

Freedom of Information (Jersey) Law 2011

Policy Guidance – Use of Exemptions

September 2024

General Guidance

1. The Freedom of Information (Jersey) Law 2011 (“the Law”) provides “for the supply of information held by public authorities and for connected purposes”
2. A person who makes a request for information has a general right to be supplied with the information they request, except as otherwise provided by this Law.
3. The Law covers information held by Scheduled Public Authority, which includes ministerial and non-Ministerial Departments, and other bodies as added, as detailed in a Schedule to the Law.¹
4. This guidance has been developed to help those requesting information and those processing requests. The intention is to support consistent, understood, and legal responses to requests for information.

¹ The Law includes a Schedule of Public Authorities to whom the Law applies. This includes “a Minister”, which includes the Departments who process information on their behalf, which includes the following Ministerial Departments:

- Cabinet Office
- Digital Services
- People Services
- Customer and Local Services Department
- Children, Young People, Education and Skills Department
- Ministry of External Relations
- Health and Community Services Department
- Infrastructure and Environment Department
- Justice and Home Affairs Department
- States of Jersey Police Department
- Treasurer and Exchequer Department
- Department for the Economy

Note: Ministers are corporation sole under the States of Jersey Law and are responsible for the data processed by and held by Departments on their behalf.

- States Assembly (including States Greffe)
- Judicial Greffe
- Viscount’s Department
- Andium Homes
- Parishes
- Office of the Commissioner for Children and Young People

5. This guidance is not intended to be definitive or exhaustive, and each request for information will always be considered on its own specific merits with reference to the legal requirements.
6. The guidance has been prepared considering guidance issued by the Office of the Information Commissioner, established precedent in Jersey since the Law was introduced in 2015, and good practice from the United Kingdom and other jurisdictions.

Responsibility for Processing Requests

7. Each of the Scheduled Public Authorities subject to the Law are individually responsible for processing requests submitted to them under the Law.
8. The Central Freedom of Information Unit hosted in the Cabinet Office supports requestors and Ministerial and non-Ministerial Departments in processing requests.²
9. The Central Freedom of Information Unit receive the requests from the public, provides them to Scheduled Public Authorities, and publish responses provided to them by Scheduled Public Authorities. The Central Freedom of Information Unit also provide advice to Scheduled Public Authorities, supporting good practice. Throughout however, the decisions on what to release fall to each Scheduled Public Authority individually.
10. Should requestors be unsatisfied with their response, they may request an Internal Review.

Exemptions

11. The Law provides exemptions from the right to receive information. These exemptions are either “Absolute” or “Qualified”.

² Requests for information from the Parishes and Andium Homes [and the Commissioner] should be made direct and not via the Central Freedom of Information Unit. They make their own decisions on the release of information and are not bound by this guidance.

- **Absolute Exemptions** enable Scheduled Public Authorities to withhold information, generally with reference to the nature (or “class”) of the information, such as court information, personal information, or national security information.

No public interest test needs to be applied when applying an absolute exemption and withholding the release of this type of information.

- **Qualified Exemptions** enable Scheduled Public Authorities to withhold information, generally with reference to the prejudice (commonly understood to mean harm) that release may involve rather than the nature of the material, for example, to the economy, employment, or commercial interests.

When considering applying a qualified exemption based on prejudice, a test needs to be applied. A public interest test also needs to be applied, weighing the right to be provided the information with any harms that may arise.

12. When applying an exemption, it is important not to apply it on a blanket basis. The Scheduled Public Authority must be satisfied in the case of each element of the requested information as to whether an exemption properly applies.

Absolute Exemptions

Article 23: Information accessible to applicant by other means

13. If the Scheduled Public Authority is satisfied that the information requested is already reasonably accessible to the applicant – for example, via the government website, including a previous FOI response, use of a search engine, or as a physical copy in a public building, or otherwise accessible other than through a request for information, the Scheduled Public Authority does not need to supply the information.

14. Instead, the Scheduled Public Authority will respond to the applicant to explain why Article 23 applies and informing them where and how they can obtain the information.

15. To rely on Article 23, the Scheduled Public Authority must first be satisfied that the information as described in the request is held, otherwise, the response should be that the information is not held.

16. If only part of the information publicly available matches the description of what the applicant has asked for, the officer can apply Article 23 to that part of the request and then consider the remainder of the requested information separately.
17. Information may be considered reasonably accessible to the applicant even where it is only accessible on payment.
18. It may be that requests for information accessible by other means could be dealt with informally, if the applicant is satisfied with that and does not wish to proceed with their request.

Article 24 Court Information

19. If the requested information was originally created or obtained for the purposes of court proceedings, and not acquired by any other route, then it falls under this exemption. The information will not lose its exempt status if the authority goes on to use it for another purpose.
20. If the Scheduled Public Authority originally acquired the information through a route other than from court proceedings and is still holding it for the purposes for which it was originally obtained, then the exemption cannot be applied, unless the information is no longer being kept for the purposes for which it was originally obtained and is now held solely for the purposes of court proceedings (in which case, it will be covered by the exemption).
21. Where information was originally only held for the purposes of court proceedings, and the authority subsequently acquires the same information from another source, that information will not be covered by Article 24 anymore as it will no longer be held for court proceedings.

Article 25: Personal Information

22. The personal data of third parties, i.e. anyone other than the requester, held by the Scheduled Public Authority cannot be provided in response to a request where providing that information would breach any of the principles in the Data Protection (Jersey) Law 2018.
23. Where the request is for the personal information of the requestor, it will always be treated as a Subject Access Request under the Data Protection (Jersey) Law 2018 wherein the data subject has a legal right to access to information held about them.

24. In considering how to respond to a request for personal information of a third party, the Law requires consideration of the lawfulness test in the Data Protection (Jersey) Law 2018, ensuring that test is not contravened. This includes the following three-part test:

- (i) Legitimate interest: Whether a legitimate interest is being pursued in the request for information, for example, to support transparency in public life such as around the use of public funds.
- (ii) Necessity: Whether disclosure of the information or confirmation or denial that it is held is necessary to meet the legitimate interest in question, for example, there may be alternative means of achieving the legitimate interest short of being provided with personal information requested.
- (iii) Balancing: Whether the above interests override the interests, fundamental rights and freedoms of the data subject. This should include considering the potential harm or distress disclosure may cause; the reasonable expectations of the individual whose personal data has been requested (with reference to expectations of public life); and considering objections of the data subject, the specific circumstances relating to the request, and whether people with knowledge would learn anything substantially new if the information in question was disclosed.

25. Scheduled Public Authorities commonly receive requests for personal data about their employees, or information that includes the personal data of their employees. In processing these requests, information such as the salary or contractual information of an individual public sector employee would normally be treated as personal information and not released considering the above tests, though it may be lawful to provide in the case of the most senior employees considering the public interest and reasonable expectation.³

26. This exemption can only apply to information about people who are living. It cannot be used to protect information about people who have died but any response will consider the data protection rights of living individuals who may be impacted by any disclosure.

27. The Scheduled Public Authority is also not obliged to confirm whether the requested information is held, even if the exemption is applied, if this would disclose personal

³ The most senior employees are generally those who directly report to a Chief Officer or above. It may be valid to depart from this in the case of other senior employees where, save for structural considerations, they nevertheless hold a level of prominence, influence and authority, comparable to a direct report to a Chief Officer.

data relating to the applicant and if so, the response would be to neither confirm or deny that information was held in accordance with Article 10 of the Law.

Article 26: Information Supplied in Confidence

28. Information is absolutely exempt if it was obtained by the Scheduled Public Authority from another person (including another Scheduled Public Authority⁴) and the disclosure of the information would constitute a breach of confidence actionable by that or any other person.

29. When determining if disclosure would constitute a breach of confidence, the authority will need to consider:

- (iv) Whether the information has the necessary quality of confidence – the information will possess this if it is more than trivial (this includes otherwise trivial information if it relates to a personal matter and the confider or the person the information is about attaches importance to it) and not otherwise accessible.
- (v) Whether it was provided in circumstances importing an obligation of confidence – this may apply when the confider has attached explicit conditions to any subsequent use or disclosure of the information, or when the confider has not set any explicit conditions but the restrictions on use are obvious or implicit from the circumstances. The mere fact of a document being marked confidential while indicative is not sufficient in itself for it to be confidential.
- (vi) Whether disclosure would be an unauthorised use of the information to the detriment of the confider (this can be assumed if the information concerns the confider's private life).

30. If the requested material contains a mixture of both information created by the authority and information given to the authority by another person, then, in most cases, the exemption will only cover the information given to the authority.

⁴ Article 51(2) curtails the use of this exemption such that while it applies to information provided by another Scheduled Public Authority (specifically those identified in paragraphs 3 and 4 of Schedule 1), the exemption cannot be applied on the basis that a breach of confidence may be actionable by that other Scheduled Public Authority.

31. The exemption may also cover material generated by the authority if its disclosure would reveal the content of any information it obtained in confidence from another person (i.e. if the authority's own analysis, interpretation or comments are specific to the information received from that person).
32. The contents of a contract between a public authority and a third party generally will not be information obtained by an authority from another person as the terms of the contract will have been mutually agreed by the respective parties, rather than provided by one party to another.

Article 26A: Information Supplied by, or relating to, Bodies dealing with Security Matters

33. Information directly or indirectly supplied by bodies dealing with security matters or which relates to any of those bodies falls under this exemption. A certificate signed by the Chief Minister is conclusive evidence of the fact that it was supplied by such bodies such that further proof is not required. The Scheduled Public Authority does not need to confirm if it holds such information.

Article 27: National Security

34. The Scheduled Public Authority should not disclose information if releasing the information would make Jersey or its citizens more vulnerable to a national security threat. When the exemption is applied, the Scheduled Public Authority does not need to confirm it holds the information requested and the response would be to neither confirm or deny that information was held in accordance with Article 10 of the Law.
35. A certificate signed by the Chief Minister is conclusive evidence of the fact that the exemption is required to safeguard national security such that further proof is not required.
36. The exemption can be applied to seemingly harmless information, for example, if it may assist terrorists when used with other information already in the public domain.
37. The exemption enables information to be withheld if it is "required" to protect national security. It is not sufficient for the requested information simply to relate to issues of national security, rather there must be evidence of specific and real

threats to national security (with a reasonable degree of probability and impact) which would occur if the requested information was disclosed.

Article 28: **States Assembly Privileges**

38. States Assembly privilege protects the independence of the States Assembly, including freedom of speech, debates, and proceedings, giving it the exclusive right to oversee its own affairs. This includes the right to control publication of States Assembly proceedings and the final decision on what would infringe privilege.
39. The States Assembly is a Scheduled Public Authority under the Law. However, individual States Members are not. As such, requestors do not have the right to information held by individual States Members in discharging their duties to constituents as this is not covered by the Law. However, information held by the States Assembly as a body, including any Committees or Panels established under the Standing Orders of the Assembly, are covered by the Law.
40. Once it is established whether information is held by a Scheduled Public Authority the next test is whether the exemption on States Assembly privilege applies.
41. In this regard, States Members' correspondence to Scheduled Public Authorities, including with Ministers, is covered by the Law, though the States Assembly privilege exemption will be applied to information held by Scheduled Public Authorities relating to the conduct of Assembly business.
42. Given that States Members are supported by Government of Jersey Digital Services, including email systems, whether information is held by the Scheduled Public Authority or by the States Member will be determined by the nature of the information not by whether it is held on systems maintained by a Scheduled Public Authority.
43. Any unpublished information relating to proceedings in the States Assembly may be covered by this exemption.
44. If this exemption is judged to apply to information held by the States Assembly, there is no duty to confirm whether the requested information is held.
45. A certificate signed by the Greffier of the States certifying that the exemption is required to avoid an infringement of States Assembly privileges is conclusive evidence of the fact.

Article 29: **Other Prohibitions or Restrictions**

46. This exemption is applicable if the disclosure of information by the Scheduled Public Authority is prohibited by or under an enactment; is incompatible with a European Union or international obligation applying to Jersey; or would constitute contempt of court. There is no duty to confirm whether the requested information is held and a response can be issued which neither confirm or deny's that information was held in accordance with Article 10 of the Law. Alternatively, reasons for the application of the exemption can be provided.

Qualified Exemptions

47. Qualified Exemptions generally relate to harms that may arise in disclosing information.

48. A Prejudice Test must be applied on all qualified exemptions that include either the words prejudice or endanger (33,34,37,38,39,40,41,42); and a Public Interest Test must also be applied on all of them.

49. A prejudice test involves being satisfied that there is a harm of disclosure that is real, actual, or of substance; that there is a "causal link" between the disclosure and the prejudice claimed; and that the harm either would or would be likely to occur.

50. More detailed guidance has been issued by the Jersey Office of the Information Commissioner on the Prejudice Test: [joic-19a-the-prejudice-test_2.pdf \(jerseyoic.org\)](#).

51. The public interest is concerned with the best interests of the public rather than what the public may be interested in or curious about.

52. There is always an inherent level of public interest in transparency, supporting accountability, informed political debate and public decision making, and this should be weighed against any harms to the public interest in disclosing information, including the likelihood and severity of harm. This will also be influenced by timing, as the harm normally diminishes over time.

53. SPAs must therefore carry out a balancing exercise, i.e. the "Public Interest Test", to decide whether the public interest in maintaining the exemption outweighs the public interest in disclosure. If it does not, the information must be released.

54. It is necessary for the Scheduled Public Authority to undertake and document a public interest test, which is always done as part of the response to the requestor.
55. More detailed guidance has been issued by the Jersey Office of the Information Commissioner on the Public Interest Test: [joic-20a-the-public-interest-test_2.pdf](#) ([jerseyoic.org](#)).

Article 30: **Communications with Her Majesty etc. and Honours**

56. Information may be qualified exempt information if it is or relates to communications with the Sovereign, any other member of the Royal Family or the Royal Household, or the conferring of an honour or dignity by the Crown.
57. The exemption also covers communications made or received by a person or organisation acting on behalf of the Sovereign or other members of the Royal Family.
58. The term “relates to” is generally interpreted broadly and applies to information that refers to or is drawn from those communications.
59. The phrase “communications with” includes information intended for communication, such as draft versions of letters and speeches or records of proposals to send correspondence or organise meetings. It does not matter whether those communications were ever sent or received or that the meetings ever took place.
60. When conducting a public interest test, the fact that the lives of the Royal Family are frequently the focus of public and media attention does not mean that there is a public interest in disclosure, despite the likelihood members of the public will be interested. The focus of the test should also not be on the seniority of the Royal Family members in question but on the content and sensitivity of the information being considered for release.
61. If the information would broaden public understanding of the Royal Family’s constitutional role and the nature of its relationship with Jersey, the case for disclosure is strengthened.
62. With regards to the conferring of an honour or dignity by the Crown, the term “relates to” is again interpreted broadly and covers every aspect of the honours process from nomination through to the publication of the honours list and beyond.

Article 31: **Advice by the Bailiff, Deputy Bailiff or a Law Officer**

63. Information may be qualified exempt information if it is, or relates to, the provision of advice by the Bailiff, Deputy Bailiff or the Attorney General or the Solicitor General.
64. The information is likely be of public interest if it would broaden understanding of the relationship between the Bailiff, Deputy Bailiff, Law Officers, and central government.
65. However, disclosure, or the prospect of disclosure, would likely inhibit free and frank discussion, thus leading to a chilling effect and undermine the effective internal decision-making processes⁵.
66. Only a Law Officer can waive the privilege in the provision of legal advice by them or on his behalf, and therefore the Law Officers must be consulted on any disclosures. The Bailiff and Deputy Bailiff will also be consulted in relation to any request for any advice from themselves.
67. It has long been a Convention within Government that neither the fact of having sought the opinion of the Law Officers' of the Crown, nor the content of that advice, is disclosed without the Law Officers' consent.
68. There are three primary reasons for the Convention –
- i) to ensure that there is no damage done to the public interest by the publication of legal advice given by Law Officers; publication of such advice would risk politicising the Law Officers' Department and would inhibit the Law Officers and those who work within that department from giving frank advice;
 - ii) to ensure that there is no inhibition on the part of Government Bodies (including the Parishes) in taking advice by fear of its publication. It is in the public interest that decisions are taken on a correct legal basis and that adequate confidential legal advice is obtained to assist;

⁵ In HM Treasury v IC [2009] EWHC 1811 Blake J held that 'Parliament intended real weight should continue to be afforded to this aspect of the Law Officers' Convention' and that 'the general considerations of good government underlying the history and nature of the convention were capable of affording weight to the interest in maintaining an exemption even in the absence of particular damage'. Blake J held that FOI had preserved the Convention, but rendered it amendable to being outweighed by greater considerations of the public interest requiring disclosure of information in either limb of the Convention.

(iii) to ensure that there is no inhibition on the part of the Law Officers or lawyers within their Department in giving full and frank advice on all the matters which are raised with the Law Officers or one of the Departmental lawyers for advice, or which the Law Officers or the advising lawyer consider should reasonably be volunteered to a Government Body (including the Parishes) for consideration; and to ensure that those seeking advice make full disclosure to the Law Officers of all material relevant to the advice sought. If legal advice became disclosable it would inhibit Government from taking legal advice and would affect the quality and nature of instructions that Government gave to their legal advisors and would impair the quality of the legal advice that was given, it is quite separate from legal professional privilege which is dealt with separately under the FOI Law as the privilege can't be waived by the client.

Article 32: Legal Professional Privilege

69. Information may be qualified exempt information if a claim to legal professional privilege could be maintained against it in legal proceedings. This would usually be the relevant exemption for legal advice held that was supplied by external lawyers other than the Law Officers' Department and those acting on their behalf (in which case Article 31 is the relevant exemption).
70. Legal professional privilege protects confidential communications between lawyers and clients. The client's ability to speak freely and frankly with their legal adviser to obtain appropriate legal advice is a fundamental requirement of the Jersey legal system and helps ensure complete fairness in legal proceedings.
71. A document does not actually need to be sent for it to count as a communication; a document that has been prepared to convey information and is still on its creator's file, is still a communication.
72. If documents existed before litigation was contemplated or before it was considered possible that legal advice might be needed, legal professional privilege will not usually apply to it.
73. Legal professional privilege will not cover communications made to further a criminal purpose.

Article 33: Commercial Interests

74. Information may be qualified exempt information if it constitutes a trade secret, or its disclosure would be likely to prejudice the commercial interests of a person (including the public authority holding the information).
75. To be considered a trade secret, information should be secret (not generally known among or readily accessible to people within the circles that normally deal with that kind of information), have a commercial value because it is secret (its disclosure would be liable to cause significant harm to the owner or be advantageous to rivals) and be subject to reasonable steps taken by the owner to keep it secret.
76. When considering applying exemption in relation to a commercial interest, a prejudice test (as well as a public interest test) should be applied considering whether the commercial interest would, or would likely, prejudice the commercial interests of a person.
77. Should the Scheduled Public Authority seek to rely on the prejudice to the commercial position of a contracting third party, they should, where practical, consult with the relevant third party to have reasonable surety of the appropriateness of applying the exemptions. However, the authority does not have to follow the third party's views if it disagrees with them.
78. The existence of a confidentiality clause does not act as a substitute for consultation with the third party, or constitute sufficient grounds for applying the exemption, as having a confidentiality clause does not guarantee information will not be disclosed under the Law, or necessarily reflect the circumstances that apply to a specific request. However, the existence of such a clause does reasonably indicate an expectation on the part of the third party that should be considered.
79. Information about the procurement of goods or services is generally regarded as being commercially sensitive as disclosing information about the authority's financial transactions with one supplier would undermine the authority's ability to maintain a competitive negotiating position when transacting with another.
80. In a commercial environment, the timing of a disclosure is of critical importance. Over time, information which had been exempt from disclosure may become eligible for release. For example, during a tendering process the information submitted is likely to be commercially sensitive while the process is ongoing though its sensitivity may diminish once the contract is awarded. That said, the likelihood of disclosure after the fact may itself impinge on the competitive position of the Public Authority at the time of negotiating any agreement.
81. When considering the public interest test, arguments in favour of disclosure could include the desire for openness and transparency in government affairs; government accountability for the spending of public money; promoting

competition in procurement via transparency; and protection of the public from unsafe products or dubious practices. Arguments against disclosure include undermining the authority's competitiveness when negotiating; reputational damage or loss of customer confidence; and undermining the authority's ability to generate income and operate in the relevant marketplaces.

Article 34: **The Economy**

82. Information may be qualified exempt if it would be likely to prejudice the economic interests of Jersey or the financial interests of the States of Jersey.
83. The exemption seeks to protect communal interests rather than those of the individual however public authorities can consider the effect of releasing information on an individual company provided that this company has a significant impact on the wider economy.
84. There is a significant public interest in disclosure of sufficient information to enable the public to assess the integrity and cost-effectiveness of government policy and administration.
85. The exemption does not solely cover information concerned with the management of the economy or economic development as the Government of Jersey impacts the economy in a variety of ways - as an employer, a customer, and by its wider set of activities, for example, planning policies, transport policies, fiscal policies, environmental and housing policies, etc.
86. When considering the public interest test, factors favouring disclosure include: furthering the understanding and participation in the public debate of issues of the day; promoting accountability and transparency by public authorities for decisions taken by them; promoting accountability and transparency in the spending of public money; allowing individuals, companies and other bodies to understand decisions made by public authorities which affect their lives; and bringing to light information affecting public health and safety.
87. Arguments against disclosure include: where disclosure would result in financial instability, either in Jersey or abroad which would harm Jersey's economic interests or the financial interests of the States of Jersey; where disclosure would pre-empt announcements; where information has been obtained from confidential sources (e.g. overseas governments or regulators [please refer to Article 41]) who would be damaged by disclosure and not provide information in the future; and where information consists of assessments of the economy's viability.

88. The severity of the harm disclosure could cause, the number of people impacted and the amounts of money involved should also be considered in the public interest test.
89. Although not true in every case, the public interest in maintaining an exemption will usually diminish over time, as the issue the information relates to becomes less topical or sensitive and the likelihood or severity of the prejudice diminishes. That said, the likelihood of future disclosure may impact the effectiveness of decision-making in government, and as such, this exemption may continue to be applied to avoid a wider chilling effect on future decisions.

Article 35: Formulation and Development of Policies

90. Information may be qualified exempt information if it relates to the formulation or development of any proposed policy by a public authority, including related communications on the policy development.
91. The purpose of Article 35 is to protect good government. It preserves a “safe space” to consider policy options in private and avoids a “chilling effect” on decision making when an expectation of future publication may limit and dilute full and frank discussions. In this way, the exemption protects the integrity, robustness and ultimately effectiveness of the policy making process.
92. The policy making process extends to the conception and detailed development through to implementation, including the process of reviewing or improving policy, and it includes policies relating to service delivery and organisational design.
93. The exemption does not cover information relating purely to the application of policy, although it can be applied to information that is used as part of policy development.
94. Information is more likely to constitute policy formulation if it is subject to ministerial approval. Decisions taken below ministerial level are more likely to be decisions on policy implementation.
95. Once the government has had a chance to properly set out its policy position and frame the debate, a safe space to develop and present the policy is no longer needed. Indeed, there is likely to be significant public interest in allowing public scrutiny of the policy details, especially while the policy is still in the public consciousness and before it is implemented. As such, once a policy is formulated

and published, the public interest in withholding information relating to its formulation is diminished.

96. However, the use of the exemption will continue to be supported if it preserves sufficient freedom during the policy formulation phase to explore options, without the process being hampered by an expectation of future publication, i.e. the “chilling effect”.
97. As such, while the “safe space” argument for applying the exemption is significantly diminished once the development phase is complete, the “chilling effect” argument in favour of non-disclosure remains strong, especially in a small Island community with high levels of access to current and former decision makers.
98. Arguments in favour of disclosure include promoting government accountability; increasing public understanding of the policy in question; and enabling public debate and scrutiny of both the policy itself and the process used to formulate it.

Article 36: Information Intended for Future Publication

99. Information may be qualified exempt information if, when the request for the information is made, the information is being held by a Scheduled Public Authority with the intention to publish it within 12 weeks of the date of the request.
100. If a request for information is refused under Article 36, the Scheduled Public Authority must make reasonable efforts to inform the applicant of the date the information will be published, the form in which it will be published, where it will be published and who it will be published by.
101. The intention to publish must pre-date the request. This means that a Scheduled Public Authority cannot, when it receives a request, attempt to give itself more time to provide the information by deciding to publish it in the future rather than provide it within the statutory time limit for answering a request.
102. The information that the Public Authority intends to be published must be the specific information the applicant has requested.
103. The term ‘publication’ requires the information to be made available to the public. However, the term is broad and can include via speech for example (say if recorded in Hansard following a States Assembly meeting), rather than in a report or document.

Article 37: **Audit Functions**

104. Information may be qualified exempt if it is held by a Scheduled Public Authority that has functions in relation to (a) the audit of the accounts of another public authority, or (b) examination of the economy, efficiency, and effectiveness with which other public authorities use their resources and its disclosure would be likely to prejudice any of these functions (for example, an internal audit of another Scheduled Public Authority, or review commissioned to examine the effectiveness of a department, could fall into the scope of the exemption).
105. Information may also be qualified exempt if it is held by the Comptroller and Auditor General and its disclosure would be likely to prejudice any of their functions.
106. When considering the public interest test, arguments against disclosure include ensuring that auditors can effectively carry out their functions and protecting the integrity of the audit.
107. Arguments in favour of disclosure include furthering public understanding of decisions made by public bodies; improving public participation in debate; promoting accountability and transparency in decision-making; and promoting accountability and transparency in the use of public funds by public bodies.

Article 38: **Endangering the Safety or Health of Individuals**

108. Information is qualified exempt if its disclosure would be likely to endanger the safety of an individual or individuals; or endanger the physical or mental health of an individual or individuals.
109. When considering the public interest test, arguments favouring disclosure include furthering the understanding and participation in the public debate of issues of the day; promoting accountability and transparency by public authorities for decisions taken by them; promoting accountability and transparency in the spending of public money; allowing individuals, companies and other bodies to understand decisions made by public authorities which affect their lives; bringing to light information affecting public health and safety; and circumstances where disclosing information would reduce potential danger to people by making them aware of various risks and enabling them to take appropriate action.
110. Arguments favouring withholding information include the disclosure of speculative or incomplete information that could mislead the general public and cause them to fail to act or act against their own interests; information that would

undermine the functioning of a system established to protect public health or safety; or information that would provide intelligence allowing known individuals to be targeted.

Article 39: Employment

111. Information is qualified exempt if its disclosure would be likely to prejudice pay or conditions negotiations that are being held between a public authority and an employee, a prospective employee of the authority, or representatives of employees of the authority.
112. It is important to be clear that this exemption does not apply to all employment matters – it is specific to pay and conditions negotiations, which can include contractual negotiations to individual employees. In considering this, weight should be given to the seniority of any individual, and the consequent public interest. Arguments against disclosure include undermining the authority’s competitiveness when negotiating and disruption to ongoing negotiations.
113. When considering the public interest test, arguments in favour of disclosure could include the desire for openness and transparency in government affairs; government accountability for the spending of public money; and promoting competition.

Article 40: Defence

114. Information is qualified exempt if its disclosure would be likely to prejudice the defence of any of the British Islands (the United Kingdom, the Channel Islands, and the Isle of Man) or the capability, effectiveness, or security of the armed forces of the Crown or a force that is co-operating with those forces or a part of those forces.
115. The defence of the nation is not limited to activities within the British Islands. The exemption may also apply to activities overseas to prevent attacks being launched against the British Islands, e.g. activities abroad aimed at combatting international terrorism.

Article 41: International Relations

116. Information is qualified exempt if its disclosure would or would be likely to prejudice relations between Jersey and the United Kingdom or another jurisdiction, an international organisation, or an international court.
117. Information is qualified exempt if its disclosure would or would be likely to prejudice any of Jersey's interests abroad or Jersey's promotion or protection of any such interest. Information is also qualified exempt if it is confidential information obtained from another state; an international organisation; or an international court.
118. Key factors to consider when ascertaining whether the disclosure of information would cause prejudice include: whether disclosure would undermine the trust and confidence other states and international organisations have in Jersey; the sensitivity of the information; the context of the information given differences in culture, social customs, religion and the type of government; the broader effects of any disclosure (a direct impact on Jersey's relationship with a particular state could also have a wider impact on Jersey's relations in a particular region or with international organisations); and the timing of the request.
119. For confidential information obtained from a state other than Jersey, an international organisation or an international court, the exemption does not cover information generated by the public authority although it may cover documents the authority generates if these record the information that had been provided in confidence.
120. Factors relevant to assessing whether information is exempt include whether: there is a formal confidentiality agreement between the authority and the provider of the information; the provider of the information has explicitly requested that the information is treated confidentially; the circumstances in which the information was provided implied that it was being provided in confidence; and the sensitivity of the information indicates the provider would have an expectation that it would be treated confidentially. The authority should also consider different states' interpretations of the concept of confidentiality.
121. When considering the public interest test, arguments for disclosure may include: furthering understanding and participation in the public debate of issues of the day; promoting accountability and transparency in how public money is spent; helping individuals understand decisions made by public authorities which impact their lives; informing the public about measures, procedures, arrangements, and associated discussions concerning public protection; and bringing to light information affecting public health and safety.
122. Public interest arguments in favour of maintaining the exemption include ensuring that Jersey enjoys effective international relations with other states, organisations, and courts in order to further its foreign policy and domestic policy

aims; and respecting international confidences to ensure states, international organisations or courts are not deterred from providing information.

Article 42: **Law Enforcement**

123. Information is qualified exempt if its disclosure would be likely to prejudice the prevention, detection or investigation of crime, whether in Jersey or elsewhere; the apprehension or prosecution of offenders, whether in respect of offences committed in Jersey or elsewhere; the administration of justice whether in Jersey or elsewhere; the assessment or collection of a tax or duty or imposition of a similar nature; the operation of immigration controls, whether in Jersey or elsewhere; the maintenance of security and good order in prisons or in other institutions where people are lawfully detained; the proper supervision or regulation of financial services; or the exercise by the Jersey Financial Services Commission, of any function imposed on it by any enactment. This Article is subject to the public interest test.

124. Article 42 covers all aspects of the prevention and detection of crime and could apply to information on general policies and methods adopted by law enforcement agencies e.g. the police's procedures for collecting forensic evidence.

125. The exemption also covers information held by Scheduled Public Authorities without any specific law enforcement responsibilities. It could also be used by a public authority to withhold copies of information it had provided to a law enforcement agency as part of an investigation, or to withhold information that would make anyone, including the public authority itself, more vulnerable to crime for example, by disclosing its own security procedures, such as alarm codes or details of computer systems.

126. Account should be taken of any harm likely to arise if the requested information was combined with information already in the public domain. This is known as the 'mosaic effect.'

127. The precedent effect should also be considered. Some requests can set a precedent i.e. complying with one request would make it more difficult to refuse requests for similar information in the future which when combined would harm law enforcement

128. There is a strong public interest in protecting the ability of public authorities to enforce the law and in protecting society from the impact of crime. Additionally, disclosure could deter the voluntary supply of information during investigations to the relevant authority. However, there is a public interest in disclosing information

that holds these law enforcing bodies to account and increases transparency about how they perform their functions in order to build public confidence and trust in these bodies.