

STATES OF JERSEY



DRAFT FREEDOM OF INFORMATION (EXEMPTIONS – AMENDMENT OF LAW) (JERSEY) REGULATIONS 201-

**Lodged au Greffe on 29th October 2014
by the Chief Minister**

STATES GREFFE



Jersey

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REPORT

The Freedom of Information (Jersey) Law 2011 (the “Law”) contains an absolute exemption in respect of national security (Article 27), whereby a certificate is signed by the Chief Minister certifying that the exemption applies. This exemption is similar to the U.K. Freedom of Information Act 2000 (the “U.K. Act”) which contains an exemption under Section 24 of the U.K. Act for the purpose of safeguarding national security, whereby a Minister of the Crown can sign a certificate that certifies that the information subject of the request is, or at any time was, required for the purpose of safeguarding national security.

In addition to Section 24 under the U.K. Act, there is a further absolute exemption in respect of “*Information supplied by, or relating to, bodies dealing with security matters*” (Section 23, U.K. Act). Information supplied by, or relating to, bodies dealing with security matters exempts information from such bodies that include, amongst others, the Security Service, Secret intelligence Service and Government Communications Headquarters, all of which are exempt from the provisions of the U.K. Act. The Law does not currently contain an absolute exemption which reflects Section 23 of the U.K. Act. The importance of Sections 23 and 24 of the U.K. Act to the U.K. Police Service and its relationship with Security Agencies is fundamental to enable secure information-sharing.

It is considered vital that a measure designed to bring transparency to Jersey should not result in potentially straining crucial external partnerships. Accordingly, the draft Regulations amend Part 4 of the Law, in accordance with Article 6(b) of the Law, by adding a further description of absolutely exempt information to add a description of “*Information supplied by, or relating to, bodies dealing with security matters*”.

This is to recognise the importance of the relationship the States of Jersey Police and the Island have with the U.K. Police Service, Security Agencies and other national bodies, which is fundamental to enable secure information-sharing.

Financial and manpower implications

There are no financial or manpower implications for the States arising from the adoption of these draft Regulations.

Explanatory Note

These Regulations amend the Freedom of Information (Jersey) Law 2011 (“Law”) by adding a further description of absolutely exempt information relating to security matters. A public authority which is subject to the requirements of the Law (“scheduled public authority”) may refuse to supply absolutely exempt information in response to a request under the Law.

Regulation 1 defines the Law.

Regulation 2 adds to the Law the new description of absolutely exempt information, that is, information held by a scheduled public authority and which was either supplied to it by a named body specified in the amendment or which relates to any such body. The bodies listed in the amendment are the same bodies listed in the equivalent provision in the Freedom of Information Act 2000 of the United Kingdom and cover a range of security bodies such as the Security Service, Security Intelligence Service and the Government Communications Headquarters. The amendment also provides that a certificate signed by the Chief Minister that information is covered by the description is conclusive evidence of that fact and provides a right of appeal to the Royal Court on the ground that the Chief Minister did not have reasonable grounds for issuing such a certificate.

Regulation 3 makes a consequential amendment to the description of absolutely exempt information referring to national security generally that currently exists in the Law. The amendment removes the potential overlap that might exist in certain cases with the new description referred to above.

Regulation 4 sets out the title of these Regulations and provides that they will come into force on the same date as the Freedom of Information (Jersey) Law 2011 comes into force.



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Arrangement

Regulation

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Jersey

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

THE STATES, in pursuance of Articles 6 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.

2 Article 26A inserted

After Article 26 of the Law there shall be inserted the following Article –

“26A Information supplied by, or relating to, bodies dealing with security matters

- (1) Information is absolutely exempt information if it is held by a scheduled public authority and either or both of the following apply –
 - (a) it was directly or indirectly supplied to the scheduled public authority by any of the bodies specified in paragraph (2); or
 - (b) it relates to any of those bodies.
- (2) Those bodies are –
 - (a) the Security Service within the meaning of section 1 of the Security Service Act 1989 of the United Kingdom;
 - (b) the Secret Intelligence Service within the meaning of section 1 of the Intelligence Services Act 1994 of the United Kingdom;
 - (c) the Government Communications Headquarters within the meaning of section 3 of the Intelligence Services Act 1994 of the United Kingdom, including any unit or part of a unit

- of the armed forces of the Crown which is for the time being required by the Secretary of State to assist the Government Communications Headquarters in carrying out its functions;
- (d) the special forces within the meaning of section 84 of the Freedom of Information Act 2000 of the United Kingdom;
 - (e) the Tribunal established under section 65 of the Regulation of Investigatory Powers Act 2000 of the United Kingdom;
 - (f) the Tribunal established under section 7 of the Interception of Communications Act 1985 of the United Kingdom;
 - (g) the Tribunal established under section 5 of the Security Service Act 1989 of the United Kingdom;
 - (h) the Tribunal established under section 9 of the Intelligence Services Act 1994 of the United Kingdom;
 - (i) the Security Vetting Appeals Panel referred to in section 23(3) of the Freedom of Information Act 2000 of the United Kingdom;
 - (j) the Security Commission referred to in section 23(3) of the Freedom of Information Act 2000 of the United Kingdom;
 - (k) the National Criminal Intelligence Service established under section 2 of the Police Act 1997 of the United Kingdom;
 - (l) the Service Authority for the National Criminal Intelligence Service established under section 1 of the Police Act 1997 of the United Kingdom;
 - (m) the Serious Organised Crime Agency established under section 1 of the Serious Organised Crime and Police Act 2005 of the United Kingdom;
 - (n) the National Crime Agency formed under section 1 of the Crime and Courts Act 2013 of the United Kingdom;
 - (o) the Intelligence and Security Committee of Parliament established under section 1 of the Justice and Security Act 2013 of the United Kingdom.

- (3) Except as provided by paragraph (4), a certificate signed by the Chief Minister certifying that the information to which it applies was directly or indirectly supplied by, or relates to, any of the bodies specified in paragraph (2) is conclusive evidence of that fact.
- (4) A person aggrieved by the decision of the Chief Minister to issue a certificate under paragraph (3) may appeal to the Royal Court on the grounds that the Chief Minister did not have reasonable grounds for issuing the certificate.
- (5) The decision of the Royal Court on the appeal shall be final.”.

3 Article 27 amended

In Article 27(1) of the Law after the word “Information” there shall be inserted the words “which does not fall within Article 26A(1)”.

4 Citation and commencement

These Regulations may be cited as the Freedom of Information (Exemptions – Amendment of Law) (Jersey) Regulations 201- and shall come into force on the same date that the Freedom of Information (Jersey) Law 2011³ comes into force.

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- ¹ *L.17/2011*
² *L.17/2011*
³ *L.17/2011*