

STATES OF JERSEY



DRAFT FREEDOM OF INFORMATION (COSTS) (JERSEY) REGULATIONS 201-

Lodged au Greffe on 23rd September 2014
by the Chief Minister

STATES GREFFE



Jersey

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REPORT

These Regulations are intended to make a provision for requested information to be provided, but with a safeguard to protect against requests that are too large and complex and which place too heavy a burden on limited resources.

The Freedom of Information (Jersey) Law 2011 (“the Law”) provides for a cost limit to be applied when responding to requests for information. The Council of Ministers has decided that there will be a cost limit applicable when responding to a Freedom of Information (‘FOI’) request. The rate being used to estimate whether a request will exceed the cost limit reflects the infrastructure put in place to handle FOI requests and enhance information management.

It is noted that in other jurisdictions, there is also a limit on the amount of resources a public authority is required to devote to each FOI request, and this is also framed as a sum of money defined as a cost limit and hourly rate. Where similar requests are received from the same person or group of persons, these may be aggregated. These Regulations use a similar formula to the one adopted in the United Kingdom, with attributes which are more appropriate to a small jurisdiction in a low tax area.

Cost limits

The Council of Ministers has decided that a cost limit should be defined. This cost limit is £500, calculated at a rate of £40 per hour which equates to 12.5 hours. If the request falls within the cost limit, disbursements will not be charged. Any request that is estimated to be over the cost limit may be refused. If the request exceeds the cost limit, the Law confers a duty on scheduled public authorities to provide advice and assistance, which may include advising a person to reframe their request so that it falls within the cost limit. For example, clarification may be sought from the requester so that the request is more specific, and therefore capable of being answered within the cost limit.

Where the cost exceeds the cost limit, the scheduled public authority has the discretion to provide the information to the requester, but the whole request may be subject to a fee, calculated at the same hourly rate, and with the ability to charge for disbursements. In this instance, the scheduled public authority will retain discretion to either fully recharge the costs, or to charge a reduced charge, or no charge.

The hourly rate of £40 does not represent the salary of any individual. It reflects the investment of the States in infrastructure; training, staff, information management, Public Records (Jersey) Law 2002 compliance, legal support and the regulatory function. As a result of the preparation that has taken place, and continues to take

place, the States have been able to considerably improve information management, which will deliver efficiencies and enable the effective implementation of the FOI Law.

Cost limit for Parishes

The Parishes indicated that when they become a scheduled public authority, the cost limit will be adjusted to take into consideration their resource limitations. A number of Parishes employ only one Parish secretary on a part-time basis, which would make a cost limit of £500 for each FOI request overly burdensome. Much of the information handled by the Parishes is already in the public domain, as their business is debated in public forum at Parish assemblies, so it is not anticipated that voluminous requests will be made. The cost limit has been reduced for Parishes to £200, calculated at a rate of £40 per hour which equates to 5 hours.

Aggregation

Regulation 3 provides that requests may be aggregated. This aggregation is necessary to avoid circumvention of the above cost limit, and refers to requests received from a person or persons who appear to be acting in concert or in pursuance of a campaign. Such requests will be aggregated and treated as one request, and the limits on cost and time apply.

Financial and manpower implications

The potential resource implications of the Freedom of Information (Jersey) Law 2011 overall have been well rehearsed in earlier reports to the States Assembly. The actual resource implications of the FOI Law will depend upon the number of requests handled and the quality of information management. Where the cost of answering a request is greater than the cost limit, then a fee may be levied for both staff time and for disbursements.

Explanatory Note

These Regulations set out the circumstances in which a scheduled public authority (“authority”) can refuse to supply information in response to a request if the costs of doing so would be excessive.

Regulation 1 defines “Law” as the Freedom of Information (Jersey) Law 2011.

Regulation 2 provides that if an authority estimates that the cost of supplying information would exceed the “specified amount”, it may refuse to supply such information. The specified amount is defined in Regulation 1 to mean £500 in the case of a request to a scheduled public authority listed in paragraph 1 to 7 to the Law or, in the case of a request to a parish made on or after 1st September 2015, £200. It is intended that parishes will be added to the list of scheduled public authorities in Schedule 1 to the Law with effect from 1st September 2015. In making such an estimate, the authority can take into account only the costs that it reasonably expects would be spent by a person at a rate of £40 per hour undertaking specified activities such as locating and retrieving the information on the authority’s behalf.

Regulation 3 provides that if 2 or more requests are received within a period of 60 consecutive working days, or such longer period as seems reasonable in all the circumstances of the case, from one person, or different persons acting together, and those requests relate to similar information, the authority must aggregate the estimated costs for complying with all of the requests for the purpose of determining whether the specified amount is exceeded.

Regulation 4 provides that even if the specified amount is exceeded, the authority may nevertheless supply the information requested on payment to it of a fee. The fee can be such amount as the scheduled public authority considers to be reasonable in all the circumstances of the case, not exceeding an aggregate amount of (a) the costs that the authority can take into account under Regulation 2 (disregarding costs that it make take into account solely by virtue of Regulation 3); (b) the costs of informing the person who makes the request whether the authority holds the information; and (c) the costs of communicating that information. Again the rate for estimating the costs in (b) and (c) is £40 per person per hour.

Regulation 5 sets out the title of these Regulations and provides that they will come into force on the same date that the Freedom of Information (Jersey) Law 2011 comes into force.



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Arrangement

Regulation

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Made [date to be inserted]
Coming into force [date to be inserted]

THE STATES, in pursuance of Articles 16 and 53 of the Freedom of Information (Jersey) Law 2011¹, have made the following Regulations –

1 Interpretation

In these Regulations –

“Law” means the Freedom of Information (Jersey) Law 2011²;

“specified amount” means –

- (a) in respect of a request to a scheduled public authority specified in any of paragraphs 1 to 7 of Schedule 1 to the Law, £500; or
- (b) in respect of a request to a parish on or after 1st September 2015, £200.

2 Estimating the cost of supplying information

- (1) For the purposes of Article 16(1) of the Law, if the estimated cost of supplying information would exceed the specified amount, as determined in accordance with this Regulation and, if applicable Regulation 3, a scheduled public authority may refuse to supply that information.
- (2) In making such a determination, the scheduled public authority shall take into account only the costs attributable to the time which it reasonably expects to be spent by a person undertaking any of the activities described in paragraph (3) on the scheduled public authority’s behalf.
- (3) Those activities are –
 - (a) determining whether the scheduled public authority holds the information;
 - (b) locating the information, or a document which may contain the information;
 - (c) retrieving the information, or a document which may contain the information; and
 - (d) extracting the information from a document containing it.

- (4) The costs referred to in paragraph (2) are to be estimated at a rate of £40 per person per hour.

3 Estimating the cost of complying with a request – aggregation of related requests

- (1) In the circumstances specified in paragraph (2), where 2 or more requests for information are made to a scheduled public authority by –
- (a) one person; or
 - (b) different persons who appear to the scheduled public authority to be acting in concert or in pursuance of a campaign,
- the estimated cost of complying with any of the requests as determined in accordance with Regulation 2 is to be taken to be the estimated total cost of complying with all of them.
- (2) Those circumstances are that –
- (a) the 2 or more requests referred to in paragraph (1) relate, to any extent, to the same or similar information; and
 - (b) those requests are received by the scheduled public authority within any period of 60 consecutive working days or such longer period as is reasonable in all the circumstances of the case.
- (3) In this Regulation “working day” means a day other than –
- (a) a Saturday, a Sunday, Christmas Day, or Good Friday; or
 - (b) a day that is a bank holiday or a public holiday under the Public Holidays and Bank Holidays (Jersey) Law 1951³.

4 Supply of information where estimated costs exceed the specified amount

- (1) If a scheduled public authority estimates that the cost of supplying information will exceed the specified amount as determined in accordance with Regulation 2 and, if applicable, Regulation 3, the scheduled public authority may, in accordance with Article 16(2) of the Law, supply the information requested on payment to it of a fee determined in the manner set out in this Regulation.
- (2) That fee shall be of such amount as the scheduled public authority may determine is appropriate in all the circumstances of the case, such amount not exceeding the total of –
- (a) the costs which the scheduled public authority may take into account in accordance with Regulation 2 (disregarding any costs it may take into account solely by virtue of Regulation 3), in relation to that request; and
 - (b) the costs the scheduled public authority reasonably expects to incur in –
 - (i) informing the person making the request whether it holds the information, and
 - (ii) communicating the information to the person making the request.

- (3) Costs which may be taken into account by a public authority for the purposes of paragraph (2)(b) include, but are not limited to, the costs of –
 - (a) reproducing any document containing the information; and
 - (b) postage and other forms of transmitting the information.
- (4) For the purposes of paragraph (2)(b), to the extent that such costs are attributable to a person undertaking activities on the scheduled authority's behalf, those costs are to be estimated at a rate of £40 per person per hour.

5 Citation and commencement

These Regulations may be cited as the Freedom of Information (Costs) (Jersey) Regulations 201- and shall come into force on the same date the Freedom of Information (Jersey) Law 2011⁴ comes into force.

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- ¹ *L.17/2011*
 - ² *L.17/2011*
 - ³ *chapter 15.560*
 - ⁴ *L.17/2011*