduled Public Authority

The Freedom of Information (Jersey) Law, 2011

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WHAT CAN I REQUEST?

The Freedom of Information (Jersey) Law, 2011, (“the Law”) provides you with rights to access official information which is recorded information held by a scheduled public authority, (“SPA”). A SPA is a States Department or agency which is listed in Schedule 1 of the Law, as follows:

1. The States Assembly including the States Greffe
2. A Minister
3. A committee or other body established by resolution of the States or by or in accordance with standing orders of the States Assembly
4. A department established on behalf of the States
5. The Judicial Greffe
6. The Viscount’s Department
- 6(a) Andium Homes Limited, registered on 13th May 2014 under registration number 115713
7. The States of Jersey Police Force.
8. A Parish.

Under the Law you have a right to:

Ask for any information you think a SPA may hold. The right covers any recorded information that is held by a SPA in Jersey which includes printed documents, computer files, letters, emails, photographs, and sound or video recordings. It is defined in the law as meaning ‘information recorded in any form’.

The Law does not give you access to your own personal data (information about you) such as your health records or credit reference file.

You don’t have to know whether the information you want is covered by the Law or the Data Protection (Jersey) Law, 2018 (“the **Data Protection Law**”) as it is for the SPA to decide which law they need to follow.



WHAT SHOULD I DO BEFORE I MAKE A REQUEST?

You can ask for any information you choose, at any time, but you may not always succeed in getting it.

- a) You should identify the information you want as clearly as possible.
- b) Your request can be in the form of a question, rather than a request for specific documents, but the SPA does not have to answer your question if this would mean creating new information or giving an opinion or judgment that is not already recorded.
- c) Some information may not be given to you because it is exempt, for example because it would unfairly reveal personal details about somebody else.

Before you make a request, it may help to consider the following questions.

- a) **Is the information you want already available to the public? For example on the SPAs website, as SPAs will make some information routinely available.**

You can find out what information is available by checking the SPA's website or by contacting the SPA directly.

- b) **Is the information you want your own personal data?**

If your request is for information about yourself, such as your medical records, you should make a subject access request under Article 27 of the Data Protection Law.

- c) **Is the SPA likely to have the information?**

It may save you time if you check with the SPA whether it is likely to have the information you want. For example, you may not be sure whether the information you want is held by your Parish or a States Department. SPAs must give reasonable advice and assistance to anyone asking for information, so you should feel free to ask for help in making your request.

- d) **Is the information you want suitable for general publication?**

The aim of the Law is to make information available to the general public. You can only obtain information that would be given to anybody who asked for it, or would be suitable for the general public to see.

Some information, such as records about a dead relative, or documents you need for legal purposes, may not always be available under the Law. However, you may have a right to see the information you want under other legislation. The SPA holding the information you want should be able to advise you on this.



WHAT ARE THE LEGAL REQUIREMENTS FOR A REQUEST?

For your request to be dealt with according to the Law, you must:

- a) Make the request in writing, for example in a letter or an email.
- b) Give your name; and
- c) Give an address to which the SPA can reply. This can be a postal or email address.
- d) Describe in adequate detail the information you are requesting

You do not have to:

- a) Specifically mention that the request is made under the Law, although it may help to do so;
- b) Know whether the information is covered by the Law; or
- c) Say why you want the information.

It is sensible to write the date on any letters or emails you send and keep a copy, so you have a reliable record of your request. If you have telephoned the SPA to seek help with your request we recommend that you note who you spoke with. A written record of matters connected to your request would be beneficial if you later need to make a complaint.

It can be helpful to check whether the SPA recommends you send your request to a specific person or email address. All SPAs should publish their procedures on how to make a request to them

The Information Commissioner (“the **Information Commissioner**”) cannot request information from another SPA on your behalf. You should address your request directly to the SPA. There is no need to send us a copy of your request.



HOW SHOULD I WORD MY REQUEST TO GET THE BEST RESULT?

Most people will exercise their rights responsibly but we also recognise that some individuals and organisations submit requests which may, whether by accident or design, cause a SPA an unjustified or disproportionate level of disruption or irritation. Some requests may cause distress to members of staff in a SPA.

The Law has a built in safeguard to protect SPAs from having to deal with requests which are submitted by a person who has no real interest in the information sought or where the information is sought purely for an illegitimate reason (such as a desire to cause administrative difficulty or inconvenience for example). Depending on the circumstances, such requests may fall within the definition of a vexatious request under Article 21 of the Law and in such circumstances a SPA does not have to comply with such a request (see our Guidance note entitled “Dealing with vexatious requests (Article 21)”).

Whilst we also accept that requests may be articulated in challenging or colourful language, using threatening or abusive language increases the risk that your request will be refused and so any request should ideally be made in a measured, calm and proportionate manner.

All requests place some degree of demand on a SPA’s resources in terms of costs and staff time, and we expect them to accept a certain level of disruption to meet their underlying commitment to transparency and openness as expected under the Law.

It can be difficult for applicants to understand how information is labelled and organised by SPAs - the Law contains a provision that ensures that SPAs must consider whether they should provide you with advice and assistance, within reasonable limits.

Nonetheless, the amount of time and resources that a SPA has to expend in responding to a request should not be out of all proportion to that request’s value and purpose.

You need to consider the dos and don’ts below – think about your request objectively - does it trigger any don’ts? If so you may want to rethink your information request in order to avoid it being refused.

If your request does lack any serious or clear purpose or if it is not focused on acquiring information, then the Law may not be an appropriate means through which to pursue your concern. You might do better to explore whether there are other more suitable channels through which to take up the issue with the SPA.

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You should also bear in mind that the Law includes a safeguard against requests which exceed the cost limits for compliance (Article 16).

Therefore, if you are planning to ask for a large volume of information, or make a very general request, you should first consider whether you could narrow or refocus the scope of the request, as this may help you get what you really want and reduce any unnecessary burden or costs on the SPA. Alternatively, you could try approaching the SPA for advice and assistance to help you reduce the scope of your request and cut down the cost of compliance – they have a duty to consider what advice and assistance they can provide.

Although you don't have to say why you want the information, if you are happy to do so it might avoid a lot of wasted time and be more likely to get you what you want.

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INFORMATION REQUEST DOS AND DON'TS

We have produced the following list of dos and don'ts as a quick reference tool to help users make effective requests under the Law.

Your request will be much more effective if it is **CLEAR, SPECIFIC, FOCUSED, UNTHREATENING.**

DO	DON'T
<p>Find out where to send your request to, this will ensure that your response can be dealt with promptly. SPA websites should advise you how best to make your FOI request. Online guidance on making a request to States of Jersey departments can be found at www.gov.je/foi</p>	<p>Use offensive or threatening language.</p>
<p>Include your name, address and other contact details in the request.</p>	<p>Level unfounded accusations at the SPA or its staff.</p>
<p>Clearly state that you are making your request under the Law.</p>	<p>Make personal attacks against employees.</p>
<p>Be as specific as possible about the information you want rather than asking general questions. Try to include details such as dates and names whenever you can. It may also assist the SPA in identifying the information if you explain the purpose behind your request.</p>	<p>Use the Law to reopen grievances which have already been fully addressed by the SPA, or subjected to independent investigation with no evidence of wrongdoing being found.</p>
<p>Re-read your request to check for any wording which is unclear or open to interpretation.</p>	<p>Make assumptions about how the SPA organises its information or tell them how to search for the information you want.</p>
<p>Use straightforward, polite language; avoid basing your request or question on assumptions or opinions, or mixing requests with complaints or comments.</p>	<p>Bury your request in amongst lengthy correspondence on other matters or underlying complaints.</p>
<p>Specify whether you have any preferences as to how you would like to receive the information, for example if you would prefer a paper copy or to receive an email.</p>	<p>Use requests as a way of 'scoring points' against a SPA.</p>



<p>Give the SPA ample opportunity to address any previous requests you have made before submitting new ones.</p>	<p>Send 'catch-all' requests for information (such as 'please provide me with everything you hold about 'x') when you aren't sure what specific documents to ask for. If in doubt, try searching on the SPA's website or enquiring whether any indexes and file lists are available. Alternatively, ask the SPA for some advice and assistance in framing your request.</p>
<p>Stay focused on the line of enquiry you are pursuing. Don't let your attention start to drift onto issues of minor relevance.</p>	<p>Submit frivolous or trivial requests; remember that processing any information request involves some cost to the public purse.</p>
<p>Think about whether making a request is the best way of achieving what you want. If you have an underlying complaint then it may be better to just take your complaint to the relevant authority and let them investigate.</p>	<p>Disrupt a SPA by the sheer weight of requests or the volume of information requested. Whether you are acting alone or in concert with others, this is a clear misuse of the Law and an abuse of your 'right to know'.</p>
<p>Aim to be flexible if the SPA advises that it can't meet the full request on cost grounds and asks you to narrow it down. Try to work with the organisation to produce a streamlined version of the request which still covers the core information that is most importance to you.</p>	<p>Deliberately 'fish' for information by submitting a very broad or random requests in the hope it will catch something noteworthy or otherwise useful. Requests should be directed towards obtaining information on a particular issue, rather than relying on pot luck to see if anything of interest is revealed.</p>
	<p>Make repeat requests unless circumstances, or the information itself, have changed to the extent that there are justifiable grounds to ask for the information again.</p>



WHAT HAPPENS AFTER I MAKE MY REQUEST?

The SPA must reply to you 'promptly' or in any event within 20 working days. It may:

- a) Give you the information you've asked for;
- b) Tell you it doesn't have the information;
- c) Tell you that another SPA is likely to hold the information you seek and either ask for your consent to transfer the request on your behalf or provide you with the alternative SPA's contact details;
- d) Say that the information is likely to exceed the relevant cost limit in which case they may:
 - » offer to provide it if you pay them a fee (but there are rules about what they can charge);
 - » discuss with you whether or not your request can be defined to as to bring it within the cost limit;
 - » refuse the request.
- e) Refuse to give you the information, and explain why; or,
- f) Say that it needs more time to consider your request, and tell you when to expect a response. This should be as soon as possible and no later than a total of 65 working days after the date of your request. It can only extend the time limit in certain circumstances.

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WILL I ALWAYS GET THE INFORMATION I ASK FOR?

Not always.

The Law recognises that there will be valid reasons why some kinds of information may be withheld, such as if its release would prejudice national security or damage commercial interests. For some exemptions the SPA must consider whether the public interest in withholding the information outweighs the public interest in releasing it. If it decides that the information cannot be released it must tell you and explain why. SPAs are not obliged to deal with vexatious or repeated requests or in some cases if the cost exceeds an appropriate limit. In addition the Law does not provide the right of access to your personal information. This is instead available under the Data Protection Law again, subject to certain exemptions, and is known as a subject access request.

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CAN I COMPLAIN IF A SPA REFUSES MY REQUEST OR I AM DISSATISFIED WITH THE WAY IT HAS BEEN DEALT WITH?

Yes.

You should first complain to the SPA and ask it to conduct an internal review into the manner in which your request has been dealt with.

We recommend that you do this as soon as possible following receipt of the SPAs response to your complaint.

The Information Commissioner recommends that SPAs carry out internal reviews as quickly as possible. The SPA cannot charge for carrying out an internal review.

If you then still believe that the SPA has not dealt with your complaint properly you may, within six weeks of receiving the response to your complaint, seek to make an appeal to the Information Commissioner.

You must exhaust a SPA's internal review procedure prior to making any request for an appeal to the Information Commissioner which must be made within 6 weeks of the decision, or when the applicant has 'exhausted' the SPA's complaints procedure. A failure to do so may mean that the Information Commissioner decides not to decide the appeal.

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MORE INFORMATION

This guidance has been developed with assistance of the Office of the Information Commissioner in the United Kingdom. The guidance will be reviewed and considered from time to time in line with new decisions of the Jersey Information Commissioner and the Royal Court.

It is a guide to our general recommended approach, although individual cases will always be decided on the basis of their particular circumstances.

If you need any more information about this or any other aspect of freedom of information, please contact us:

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