

Memorandum of Understanding (MoU) between The Office of the Information Commissioner (OIC) and The Chief Minister(s Department) (CM/D).

- 1) The Freedom of Information (Jersey) Law 2011 ('the Law') provides public access to information held by scheduled public authorities.
- 2) It creates the role of the Information Commissioner to act as the independent regulator and to investigate complaints from members of the public who believe that a scheduled public authority has failed to respond correctly to a request for information.
- 3) Article 46 of the Law provides for appeals to the Information Commissioner in respect of decisions by a scheduled public authority;
- 4) A person aggrieved by a decision of a scheduled public authority may appeal to the Information Commissioner who must decide the appeal as soon as practicable.
- 5) In order to properly investigate a complaint and for the appeal to be decided upon, the Information Commissioner will require that all relevant information and documents pertaining to the initial request are provided by the scheduled public authority. In some circumstances such information may consist of information which the scheduled public authority considers exempt (either absolute or qualified).
- 6) The OIC will strive to work positively with scheduled public authorities to conclude appeals fairly and consistently and expects the scheduled public authorities to co-operate fully in respect of the provision of documents and/or information which may be required by the Information Commissioner.
- 7) The Law does not provide clear statutory powers which would allow the Information Commissioner to require the scheduled public authorities to engage in any appeal process initiated under Article 46 of the Law or to compel the provision of information by those scheduled public authorities when determining any appeal. Accordingly, this Memorandum of Understanding (MoU) has been put in place to facilitate an effective appeal process by providing a formal route of communication between the OIC and CMD in the event that scheduled public authorities fail to adhere to the Code of Practice and where they fail to provide the Information Commissioner with all relevant information to allow him/her to determine an appeal.
- 8) Specifically, where the Information Commissioner has requested information relevant to an appeal under Article 46 from a scheduled public authority and that authority has not provided any response to the Information Commissioner, this MoU allows the Information Commissioner to inform the CMD of that failure using the attached summary pro-forma.
- 9) Where the CMD considers that the request made to the scheduled public authority by the Information Commissioner to be reasonable in all circumstances, the CMD will instruct the Information Commissioner to contact the scheduled public authority(s) (via the nominated

contact where known) and the scheduled public authority shall, upon receipt of the instruction from the CMD:

- a) Provide a reasoned explanation, together with additional background information, as quickly as possible and in any event within 5 working days of being contacted by the Commissioner (unless the Commissioner otherwise agrees) as to why the SPA has failed to adhere to the Code of Practice; and either
- b) Provide the Commissioner with the information originally requested by the applicant as quickly as possible and in any event within 5 working days of being contacted by the Commissioner, unless the Commissioner otherwise agrees; or
- c) Inform the Commissioner, giving reasons, that it is not able to provide the reasoned explanation and other relevant information within the time periods set out in this paragraph and provide an indication of when it expects to be able to do so.

10) The OIC will not hold information provided under this MoU for longer than necessary for the discharge of statutory functions. The Information Commissioner shall, in consultation with the scheduled public authority, arrange for the return or other disposal of the information and documentation where necessary and shall not release the information to the appellant.

Signed:.....


Senator I. Gorst, Chief Minister

Dated: 21st November, 2014

Signed:.....


Mrs. E. Martins, Information Commissioner

Dated: 21st November, 2014

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Freedom of Information (Jersey) Law 2011, Article 46

Date

OIC reference

Scheduled Public Authority and Officers name

Summary of Appeal

Details of information request by OIC

Name of OIC case manager

Authorised by the Information Commissioner

Date
