

Freedom of Information (Jersey) Law 2011

DECISION NOTICE

OIC Reference	202-03-14180
Date of Decision Notice	16 November 2018
Scheduled Public Authority	Department of the Environment (the SPA)
Address	South Hill St Helier Jersey, JE2 4US
Date of Initial Request	2 February 2017
Date of SPA's response	3 May 2017
Date of request for Internal Review	6 May 2017
Date of Internal Review	25 May 2017
Date of Appeal to Information Commissioner	1 June 2017

Summary/Decision

1. On 2 February 2017, the Complainant requested certain information regarding water pollution in certain areas of the Island and the concentrations of certain chemicals (the **Requested Information**) such as was held by the SPA.
2. The SPA wrote to the complainant on 3 March 2017 via the FOI Unit and initially withheld/redacted certain of the Requested Information (the **Withheld Information**) under Arts. 23, 25, 26, 29 and 33 of the Freedom of Information (Jersey) Law 2011 (the **Law**), which the Complainant subsequently contested and requested an internal review.
3. The SPA sent the outcome of its internal review on 25 May 2017 (the **Internal Review**), upholding its original position.
4. The Complainant appealed to the Information Commissioner (the **Commissioner**).
5. During the course of the appeal, the SPA released further of the Withheld Information to the Complainant and this Decision Notice thus focuses on the information which remains withheld as at the date of this Decision Notice.
6. The Commissioner's decision is that the SPA withheld the Withheld Information in accordance with the Law.
7. No further steps need be taken by the SPA to comply with the Law.

The Role of the Information Commissioner

8. It is the duty of the Information Commissioner (the **Commissioner**) to decide whether a request for information made to a SPA has been dealt with in accordance with the requirements of Part 1 of the Law.
9. This Decision Notice sets out the Commissioner's decision.

The Request

10. On 2 February 2017 the Complainant requested the following

"Please will you provide me with a copy of certain water analyses which the States of Jersey's Environmental Health Department hold.

The results I wish to have are for the concentrations of PFAs (Per- and Polyfluoroalkyl Substances) such as PFOS, PFOA PFH(x)S in borehole and well water from 1993 to-date.

The analyses were carried out to discover the spread of PFAs resulting from the use of such substances by Jersey Airport's Firefighting Service.

I wish to have for each analysis:

- a. *The date that either the sample was taken or the date that the analysis was carried out.*
- b. *The concentration in the sample of each PFA discovered.*
- c. *The location where the sample was taken of; this can be any of:*
 1. *The geographical co-ordinates of the water source sampled or*
 2. *The UPN of a place nearby or*
 3. *The address of a nearby property.*

*I do not ask for any details of the delivery point(s) to which each sample point's supply may be connected to" (the **Request**).*

11. On 3 March 2017, the SPA (via the Central Freedom of Information (FOI) Unit (the **Unit**)) contacted the Complainant stating that the SPA was unable to respond to the Request within the extended timeframe previously requested. The Unit indicated that the SPA was requesting a further extension from 17 March to 18 April 2017. The reason advanced by the SPA for the delay was that it was seeking consent from certain third parties affected by the Request. The Complainant sought, at that stage, to request an internal review, but the SPA indicated that such would ordinarily only be carried out once a final response had been sent to the original request. The Complainant was provided with a copy of the SPA's internal review policy and advised that if, following receipt of the response, they still wished to request an internal review that such would be conducted by the SPA.

12. On 3 May 2017 the SPA (via the Unit) responded to the Request in the following terms (the **Initial Response**):

“Water analysis results from 1993 – 1998 and 2017

The Department of the Environment does not hold any data relating to the concentrations of PFAs (Perand Polyfluoroalkyl Substances) such as PFOS, PFOA PDH(x)S in borehole and well water for the periods 1993 to 1998 or for the year 2017.

Water analysis results from 1999 to 2016

The information you have requested is ready for collection from the Department of the Environment, South Hill, St Helier.

Note that a number of exemptions have been considered and applied to the data requested after due consideration to the provisions set out in the following legislation:

- *Freedom of Information (Jersey) Law 2011*
- *Data Protection (Jersey) Law 2005*
- *Water Pollution (Jersey) Law 2000*
- *The Water Resources (Jersey) Law 2007”.*

13. The Complainant responded to the Initial Response indicating that they were not in agreement with that decision and asked for an internal review. In particular, the Complainant indicated that they disagreed with the application of Arts.25 and 33 of the Law to the Requested Information and again asked the SPA to comply with the Request.
14. On 8 May 2017, the Unit responded to the Complainant’s email acknowledging their request for an internal review and noting that such review would be conducted by the SPA. A copy of the SPA’s internal review policy was again provided to the Complainant at that time and the Complainant was advised that they “*should receive a response within 20 working days*”.
15. On 25 May 2017, the Unit contacted the Complainant to advise that the internal review had been completed. The SPA’s Internal Review upheld the SPA’s initial refusal to release the Requested Information.
16. On 23 November 2017, the SPA wrote to the Complainant regarding a further release of information in respect of the Initial Request and following the receipt of consents from certain third parties (the **Second Tranche**). The Complainant was directed to information on the Ports of Jersey website.
17. On 8 December 2017, the SPA wrote to the Complainant with a further release of information in respect of the Initial Request and following the receipt of consents from certain third parties (the **Third Tranche**). The SPA confirmed that the Complainant had now been provided with all the information held by the SPA, save for in respect of that pertaining to four particular sites:

“We have now reviewed the data for the 18 remaining sites and are pleased to be able to release the water testing results, with accompanying address identifiers, for all of them.

This data has been released because of one or more of the following reasons:

- We have not been able to establish the site location*
- We have not been able to establish ownership of the site*
- The results are more than 10 years old and/or are well below the minimum acceptable limit of 3 micrograms per litre.*

The final release of data constitutes disclosure, either directly from the Department of the Environment or via the POJ website, of all the information held, with the exception of four site names/address identifiers where consent for the release of location has not been received”
(emphasis supplied).

18. The SPA revised its position as it transpired that, in fact, not everything had been provided to the Complainant in the Third Tranche. This was said to be an error on the part of the SPA. Accordingly, some further information was provided to the Complainant in May 2018 (the **Final Tranche**).
19. The SPA has confirmed (in September 2018) that all information where consent has been received from various third parties is now publicly available via the Ports of Jersey website.

The Investigation

Scope of the case

20. On 1 June 2017, the Complainant contacted the Commissioner to complain about the way their Request and the Internal Review had been handled and to appeal the SPA’s decision to withhold certain of the Requested Information. The Complainant asked the Commissioner to review the Complainant’s request and the responses received from the SPA in order to ascertain whether or not the response was in accordance with the law.
21. The Commissioner has set out in this Decision Notice the particular issues that he has had to consider in respect of each exemption cited by the SPA and, where relevant, the public interest test.
22. The Complainant also indicated that they were unhappy with the time taken by the SPA to provide the Requested Information. Accordingly, the Commissioner has considered whether or not the provision of the Requested Information was made in accordance with the Law.

Chronology

23. On 21 July, the Commissioner wrote to the SPA to advise that the Complainant had appealed to the Commissioner regarding the SPA's handling of the Initial Request and subsequent Review, pursuant to Art.46 of the Law. The SPA was asked to begin collating the relevant documentation falling within the scope of the Request (including the Withheld Information) and prepare a written submission in response to the complaint. The SPA was asked not to send that information/submission to the Commissioner until requested to do so.
24. On 31 August 2017, the Commissioner wrote to the SPA asking for a copy of the requested information and their written submissions in response to the complaint made by the Complainant.
25. The SPA responded on 22 September 2017 and provided the Commissioner with a letter explaining the rationale applied by the SPA in respect of the Withheld Information, together with a marked up copy of the documents sent to the Complainant pursuant to their request, indicating where redactions had been applied by the SPA.
26. Further questions were raised by the Commissioner in various correspondence to which the SPA responded.

Analysis

Background

27. Requests for information under the Law are requester, purpose and context blind: generally speaking, it does not matter who is making the request or why and in what context. However, in this case, the context is relevant to the extent that the Commissioner understands that historically, the Minister for the Environment (previously the Department for Planning and Environment) had responsibility for Jersey Airport and would have had responsibility for information gathered at the relevant time. Jersey Airport is now part of the Ports of Jersey, which is a separate legal entity from the SPA. Ports of Jersey is not a scheduled public authority¹ and do not fall within the ambit of the Law. Information regarding contamination of the area surrounding the airport (the **Plume Area**) is made available to the public at the following link: <http://www.jerseyairport.com/PFOS/Pages/Background.aspx>. (Further information has been added to this site since the date of the Initial Request.)

Substantive Procedural Matters

28. The SPA initially wrote to 74 third parties whose properties had been subject to testing within the Plume Area asking for consent to release the Requested Information to the Complainant. Where consent was actively withheld, or where no response was received from the potentially affected third parties, the SPA considered that it was appropriate to withhold the Withheld Information citing various exemptions of the Law.

¹ See list of scheduled public authorities at Sched 1 of the Law

29. During the initial phase of the appeal, the SPA clarified that it sought only to rely on the exemptions set out in Art.25, 29 and 33 of the Law in support of its stance that the Withheld Information should not be disclosed to the Complainant.
30. During the latter phase of the appeal, the SPA released the Second, Third and Final Tranche to the Complainant so that by the time of this Decision Notice, the Withheld Information related to only four third parties and in respect of “four names/address identifiers”. The SPA sought to maintain the Art.33 exemption in respect of three of those third parties (TP1, TP2 and TP3) and the Art.25 exemption in respect of the remaining third party (TP4). The SPA has also confirmed that, save for the information relating to TP1-4, all the information held by the SPA in relation to the Request has now been disclosed to the Complainant and is publicly available via the Ports of Jersey website.
31. A Complainant can only appeal to the Commissioner for a review of a decision to withhold requested information². Accordingly, this Decision Notice deals only with the information referred to at para.28 above, namely that which was withheld in respect of TP1-4. It does not involve a historical review of information that was originally withheld but which has now been disclosed by the SPA.

ABSOLUTE EXEMPTIONS

Art.25 – Personal Information

32. The full text of Art.25 of the Law can be found in the Legal Appendix at the end of this Decision Notice.
33. Art.25 specifies that personal data is exempt from disclosure if its disclosure would breach any of the data protection principles contained within the Data Protection (Jersey) Law 2005 (the **DPJL 2005**).
34. Personal data is defined at Art.1(1) as:

“data that relate to a living individual who can be identified –

(a) from those data; or

(b) from those data and other information that is in the possession of, or is likely to come into the possession of, the relevant data controller,

and includes any expression of opinion about an individual who can be so identified and any indication of the intentions of the data controller or any other person in respect of an individual who can be so identified.”

35. The information sought in the Request was for water analyses results, held by the SPA, and which included the date the sample was taken (for the period 1993 – the date of the Request) and the post code (so the location) where the sample was taken from.

² Art.46(d)-(e)

36. The SPA initially applied the exemption contained at Art.25 of the Law stating that:

“Where specific consent from residential property owners has not been received the department considers that the disclosure of the address data alongside the test results would constitute a breach of one or more of the data protection principles. Address data for residential properties has therefore been redacted”

37. The SPA has sought consent from TP4 to release the Requested Information to the Complainant but, as at the date of this Decision Notice, no response has been received from TP4. The SPA thus seeks to maintain its reliance on the exemption contained at Art.25 of the Law in respect of the name and address details for T4.

The SPA’s position

38. TP4 is a residential property owner within the Plume Area.

39. In its Internal Review, the SPA indicated that in its view a residential address could amount to personal data *“...because this information has the potential to directly or indirectly identify an individual”*. The SPA went on to say that *“It is also considered that the release of raw test result data (raw data), together with the corresponding address into the public domain has the potential to cause detriment to the land/property owners concerned and is an unwarranted invasion of legitimate interests of the data subjects”*. It was also noted that at the time the information was originally collected, that it was done with the express permission of the owners of the land on the basis that such information would be kept confidential.

40. The SPA contends that to release Requested Information without the consent of the residential property owners would breach the first and second data protection principles in that further and onward transmission of the original data for research purposes by a private individual is not in a manner directly compatible with the specified and lawful purpose for which the data was originally obtained.

41. The SPA further considers that the data subjects would not reasonably expect their personal data to be shared in this manner and argue that to do so may impact upon any on-going negotiations between the owners of the properties in the Plume Area and Ports of Jersey.

42. The SPA also argues that the linking of the chemical information to a particular address may also have the effect of potentially de-valuing the property.

The Complainant’s position

43. The Complainant, however, contends that the addresses of the properties subject to the water testing are not personal data and should thus be released. In particular, the Complainant argues that they are not interested in the use of any water source, but that they want to understand the spread of potential contaminants. The Complainant says that it would not be possible to identify any individual from the Requested Information and that, in any event, the majority of householders

within the Plume Area are not consuming water from affected land as they are connected to mains water supplies³.

44. The Complainant has indicated that they wish to have access to the Requested Information for research purposes and believes that there is substantial public interest in disclosure of the information and which they say relates to pollution of a large section of Jersey's coast. The Complainant suggests that there would be no impact for any identifiable persons if the Requested Information was disclosed.

The Commissioner's position

45. The definition of "personal data" under the Data Protection (Jersey) Law 2005 (the **DPJL 2005**)⁴ is as follows:

"...“personal data” means data that relate to a living individual who can be identified –

(a) from those data; or

(b) from those data and other information that is in the possession of, or is likely to come into the possession of, the relevant data controller,

and includes any expression of opinion about an individual who can be so identified and any indication of the intentions of the data controller or any other person in respect of an individual who can be so identified...”⁵

46. The Commissioner refers to the guidance note provided by the UK Information Commissioner (**ICO**) entitled "Determining what is personal data"⁶. Whilst not binding in this jurisdiction, the Commissioner thinks that the guidance is of assistance in assessing whether or not an address is capable of constituting personal data. At para.5 of that note, it poses the question *"Is the data used, or is it to be used, to inform or influence actions or decisions affecting an identifiable individual?"* and, if the answer to that question is "yes" then *"the data is 'personal data' for the purposes of the DPA"*. Similarly, at para.8 of the note it asks *"Does the data impact or have the potential to impact on an individual, whether in a personal, family, business or professional capacity"* and, if the answer to that question is "yes" then *"the data is 'personal data' for the purposes of the DPA"*. The paragraph ends stating that *"What is being considered here is whether the processing of the information has or could have a resulting impact upon the individual even though the content of the data is not directly about that individual, nor is there any intention to process the data for the purpose of determining or influencing the way that person is treated."*

³ See <http://www.jerseyairport.com/PFOS/Pages/Background.aspx> para.9.

⁴ The Request is reviewed as at the time it was made. At the time of the Request the DPL was in force. The DPJL 2005 was replaced by the Data Protection (Jersey) 2018 (the **DPJL 2018**) on 25 May 2018

⁵ Art.1(1)

⁶ <https://ico.org.uk/media/for-organisations/documents/1554/determining-what-is-personal-data.pdf> The Data Protection Act 1998 was broadly similar to the DPJL 2005 and guidance provided by the OIC is considered helpful in interpreting equivalent provisions in the DPJL 2005.

47. In this case, the Requested Information relates to the concentration levels of certain chemical compounds at various locations within the Plume Area and the Complainant has particularly requested “*the location where the sample was taken from*”. Thus, were the SPA to disclose the location details as requested, it may be possible to identify TP4’s address from where such samples were taken (if samples were taken at particular properties, for example) and thus link them to the raw data regarding the concentration levels of the chemical compounds at those properties. It is also clear that it is possible to identify the owner of one of the residential properties. The Public Registry housed at the Judicial Greffe contains the details of all owners of immovable property on the Island and is searchable by address.
48. The Commissioner has reviewed the Withheld Information and is satisfied that such constitutes the personal data of TP4. (That would be the case under the DPJL 2005 and the DPJL 2018.)

Reasonable expectations of the data subjects

49. Notwithstanding the data subject’s reasonable expectations or any damage or distress caused to them by disclosure, it may still be fair to disclose the Requested Information if it can be argued that there is a more compelling legitimate interest in disclosure to the public.
50. In deciding whether disclosure of personal data would be unfair, and thus breach the first data protection principle of the DPJL 2005, the Commissioner takes into account a range of factors including:
- a. The reasonable expectations of the individual in terms of what would happen to their personal data. Such expectations could be shaped by:
 - i. What the public authority may have told them about what would happen to their personal data;
 - ii. Their general expectations of privacy, including the effect of Art.8 of the European Convention on Human Rights (ECHR);
 - iii. The nature or content of the information itself;
 - iv. The circumstances in which the personal data was obtained;
 - v. Any particular circumstances of the case, e.g. established custom or practice within the public authority; and
 - vi. Whether the individual consented to their personal data being disclosed or, conversely, whether they explicitly refused.
 - b. The consequences of disclosing the information i.e. what damage or distress would the individual suffer if the information was disclosed? In consideration of this factor the Commissioner may take into account:
 - i. Whether information of the nature requested is already in the public domain;

- ii. If so, the source of such disclosure; and even if the information has previously been in the public domain, does the passage of time mean that disclosure now could still cause damage or distress?

51. In considering 'legitimate interests', in order to establish if there is a compelling reason for disclosure, such interests can include broad general principles of accountability and transparency for their own sake, as well as case specific interests. In balancing these legitimate interests with the rights of the data subject, it is also important to consider a proportionate approach.
52. The SPA argued that the owners of the residential properties in the Plume Area (and thus TP4) have an expectation of privacy and would not expect their addresses to be disclosed. The SPA also argued that should disclosure occur in circumstances where consent has not been given then this could adversely impact any negotiations which are on-going between the owners of the residential properties and Ports of Jersey. The SPA also argued that publication of information regarding the contamination levels at certain residential properties had the potential to impact on the value of those residential properties and which could be detrimental to the owners of those properties. The Commissioner accepts those submissions.
53. Having considered the Withheld Information, the Commissioner considers that the exemption has been correctly applied Art.25 exemption has been correctly engaged by the SPA in respect of TP4.

QUALIFIED EXEMPTIONS

Art.33 – Commercial interests

54. The full text of Art.33 of the Law can be found in the Legal Appendix at the end of this Decision Notice.
55. Art.33(b) provides an exemption from disclosure if the information would, or would be likely to, prejudice the commercial interests of any person (including the scheduled public authority holding it). This is a qualified exemption and is therefore subject to the public interest test.
56. In order for a prejudice based exemption, such as those provided by Art.33 to be engaged the Commissioner considers that three criteria must be met:
- a. Firstly, the actual harm which the SPA alleges would, or would be likely, to occur if the Withheld Information was disclosed has to relate to the applicable interests within the relevant exemption;
 - b. Secondly, the SPA must be able to demonstrate that some causal relationship exists between the potential disclosure of the Withheld Information and the prejudice which the exemption is designed to protect⁷. Furthermore, the resultant prejudice which is alleged must be real, actual or of substance; and
 - c. Thirdly, it is necessary to establish whether the level of likelihood of prejudice being relied upon by the SPA is met – i.e., disclosure 'would be likely' to result in prejudice,

⁷ See DWP v. Information Commissioner, Decision of the Information Tribunal (Lower Tier) EA/2014/0073

or disclosure 'would' result in prejudice. In relation to the lower threshold the Commissioner takes the view that the chance of prejudice occurring must be more than a hypothetical possibility; rather there must be a real and significant risk. With regard to the higher threshold, in the Commissioner's view this places a stronger evidential burden on the SPA.

The SPA's position

57. TP1-TP3 are commercial premises. In respect of TP1, consent has been actively withheld citing potential reputational damage to that commercial entity. TP1 also indicated that permission to take samples was given on the basis that the results of any tests would remain confidential. Further, and whilst the Commissioner cannot provide explicit details in this Decision Notice, it was also submitted that disclosure could adversely affect certain legal proceedings involving TP1.
58. The SPA thus contends that releasing the Withheld Information in respect of TP1 would prejudice TP1's commercial interests.
59. In respect of TP2 and TP3, the SPA contends that releasing the Withheld Information would be likely to prejudice their commercial interests and that disclosing the Withheld Information could impact on the entities' reputation. TP2 and TP3 have not, apparently, responded either positively or negatively to the SPA and there is no evidence emanating from TP2 or TP3 that they consider that their commercial interests will be prejudiced by disclosing the Withheld Information insofar as it relates to them.

The Complainant's position

60. The Complainant does not consider that there was any requirement to seek permission from relevant landowners to release the requested data and similarly, does not consider that releasing the Requested Information would/would be likely to prejudice an entity's commercial interests.
61. The Complainant has indicated that where a request to withhold data has been received from a landowner then this should be honoured.

Does the Withheld Information relate to commercial interests?

62. The term 'commercial interests' is not defined in the Law. It is noted that the UK ICO has an awareness guidance document on the application of s.42 of FOIA⁸ which states:

*"...a commercial interest relates to a person's ability to participate in a commercial activity"*⁹

63. The Commissioner does consider that the Withheld Information relates to the commercial interests of T1-T3.

⁸ s.43 of FOIA is the equivalent to Art.33 of the Law.

⁹ <https://ico.org.uk/media/for-organisations/documents/1178/commercial-interests-section-43-foia-guidance.pdf>

What is the nature of the prejudice?

64. As a prejudice-based exemption, a SPA seeking to rely on Art.33 must be able to demonstrate a link between the commercial interests described and the harm that it considers may arise through disclosure. Further, the risk of prejudice occurring must be real and significant. The wording of the exemption makes plain that it covers communal interests rather than those of the individual; concerning information that would, or would be likely, to damage the commercial interests of TP1-TP3.
65. The SPA needs to be able to establish that disclosure of the Withheld Information would be likely to lead to the harmful consequences claimed. Based on the arguments presented by the SPA, the Commissioner accepts that there is a causal link between the disclosure of the Withheld Information and the prejudice that may be caused to TP1-TP3's commercial interests.

What is the likelihood of prejudice?

66. The Commissioner will then consider whether there was a sufficient likelihood of prejudice to engage Art.33. At para.26 of his Guidance Note¹⁰, the Commissioner notes that in establishing whether prejudice would or would be likely to occur, it is necessary to consider:
- a. The range of circumstances in which prejudice could occur (for example, whether it would affect certain types of people or situations);
 - b. How frequently the opportunity for the prejudice arises i.e. how likely it is for these circumstances to arise); and
 - c. How certain it is that the prejudice results in those circumstances.
67. In the UK case of John Connor Press Associates v. Information Commissioner¹¹, the Information Tribunal confirmed that, when determining whether prejudice would be likely to occur, the test to apply is that:
- "We interpret the expression "likely to prejudice" as meaning that the chance of prejudice being suffered should be more than a hypothetical or remote possibility; there must have been a real and significant risk" (para.15).*
68. In other words, there is a more than 50% chance of the disclosure causing the prejudice, even though it is not absolutely certain that it would do so.
69. As Art.33 is a qualified exemption, the Commissioner will consider whether in all the circumstances of the case the public interest in maintaining the exemption outweighs the public interest in disclosure.

¹⁰ <https://dataci.ie/wp-content/uploads/2015/01/The-Prejudice-Test.pdf>

¹¹ Appeal Number: EA/2005/0005

70. A scheduled public authority can withhold information that has been provided to it by a third party on the basis of prejudice to the commercial interests of that party. However, to do so it must follow the same steps and arguments that it would for its own information. When a public authority wants to withhold information on the basis that to disclose the information would or would be likely to prejudice the commercial interests of a third party, it must have evidence that this does in fact represent the concerns of that third party. It is not sufficient for the public authority to speculate on the prejudice which may be caused to the third party by the disclosure. The Commissioner appreciates that there will be situations where a scheduled public authority cannot seek the views of a third party, for example due to time constraints for responding to requests. In such circumstances, the public authority may present arguments regarding the likelihood of prejudice based on its prior knowledge of the third party's concerns. In doing so, a public authority will need to provide evidence that its arguments genuinely reflect the concerns of the third party involved. If it is established that a third party does not itself have any arguments or concerns about prejudice to its commercial interests, then the public authority should not present speculative arguments on behalf of that third party.
71. Having considered the information presented, the Commissioner considers that release of the Withheld Information would damage the commercial interests of TP1 and, on the balance of probabilities, would be likely to damage the commercial interests of TP2 and TP3 the Withheld Information was released.

The Public Interest Test

72. Art.33 is a qualified exemption and therefore the Commissioner must consider the public interest test in relation to the information which he accepts is exempt. The test is whether, in all the circumstances, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.
73. The Commissioner understands that much of the Requested Information is now online and that there is a 20-year history of issues regarding the Plume Area. The SPA did not consider that there were any strong indicators to suggest that the Requested Information was of any wider interest to the public at large but was conscious that as the Requested Information related to information about certain properties it was thus unwilling to disclose it without the landowners' consent. The SPA did not consider that the public interest in withholding the information was overridden by the public interest in disclosure.
74. The Complainant considers that releasing all of the information is in the public interest as it relates to contamination of land within the Plume Area that may have potential health implications.
75. The SPA has not provided any particular detail as to the balance of the public interest in circumstances where they have sought to rely on Art.33. The Commissioner has, however, considered the balance of the public interest in the information and, in particular, whether or not the public interest in disclosure of the Withheld Information is outweighed by the Public Interest in withholding that information.
76. The Commissioner considers that the SPA has appropriately withheld the Withheld Information in accordance with the Art.33 exemption and in respect of TP1-3.

OTHER MATTERS

Art.13 – time for compliance

77. Art.13(1) requires that a scheduled public authority must respond to a request promptly and in any event no later than 20 working days after the date of receipt (Art.13(2)(a)).
78. Whilst it is noted that the SPA attempted to receive permission from those third parties who might be affected by the disclosure of the Requested Information, the Commissioner considers that the SPA has technically breached Art.13(2)(a) as it took considerably longer than 20 working days to respond to the request (some 63 working days). In particular, it is also noted that whilst the SPA requested an extension from the Complainant that the SPA then went over the requested extension by a further 10 days and without any further liaison with the Complainant.
79. However, it is noted that the SPA was proactive in continuing to provide information to the Complainant once consents were received from various property owners. It is also clear that the SPA has spent longer than the time provided for under the Freedom of Information (Costs) (Jersey) Regulations 2014 and has continued to demonstrate willingness to provide the Requested Information even if, technically, it may have refused to do so.
80. Whilst no further steps need to be taken by the SPA at this time, the Commissioner reminds the SPA of the need to respond to all requests promptly and in any event, within the 20-day timeframe save for in exceptional circumstances or where such has been expressly agreed with the requester of the information.

The Decision

81. The Commissioner's decision is that the SPA correctly withheld the Withheld Information in respect of TP1-4. This part of the complaint is therefore not upheld.
82. The Commissioner does, however, uphold the complaint in that the Requested Information was not technically provided within the requisite time period.
83. As the response has been received by the Complainant, the Commissioner does not require the SPA to take any steps in respect of this notice.

Right of Appeal

84. An aggrieved person has the right to appeal against this Decision Notice to the Royal Court of Jersey.
85. If you wish to appeal against this Decision Notice, you can obtain information on how to do so on <https://www.oicjersey.org>.
86. Any Notice of Appeal should be served within 28 (calendar) days of the date on which the Decision Notice is issued.

Dated this day of November 2018

Signed.....

Mr Paul Vane

Deputy Information Commissioner
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One Liberty Place
St. Helier
Jersey
JE2 3NY

3 Meaning of “information held by a public authority”

For the purposes of 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.

4 Meaning of “information to be supplied by a public authority”

- (1) For the purposes of this Law, the information held by a public authority at the time when a request for the information is received is the information that is to be taken to have been requested.
- (2) However, account may be taken of any amendment or deletion made to the information between the time when the request for the information was received and the time when it is supplied if the amendment or deletion would have been made regardless of the request for the information.

8 General right of access to information held by a scheduled public authority

If a person makes a request for information held by a scheduled public authority –

- (a) the person has a general right to be supplied with the information by that authority; and
- (b) except as otherwise provided by this Law, the authority has a duty to supply the person with the information.

9 When a scheduled public authority may refuse to supply information it holds

- (1) A scheduled public authority may refuse to supply information it holds and has been requested to supply if the information is absolutely exempt information.
- (2) A scheduled public authority must supply qualified exempt information it has been requested to supply unless it is satisfied that, in all the circumstances of the case, the public interest in supplying the information is outweighed by the public interest in not doing so.
- (3) A scheduled public authority may refuse to supply information it holds and has been requested to supply if –
 - (a) a provision of Part 3 applies in respect of the request;
 - (b) a fee payable under Article 15 or 16 is not paid; or
 - (c) Article 16(1) applies.

18 Where a scheduled public authority refuses a request

The States may, by Regulations, prescribe the manner in which a scheduled public authority may refuse a request for information.

25 Personal information

(1) Information is absolutely exempt information if it constitutes personal data of which the applicant is the data subject as defined in the Data Protection (Jersey) Law 2018.

(2) Information is absolutely exempt information if –

(a) it constitutes personal data of which the applicant is not the data subject as defined in the Data Protection (Jersey) Law 2018; and

(b) its supply to a member of the public would contravene any of the data protection principles, as defined in that Law.

(3) In determining for the purposes of this Article whether the lawfulness principle in Article 8(1)(a) of the Data Protection (Jersey) Law 2018 would be contravened by the disclosure of information, paragraph 5(1) of Schedule 2 to that Law (legitimate interests) is to be read as if sub-paragraph (b) (which disapplies the provision where the controller is a public authority) were omitted.

33 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 scheduled public authority holding the information).