



THE OFFICE OF THE

**Data Protection Commissioner**



***2005***  
***Annual Report***

*June 2006*





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# The Island of Jersey

Jersey is situated off the north-west coast of France, 14 miles from Normandy and 85 miles from the south coast of England.

Within its 45 square miles the Island has a population of 87,000 and enjoys a reputation as a well regulated international finance centre.

Jersey's allegiance is to the British Crown but it is not part of the United Kingdom. The Island is not part of the European Union, being neither a separate Member State nor an Associate Member.



The Island has a special relationship with the European Union by virtue of Protocol 3 to the United Kingdom's Treaty of Accession to the European Economic Community. The constitutional relationship with the UK is the product of 800 years of custom and usage and is not affected by changes of government in the UK. This relationship has been confirmed by Royal Charters which over the centuries secured the independence of the Island's judicial system from the English courts and granted important privileges including freedom from UK taxes.

Royal Charters were the basis of the independence of the Island's judicial system from the English Courts. From this foundation Jersey's independence and autonomy in domestic matters has developed.

Jersey has its own legislative assembly, called the States of Jersey, which comprises 53 elected members plus a Chief Minister. Jersey has its own system of local administration, fiscal and legal systems, and courts of law.



# The Office of the Data Protection Commissioner



The Office of the Data Protection Commissioner is responsible for the regulation of businesses and individuals with regard to the processing of personal data in Jersey.

The office was originally established by the Data Protection (Jersey) Law 1987 as the Office of the Data Protection Registrar. However, the implementation of the Data Protection (Jersey) Law 2005 has seen a change in title to that of Data Protection Commissioner, to meet with the standards required by the European Directive on Data Protection, 95/EC/46. The office has also become a body corporate, and is now separated from the Judicial Greffe, however will remain accountable for its overall performance to the States of Jersey through the Chief Ministers Department.

Under the new 2005 Law, the Commissioner's key purpose is to:

Promote respect for the private lives of individuals through ensuring privacy of their personal information by:

- Promoting the following of good personal data handling practices; and
- Ensuring compliance with the Data Protection (Jersey) Law 2005, and; influencing thinking on privacy and processing of personal information matters on a local and international basis.

# The Commissioner and her staff



**Emma Martins**

**The Data Protection Commissioner** acts as an independent statutory authority and has a remit to provide effective regulation and enforcement of the Data Protection (Jersey) Law 2005, provide advice and guidance to businesses and individuals. She also provides guidance and recommendations to the States of Jersey in response to international data protection legislative developments. Emma has many years experience working with data protection and is regarded as the Island's leading authority on the subject.

**Paul Vane**

**The Deputy Commissioner** is responsible for the day to day running of the Data Protection Office, and acts for the Commissioner in her absence. He is also the main point of contact for complaints in relation to the way personal data has been handled, and can provide advice and guidance to businesses and individuals on data protection issues. Paul joined the department in August 2004 from the Jersey Financial Services Commission where he worked as a Compliance Manager.



**Vivien Evans**

**The Administrative Support Manager** deals with all matters concerned with the notification of data controllers established in Jersey. She maintains an active database of those registered under the former 1987 Law and maintains the new on-line public registry. Vivien joined the department in January 2001 and has played a key role in obtaining a significant improvement in the overall compliance standards of data controllers and processors in Jersey.

**David Lawson**

**The Administrative Support Assistant** ensures that all administration matters are processed accurately and maintains the considerable reference documentation in an efficiently accessible manner. David's role is multi-functional, from providing PA support to the Commissioner and her Deputy, as well as ensuring the Office runs smoothly on a day-to-day basis. David is also responsible for ensuring the Data Protection website is kept up to date.





## Commissioner's Statement

I am delighted to present my second report as Data Protection Commissioner. 2005 saw radical changes to this department in the lead up to and implementation of the new Data Protection (Jersey) Law 2005 which came into force on 01<sup>st</sup> December. In the months before that my staff and I were working hard to ensure that our internal systems were updated and the new website was ready.

The results of all that hard work were a credit to my small team who worked tirelessly to ensure the department was fully prepared for the significant changes and challenges ahead. The new website is something of which I am particularly pleased with and we owe our thanks to the staff at Information Services for all their support. The site not only provides an invaluable information resource, it also allows businesses to notify with us and make payment via a secure payments system. This is a further step forward towards our objective of providing individuals and businesses with the information they need to be informed of their rights and responsibilities under the Law whilst also aiming to reduce the administrative burden when businesses need to interact with us.

The feedback we have had so far has been very positive, with those people who have notified on-line with us commenting very favourably on the process.

The next major issue facing the department is the application to the European Commission for an assessment of the Islands data protection regime. This will be one of the most significant developments the Island has been involved with in the field of data protection for some years. Preliminary negotiations have commenced and I am optimistic that in next year's annual report I will be in a position to communicate some good news in this respect.

The new Law has meant a further significant move for the Commissioners Office to a status of full independence from the civil service. This is aimed to increase confidence in the way in which we regulate the Law, ensuring we are able to do so in a completely equitable and independent manner across both the private and public sector.

As an employer in my own right, a lot of work has had to be done to ensure the staff received updated contracts as well as ensuring clear policies and procedures were put in place. Credit for this significant project must be given to my Deputy, Paul Vane who has worked incredibly hard to ensure the department meets its legal responsibilities whilst at the same time coordinating the increasing number of enquiries and complaints received at the office.

The new Law brings with it enormous challenges for the whole team. The entire administrative process has been overhauled, fundamentally changing the way in which the department runs. Both my administrative staff, Viv Evans and David Lawson also deserve credit for the professional way in which they dealt with the enormous changes and inevitable challenges. I genuinely feel very fortunate to have such a loyal and committed team.

This next year will I know be a busy one, with businesses getting to grips with compliance issues the new Law brings. We remain committed to developing a culture of respect for privacy throughout the community through proactive education of all sectors, as well as a fair and transparent approach to enforcement.

**Emma Martins**  
**Commissioner**

# The Data Protection (Jersey) Law 2005

The motivation locally for an updated piece of legislation has largely been as a result of pressure from Europe. The European Directive on Data Protection, 95/46/EC, places restrictions on the transfer of personal data from Europe to 'third countries' of which Jersey is one. If not enshrined within local legislation, such restrictions could have caused potentially very serious implications particularly for the finance industry.

These potential problems can be overcome if jurisdictions outside the European Economic Area, such as Jersey, can demonstrate robust data protection legislation and regulatory regimes. The 1987 Law fell significantly short of European standards, and sparked the drafting of a new Law.

The new Data Protection (Jersey) Law 2005 is very similar to the UK Data Protection Act 1998, which should ensure a smooth assessment by the European Commission placing Jersey on the trading 'white list'. The process of obtaining 'adequacy status' from the European Commission is now underway.

The new Law also provides increased protection for all in recognition of the basic human rights to which we are all entitled to benefit.

The other Crown dependencies, Guernsey and the Isle of Man have both implemented their new Data Protection Laws, and both jurisdictions have had positive adequacy assessments from the European Commission.



The main changes highlighted in the Data Protection (Jersey) Law 2005 are:

- Expanded definition of data
- Expanded definition of processing
- Strengthening of principles
- Principles apply, notified or not
- Assessments by the Commissioner
- Information notices
- Increased scope of offences

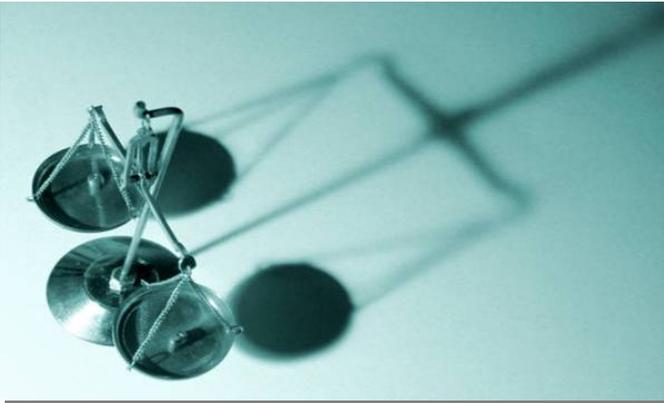
## **Data**

No longer applies solely to electronic data, but also to manual records retained as part of a relevant filing system.

## **Processing**

Now much wider, and includes obtaining, recording or holding the data. In reality, there are very few activities that would not be considered as processing.

# The Data Protection (Jersey) Law 2005



## The Principles

### First principle:

Personal data shall be processed fairly and lawfully.

At least one of the conditions set out in Schedules 2 and 3 to the Law must be met before the processing of personal data or sensitive personal data can commence.

### Second principle:

Personal data shall be obtained only for one or more specified and lawful purposes, and shall not be further processed in any manner incompatible with that purpose or those purposes.

### Third principle:

Personal data shall be adequate, relevant and not excessive in relation to the purpose or purposes for which they are processed.

### Fourth principle:

Personal data shall be accurate and, where necessary, kept up to date.

### Fifth principle:

Personal data processed for any purpose or purposes shall not be kept for longer than is necessary for that purpose or those purposes.

### Sixth principle:

Personal data shall be processed in accordance with the rights of data subject under this law.

### Seventh principle:

Appropriate technical and organisational measures shall be taken against unauthorized or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data.

### Eighth principle:

Personal data shall not be transferred to a country or territory outside the European Economic Area unless that country or territory ensures an adequate level of protection for the rights and freedoms of data subjects in relation to the processing of personal data.

# The Data Protection (Jersey) Law 2005

## Application of the Principles

One of the major changes in the 2005 Law is that the principles apply to everyone processing personal data, whether or not they have notified the Commissioner under the Law, therefore strengthening the powers of the Commissioner significantly.

## Assessments by the Commissioner

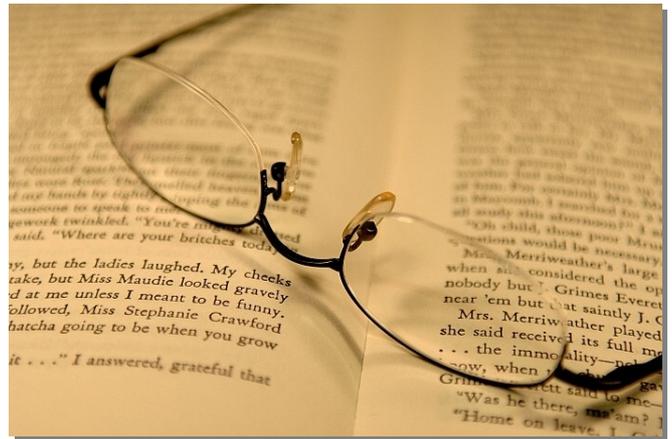
This addition allows the Commissioner to conduct a formal assessment of an organisation's compliance with the Law. This is seen very much as a precursor to enforcement action and gives the organisation the opportunity to put things right at an early stage.

## Information Notices

The Commissioner will also be able to issue Information Notices to Data Controllers, requiring information for the purposes of determining whether a Data Controller is complying with the Principles.

## Scope of Offences

Additional offences can be committed under the new Law, including the unlawful obtaining or selling of personal data, making a false statement in purported compliance with an Information Notice, and providing false or misleading information to the Commissioner. It should be noted that Jersey is the first jurisdiction in the British Isles to impose a maximum custodial sentence of 5 years imprisonment where an individual is found guilty of unlawful obtaining or selling of personal data.



# The 2005 Data Protection Conferences

In preparation for the implementation of the 2005 Law, the Registrar hosted two very successful Data Protection conferences in January 2005. Whilst much of the work and organisation towards these events took place at the tail end of 2004, the conferences were seen as the launching platform for the 2005 Law.

The first day was held at the Town Hall in St. Helier and was devoted purely to public sector employees, with the second day aimed at the private sector and held at the Hotel de France.

A host of top local and UK speakers were heard by a total of over 300 people who attended across the two days.

On day one, IT Director for the States of Jersey, Stephen Chiang gave an overview of the strategy for the States and e-government, before the UK's Assistant Information Commissioner, Jonathan Bamford delighted the audience with his anecdotes and thoughts as to why we bother with data protection.

CS Privacy Managing Director, Sheelagh Keddie provided an overview of the new 2005 Law, and Paul Boyle, Head of Information Rights with the Department of Constitutional Affairs discussed the implications of data sharing.

After lunch Wendy Malorey, Partner at Mourant's law firm focused attention on employment records and individual's rights.



Lesley Le Bailly, Data Protection Officer for Education then gave some practical advice on managing compliance in a States organisation, with Deputy Jennifer Bridge and Paul Boyle concluding the day with an insight into Freedom of Information.

Day two saw a large number of the finance sector in attendance, however it was pleasing to see many other smaller private sector retailers and service providers present as well.

Deputy Geoffrey Grime started the day with an overview of the Finance and Economics Committee, followed by a repeat of Jonathan Bamford's 'Why Bother?' session.

Top privacy lawyer, Rosemary Jay from Pincent Masons provided an overview of the new 2005 Law, while local lawyer, Elaine Millar from Mourants talked about marketing issues and solutions.

# The 2005 Data Protection Conferences



Paul Boyle also stayed for the second day and discussed the legal implications of the famous Durant case, which has become a defining case in Data Protection circles.

The afternoon also saw a collaboration of local law enforcers and regulators look at the relationship of Data Protection legislation with the Proceeds of Crime (Jersey) Law 1999, the Rehabilitation of Offenders (Jersey) Law 2001 and the Financial Services (Jersey) Law 1998.

Soon to be Commissioner, Emma Martins lead the discussions, with valuable contributions from Assistant Chief Probation Officer, Mike Cutland, Detective Inspector Barry Faudemer of the Joint Financial Crimes Unit, and Andrew Le Brun, Director of International and Policy at the Jersey Financial Services Commission.

Wendy Malorey repeated her presentation on the practical approaches to employment records, with Emma Martins and Guernsey Commissioner, Peter Harris concluding the day with an insight into overseas transfers and European adequacy assessments.

The two days were the culmination of months of hard work, most notably by the conference organiser, Rozena Newell at Concept Communications. The Commissioner would like to again extend her sincere thanks to Rozena and her team for the effort put in to making the two days such a successful and well run event.

The conferences were deemed a resounding success for the Department, and the feedback from public and private sector attendees to date has been extremely positive. Without doubt, the two conferences have planted the data protection 'seed' in many people's minds and this has been reflected in the large increase in calls to the department for advice.

Local businesses, both public and private, are becoming far more aware of their Data Protection requirements, whilst at the same time Jersey citizens are becoming more aware of their rights of access to information about them.



# The Work of the Commissioner

## Notification Process

Up to the 1<sup>st</sup> December 2005, the department operated under the 1987 Law; therefore all records within the Public Registry were produced manually, including renewal notices.

A new on-line notification system and searchable register was introduced upon implementation of the 2005 Law, allowing for a much easier and more streamlined notification process.

The 2005 Law also brings a change to the old-style Registration process, replacing it with an annual notification as opposed to tri-annual.

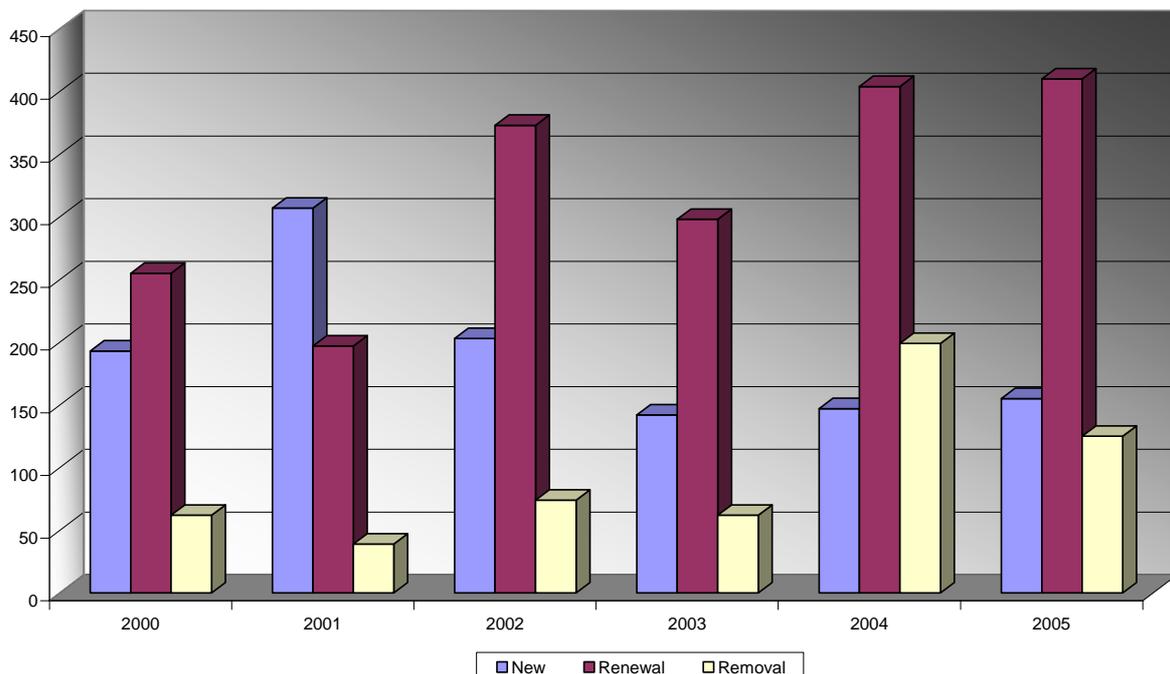
At the end of 2005 there were a total of 3449 active registrations, having seen 155 new applications throughout the year. This is a slight increase on 2004.

There was also a slight increase in the number of registration renewals, the highest since the turn of the century mainly due to the delay in the implementation of the new Law.

Removals were down significantly down on the previous year, where mergers in large organisations due to major business re-structuring had contributed to the figure.

Whilst there is no direct pattern in relation to when notifications are received, historically the months of September and October appear to be the busiest months for notification, and 2005 saw a similar story. October 2005 was also the end of the 6<sup>th</sup> cycle of 3-year registrations since the advent of the 1987 Law.

Registration Statistics:- 2000 to 2005





# The Work of the Commissioner

## Complaints against Data Users and Controllers

The design of a new complaints recording database in early 2005 and the implementation of the Commissioner's new Policy Statement and Guidance on Complaint Handling, and procedures to standardise the handling of complaints, has ensured that complaints continue to be dealt with in a professional and efficient manner. It also ensures that all complaints are handled consistently and acknowledged within specific time constraints.

The complaint recording database was developed within the department and has the ability to produce reports on the numbers of complaints and the type of complaint received. It also highlights areas of concern that may prompt further active focus or guidance to the relevant industry sectors.

Since complaint recording commenced in April 2005, a total of 31 complaints were received. It should be noted that these figures do not include complaints relating to unsolicited telephone calls, e-mails, or general spam due to the volume of such calls received by the office. Therefore, only direct complaints against Data Controllers which may possibly allege a breach of the Law or Principles are recorded.

## Education and Promotion

During the year, the Commissioner and her Deputy continued to meet the demand of public and private sector businesses with regard to speaking engagements and provide compliance advice to organisations. In 2005, the Office of the Data Protection Commissioner undertook a total of 26 speaking engagements to both public and private sector organisations.

## Preparation for the 2005 Law

Much of the year was dedicated to preparing for the implementation of the 2005 Law, including the preparation of extensive guidance documents, codes of practice and policy documents ready for implementation date. A full list of guidance prepared to date can be found on the Data Protection website at [www.dataprotection.gov.je](http://www.dataprotection.gov.je).

As a result of the significant efforts of the department as a whole, new guidance, codes of practice and policy documents all became available on the Commissioner's new website on 1<sup>st</sup> December 2005. Since going live with the new website, the department received a total of 5163 visits to the site in the first month and averages around 6000 visits per month. This figure is a 300% increase on the average number of visits to the old Data Protection website, which rarely hit 2000 visits per month.

## Legal Preparation

Whilst preparation for implementation of the 2005 Law progressed through the year, the department, with the assistance of the Law Draftsman's Office, also prepared the subordinate Regulations to accompany the Primary Law.

Once drafted, the Regulations were made available for public consultation and were finally approved by the States in October.





## The Work of the Commissioner

### **First independent audit of the Office of the Data Protection Commissioner**

As the implementation of the 2005 Law also changed the Commissioner's identity to that of a corporation sole, no longer linked to the Judicial Greffe, much work was also undertaken to produce new internal procedures and processes for the department to ensure the best possible service to individuals and businesses alike.

Within 10 days of implementation of the new Law, the department was subject to its first independent audit from the States Auditors. The resulting report was highly complimentary and the department was given a clean bill of health going forward.

### **European Adequacy**

Once the 2005 Law was successfully implemented, the next major step was to submit our formal request to the European Commission for an adequacy assessment similar to those already enjoyed in the other Crown Dependencies. A positive assessment from Europe is vital to the Island to ensure that Jersey is placed firmly on the trading "white list" to enable personal data can be freely exchanged between Jersey and members of the European Economic Area.

A formal request was sent to the Department of Constitutional Affairs ("DCA") in the UK by the Deputy Bailiff on 20<sup>th</sup> February 2006, requesting the DCA to act on the Island's behalf in seeking adequacy status from the European Commission.

### **Key Tasks for 2006:**

- Continue to develop guidance and codes of practice to support the 2005 Law;
- Implement the second phase of the on-line notification system;
- Introduce a specific area of the Commissioner's website dedicated to parents and children in response to growing issues surrounding the security of personal data belonging to young people;
- Obtain adequacy status from the European Commission;
- Employ a comprehensive external audit of the department for 4th quarter of 2006;
- Maintain a high standard of service to the general public and public and private sector organisations.



# The Work of the Commissioner



## Coverage in the media

During the course of 2005, Data Protection was subject of media coverage in the Jersey Evening Post a total of 36 times. Only four of those reports were of a negative nature, where organisations had misinterpreted the requirements of the legislation. Most articles were in relation to the impact upon organisations of the 2005 Law and coverage about the activities of the Commissioner's Office.



## International Relations

Both the Commissioner and the Deputy Commissioner attended various national and international conferences and seminars throughout 2005.

The Commissioner and her Deputy both attended a conference on Freedom of Information in London in February, and the Deputy Commissioner represented the department at the annual meeting of British and Irish Data Protection Authorities in Cyprus in May.

The Island was also represented at the 27<sup>th</sup> International Conference of Data Protection Commissioners in Montreux, Switzerland.

# Financial Statements

## Income and Expenditure Account for the year ended 31 December 2005

	Note	£	2005 £	£	2004 £
<b>Income:</b>					
Registry fees	2		<u>88,044</u>		<u>70,463</u>
Total income			88,044		70,463
Contribution from the States of Jersey	2		<u>210,393</u>		<u>197,070</u>
Net income			298,437		267,533
<b>Operating expenses:</b>					
<b>Manpower costs:</b>					
Staff salaries, social security and pension contributions		199,163		155,602	
<b>Supplies and services:</b>					
Supplies		0		0	
Hired services		0		22,540	
Computer system costs		3,113		1,520	
Equipment purchases		0		2,555	
<b>Administrative costs:</b>					
Printing and stationary		2,440		3,128	
Books and publications		2,267		2,673	
Telephone charges		982		1,121	
Postage		1,118		800	
Advertising and publicity		3,264		1,603	
Travel and entertainment	3	0		3,360	
Conference and course fees		5,779		4,694	
Other administrative costs		8,432		7,096	
<b>Premises and maintenance:</b>					
Furniture		0		0	
Utilities (incl. Electricity)	4	4,358		568	
Water	4	0		12	
Rent	4	<u>25,102</u>		<u>30,780</u>	
Total operating expenses			<u>256,018</u>		<u>238,052</u>
Excess of income over expenditure			42,419		29,481

### Statement of recognised gains and losses

There were no recognised gains or losses other than those detailed above.

The notes on the following page form an integral part of this income and expenditure account.

# Financial Statements (continued)

## Notes to the Financial Statements

### 1. Accounting policies

a) The financial statements have been prepared under the historical cost convention, in accordance with generally accepted accounting practice in the United Kingdom.

b) Income is accounted for during the period to which it relates and expenditure is accounted for on an accruals basis.

### 2. Income

The figure for registry fees is inclusive of a refund total of £250 for two refunded registration fees paid in error.

The contribution from the States of Jersey is shown separately in order to show the annual budgeted allowance provided to the Office of the Data Protection Commissioner.

### 3. Travel and entertainment

This figure is now part of the Conference and Course Fees expenditure.

### 4. Utilities, electricity, water & rent

In 2004, The department was charged separately for rent, water and electricity. This method of billing has now changed and whilst the charges for rent are still charged separately, all utilities, including electricity, water, oil, security and office cleaning are charged together in one quarterly bill.

# Annexe to the Financial Statements

## Corporate Governance

### **Constitution of the Office of the Data Protection Commissioner**

The Office of the Data Protection Commissioner (“the Commissioner”) is a statutory authority, and a corporation sole established under Article 6 of the Data Protection (Jersey) Law 2005 (“the Law”). The Commissioner is appointed by the Appointments Commission, and the Office has a direct reporting line to the Chief Ministers Department.

### **Functions of the Commissioner**

The general duties of the Commissioner are set out in Article 51 of the Law, which in simple terms state that it is the Commissioner’s duty to:

- a) promote the following of good practice by data controllers and to promote the observance of the requirements of the Law;
- b) consider any complaint of alleged contravention of the data protection principles or the provisions of the Law;
- c) provide guidance and advice to the public about the operation of the Law and other matters that fall within the scope of the Commissioner’s functions;
- d) provide compliance advice to trade associations or other representative bodies in the preparation of guidance to their members to assist with compliance with the data protection principles.

### **Accountability**

The Commissioner is a corporation sole and is accountable to the Chief Ministers Department within the States of Jersey.

The Commissioner is required to submit its business plan, budget and Annual Report to the Council of Ministers each year for approval.



*The Freddie Mercury memorial, Montreux, Switzerland – 27<sup>th</sup> International Conference of Data Protection Authorities.*



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