



## **OPERATION BELFONG**

**ORGANISATIONAL LEARNING REPORT FOLLOWING AN INDEPENDENT  
INVESTIGATION OF COMPLAINTS AGAINST STATES OF JERSEY POLICE,  
RELATING TO THEIR LEGAL OBLIGATIONS TO DISCLOSE INFORMATION**

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PSNI	Police Service of Northern Ireland
SoJP	States of Jersey Police
TOR	Terms of Reference
FoI	Freedom of Information
PSD	Professional Standards Department
MoPI	Management of Police Information
JEP	Jersey Evening Post
PCA	Police Complaints Authority
JFCAS	Jersey Family Court Advisory Service
HSS	Health and Social Services
NPCC	National Police Chiefs' Council
ACPO	Association of Chief Police Officers
PNB	Pocket Notebook

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## **1. EXECUTIVE SUMMARY**

- 1.1** This report relates to an investigation conducted on behalf of the States of Jersey Government by the Police Service of Northern Ireland (PSNI). The investigation was conducted in accordance with the States of Jersey Police Force (Chief Officer and Deputy Chief Officer) (Jersey) Regulations (the Draft Regulations) and legislative framework therein, criminal and civil law applicable to the States of Jersey, Codes of Practice on Access to Information Held by the States, applicable States of Jersey Police (SoJP) Policies, and the Code of Conduct, Disciplinary Rules and Disciplinary Policy relevant to States of Jersey civilian employees. The investigation centres on allegations made by the Complainant concerning Police Officer 1 and Police Employee 1. The commissioning authority in the matter was the Assistant Minister for Home Affairs and the person appointed as the Investigating Officer was the PSNI Chief Constable, George Hamilton. Terms of Reference (TOR) were agreed between the PSNI and the Assistant Minister for Home Affairs and the investigation was progressed under the operational name, Operation Belfong.
- 1.2** On 26 November 2015 the Complainant alleged that Police Officer 1 and Police Employee 1 used their positions to pervert the course of civil justice by failing to release documents requested by the Complainant in the 40 days prescribed by the Data Protection (Jersey) Law 2005 and of deliberately misleading him at a meeting on 13 July 2012. The Complainant claims this resulted in his civil action against the SoJP being struck out by the Royal Court, Jersey on 3 November 2015 on the basis of being time barred.
- 1.3** The Complainant engaged in an interview process with the Enquiry Team; from that interview process a written statement was compiled. In his statement, he outlined his business dealings with the SoJP from 1985; investigations conducted by SoJP in respect to him; his previous complaints about Police Officer 2; independent investigations into his alleged mistreatment; the collapse of his business; his requests for disclosure over a significant period of time; the actions of Police Officer 1 and Police Employee 1; and his failed civil actions taken against the SoJP.
- 1.4** Under the TOR the remit of the Enquiry Team was to consider whether there had been any criminal conduct and/or misconduct on the part of Police Officer 1 or Police Employee 1. The Enquiry Team was also to consider whether response times for disclosures had been adequately improved and make any relevant observations or recommendations identified in the course of the investigation for the purpose of organisational learning for the SoJP.

- 1.5** To ensure an effective and thorough investigation, the Enquiry Team engaged with a total of 17 witnesses. The accounts of three witnesses were not deemed relevant and two witnesses did not provide statements, being under no obligation to do so. Statements were recorded from the remaining 12 witnesses. The Enquiry Team examined a substantial number of documents supplied by the Complainant, the SoJP and witnesses. The SoJP's processes relevant to the complaint were assessed and reality testing was conducted. Police Officer 1 and Police Employee 1 were interviewed after caution.
- 1.6** In respect of the allegations of criminal conduct, a written report was submitted to the Attorney General, Jersey on 19 October 2016. On 23 December 2016 the Attorney General directed that there was insufficient evidence to prosecute either Police Officer 1 or Police Employee 1 for the offences of Perverting the Course of Civil Justice or Misconduct in Public Office.
- 1.7** In respect of the allegations and the question of misconduct, the Enquiry Team found insufficient evidence to suggest possible misconduct on the part of Police Officer 1 under the Draft States of Jersey Police Force (Chief Officer and Deputy Chief Officer) (Jersey) Regulations, had Police Officer 1 still been a serving officer. However, evidence was found to suggest possible misconduct on the part of Police Employee 1 under the States of Jersey Disciplinary Rules, had Police Employee 1 still been an employee of the States of Jersey. Police Officer 1 had retired from the SoJP prior to the commissioning of this enquiry. Police Employee 1 had resigned as a States of Jersey employee in 2014. This means that neither can be subject to misconduct proceedings, given the regulations in Jersey covering both police and civilian government employees.
- 1.8** Although this enquiry focused on events post 2010, in order to fully consider the allegations and to provide context, it was necessary to evaluate and summarise events that took place prior to 2010. It has been established that over a period of time dating from 2006, the Complainant made multiple requests for disclosure to the SoJP. In some instances, the SoJP failed to recognise and assess the correct regime for considering disclosure. In the two instances, when the SoJP provided the Complainant with disclosure, it was outside the prescribed statutory time limit. In all other instances the SoJP failed to provide the Complainant with any disclosure (Allegation 1).
- 1.9** It has been established and acknowledged by Police Officer 1 and Police Employee 1 that the SoJP failed to provide the Complainant with the disclosure that he had asked for in his Subject Access Request of January 2012, within the prescribed statutory time limit, even though this material was in the possession of the SoJP. The Enquiry Team has found no evidence to support the assertion that this failure to disclose information to the Complainant was a deliberate act to ensure

that his claim against the SoJP would become time barred. It is important to note that regardless of the reason for the failure, it could not have contributed to the Complainant's civil claim of August 2015 becoming time barred (Allegation 1). This was due to the fact that the Royal Court ruled that the Complainant had sufficient information to bring his civil claim when he was provided with a redacted version of the Devon and Cornwall report on 28 July 2009.

- 1.10** The Enquiry Team has also found no supportive evidence which would indicate that the Complainant was told at the meeting on 13 July 2012 that his claim was not, and could not become, time barred or that he was given assurances that any claim that he would bring against the SoJP would not be defended. Even if it had been proven that any such discussion had taken place, it could not have contributed to the Complainant's claim of August 2015 becoming time barred (Allegation 2). No participant at the meeting could have been aware of the time barring date of 28 July 2012 as that date was only arrived at by the Master of the Royal Court on 3 November 2015.
- 1.11** Police Employee 1 received a total of 12 'Section 3' Subject Access Requests (requests for non-conviction information) for action between 2009 and 2013. Only two of these were finalised within the prescribed statutory time limit; one Subject Access Request was withdrawn. When Police Employee 1 resigned from the SoJP in 2014 there were five outstanding Subject Access Requests, including the Complainant's. All of these were outside of the prescribed statutory time limit. It is therefore considered that this is evidence of prolonged organisational and individual failings around Subject Access Requests by the SoJP. It also demonstrates that the Complainant was not singled out for non-disclosure.
- 1.12** Police Employee 1's broad role profile and job description were factors in his failure to process Subject Access Requests within the prescribed time limit. The SoJP's appointment in June 2014 of a person whose main responsibility was processing Subject Access Requests has resulted in the majority of requests for disclosure being prioritised and addressed promptly; adherence to the prescribed statutory time limit is now the norm rather than the exception. There is evidence of clear improvements to the monitoring and tracking of Subject Access Requests, improvements to processes and improvements in record keeping concerning disclosures.
- 1.13** Several of the witnesses who engaged with the Enquiry Team have recorded dissatisfaction as to their interaction with the Office of the Information Commissioner. The role and function of the Office of the Information Commissioner is outside the agreed TOR and subsequent investigation. However, the Enquiry Team felt it was appropriate to include the reported experiences of these witnesses.

- 1.14** This report identifies 20 key findings and makes 20 recommendations, designed to assist the Assistant Minister for Home Affairs, Jersey, and the SoJP, to address the key findings. The 20 recommendations are sub-divided into five of a strategic nature and 15 which relate to operational matters. These are covered in greater detail in paragraph 15.
- 1.15** The Enquiry Team wish to acknowledge that the SoJP co-operated fully with this enquiry at all times. We would also acknowledge the large number of documents that have been provided without restriction and the professionalism of those officers and staff in the SoJP who assisted the Enquiry Team.



## 2. INTRODUCTION

- 2.1** This report relates to an investigation conducted on behalf of the States of Jersey Government by the PSNI. The investigation was conducted in accordance with, the States of Jersey Police Force (Chief Officer and Deputy Chief Officer) (Jersey) Regulations (the Draft Regulations) and legislative framework therein, criminal and civil law applicable to the States of Jersey, Codes of Practice on Access to Information Held by the States, applicable SoJP Policies and the Code of Conduct, Disciplinary Rules and Disciplinary Policy relevant to States of Jersey civilian employees.
- 2.2** The test in the Draft Regulations at 12(1)(a), that the conduct complained of, or in respect of which an allegation is made, if proved, would justify a criminal or disciplinary charge, was deemed to have been met. Therefore an external independent investigation was required. The commissioning authority in the matter was the Assistant Minister for Home Affairs, Jersey and the person appointed as the Investigating Officer was Chief Constable George Hamilton. A copy of the Draft Regulations is attached at *Appendix A*.
- 2.3** The investigation centred on allegations made by the Complainant concerning the actions of Police Officer 1 and Police Employee 1. The investigation was progressed under the operational name, Operation Belfong.
- 2.4** On 26 November 2015, the Complainant outlined his allegations to the Chief Officer, SoJP by email (*Appendix B*). The allegations were also addressed to the Minister for Home Affairs, Jersey and the Information Commissioner. The Complainant alleged that Police Officer 1 and Police Employee 1 used their positions to pervert the course of civil justice by failing to release documents requested by him in the statutory time prescribed by the Data Protection (Jersey) Law 2005 and of deliberately misleading him at a meeting on 13 July 2012. The Complainant claimed that this resulted in his civil action against the SoJP being struck out by the Royal Court, Jersey on 3 November 2015 on the basis of being time barred. The Royal Court Ruling is attached at *Appendix C*.
- 2.5** Whilst the Master of the Royal Court, Jersey acknowledged that the Complainant had made requests for disclosure to the SoJP prior to 2010, he stated that “even if there may have been concerns in 2007 about providing disclosure, there was no justification by 2010 to refuse to provide information”. As a result of this ruling the Enquiry Team, whilst making reference to the Complainant’s earlier requests for disclosure, has focused their investigation on events leading on from the Complainant’s request for disclosure dated 26 April 2010. The Complainant’s requests for disclosure prior to 26 April 2010 are detailed in paragraph 7 of this report.

- 2.6** Following liaison between the Assistant Minister for Home Affairs and the PSNI, Chief Constable Hamilton appointed a suitably trained and experienced Enquiry Team. The Enquiry Team was managed by a Superintendent on a day-to-day basis with active direction by Chief Constable Hamilton.
- 2.7** TOR were established between the Assistant Minister for Home Affairs and the PSNI Chief Constable to ensure clarity of purpose (*Appendix D*).
- 2.8** The objectives of the Enquiry Team were -
- To establish whether any criminal offences occurred and, in the event of there being evidence of criminality, provide a written report for consideration by HM Attorney General for Jersey.
  - In the event that misconduct failings were identified, to provide a report for consideration by the Assistant Minister for Home Affairs.
  - To consider whether systems in the SoJP have been adequately improved to avoid future delays in response times for disclosures and make any relevant observations or recommendations identified in the course of the investigation for the purpose of organisational learning for the SoJP.

### **3. RELEVANT LEGISLATION, POLICIES AND CODES OF PRACTICE**

**3.1** In considering the actions of those persons complained of, and in measuring the performance of the SoJP, the following legislation, policies and codes of practice were found to be relevant.

#### **3.1.1 States of Jersey Police Force (Chief Officer and Deputy Chief Officer) (Jersey) Regulations (the Draft Regulations)**

At the time of the investigation the States of Jersey Police Force (Chief Officer and Deputy Chief Officer) (Jersey) Regulations (the Draft Regulations) had not been implemented. However on 21 February 2017 prior to printing of this report the Draft Regulations were enacted.

#### **3.1.2 Data Protection (Jersey) Law 2005**

This legislation governs the disclosure of personal data to individuals. Article 7 covers the obligations on the individual and the Data Controller in respect of Subject Access Requests. An individual is obliged to make any request for personal data in writing, accompanied by the required fee and any identification documents deemed necessary. The Data Controller is obliged to respond to a request for personal data within 40 days of receipt of a written request, submitted with the required fee and the identification documents (if required by the Data Controller). This legislation remains current. A copy of the Data Protection (Jersey) Law 2005 is attached at *Appendix E*.

#### **3.1.3 Codes of Practice on Access to Information Held by the States, Committees of the States and Departments of the States**

Freedom of Information (Fol) Legislation did not come into effect in Jersey until January 2015. Prior to that date, requests for disclosure under Fol were governed by the Codes of Practice. These Codes applied to all States of Jersey Departments, including the SoJP. These Codes required the SoJP to acknowledge receipt of any request and to take all reasonable steps to supply information within 21 days. If the information was exempt and could not be released, the SoJP was required to inform the applicant of the reasons for not providing information and their right to appeal if they were dissatisfied with the handling of the request. The Codes of Practice are attached at *Appendix F*.

#### **3.1.4 SOJP Policy – Data Protection Disclosure of Information**

This policy was current from December 2005 until October 2014. This is a high level policy to provide guidance for staff making disclosures of personal data and to support decision making considerations including complying with court orders and Subject Access Requests. A copy of the Policy is attached at *Appendix G*.

### **3.1.5 SOJP Policy - Disclosure of Personal and Non-Personal Information**

This policy superseded the policy at 3.1.4 above and remains current. This updated policy provides guidance on legal gateways for staff making disclosures of both personal and non-personal information in a variety of scenarios, including establishing a standard administrative procedure for disclosures to third parties such as the media, individuals and disclosures required for legal proceedings. A copy of the policy is attached at *Appendix H*.

### **3.1.6 SOJP Policy – Subject Access Procedure**

This policy provides guidance on the handling and processing of Subject Access Requests and administrative procedures for staff to follow on receipt of a request. A copy of the policy is attached at *Appendix I*.

### **3.1.7 Code of Conduct – States of Jersey Employees**

States of Jersey civilian employees are expected to adhere to this code which covers areas such as working within the law and reporting wrongdoing. A copy of the Code of Conduct is attached at *Appendix J*.

### **3.1.8 Disciplinary Rules and Policy – States of Jersey Employees**

The Disciplinary Rules are intended to set out boundaries of acceptable behaviour and are applicable to all States of Jersey civilian employees. The Disciplinary Policy aims to provide clear guidance about the discipline procedure. Copies of the Disciplinary Rules and Disciplinary Policy are attached at *Appendix K*.

#### **4. OVERVIEW OF REPORTING STRUCTURES**

The agreed reporting structures for the investigation were based on three possible outcomes:-

##### **4.1 Evidence of Criminal Conduct and/or Misconduct and Organisational Learning**

4.1.1 If evidence of any criminal conduct in breach of the law of the States of Jersey was detected, the Enquiry Team was to provide a report to the Attorney General.

4.1.2 Within one month of the conclusion of any Criminal Justice proceedings, or a 'no prosecution' decision, the Enquiry Team was to report to the commissioning authority (the Assistant Minister for Home Affairs) on any misconduct issues.

4.1.3 Within one month of the conclusion of any misconduct proceedings (or within one month of the conclusion of any criminal proceedings if there are no misconduct issues), the Enquiry Team was to provide a penultimate draft of the report that addressed the organisational learning, the overall findings, observations and recommendations regarding the policies, processes and practices to the Chief Officer of the SoJP for factual accuracy checking allowing a two week period for a response.

4.1.4 Within one month of the response from the Chief Officer of the SoJP on factual accuracy, the Enquiry Team was to provide the final report to the commissioning authority, the Chief Officer and the Complainant.

##### **4.2 Evidence of Misconduct and Organisational Learning**

4.2.1 In the event of there being no evidence of a criminal nature, the Enquiry Team was to report to the commissioning authority on any misconduct issues.

4.2.2 Within one month of the conclusion of any misconduct proceedings, the Enquiry Team was to provide a penultimate draft of the report that addressed the organisational learning, the overall findings, observations and recommendations regarding the policies, processes and practices to the Chief Officer of the SoJP for factual accuracy checking allowing a two week period for a response.

4.2.3 Within one month of the response from the Chief Officer of the SoJP on factual accuracy, the Enquiry Team was to provide the final report to the commissioning authority, the Chief Officer and the Complainant.

### **4.3 Organisational Learning Only**

- 4.3.1 In the event of there being no evidence of criminal conduct and/or misconduct, the Enquiry Team was to provide a penultimate draft of the report that addressed the organisational learning, the overall findings, observations and recommendations regarding the policies, processes and practices to the Chief Officer of the SoJP for factual accuracy checking allowing a two week period for a response.
- 4.3.2 Within one month of the response from the Chief Officer of the SoJP on factual accuracy, the Enquiry Team was to provide the final report to the commissioning authority, the Chief Officer and the Complainant.

## **5. METHODOLOGY OF INVESTIGATION**

### **5.1 Preparation**

In preparation for the first visit by the Enquiry Team to Jersey, a number of pre-visit requests for information were submitted. These included requests for copies of SoJP policies, details of their processes, relevant role profiles and other specific information deemed necessary to inform the investigation.

### **5.2 Visit 1 - April 2016**

The purpose of this visit was familiarisation, fact-finding, securing documentation, and making necessary contacts. Meetings were held with the Assistant Minister for Home Affairs Jersey, the Chief Officer SoJP and the Complainant. Briefings were provided on SoJP policies and procedures, SoJP Disciplinary and Misconduct Procedures and legislation relevant to Jersey.

### **5.3 Visit 2 - May 2016**

The purpose of this visit was to secure the account of the Complainant, record statements and secure documentation. Meetings were held with SoJP staff currently involved in processing Subject Access Requests and with the States' Insurers. The Complainant had his witness account audio recorded. Liaison also took place with Professional Standards Department (PSD), SoJP.

### **5.4 Visit 3 - May 2016**

The purpose of this visit was to secure documentation and engage with identified witnesses. Meetings were held with SoJP staff involved in processing Subject Access Requests and with identified witnesses. Further liaison took place with PSD.

### **5.5 Visit 4 - July 2016**

The purpose of this visit was to conduct suspect interviews, record witness statements, evaluate processes and perform reality testing. Meetings took place with witnesses, SoJP staff, the States' Insurers, the Chief Officer SoJP and the Chief Officer, Community and Constitutional Affairs. Audio recorded interviews of Police Officer 1 and Police Employee 1 were also completed.

### **5.6 Visit 5 - August 2016**

The purpose of this visit was to locate additional witnesses and engage with identified witnesses and the Complainant. Meetings took place with witnesses and the Complainant. Statements were recorded from witnesses. Attempts were made to locate a further possible witness who had been identified by the SoJP.

## **5.7 Visit 6 - October 2016**

The purpose of this visit was to deliver a written report to the Attorney General, States of Jersey, to seek clarification from the SoJP on minor matters relating to this report and engagement with the Complainant. Meetings took place with staff at the Attorney General's Office, with SoJP staff members involved in processing Subject Access Requests and with the Complainant.

## **5.8 Hypotheses**

On completion of enquiries, to test the veracity of the complaint, the following broad hypotheses (possible scenarios) were adopted by the Enquiry Team:-

- (i) The SoJP's failure to disclose information to the Complainant within the required timeframe was in order to avoid a civil claim or;  
  
the failure was through organisational and/or individual failings or;  
  
the SoJP was correct not to disclose information.
- (ii) Regarding the information given to the Complainant at the meeting on 13 July 2012, he was misinformed in order to avoid a civil claim or;  
  
he was misinformed through organisational and/or individual failings or;  
  
he misunderstood the information that was relayed to him or;  
  
he was not misinformed at this meeting.



## **6. NATURE OF THE COMPLAINT**

- 6.1** The Complainant's email formed the basis for a witness interview strategy which was utilised to obtain best evidence from the Complainant.
- 6.2** The Complainant's account was audio recorded on 6 May 2016. A comprehensive witness statement was subsequently compiled. This statement was checked and signed by the Complainant on 19 May 2016.
- 6.3** In his witness statement the Complainant, who was the owner of a recovery service outlined his business dealings with SoJP from 1985; investigations conducted by the SoJP in respect of him; his complaints about Police Officer 2; independent investigations into his alleged mistreatment; the collapse of his business; his requests for disclosure; the actions of Police Officer 1 and Police Employee 1; and his failed civil action taken against SoJP.

## **7. EVENTS LEADING TO COMPLAINT AND THE COMPLAINANT'S EARLIER REQUESTS FOR DISCLOSURE**

- 7.1** From 1985, the Complainant operated a vehicle recovery/towing service. This firm had several clients, including the Parishes of Jersey and the SoJP. In 2005, Police Officer 2 introduced a rota system to manage the SoJP's vehicle recovery system. Prior to this, vehicle recovery had been carried out on an ad hoc basis with the Complainant's recovery service receiving the bulk of the work. The Complainant subsequently complained to the SoJP about the actions of Police Officer 2 in relation to the vehicle recovery rota. Police Officer 3 commissioned the Sussex Police to carry out a review of the recovery arrangements within the SoJP.
- 7.2** On 5 September 2006, the Complainant was arrested on suspicion of bribery and corruption of police officers. Following his arrest he was removed from the vehicle recovery rota. Police Officer 2 wrote to the Parishes on 12 September 2006 informing them that the Complainant had been removed from the SoJP vehicle recovery rota. He went on to say "other agencies using this company are themselves vulnerable to the same type of attack on their integrity". As a result of this letter the Complainant alleged that he lost a substantial amount of business.
- 7.3** The Sussex Police report recommended that the SoJP devise a contractual agreement with its recovery operators and that the Complainant was invited back on the tow rota. The SoJP did comply with the recommendation to draw up a contract and invited recovery companies to tender, however when the Complainant applied to tender he was informed by the SoJP that he was prohibited from doing so.
- 7.4** On 27 September 2006, Witness 1 wrote to the SoJP on the Complainant's behalf, requesting copies of any correspondence between the SoJP and outside agencies relating to him and his vehicle recovery business. The Complainant's Advocates (solicitors) wrote on two further occasions requesting this information. It is understood these requests for copies of correspondence included Police Officer 2's letter of 12 September 2006, as detailed at paragraph 7.2 and any email correspondence. There is no evidence that the Complainant was provided with disclosure in response to these letters.
- 7.5** On 17 November 2006 the Attorney General directed that there was insufficient evidence to prosecute the Complainant for any offence. Following this decision, the Complainant made allegations against Police Officer 2. The Devon and Cornwall Police was commissioned to investigate this complaint.

- 7.6** The Devon and Cornwall Police report recommended that the SoJP review their actions in relation to the Complainant's request to tender for the vehicle recovery contract. Following this recommendation, the SoJP invited the Complainant to tender and he was re-instated on the vehicle recovery rota. The report also recommended the SoJP review the actions of Police Officer 2 in terms of how they might have restricted the Complainant's business. As Police Officer 2 had retired from the SoJP no recommendations were made in relation to misconduct on his part.
- 7.7** On 30 December 2006, the Complainant wrote to the SoJP requesting a copy of the Sussex Police report. He made four further requests for this report before he was provided with a redacted version on 20 August 2007. The SoJP provided the report under the Codes of Practice on Access to Information held by the States, Committees of the States and Departments of the States.
- 7.8** On 22 October 2007, the SoJP began an investigation into the Complainant for Computer Misuse Offences, after he had allegedly incriminated himself at the trial of a former police officer. The case against the Complainant was dismissed on 28 August 2008. The Devon and Cornwall Police investigation, which had been suspended during the investigation into the Complainant, was resumed following this dismissal. Police Officer 2 retired from the SoJP on 31 August 2008.
- 7.9** On 12 May 2009 the Complainant wrote to the SoJP requesting a copy of the Devon and Cornwall Police report. He was provided with a redacted version of the report on 28 July 2009 by Police Officer 1, who stated that the redactions were necessary due to "issues relating to the Data Protection Act".
- 7.10** The Complainant made no further requests for disclosure to the SoJP until he wrote to them on 26 April 2010.

## **8. ALLEGATION 1**

### **Nature of Complaint**

- 8.1** The Complainant's first complaint was that the SoJP failed to release documents to him in the statutory time limit prescribed by the Data Protection (Jersey) Law 2005.
- 8.2** The following facts have been established by the Enquiry Team. The Complainant wrote to the SoJP on 26 April 2010, requesting disclosure of the full Sussex Police report, the full Devon and Cornwall Police report, a copy of the letter sent to the Parishes about him, all emails sent to officers and any police complaints about him. This letter was replied to on 6 May 2010 by Police Officer 1, who stated 'it is not policy to routinely disclose information held by the police'. The Complainant did not receive any of the documentation he had requested.
- 8.3** On 10 November 2011, the Complainant submitted a further request for disclosure. He requested the Sussex Police report, the Devon and Cornwall Police report, all emails sent by Police Officer 2 about him, all emails sent to States' Departments and Parishes about him, emails sent to police and staff during the investigation against him (2005-2006) and details of persons who had checked the registration details of any of his vehicles in the preceding three years. Police Employee 1 emailed a Subject Access Request form to the Complainant on 7 December 2011. The completed form, with the required fee and identification, was received by the SoJP on 20 January 2012.

### **Account of the Complainant**

- 8.4** The Complainant had stated that "in and around 2012", Police Employee 1 informed him of the need to complete a Subject Access Request form. The Complainant stated that he had never been required to submit a form to request disclosure before and that nobody had told him that his disclosure requests were incorrect or inappropriate. The Complainant completed the form and returned it to Police Employee 1 with the required fee and identification documentation.
- 8.5** The Complainant alleged that he did not get a response to this Subject Access Request within 40 days, despite repeatedly emailing Police Employee 1 for updates. He stated that Police Employee 1 had subsequently informed him verbally that some of the documents he was seeking had gone missing. The Complainant stated that he sent emails breaking his requests down to 25 smaller items to make it easier for Police Employee 1 to process (see Chronology of Disclosure at *Appendix L*).

- 8.6** On 7 September 2012, Police Officer 1 wrote to the Complainant and informed him that the disclosure he was seeking was not available through the Subject Access process. The letter stated that the Complainant would have to take legal action to get the documentation he was asking for. The Complainant asserted that between 2007 and 2014 he was constantly denied disclosures by the SoJP resulting in his 2015 claim against them being dismissed on the basis of being time barred. The Complainant stated that between September-October 2014 he was provided with the disclosures he had asked for in his Subject Access Request of 20 January 2012. These had been provided by Police Employee 2 and Police Employee 3 and signed off by Police Officer 1. He stated that he was unable to bring his claim against the SoJP when he had received the redacted versions of the Sussex and Devon and Cornwall Police reports, because they were so heavily redacted.
- 8.7** The Complainant believed that the failure to disclose information to him was not due to poor procedures or incompetence, but was a deliberate act on the part of Police Officer 1 and Police Employee 1 to stop him bringing his claim against the SoJP, as aspects of his claim would have shown the SoJP in a bad light. He stated that he did not believe that his case was an isolated one and was of the opinion that all such cases should be examined as a whole.

#### **Account of Police Officer 1**

- 8.8** Police Officer 1 provided the following account during interview. He took up his role with the SoJP in March 2009. He stated that he provided the Complainant with a redacted version of the Devon and Cornwall Police report in 2009. In April 2010 the Complainant wrote and formally asked for the Devon and Cornwall Police report, the Sussex Police report, a copy of the letter to the Parishes and all emails. Police Officer 1 passed this letter to Police Employee 1 for action, as he dealt with all matters of disclosure. Police Officer 1 was aware from his meetings with Police Employee 1 that the Complainant's Subject Access Request was taking longer than expected. He stated that it took the Complainant 12 months to pay the required fee, so he considered that it was not a legitimate Subject Access Request and Police Employee 1 had been in touch with the Complainant about that.
- 8.9** Police Officer 1 believed that another reason for the delay in responding to the Complainant's Subject Access Request was the numerous additional requests for disclosure he had made. Police Officer 1 stated "where we went wrong organisationally is...he asked for further bits of information to add things on ...I think it just ended up as an open ended request that just kept going, running on and on". He also stated that the Complainant's further requests for information, not on his Subject Access Request, should have been compartmentalised.

- 8.10** Police Officer 1 confirmed that he was Police Employee 1's Line Manager. He explained he had some "hands-on" involvement concerning disclosure relating to convictions. All matters in relation to Subject Access and FoI were dealt with exclusively by Police Employee 1. All incoming correspondence to the SoJP in relation to disclosure would be directed to Police Employee 1 for assessment. Police Employee 1 would also advise individuals how to structure their requests for disclosure. Police Officer 1 described Police Employee 1 as a "one man band" and acknowledged that he was under resourced.
- 8.11** The decision as to what disclosure to provide would be Police Employee 1's and he would personally sign off on these decisions. Police Officer 1 would sign off on disclosures where there were "issues around third party public interest". Police Officer 1 acknowledged that the Complainant's requests for disclosure could have been answered much more quickly than they had been. Police Officer 1 stated that he had no recollection of writing to the Complainant on 7 September 2012 and informing him that the material he was seeking was not available through the Subject Access process, but he accepted that he did. He believed that the letter only referred to the documentation that was not available to the Complainant through the Subject Access process, not all the documentation he had requested.
- 8.12** Police Officer 1 also stated that he was unaware that the Complainant had not been provided with the documentation that he was entitled to through the Subject Access process by Police Employee 1. He described his meetings with Police Employee 1 as "periodic" and occurred on a 2-3 weekly basis. The purpose of these meetings was to get updates from Police Employee 1 on all aspects of his job, not just Subject Access Requests. Police Officer 1 stated in interview, "I know Police Employee 1 was in regular contact with him [the Complainant] and [had] regular discussions over disclosure and when Police Employee 1 and I met every 2-3 weeks, he would, if there was something pertinent, he would update us and say I'm still in discussion with [the Complainant], I'm still dealing with disclosures". Police Officer 1 stated that before Police Employee 1 left the employment of the SoJP he had a handover meeting with Police Employee 2 and Police Employee 3.

#### **Account of Police Employee 1**

- 8.13** Police Employee 1 provided the following account during interview. Police Employee 1 stated that he took up his role with the SoJP in January 2006. He initially stated that he could not recall when in 2010 the Complainant's letter had been received or when it had been referred to him, although he could recall what the Complainant requested in 2010 and made reference to dealing with him from 2010. However, when Police Employee 1 was shown a copy of the letter during interview, he stated that he believed he had never seen the

letter and that if it had come to him he would have “had to do something with it”.

- 8.14** Police Employee 1 recalled a letter from the Complainant dated 10 November 2011, which had initiated the Complainant’s Subject Access Request. He believed that the Complainant had an expectation that he only had to ask for documentation and it would be provided to him. He stated that when the Complainant had submitted his Subject Access Request he had met with him and told him from the outset that un-redacted versions of the Sussex and Devon and Cornwall Police reports were not available to him under Data Protection Law as he was only entitled to his own personal information.
- 8.15** Police Employee 1 believed that the Complainant was already in possession of redacted versions of the Sussex and Devon and Cornwall Police reports and informed him that if he wanted access to the un-redacted versions he should sue the Force and he would end up with disclosure via a Court Order. He informed the Complainant that he was unable to locate the letter to the Parishes and as the SoJP had not archived emails prior to October 2006, he was unable to access the emails that the Complainant had requested. Police Employee 1 claimed that he had been telling the Complainant this from 2010 up to 2012. He did not inform the Complainant of this in writing at any time.
- 8.16** Police Employee 1 stated that he was the only person involved in the decision making process in relation to what to disclose and the only person involved in finding that material. Due to his heavy workload he had no time to record either the rationale for his decisions, or what disclosure was given to any individual. Police Employee 1 stated that he had “looked everywhere” for the missing documentation without success until March 2014 when Police Officer 1 informed him that he had found some documentation that may be relevant to the Complainant. This documentation included the letter to the Parishes.
- 8.17** Police Employee 1’s intention had been to arrange a meeting with the Complainant and Police Employee 3, who was due to take up his appointment in a role of Data Protection Audit, to hand over the documentation and introduce the Complainant to Police Employee 3. This did not happen. Police Employee 1 alleged that he requested a handover with Police Employee 3, but this was not facilitated. On leaving the SoJP, he left all documentation in his possession that was to be disclosed to the Complainant, with Police Employee 3.
- 8.18** At a later stage of the interview he suggested that he gave this paperwork to Police Employee 3 after he had left the employ of the SoJP. Police Employee 1 stated that Police Officer 1 was his Line Manager and “such was the working relationship with Police Officer 1 that he knew all that I was doing”. He stated that he met with Police Officer 1 on a regular basis, at first weekly and eventually fortnightly. Police Employee 1 maintained that during the period of the

Complainant's Subject Access Request he was discussing his request with Police Officer 1 and described Police Officer 1 as a source of information due to his knowledge of the police investigation that had led to the Complainant's arrest.

### **Account of Police Employee 2**

- 8.19** Police Employee 2 stated that he commenced employment with the SoJP in 2010-2011. In 2011-12 he was approached by Police Employee 1 and asked to perform a role which included records management under the Management of Police Information (MoPI). During this time he got a flavour of Police Employee 1's role around Subject Access and Data Protection. Police Employee 1 confided in him that he had difficulties in relation to staff shortages and found it difficult to keep on top of things. Police Employee 2 stated that Police Employee 1 had no supervisor. Police Employee 2 was aware that there were Subject Access Requests coming in from various sources and these were creating a lot of work for Police Employee 1.
- 8.20** In November 2014, Police Employee 2 took up a role which included Information Management and National Security Vetting. When Police Employee 2 took up his position he stated that there were six or seven Subject Access Requests still outstanding, the Complainant's among them and both he and Police Employee 3 finalised his Subject Access Request. Police Employee 2 stated that Police Officer 1 did not appear to have issues with information being supplied to the Complainant. Police Employee 2 further stated that he never met with any obstruction in relation to the Complainant's Subject Access Request. Police Employee 2 was Police Employee 3's Line Manager.

### **Account of Police Employee 3**

- 8.21** Police Employee 3 stated that he took up responsibility for Data Protection Audit on 16 June 2014. He had no handover from Police Employee 1. His belief was that Police Employee 1 had asked Police Officer 1 for a handover period but this was refused as Police Employee 3 could not be released from his role at that time (Custody Sergeant).
- 8.22** Police Employee 3 stated that he was provided with a bundle of papers that consisted of emails between the Complainant and Police Employee 1. These emails related to requests from the Complainant for information that had not been included in his original Subject Access Request. Between 24 July 2014 and 22 January 2015 Police Employee 3 provided the Complainant with seven disclosure bundles in hard copy and via email. Virtually all of these had been signed off by Police Officer 1.



## **Consideration of Allegation 1**

**8.23** In relation to Allegation 1, that the SoJP failed to release documents to the Complainant within the time prescribed by the Data Protection (Jersey) Law 2005, this part of the allegation is clearly upheld in light of the available evidence. It is the view of the Enquiry Team that the evidence suggests that this was due to serious organisational and individual failings by the SoJP as opposed to deliberate or malicious actions on behalf of any one person. This is supported by the systemic nature of the disclosure failings by the SoJP to a range of individuals, not only the Complainant. This is further discussed in the Key Findings section at paragraphs 14.1-14.4.

## **9. ALLEGATION 2**

### **Nature of Complaint**

**9.1** The Complainant's second complaint is that he was deliberately given misleading information at a meeting he had on 13 July 2012 with Police Officer 1 and Police Employee 1. The Complainant alleged that he was informed that Police Officer 1 had spoken to the States' Insurers on the morning of the meeting and that any claim the Complainant would bring against the SoJP would not be time barred and that the SoJP would not resist any claim that the Complainant would bring against them.

### **Account of the Complainant**

**9.2** The Complainant stated that he attended a meeting at Police Headquarters on 13 July 2012. This meeting had been organised by Police Employee 1, who attended along with Police Officer 1, and lasted approximately half an hour. He stated that at this meeting Police Officer 1 told him that he had done nothing wrong and that he had been wronged by the SoJP and should be compensated. The Complainant claimed that Police Officer 1 told him that the SoJP would not resist any action that the Complainant would take against them.

**9.3** The Complainant asked about the disclosure he had requested to enable him to take action against the SoJP and Police Officer 1 told him that he did not need any paperwork. The Complainant stated that Police Employee 1 asked Police Officer 1 a question about time constraints and Police Officer 1 replied that he had spoken to Witness 2 at the States' Insurers that morning and they had told him that there was no time limit on the Complainant's case and that it was not, and could not become, time barred. No notes were taken at the meeting.

**9.4** The Complainant stated that he was in financial difficulties at this time and his bank told him if he could get written confirmation from Police Officer 1 or Police Employee 1 that the SoJP would not defend his claim this would give him some "breathing space". The Complainant made numerous requests to Police Officer 1 and Police Employee 1 for a commitment in writing that they would not oppose his claim, but was never given this. On 19 February 2013 the Complainant heard that the States' Insurers had not been spoken to that day and his claim was time barred. He also established that it had not been time barred on the day of the meeting, 13 July 2012.

**9.5** The Complainant had been aware of the issue of having to have paperwork filed with the court within three years, however he did not think he could put a case together without having the paperwork and did not believe that the countdown clock had commenced. This belief was strengthened by what Police Officer 1 had told him. The Complainant stated that Police Officer 1 blatantly lied to him on 13 July

2012, which stalled him when he could have taken action to prevent his claim from becoming time barred.

#### **Account of Police Officer 1**

- 9.6** Police Officer 1 provided the following account during interview. Police Employee 1 suggested that both he and Police Officer 1 meet with the Complainant to get clarity regarding his request. The meeting took place at 11.00 am in Police Officer 1's office. Police Officer 1 stated that it quickly became clear that the Complainant wanted to take civil action against the SoJP due to the behaviour of Police Officer 2 from 2005 onwards. The Complainant explained the background of his involvement with Police Officer 2. From what the Complainant told him, Police Officer 1 believed that he had an arguable case against the SoJP as Police Officer 2's actions could have resulted in a breach of contract. He did not tell the Complainant this, but recommended that he seek legal advice and submit a civil claim which the SoJP would pass to their Insurers. The Complainant seemed content with that.
- 9.7** Police Officer 1 explained to the Complainant that if he took civil action then the SoJP would make full and proper disclosure under a Court Order and that would not be resisted. Police Officer 1 did not speak to the Insurers because he would have had no reason to speak to them at that stage. The matters discussed at the meeting were not recorded, but Police Officer 1 made an entry in his day book of the pertinent points. Police Officer 1 stated that if he had contacted the States' Insurers there would have been an entry in his day book (the Enquiry Team have had sight of Police Officer 1's day book and there is no such entry). He did not contact the Insurers until he received the Complainant's civil action in December 2012.
- 9.8** Police Officer 1 stated that he had no conversation with the Complainant around the subject of his claim not becoming time barred. Police Officer 1 stated that he had no memory of receiving the Complainant's email requests for confirmation that the SoJP would not resist his civil action against them. Police Officer 1 reiterated that the Complainant was informed that the SoJP would not resist disclosure and would not stand in the way of the Complainant submitting a claim, but he did not say that the SoJP would not dispute his claim. Police Officer 1 stated that he was not aware at the time of the meeting that the Complainant's claim would become time barred by the end of July 2012.

#### **Account of Police Employee 1**

- 9.9** Police Employee 1 provided the following account during interview. Police Employee 1 had suggested to Police Officer 1 that they meet with the Complainant as he did not accept what Police Employee 1 was telling him about the Sussex and Devon and Cornwall Police reports not being available through Subject Access in their un-redacted form.

- 9.10** Police Employee 1 wanted a senior officer to reinforce this point with the Complainant. Police Employee 1 recalled Police Officer 1 telling the Complainant if he was to go into the civil process and there was a Court Order, the SoJP would have to comply with that. Police Employee 1 believed that the Complainant was leaving the meeting to go off and see about his civil action. Police Employee 1 stated that both he and Police Officer 1 felt that the Complainant had been wronged and recalled that Police Officer 1 said that the Insurers would be involved and if it was right he would be compensated.
- 9.11** Police Employee 1 recalled that sometime after the meeting the Complainant was adamant that Police Officer 1 had told him to submit his claim and it would not be resisted, but Police Officer 1 had not said that. What Police Officer 1 had said was that if a claim was made and a Court Order was granted, “we would not resist” this Court Order. Police Employee 1 could not recall asking Police Officer 1 any questions in relation to time constraints, but he recalled Police Officer 1 saying something regarding being in touch with the Insurers that morning. He cannot recall if Police Officer 1 mentioned the name of any person he spoke to.
- 9.12** Police Employee 1 believed Police Officer 1 may have spoken to the Insurers to forewarn them that the Complainant would be making a claim. He had no recollection of Police Officer 1 telling him in advance that he was going to contact the Insurers. Police Employee 1 did not recall any comments being made about the Complainant’s claim not becoming time barred. Police Employee 1 claimed that he had no concept of the Complainant’s civil claim being close to becoming time barred at the time of the meeting and if he had known he would not have organised the meeting. In relation to the Complainant’s emails requesting confirmation that the SoJP would not contest his claim, Police Employee 1 stated that it was not his place to answer the Complainant and he did not see how Police Officer 1 could do so.

## **Account of Witness 2**

- 9.13** Witness 2 is employed by the Insurance Corporation of the Channel Islands (States’ Insurers) and was Police Officer 1’s main point of contact within the States’ Insurers. Witness 2 had no recollection of any conversation with Police Officer 1 in respect of the Complainant on or around the 13 July 2012.
- 9.14** In accordance with the Corporation’s administrative procedures, any conversation in relation to the claim should have been noted on the file. There is no such note on the file. Witness 2 had a recollection of a general conversation with Police Officer 1 when he asked if it was still possible to pay a monetary sum if a claim had been refused. He did not make any reference to any person. Witness 2 cannot recall when this conversation took place.

## **Consideration of Allegation 2**

- 9.15** In relation to Allegation 2, that the Complainant was deliberately given information that any claim he might bring against the SoJP was not time barred and could not become time barred and that they would not resist any claim, is not considered to be upheld. This issue arose at the meeting on 13 July 2012, during which it remains the possibility that the Complainant misunderstood the information that was relayed to him. This is further discussed in the Key Findings section at paragraphs 14.5-14.8.

## **10. CHRONOLOGY OF THE COMPLAINANT'S CIVIL ACTIONS AGAINST THE SOJP**

### **First Claim**

- 10.1** On 14 February 2007, a solicitor's firm acting on behalf of the Complainant wrote to the SoJP giving notice in relation to a claim from the Complainant for defamation and wrongful arrest, search and seizure.
- 10.1.1 This notice was forwarded to the States' Insurers. Both aspects of the claim were dismissed by the Insurers as outlined in letters dated 1 May 2007 and 8 May 2007. This was not further pursued by the Complainant.
- 10.1.2 On 16 March 2010 the States' Insurers noted on their file that the Complainant's claims in relation to defamation, relating to comments made to the Jersey Evening Post (JEP) by Police Officer 2 and wrongful arrest, search and seizure were time barred.

### **Second Claim**

- 10.2** On 13 December 2012, a different solicitor's firm, now acting on behalf of the Complainant, wrote to the SoJP asking them to confirm their liability for the Complainant's losses as a result of their investigation and his arrest. Police Officer 1 forwarded this to the States' Insurers, who confirmed with the Complainant's solicitors on 17 December 2012 that the basis of the claim was the alleged wrongful arrest of the Complainant in September 2006 leading to loss of reputation and stress.
- 10.2.1 On 7 February 2013, the States' Insurers wrote to this second solicitor's firm informing them that the Complainant had made a previous claim in relation to his arrest and that the matter was time barred. This second claim was not further pursued.
- 10.2.2 On 20 February 2013, the Complainant's solicitor emailed to inform him that there was "no pot of money" to compensate him, despite what he may have been told. His solicitors also advised that his claim for wrongful arrest was time barred and in any case 'on the balance of probabilities', it would likely have failed. Regarding his claim for defamation, his solicitor's advised that the JEP would have been liable, not Police Officer 2. He also advised that as the Complainant had no written contract with the SoJP in relation to vehicle recovery he could not therefore pursue a claim on the basis of his loss of revenue by being excluded from the SoJP vehicle recovery rota.

### **Third Claim**

- 10.3** On 3 August 2015, the Complainant lodged an Order of Justice with the Royal Court, Jersey claiming compensation for loss of business and reputation; emotional distress in relation to the investigation into his alleged corruption; his arrest; his exclusion from the vehicle recovery rota; Police Officer 2's letter to the Parishes advising them not to do business with him; the requirement to upgrade his vehicles and recovery equipment to a standard not legally required in the island in a short timeframe and the delay in the supply of documentation by the SoJP which resulted in an insurance claim being out of time. It further stated that the SoJP had acknowledged that the Complainant had been wronged by Police Officer 2.
- 10.3.1 On 3 November 2015, the Complainant's claim was struck out on the basis of being time barred. The Master of the Royal Court ruled that the Complainant had been in a position to bring his claim against the SoJP when he had been provided with a redacted copy of the Devon and Cornwall Police report by the SoJP on 28 July 2009 and as a result his claim had been time barred from 28 July 2012.

## **11. OTHER WITNESSES REPORTING DISCLOSURE FAILINGS BY SOJP**

**11.1** As the Enquiry Team conducted their enquiries in Jersey, a number of other persons came forward through the Complainant and relayed their experiences of attempting to obtain disclosure from the SoJP. Three such persons engaged with the Enquiry Team and provided witness accounts. Their accounts are outlined at paragraphs 11.2, 11.3 and 11.4 below.

### **Account of Witness 3**

**11.2** Witness 3 was a serving Police Officer at the time and submitted a Subject Access Request to the SoJP on 24 November 2011 concerning her involvement, as a witness, at a Police Disciplinary Tribunal. Witness 3 requested pocket books and day books in relation to an investigation arising from this Tribunal, all correspondence and emails relating to her and information from her personal file.

**11.2.1** On 28 November 2011 Police Employee 1 acknowledged Witness 3's request. Witness 3 had no further correspondence regarding her request until 9 January 2012 when Police Employee 1 replied to an email from her in which she pointed out that Police Employee 1 had 40 days to respond to her Subject Access Request.

**11.2.2** Following this prompt, Witness 3 received a bundle of papers from Police Employee 1 which he referred to as the 'First disclosure'. At the end of January 2012, following a request from Police Employee 1, Witness 3 agreed to narrow the scope of her request for emails to those from 2010 only.

**11.2.3** On 23 February 2012, Witness 3 received a letter stating that she would not be provided with pocket books or day books, on the basis that they were 'not data'. This was 87 days after her Subject Access Request was acknowledged.

**11.2.4** On 2 March 2012, 95 days after her Subject Access Request was acknowledged, Witness 3 received a bundle of papers which contained emails from 2010 which were heavily redacted. Witness 3 then asked for the rest of the emails as in her original request. She had no further response from Police Employee 1, despite emails and phone messages and she never received any further disclosures.

**11.2.5** Witness 3 re-submitted her original Subject Access Request in March 2015 and this was processed and finalised within the prescribed 40 days.



#### **Account of Witness 4**

- 11.3** Witness 4 was a former police officer. On 20 January 2010, he submitted a complaint to the SoJP in relation to a serving police Inspector. He was subsequently informed by Police Officer 1 in 2012 that the matter had been closed. Following this decision, Witness 4 submitted a Subject Access Request to the SoJP (exact date unknown), requesting information relating to the investigation of his complaint. This was acknowledged on 11 September 2012 by Police Employee 1.
- 11.3.1 Following this acknowledgement, he heard nothing more from Police Employee 1 despite sending him emails requesting updates. On 10 December 2012, Witness 4 again emailed Police Employee 1, threatening to go to the media if he got no response. Police Employee 1 replied the same day, saying that he would expedite the matter. Approximately two weeks later (104 days from his Subject Access Request was acknowledged), Witness 4's Subject Access Request was finalised and he received some heavily redacted paperwork.

#### **Account of Witness 5**

- 11.4** Witness 5 was a former police officer. He was the subject of a misconduct investigation. As a result of this investigation he was arrested in July 2005 and later resigned from the SoJP. Witness 5 made allegations against Police Officer 2 in relation to this investigation. These allegations along with the Complainant's were investigated by the Devon and Cornwall Police and comprised part of their report.
- 11.4.1 On 12 September 2008, Witness 5 formally requested a copy of the Devon and Cornwall Police report from the Police Complaints Authority (PCA), to which he received no response.
- 11.4.2 On 28 July 2009, Police Officer 1 wrote to Witness 5 informing him that he would not be provided with a copy of the Devon and Cornwall Police report, sanitised or otherwise, as it was not SoJP policy to release such reports.
- 11.4.3 In early 2010, Witness 5, through his solicitor, then requested a copy of the Devon and Cornwall Police report from the SoJP. This request was responded to by the PCA who stated that Witness 5 did not have a legal right to have a copy of the Devon and Cornwall Police report.

- 11.4.4 On 11 October 2011, Witness 5 contacted the SoJP pointing out that they had not responded to his request for the Devon and Cornwall Police report that he submitted to them in 2010. As a result of this, Police Employee 1 emailed a Subject Access Request form to Witness 5 on 6 December 2011. On 14 December 2011 Witness 5 submitted a Subject Access Request to the SoJP.
- 11.4.5 In March 2012, Police Employee 1 contacted Witness 5 and asked him to specify documentation of particular interest to him. Witness 5 replied on 28 March 2012 specifying the Devon and Cornwall Police report and the grounds for the misconduct investigation concerning him. Two days later Witness 5 received copies of his nominal and personal files from Police Employee 1.
- 11.4.6 On 18 July 2012, Witness 5 had a meeting with Police Employee 1 and Police Officer 1 to discuss his Subject Access Request. Witness 5 received no further disclosure from the SoJP until 8 February 2013 when he received a letter from Police Employee 1 containing the Devon and Cornwall Police report and the 2005 internal Police Complaint report in relation to his misconduct investigation. Both were heavily redacted.
- 11.4.7 In February 2013, an Enquiry Team was commissioned to investigate complaints that Witness 5 had made about SoJP officers and an incident in 2011 that had resulted in his second arrest (this was a separate PSNI investigation to the Complainant's investigation).
- 11.4.8 On 15 June 2013, Witness 5 wrote to the SoJP formally requesting a copy of the PSNI report. He was not asked by the SoJP to complete a Subject Access Request form. On 9 September 2013 Police Officer 1 wrote to Witness 5 informing him of the findings of the PSNI report, however did not enclose a copy.
- 11.4.9 On 26 September 2013, Witness 5's Advocates requested a copy of the PSNI report, a redacted copy of which was provided on 25 November 2013.
- 11.4.10 In April 2014, Witness 5 made a further complaint against the SoJP, in relation to an incident in 2013 which had resulted in his third arrest. This complaint was investigated by the States of Guernsey Police. On 6 January 2015, Witness 5 requested a copy of the Guernsey Police report from the SoJP. This request was followed by a request from Witness 5's Advocates for the Guernsey Police report on 6 March 2015. This was responded to by Police Employee 3, who asked that the Advocates supply written consent from Witness 5 for the Advocates to act on his behalf, Police Employee 3 also asked for submission of a completed Subject Access Request Form.

11.4.11 Police Employee 3 acknowledged receipt of Witness 5's Subject Access Request Form on 26 May 2015. On 1 July 2015, Witness 5 was provided with a disclosure bundle, which did not include the Guernsey Police report.

**11.5** The SoJP provided the Enquiry Team with the details of four other persons whose Subject Access Requests (along with the Complainant's) had been passed to Police Employee 3 on his appointment with the SoJP. These had been outstanding from Police Employee 1's time with the SoJP. All of these were outside the prescribed statutory time limit. Of these four persons, two engaged with the Enquiry Team and provided statements, the other two persons did not engage further being under no obligation to do so. The accounts of the two persons who engaged with the Enquiry Team are outlined at paragraphs 11.6 and 11.7 below.

### **Account of Witness 6**

**11.6** Witness 6 submitted a Subject Access Request to the SoJP on 22 January 2014, following a police investigation in 2012. He asked for all information held about him and specified family members, the source and recipients of this information and copies of all information shared by the SoJP with any other organisation in relation to himself or the specified family members. He also requested that certain information held about him, which he stated was inaccurate, was amended.

11.6.1 On 7 March 2014, Witness 6 wrote to the SoJP enquiring about the progress of his Subject Access Request but received no reply to this or his further requests for updates. On 12 May 2014, Witness 6 brought the matter to the attention of the Information Commissioner's Office. On 2 October 2014, Witness 6 met with Police Employee 3 to discuss his Subject Access Request. On 14 November 2014, Police Officer 1 wrote to Witness 6 stating that the information requested would not be disclosed as it contained sensitive third party information and that the SoJP's records had been amended as requested by Witness 6.

11.6.2 On 24 November 2014, Witness 6 appealed this decision in writing to the SoJP, but received no response to this letter of appeal. In May-June 2016, the information that Witness 6 had been seeking was released by the SoJP, in redacted form, to the Independent Jersey Care Enquiry, as part of the SoJP's Closing Submission. This had been prepared by Police Officer 1. The Independent Jersey Care Enquiry placed this document on its website, however by using the search function on his computer, Witness 6 was able to access his information in an un-redacted form. The Closing Submission was removed from the website when Witness 6 notified the Independent Jersey Care Enquiry of the inadequacy of the redactions.

- 11.6.3 On 26 August 2016, Witness 6 wrote to Police Employee 3, informing him that his personal data, which had been refused by the SoJP, had been supplied by them to the Independent Jersey Care Enquiry. He again asked to be provided with disclosure in relation to himself and specified family members and asked what exemptions the SoJP had relied on in deciding that he was not entitled to this information in 2014.
- 11.6.4 In October 2016 Witness 6 was provided with the information that had been requested in his Subject Access Request, most of which was available when he first submitted his request. When Witness 6 made his initial Subject Access Request to the SoJP he made similar Subject Access Requests to two other public bodies. The Subject Access Requests to these other public bodies were responded to within two weeks.

### **Account of Witness 7**

- 11.7 Witness 7 is a former police officer. In 2010 Witness 7, was arrested following an allegation of assault which was investigated by the SoJP. He was not prosecuted in relation to this allegation. On 16 November 2013, he submitted a Subject Access Request to the SoJP by post, asking for disclosure of documentation relating to his arrest and the subsequent investigation.
- 11.7.1 On 16 December 2013, Witness 7 received a letter from Police Employee 1 enclosing a copy of his criminal record. No mention was made of any further disclosure.
- 11.7.2 Between February and July 2014, Witness 7 received only one update from Police Employee 1. In July 2014, one of his emails to Police Employee 1 was returned as undelivered (Police Employee 1 had resigned by this point). Witness 7 contacted the SoJP and spoke with Police Employee 3. On 7 September 2014, Witness 7 was provided with access to the documentation he had requested by Police Employee 3. He had no further interaction with the SoJP in relation to his Subject Access Request.

## **12. EVALUATION OF PROCESSES AND PERFORMANCE**

- 12.1** According to figures supplied by Data Protection Audit Officer, SoJP, they receive over 1,000 Subject Access Requests annually. The vast majority of these are requests for criminal records checks and are dealt with by the staff in the Vetting Unit, where all incoming Subject Access Requests are registered. The Subject Access Requests that were processed by Police Employee 1 and later by Police Employee 3 are referred to by the SoJP as 'Section 3' requests. These are Subject Access Requests for 'non-conviction information'.
- 12.2.** As well as being responsible for the processing of 'Section 3' Subject Access Requests, Police Employee 1 had a strategic managerial role within the SoJP. Police Employee 1's role included responsibility for information compliance and information security. This role evolved and his areas of responsibility increased. His role profile was amended and he became responsible for information management. He still maintained responsibility for the processing of 'Section 3' Subject Access Requests.
- 12.3** On 16 June 2014, the SoJP appointed Police Employee 3, whose role included responsibility for ensuring that the SoJP complied with Data Protection (Jersey) Law 2005. This included responsibility for processing all 'Section 3' Subject Access Requests.
- 12.4** In order to assess if there had been any improvement in the processing of 'Section 3' Subject Access Requests from the appointment of Police Employee 3, the Enquiry Team completed comparison tests on the processes and performance during Police Employee 1's tenure (pre June 2014) versus the current processes and performance. This consisted of three strands of evaluation:-
- (i) A comparison between the 'Section 3' Subject Access Requests received in calendar year 2012, the year that the Complainant submitted his Subject Access Request, and the 'Section 3' Subject Access Requests received in 2015, the first complete calendar year that Police Employee 3 was in post.
  - (ii) A random dip sample of 'Section 3' Subject Access Requests received during 2016.
  - (iii) A comparison of administrative processes, the expedite system, staff training, and supervision employed by the SoJP during Police Employee 1's tenure and those subsequently employed by the SoJP when the Data Protection Audit Officer (Police Employee 3) was in post.

## **12.5 Comparison between Calendar Year 2012 and Calendar Year 2015**

- 12.5.1 In 2012, the SOJP received six 'Section 3' Subject Access Requests. None of these were responded to within the prescribed 40 days. This was a compliance rate of 0%. The Complainant's request took the longest to finalise at 1112 days from date of ratification (1119 days from date of receipt).
- 12.5.2 In 2015, the first full calendar year following the appointment of Police Employee 3, the SoJP received 21 'Section 3' Subject Access Requests. The SoJP finalised 19 of these within the prescribed statutory time limit. This was a compliance rate of over 90%. The remaining two were finalised outside the statutory time - 108 days and 45 days respectively. In respect of the request processed in 108 days, an extension of time was agreed between the SoJP and the applicant. In respect of the request processed in 45 days, this was only just outside the prescribed statutory time limit and as such does not merit further comment.
- 12.5.3 To determine whether the poor performance in 2012 was an aberration, further evaluation of performance was conducted during the years 2006-2013, when Police Employee 1 was employed with the SoJP. The records for 2006 and 2007 have been destroyed as per National Police Chiefs' Council (NPCC - formally ACPO) guidelines. There were no 'Section 3' Subject Access Requests submitted in 2008. Between 2009 and 2013, a total of 12 'Section 3' Subject Access Requests were processed by Police Employee 1. Of these 12 requests, nine took longer than the prescribed statutory time to finalise, one request was not proceeded with. Therefore only two were finalised within the prescribed statutory time limit. This was a compliance rate of 17%.
- 12.5.4 Tables illustrating the findings of paragraph 12.5 are included at *Appendix M*.

## **12.6 Dip Sample of 2016 'Section 3' Subject Access Requests**

- 12.6.1 To assess the SoJP's current performance in responding to 'Section 3' Subject Access Requests, the Enquiry Team carried out a dip sample of applications received from 1 January 2016 to 6 July 2016. Of a total of seven 'Section 3' Subject Access Requests received by SoJP during this period, four were selected at random and assessed. All four of the applications sampled were found to have been responded to and finalised well within the prescribed statutory time. This was a compliance rate of 100%.
- 12.6.2 A table illustrating the findings of paragraph 12.6 is included at *Appendix N*.

## **12.7 Assessment of Administrative Processes - Pre and Post June 2014**

12.7.1 From June 2014, the administrative processes surrounding 'Section 3' Subject Access Requests have been developed. Contemporaneous records are kept on the electronic Masterfile and documentation, including disclosures and all correspondence with the applicant, is electronically attached to the Masterfile. An electronic countdown clock has been introduced to monitor the 40 day timeframe.

12.7.2 The table at *Appendix O* compares the administrative processes employed pre and post June 2014.

## **12.8 Assessment of Expedite System**

12.8.1 Pre June 2014, adherence to the electronic expedite system in respect of the processing of 'Section 3' Subject Access Requests was poor. These electronic expedites are designed to ensure the prompt and efficient processing of the 'Section 3' requests and help monitor the lifecycle of each request received. In addition to the non-compliance with the electronic expedites, it appeared that there was no process to escalate concerns when the electronic expedite dates were not adhered to. Whilst 'Section 3' requests are now being processed well within the prescribed statutory time limits, it is unclear whether the SoJP have a process in place to escalate non-compliance with electronic expedites.

## **12.9 Assessment of Staff Training**

12.9.1 When the Enquiry Team interviewed Police Employee 1 and asked him whether he had undertaken any Data Protection training whilst attached to the SoJP he replied "no... that I can recall".

12.9.2 The Enquiry Team asked Police Employee 3 whether he had undertaken any Data Protection training. Police Employee 3 stated that on commencing his role he recognised the necessity for training and attended Data Protection training courses in Bristol and London. The courses were delivered by PDP Training. Police Employee 3 further outlined that since January 2015 he had held the qualification of 'Practitioner Certificate in Data Protection'.

## **12.10 Assessment of Supervision**

12.10.1 Police Employee 1 reported directly to Police Officer 1 throughout his employment with the SoJP. Police Employee 3 reported directly to Police Employee 2.

12.10.2 It is the opinion of the Enquiry Team that Police Officer 1 held a far too senior and strategic role to effectively manage Police Employee 1's day-to-day performance around the practical processing of 'Section 3' Subject Access Requests within the prescribed statutory time limit.



### **13. ASSESSMENT OF POLICIES AND PROCEDURES**

#### **13.1 Overarching Policy – Disclosure of Data**

- 13.1.1 From December 2005 until October 2014, the SoJP relied on ‘Policy – Data Protection Disclosure of Information’ to guide the Force and ensure that there was a consistent and accountable approach when disclosing personal information. In October 2014 this policy was replaced by ‘Disclosure of Personal and Non-Personal Data Policy’.
- 13.1.2 The SoJP ‘Disclosure of Personal and Non-Personal Data Policy’ is a document of seven pages, including the front cover and excluding the Appendices. The policy is subject to review every two years, unless there is a need to review sooner. The last scheduled review date was to be October 2016. The policy devotes five paragraphs specifically to Subject Access Requests, but does not consider the wider aspects of Data Protection Legislation which disclosure requires, including adherence to the eight Data Protection Principles. These principles set out standards of information handling which form the central framework for consideration of Data Protection disclosures, Data Subject rights and the consequences of not adhering to Data Protection legislation.

#### **13.2 Specific Policy – Data Protection Subject Access Procedure**

- 13.2.1 From December 2005, the SoJP had relied on ‘Policy – Data Protection Subject Access Procedure’ to guide the Force and ensure Subject Access Requests are processed in accordance with the Data Protection (Jersey) Law 2005. The ‘Policy – Data Protection Subject Access Procedure’ is a document of two pages. This policy sets out in clear steps the process to be followed when the SoJP receive a request from a member of the public to access personal data held by the SoJP.
- 13.2.2 The policy states that, ‘In order to obtain information, an applicant is required to show proof of identity’. The Data Protection (Jersey) Law 2005 simply states that ‘If a data controller reasonably requires further information in order to be satisfied as to the identity of the person making the request or to locate the information that person seeks and has informed the person of the requirement, the data controller is not obliged to comply with the request unless supplied with that information’. The policy is therefore more prescriptive than the legislation and requires production of identification in all cases. Where a prior and long standing relationship, such as the Complainant’s, is in existence and the SoJP could satisfy themselves of identity as a result, producing proof of identity would not be necessary.

- 13.2.3 In the investigation into the Complainant's allegations, it became evident that there was a reliance on waiting until a Form SA1 was received before dealing with Subject Access Requests. Again the policy is more prescriptive than the legislation which requires only that the request is made in writing. The Data Protection Subject Access Procedure policy would benefit from additional information highlighting how to identify a Subject Access Request in formats other than form SA1 and the duty to comply with the Data Protection (Jersey) Law promptly and no later than 40 calendar days.
- 13.2.4 It is the view of the Enquiry Team that the Data Protection Subject Access Procedure policy needs updated to reflect the current job titles. Any references to the Force Data Protection Officer and Information Compliance and Security Manager should read Data Protection Audit Officer and Information Security Manager.

## 14 KEY FINDINGS

Having considered the various hypotheses as outlined in paragraph 5.8 and weighing these against the available evidence it is concluded that:-

1. Allegation 1, that the SoJP failed to release documents to the Complainant within the time prescribed by the Data Protection (Jersey) Law 2005, this part of the allegation is clearly upheld in light of the available evidence. It is the view of the Enquiry Team that the evidence suggests that this was due to serious organisational and individual failings by the SoJP as opposed to deliberate or malicious actions on behalf of any one person. This is supported by the systemic nature of the disclosure failings by the SoJP to a range of individuals, not only the Complainant.
2. Allegation 2, that the Complainant was deliberately given information that any claim he might bring against the SoJP was not time barred and could not become time barred and that they would not resist any claim, is not upheld. This issue arose at the meeting on 13 July 2012, during which it remains the possibility that the Complainant misunderstood the information that was relayed to him.

The rationale for the above conclusions is outlined in the key findings below and in further detail in this section.

### Overview of 20 Key Findings

1. The SoJP inadequately handled the Complainant's requests for disclosure prior to April 2010.
2. The SoJP failed in their obligations to assess the Complainant's request for disclosure dated 26 April 2010.
3. The SoJP failed to release documents requested by the Complainant, in his Subject Access Request, within the statutory time prescribed by the Data Protection (Jersey) Law 2005.
4. The SoJP failed to release documents requested by the Complainant that they had in their possession.
5. The Complainant's allegation, that he was deliberately given misleading information in respect of his claim not becoming time barred at the July 2012 meeting is not proven.
6. The Complainant's allegation that he was deliberately given misleading information in relation to the SoJP not defending his claim is not proven.
7. No effort was made by Police Officer 1 or Police Employee 1 to correct the Complainant's belief that the SoJP would not resist any claim he made against them.

8. The Complainant's civil claim of August 2015 was not struck out by the Royal Court as a result of any failure on the part of Police Officer 1 or Police Employee 1 to release documents requested by him in his Subject Access Request of January 2012.
9. There was poor information management and record keeping by the SoJP.
10. The SoJP previously displayed an unprofessional attitude towards the Complainant and towards disclosure.
11. Police Employee 1's broad role profile was a factor in his inability to process 'Section 3' Subject Access Requests within the legislated timeframe.
12. No criminal prosecution is to be brought against Police Officer 1 or Police Employee 1.
13. Chief Officer/Deputy Chief Officer discipline legislation has not yet been implemented (see updates at paragraphs 14.13.4, 14.13.5 and 14.13.6).
14. Whilst there is insufficient evidence to suggest possible misconduct on the part of Police Officer 1, had he still been a serving officer, there is evidence of possible misconduct on the part of Police Employee 1, had he still been employed by the States of Jersey.
15. Serious organisational and individual failings by the SoJP, in respect of the processing of Subject Access Requests, were not confined to the Complainant's case.
16. The SoJP did not have an adequate and robust internal performance management regime in place, concerning the processing of 'Section 3' Subject Access Requests.
17. The SoJP's performance around 'Section 3' Subject Access Requests has improved significantly.
18. There is now an external accountability framework in place in relation to the SoJP.
19. Witnesses interviewed during the course of the Enquiry Team's investigation have voiced their concerns as to the effectiveness of the Office of the Information Commissioner.
20. There are weaknesses in the SoJP's policy relating to the issue, administration and retention of the Pocket Notebook and Day Book.

These key findings are discussed and elaborated upon in the paragraphs following.

## **14.1 The SoJP inadequately handled the Complainant's requests for disclosure prior to April 2010**

- 14.1.1 Copies of Police Officer 2's letter to the Parishes and correspondence relating to the Complainant and his recovery service were requested from the SoJP three times between September 2006 and March 2007. These specific requests were incorporated into letters relating to the Complainant's arrest in September 2006 and his subsequent intention to take civil action against the SoJP. The requests for disclosure contained in these letters were not addressed in line with policy or legislation. The Complainant was not provided with copies of the letter to the Parishes or the correspondence he requested until 2014. It should be noted that Police Employee 1 was unable to locate the letter to the Parishes following the Complainant's Subject Access Request in 2012. If the request had been managed adequately in 2006, whilst Police Officer 2 was still in post, there would have been a much greater likelihood of locating and disclosing this letter. Likewise emails that Police Employee 1 stated were unavailable due to archiving would not have been subject to the archiving process at that stage.
- 14.1.2 The Enquiry Team consider that the Complainant's request for the letter to the Parishes and correspondence relating to him and his recovery service from 2006 was still incumbent upon the SoJP. The duty to process this request remained, even when they received his repeated request for the same material in 2010.
- 14.1.3 On 30 December 2006, the Complainant wrote to the SoJP requesting a full copy of the Sussex Police report. He made four further requests for this report before he was provided with a redacted version on 20 August 2007. The SoJP provided the report under the Codes of Practice on Access to Information Held by the States, Committees of the States and Departments of the States. The SoJP did not adhere to their procedural obligations under the Code of Practice which required them to take all reasonable steps to supply information requested within 21 days. They ultimately took 233 days to provide the Complainant with a redacted copy of the Sussex Police report and failed to inform him of his right to appeal if he was dissatisfied with the handling of his request.
- 14.1.4 It is the view of the Enquiry Team that the SoJP had a basis within the Codes of Practice for refusing to supply the Complainant with an un-redacted copy of the Sussex Police report.
- 14.1.5 The Complainant made one request for a full copy of the Devon and Cornwall Police report prior to April 2010. This was on 12 May 2009. Police Officer 1 provided the Complainant with a redacted version of the report on 28 July 2009, 77 days after his request. It is clear from Police Officer 1's covering letter to the Complainant that the request was considered under the Data Protection (Jersey) Law 2005. Under

Data Protection the SoJP was required to respond to the Complainant promptly and in any event within 40 days. The SoJP did not adhere to the Data Protection (Jersey) Law 2005.

14.1.6 It is the view of the Enquiry Team that the SoJP had a basis within the Data Protection (Jersey) Law 2005 for refusing to supply the Complainant with an un-redacted copy of the Devon and Cornwall Police report.

14.1.7 It is the conclusion of the Enquiry Team that the inadequate handling of the Complainant's requests prior to 2010 was due to serious organisational and individual failings.

**14.2 The SoJP failed in their obligations to assess the Complainant's request for disclosure dated 26 April 2010**

14.2.1 When the SoJP received the Complainant's letter of 26 April 2010 requesting disclosure they were under an obligation to consider if the Complainant had made a valid request for disclosure and if so, to consider the most appropriate regime to deal with each constituent part of his request (Data Protection (Jersey) Law 2005 or Codes of Practice on Access to Information).

14.2.2 Police Officer 1 responded to the Complainant's letter on 6 May 2010, stating that it was 'not policy to routinely disclose information held by the police'. This is at variance with the Data Protection legislation. The sixth Principle of the Data Protection (Jersey) Law 2005 states that 'Personal data shall be processed in accordance with the rights of the data subject'. The legislation further states that this Principle is contravened if there is a failure to, 'supply information in accordance with Article 7'. Article 7 of the Data Protection (Jersey) Law 2005 deals with the 'Fundamental rights of access to personal data'.

14.2.3 At this time, the Complainant was not provided with any of the information he requested in his letter dated 26 April 2010.

14.2.4 It is the conclusion of the Enquiry Team that the SoJP failed in their obligations in respect of the Complainant's request for disclosure and were in breach of the relevant legislation.

**14.3 The SoJP failed to release documents requested by the Complainant, in his Subject Access Request, within the statutory time prescribed by the Data Protection (Jersey) Law 2005**

14.3.1 Following the Complainant's letter dated 10 November 2011, he was required by the SoJP to submit a Subject Access Request form. This indicated that the SoJP's intention was to deal with his request under Data Protection (Jersey) Law.

- 14.3.2 The Complainant's requests from 2006 and 2010 for the letter to the Parishes and correspondence relating to him and his vehicle recovery company were still incumbent upon the SoJP to process and address when they received his repeated request for the same material in his Subject Access Request of 2012.
- 14.3.3 The SoJP took 1,119 days from receipt of the Subject Access Request to finalise the Complainant's request.
- 14.3.4 During interview Police Officer 1 gave two reasons for the delay in processing the Complainant's Subject Access Request. He stated that it took 12 months for the Complainant to provide the SoJP with the required fee and that the Complainant kept adding things onto his Subject Access Request.
- 14.3.5 Under Data Protection (Jersey) Law 2005, the legislated 40 day timeframe does not begin until the Data Controller has received the request together with any fee required. This means that any delay on the part of the Complainant to submit the required fee could not have contributed to the 1,119 days it took the SoJP to finalise his Subject Access Request, as this timeframe only started once the Complainant's fee had been received.
- 14.3.6 Whilst the Complainant frequently sent follow up emails requesting the information he had asked for, it was not until 4 April 2014 that he made further requests for documentation that was not listed on his original Subject Access Request. This was 805 days after his original Subject Access Request had been received. This was the start of a series of emails requesting further disclosures which the Complainant eventually produced as a list of 28 separate requests. There is no evidence that these new requests for information were dealt with as separate Subject Access Requests seeking new information.
- 14.3.7 It is the conclusion of the Enquiry Team that the SoJP failed in their obligations under the Data Protection (Jersey) Law 2005 to release the documents requested by the Complainant, to which he was entitled, in the statutory time prescribed by the Data Protection (Jersey) Law 2005. It is assessed that this was due to serious organisational and individual failings.
- 14.4 The SoJP failed to release documents requested by the Complainant that they had in their possession**
- 14.4.1 The Complainant had been informed by Police Employee 1 that under Subject Access he was entitled to a copy of the letter that Police Officer 2 had sent to the Parishes following his arrest. He was also entitled to emails sent to Police and Staff during the investigation into him by the SoJP in 2005-2006 and all emails relating to him from Police Officer 2.

- 14.4.2 Police Employee 1 informed the Complainant that these were not available because a copy of the letter to the Parishes could not be located and the SoJP email system had not archived emails prior to October 2006.
- 14.4.3 In March 2014, the letter to the Parishes was located within SoJP Headquarters. This was disclosed to the Complainant on 24 July 2014, by Police Employee 3.
- 14.4.4 Police Employee 1 made mention of the fact that the Investigating Officer from the Devon and Cornwall Police had also been unable to locate a copy of the letter to the Parishes. The Devon and Cornwall Enquiry Team emailed Connétables (of the Parishes) and the Jersey Electricity Company in an effort to locate the letter that had been sent by Police Officer 2, on 12 September 2006. Whilst the Jersey Electricity Company denied receiving such a letter, two Connétables confirmed that they had received it and confirmed that at least six other Parishes had also received the letter. One of the Connétables stated that he had been informed by Police Officer 2 that an investigation was being carried out in relation to potential corruption on the part of the Complainant.
- 14.4.5 In his interview, Police Employee 1 made no reference to approaching the Parishes for a copy of the letter, nor has the Enquiry Team seen any evidence that he attempted to contact any of the Parishes to ascertain if they could provide a copy of the letter. Such an approach may have quickly and easily located the letter however, it should be noted that under Data Protection Law, Police Employee 1 would have been under no obligation to enquire with any other bodies in this fashion.
- 14.4.6 Between August and November 2014 copies of the email correspondence from 2005–2008 were disclosed to the Complainant by Police Employee 3. It has been confirmed that the SoJP's archiving was effective from October 2006, however it is understood some emails prior to this date are still accessible. On this basis Police Employee 3 carried out manual searches of the email system using certain key words. This allowed him to access some emails dated prior to the archiving process.
- 14.4.7 Under the Data Protection (Jersey) Law 2005, disclosure should be provided unless 'the supply of such a copy is not possible or would involve a disproportionate effort'. The UK Information Commissioner imposes a high threshold on the consideration of this section. In their Subject Access Code of Practice issued under Section 51 of the Data Protection Act, the UK Information Commissioner states, 'We stress that you should rely on the disproportionate effort exception only in the most exceptional of cases. The right of subject access is central to data protection law and we rarely hear of instances where an organisation could legitimately use disproportionate effort as a



reason for denying an individual access to any of their personal data'. The SoJP would therefore have had to justify any decision that searching for the documentation requested by the Complainant constituted 'a disproportionate effort'.

14.4.8 It is the conclusion of the Enquiry Team that the SoJP did not release the documents requested by the Complainant that they had in their possession, and to which he was entitled, due to serious organisational and individual failings.

**14.5 The Complainant's allegation that he was deliberately given misleading information in respect of his claim not becoming time barred at the July 2012 meeting is not proven**

14.5.1 The Complainant stated that during the meeting in July 2012, Police Employee 1 asked Police Officer 1 a question about time constraints. The Complainant asserted that Police Officer 1 had told him that he had spoken to Witness 2 at the States' Insurers that morning and they had confirmed that there was no time bar on the Complainant's case. The Complainant states that he was told that his case was not, and could not become, time barred.

14.5.2 Police Officer 1 refutes this and stated that he did not discuss the time barring of the Complainant's claim at the meeting and he did not say that he had spoken to the States' Insurers that morning.

14.5.3 Police Employee 1 stated that he had no recollection of asking Police Officer 1 any questions in relation to time constraints, but he can recall Police Officer 1 saying that he had been in touch with the Insurers that morning. Police Employee 1 does not recall any comments being made about the Complainant's claim not becoming time barred.

14.5.4 Police Officer 1 stated that he was not aware at the time of the meeting that the Complainant's claim would become time barred by the end of July 2012. Police Employee 1 had stated that he had no concept of the Complainant's claim being close to being time barred at the time of the meeting and if he had known he would not have organised the meeting. Witness 2 stated that she had no recollection of speaking to Police Officer 1 about the Complainant on or around 13 July 2012.

14.5.5 Police Officer 1's day books and diaries were made available to the Enquiry Team. There was no mention made in either the day book or the diary for the day of the meeting of any contact with the States' Insurers. There is no mention in the days leading up to the meeting of any such contact. Police Officer 1 and Police Employee 1 had a meeting on 12 July 2012 and there was no note made that any conversation, or planned conversation, with the States' Insurers was discussed at this meeting. Police Officer 1 does have an entry in his

day book in relation to the meeting of 13 July 2012, but this does not go into the specifics of what was discussed during the meeting. There were no contemporaneous notes taken at the meeting by any of the participants, or any minutes taken. In accordance with the Insurer's administrative procedures any conversation in relation to the Complainant's claim should have been noted on the file. There is no such note on the file.

- 14.5.6 An email from Police Officer 1 to the Finance Director, Home Affairs Department, dated 4 January 2013 (approximately six months after the meeting on 13 July 2012) clearly shows that he was making contingencies to settle the Complainant's claim, which had been received by the SoJP in December 2012, in the event that it was upheld. This email undermines the Complainant's assertion that Police Officer 1 deliberately gave him false information about time barring. It clearly demonstrated that Police Officer 1 did not consider that the Complainant's claim was at risk of being time barred.
- 14.5.7 From his interview it is apparent that Police Officer 1 believed that the crux of any civil action the Complainant would take was his exclusion from the tow rota, his subsequent loss of business and the perceived vendetta against him on the part of Police Officer 2, as this is what he discussed at the meeting with the Complainant.
- 14.5.8 The Complainant's actual claim of December 2012 was in connection with his arrest and the subsequent search of his home in September 2006, not his exclusion from the tow rota and consequential loss of business. The Complainant stated that he had heard on 19 February 2013, that his claim 'was now time barred'. In fact his claim which had been for wrongful arrest (his second claim) had been time barred from September 2009. It is strongly suspected that the Complainant had interpreted this as meaning that his claim was not time barred at the time of the meeting on 13 July 2012.

**14.6 The Complainant's allegation that he was deliberately given misleading information in relation to the SoJP not defending his claim is not proven**

- 14.6.1 The Complainant claimed that Police Officer 1 told him that the SoJP would not resist any action that the Complainant would take against them. Police Officer 1 stated that he recommended that the Complainant seek legal advice and submit a civil claim which the SoJP would pass to their Insurers. If he took civil action, then the SoJP would make full and proper disclosure under a Court Order and that would not be resisted. Police Officer 1 was adamant that he did not say that the SoJP would not dispute his claim. Police Employee 1 stated that he had been telling the Complainant for some time that the Sussex and Devon and Cornwall Police reports were not available through Subject Access Requests in their un-redacted form, but could be made available through a Court Order.

He recalls Police Officer 1 telling the Complainant if he was to go into the civil process and there was a Court Order the SoJP would have to comply with that. He stated that Police Officer 1 did not tell the Complainant that the SoJP would not resist any claim he submitted.

14.6.2 On 7 September 2012, Police Officer 1 wrote to the Complainant. In his letter he informed the Complainant that the information he was seeking was not available through the Subject Access Request process. The letter went on to state that if the Complainant decided to take civil action the 'discovery of material can be achieved through a Court Order, which the Police would accordingly comply with'. This was a reiteration of the position previously outlined to the Complainant in another letter from Police Officer 1, dated 6 May 2010 and the same position outlined in the July meeting, according to Police Officer 1 and Police Employee 1.

14.6.3 Following the refusal of the Complainant's claim in 2013, he emailed Police Employee 1 stating that he should have been informed that he would not be compensated. On 28 February 2013, Police Employee 1 forwarded this email to Police Officer 1 commenting 'His issue is his belief that when he met with you and I last year we stated that his claim would not be resisted full stop. This was opposed to the actual advice that you gave that he needed to put his claim in a formal footing which we would not resist and would welcome direct resolution with our Insurers'.

14.6.4 There remains the possibility that the Complainant misheard or misunderstood the advice he had been given during this meeting and that no specific assurances were given that the SoJP would not resist any claim that he would bring against them.

**14.7 No effort was made by Police Officer 1 or Police Employee 1 to correct the Complainant's belief that the SoJP would not resist any claim he made against them**

14.7.1 On 23 July 2012, the Complainant emailed Police Employee 1 informing him that he had sought legal advice and the lawyers he had approached were asking for written confirmation that the SoJP was not going to defend any claim that he would bring against them. It is clear from the email that the Complainant believed that this is what he had been told at the 13 July 2012 meeting. Police Employee 1 forwarded this email to Police Officer 1. The Complainant emailed again on 31 July 2012, stating he could not get anyone to take on his 'compensation claim', as they are frightened the police would 'fight it' and again asked for written confirmation that the SoJP would not defend his claim. A further email request from the Complainant for written confirmation was also forwarded to Police Officer 1. Police Officer 1 has stated that he has no recollection of ever receiving these emails.

- 14.7.2 Neither Police Officer 1 nor Police Employee 1 took responsibility for replying to the Complainant's emails. Both had sufficient opportunity to correct the Complainant between his first requests for written confirmation on 23 July 2012 and being informed that the Complainant had placed the matter in the hands of a solicitor on 3 September 2012. During interview Police Employee 1 stated that it was not 'his place' to correct the Complainant.
- 14.7.3 In his letter of 7 September 2012 Police Officer 1, despite having an opportunity to do so, failed to correct the Complainant's evident misunderstanding that the SoJP would not defend any claim he would bring against them.
- 14.7.4 The email from Police Employee 1 to Police Officer 1 on 28 February 2013, detailed in paragraph 14.6.3, demonstrates that Police Employee 1 was fully aware of what was discussed at the meeting, yet he also failed to correct the Complainant's misunderstanding.
- 14.8 The Complainant's civil claim of August 2015 was not struck out by the Royal Court as a result of any failure on the part of Police Officer 1 or Police Employee 1 to release documents requested by him in his Subject Access Request of January 2012**
- 14.8.1 The Complainant alleged that Police Officer 1 and Police Employee 1 used their positions to pervert the course of civil justice by failing to release documents requested by him in his Subject Access Request of January 2012 in the statutory time. The Complainant believed that this contributed to his civil action against the SoJP being struck out by the Royal Court, Jersey on 3 November 2015, on the basis of being time barred.
- 14.8.2 The Royal Court ruled that the Complainant had sufficient information to commence proceedings at the latest when he received the redacted copy of the Devon and Cornwall Police report from Police Officer 1 on 28 July 2009. Therefore, at the latest, any claim became time barred three years after that date on 28 July 2012. Indeed the Royal Court stated that the Complainant may have had sufficient information to bring a civil action against the SoJP as early as 2007.
- 14.8.3 Whilst the SoJP failed to provide the Complainant with the disclosure he had requested within the statutory time prescribed, this failure did not contribute to the Complainant's claim of August 2015 becoming time barred, as he was already in possession of sufficient information to bring this claim prior to August 2015 but had failed to do so.

**14.9 There was poor information management and record keeping by the SoJP**

- 14.9.1 The Enquiry Team requested copies of correspondence that had been sent to the Complainant electronically and in paper format. Whilst electronically held information was sourced and provided promptly, it was apparent that information held in a paper format was more difficult for those SoJP employees assisting with the enquiry to find.
- 14.9.2 Police Employee 1 was unable to find paperwork required for the Complainant's Subject Access Request. During his interview Police Employee 1 claimed his inability to locate documents requested by the Complainant could be seen as 'reflective of lack of filing and storage etc.' When detailing the Subject Access Requests that had been handed over to him from Police Employee 1, Police Employee 3 noted that one of the requests (not the Complainant's) had a note stating that the documentation could not be found.
- 14.9.3 The letter written by Police Officer 1 on 6 May 2010 is not included in his affidavit (submission to Royal Court concerning the Complainant's civil claim). Police Officer 1 has no recollection of the letter sent to the Complainant in September 2012, which again he did not include it in his affidavit. In his affidavit Police Officer 1 notes in four of his 81 points that he is unable to locate paperwork to exhibit. He also makes reference to pages missing from the file of the investigation into the Complainant's alleged corruption.
- 14.9.4 It took from January 2012 to March 2014 to locate the paperwork that the Complainant was entitled to under his Subject Access Request. In interview Police Employee 1 stated that the paperwork was found whilst Police Officer 1 was going through old PSD files or documentation that had been left in Police Officer 1's office by Police Officer 2.
- 14.9.5 It is the Enquiry Team's understanding that Police Officer 2 was able to bypass the requirement to sign in and out his day books and was allowed to leave the employment of the SoJP without returning his day books, contrary to the SoJP's policy. The SoJP's Pocket Notebook/Day Book Policy is at *Appendix P*.
- 14.9.6 In 2010 the SoJP commissioned a review into the way they collect, record, evaluate, action, share, review, retain and dispose of police information. Essex Police carried out this review and its findings were referred to as the Essex Police report, produced in October 2010. The review was based on the MoPI Guidance and encompassed paper based and electronic information. The report made 16 recommendations. When Police Employee 1 left in 2014 only four of the recommendations had been implemented, which were specific to Special Branch. It took until 2015 for all the

recommendations to be implemented. The report recommended the implementation of a retention and disposal schedule. It further recommended that a scoping exercise should be undertaken to determine what resources were required to undertake back record conversion in line with this retention and disposal schedule. It is the view of the Enquiry Team that if the retention and disposal schedule had been implemented and the back record conversion had commenced earlier, the likelihood of locating missing documentation would have increased.

14.9.7 The seventh Data Protection Principle (Data Protection (Jersey) Law 2005) requires that 'appropriate...organisational measures shall be taken...against accidental loss or destruction of, or damage to, personal data'. The inability of Police Employee 1 to locate documentation required by the Complainant and others and the inability of Police Officer 1 to locate documentation, or be aware of documentation, to include in his affidavit, may illustrate a breach of this principle which requires both technical and organisational measures to be put in place to safeguard personal data.

**14.10 The SoJP previously displayed an unprofessional attitude towards the Complainant and towards disclosure**

14.10.1 On 12 and 17 June 2006, Police Officer 2 stated publically in the JEP that the Complainant had an 'unhealthy relationship' with some Police Officers and that he received a large proportion of business from the SoJP because of favours given to Police Officers. This was whilst an investigation into alleged corruption on the part of the Complainant was ongoing and nearly three months before the Complainant was arrested for this alleged corruption. Police Officer 2 defended his statements in the press by stating that the Complainant had gone to the press first.

14.10.2 In January 2007, following the Complainant's request for the Sussex Police report, Police Officer 3 emailed other senior officers seeking advice as to how this should be dealt with. Police Officer 4 advised Police Officer 3 to refuse the Complainant's request until he specifically requested it under FoI. He wrote that to assume that the Complainant would do this was to 'make too big a presumption on his level of intelligence'.

14.10.3 Following requests from the Complainant's Advocates in March 2007 for the Sussex Police report, Police Officer 3 emailed Police Employee 1 on 29 March 2007 stating "thank you for assisting me yesterday. Today can we talk about finding a few documents to throw to the wolves when the next letter arrives...tow-away policy and some accompanying documents???"

- 14.10.4 In October 2007, the Complainant was prohibited from applying to tender for the new vehicle towing contract. In November 2007, the Complainant's Advocates wrote to SoJP asking for the ACPO guidelines that were used to draw up the new towing contract. Police Officer 5 was advised by Police Officer 2 to 'Refer the Advocate to Police Officer 3 – he has told them to go ahead and sue; I suggest you do the same.' The SoJP continued to be obstructive in respect of the ACPO guidelines until they were threatened with a Letter of Action to Police Officer 3 at which point Police Officer 5 emailed the Complainant's Advocates on 12 November 2007 clarifying the ACPO documentation referred to.
- 14.10.5 In respect of the Complainant's allegation against Police Officer 2, Police Officer 3 described this complaint in an email as 'transparent nonsense' from someone 'who is not thinking straight.' The Complainant's association with others who made complaints against Police Officer 2 are referred to as 'his band of outlaws'. There was apparent relief expressed by Police Officer 3 that 'someone else [Devon and Cornwall Police] is dealing with him'.
- 14.10.6 On 7 January 2008, Police Officer 6 emailed Police Officer 2 to expedite him in relation to the file concerning the investigation into the Complainant's self-incrimination in court in June 2007. Police Officer 2 replied, 'Did you doubt me?', to which Police Officer 6 replied that he 'didn't want to miss an opportunity'. When the decision was made not to charge the Complainant, Police Officer 5 noted in an email on 12 February 2008 that Police Officer 2 'is not best pleased.'
- 14.10.7 On 26 April 2010, Police Officer 7 referred to the Complainant as a 'sneaky so and so' in an email to another SoJP Officer, in relation to the Complainant's concerns about the vehicle towing contract.
- 14.10.8 The Enquiry Team believe that these various comments provides sufficient evidence to conclude that the SoJP's attitude towards the Complainant and disclosure was both disrespectful and unprofessional.
- 14.11 Police Employee 1's broad role profile was a factor in his inability to process 'Section 3' Subject Access Requests within the legislated timeframe**
- 14.11.1 By his own admission, Police Employee 1 was under considerable pressure in his job due to several factors, including lack of resources and his evolving role profile.
- 14.11.2 Police Employee 1 had a strategic and expanding role within the SoJP. Part of his remit was to implement national directives in respect of Information Management, such as MoPI, FoI and vetting procedures following the Bichard report. He was also expected to

process all 'Section 3' Subject Access Requests submitted to the SoJP. This included researching of databases, retrieval of documents and if necessary, the redaction of documents. The priority given to processing and finalising such Subject Access Requests promptly was low, as evidenced by how often the prescribed statutory time limit was exceeded.

- 14.11.3 The requirement to begin the implementation of recommendations from the Essex Police report without the resources to assist him to do so, made Police Employee 1's ability to perform in all his required areas of work more difficult. The Essex Police report stated that the SoJP did have the key staff to implement MoPI compliance but the 'breadth of the portfolios held by these individuals' was a challenging factor in its implementation.
- 14.11.4 Whilst there had been an agreement to recruit staff to assist Police Employee 1 in July-August 2011, they were not recruited until 2014. This delay was due to several factors including the comprehensive spending review that the SoJP was required to undertake and the knock-on effect of Police Employee 1's job description being re-assessed and re-graded. Police Employee 1 stated that when he left SoJP his role and functions were shared out between four different newly appointed members of staff. The SoJP have stated that Police Employee 1's role and functions were shared out between three different newly appointed members of staff.
- 14.11.5 It is the view of the Enquiry Team that the work being undertaken by Police Employee 1 on a routine basis in processing requests was not commensurate with his grade and the administrative tasks involved in the processing of requests were not being completed effectively by him. Routine administrative tasks such as searching files and databases for documentation should have been more appropriately assigned to a member of staff with capacity to complete the tasks.

**14.12 No criminal prosecution is to be brought against Police Officer 1 or Police Employee 1**

- 14.12.1 Following the investigation of the Complainant's allegations against Police Officer 1 and Police Employee 1, a written report was compiled and delivered to the Attorney General on 19 October 2016.
- 14.12.2 The Attorney General considered the potential offences of Perverting the Course of Justice and Misconduct in Public Office.
- 14.12.3 On 23 December 2016, the Attorney General directed that there was insufficient evidence to prosecute either party for any offence.



- 14.13 Chief Officer/Deputy Chief Officer discipline legislation has not yet been implemented (see updates at paragraphs 14.13.4, 14.13.5 and 14.13.6)**
- 14.13.1 Current legislation in relation to complaints against members of the SoJP does not make any provision for the investigation of complaints against either the Chief Officer or the Deputy Chief Officer of the SoJP (Art 4(1) Police (Complaints and Discipline) (Jersey) Law 1999).
- 14.13.2 There is a Discipline Code for Police Officers, who commit an offence against discipline if they do not meet the standards set out therein (Art 2(2) Police (Complaints and Discipline Procedures) Order 2000) but this is not applicable to the conduct of the Chief Officer or Deputy Chief Officer.
- 14.13.3 One of the recommendations of the Devon and Cornwall Police report in 2008 was for a legislative framework to be drafted to deal with misconduct allegations and complaints against the Chief Officer and Deputy Chief Officer of the SoJP.
- 14.13.4 Part of the documentation made available to the Enquiry Team was a draft of the States of Jersey Police Force (Chief Officer and Deputy Chief Officer) (Jersey) Regulations. The Draft Regulations were lodged with the Greffe, States Assembly by the Minister for Home Affairs on 30 December 2016. On 21 February 2017 prior to printing of this report the Draft Regulations were subsequently enacted.
- 14.13.5 It should be noted that whilst the Draft Regulations make provision for the officer complained of not to be required to resign or retire during the course of an investigation against them, there is nothing preventing the officer resigning or retiring of their own volition. It is understood that a project is underway to update and revise the Police (Complaints and Discipline) (Jersey) Law 1999. This will include a consideration on whether the position in relation to officers seeking to retire during alleged misconduct proceedings should be updated to match the Police (Conduct) (Amendment) Regulations 2014.
- 14.13.6 It is therefore the view of the Enquiry Team that these Draft Regulations should be reviewed if considered appropriate and then implemented forthwith. As stated at paragraph 14.13.4, on 21 February 2017 prior to printing of this report the Draft Regulations were subsequently enacted.

**14.14 Whilst there is insufficient evidence to suggest possible misconduct on the part of Police Officer 1, had he still been a serving officer, there is evidence of possible misconduct on the part of Police Employee 1 had he still been employed by the States of Jersey**

- 14.14.1 Although misunderstandings and failings were evident, the Enquiry Team found insufficient evidence to suggest possible misconduct on the part of Police Officer 1 under the Draft States of Jersey Police Force (Chief Officer and Deputy Chief Officer) (Jersey) Regulations, in relation to the Complainant's allegations, had Police Officer 1 still been a serving officer.
- 14.14.2 The electronic file for the Complainant's Subject Access Request showed that on 17 February 2014, Police Employee 1 instructed that the status of the file should be set to complete. The entry on the electronic log for this date reads 'File status set to complete. Comment; Police Employee 1 still has file but advised not to re-pond.' This action had the effect of stopping the electronic expedite in relation to the Complainant's Subject Access Request. This was one month before Police Employee 1 tendered his resignation to the SoJP and prior to the material that he had been looking for being located by Police Officer 1. There had been no disclosures made to the Complainant at the point when the electronic log was marked complete. It was therefore not considered appropriate to mark the file complete at this juncture.
- 14.14.3 The status of the Complainant's file was correctly returned to live when Police Employee 3 was appointed in June 2014. The status of the file was then legitimately and appropriately set at complete on 12 February 2015, when the Complainant had received the last of his disclosures.
- 14.14.4 Police Employee 1 did not as a rule make contemporaneous notes on electronic files. The Enquiry Team found evidence of electronic files being updated and closed over a year after the 'Section 3' Subject Access Request had been finalised. For example, a Subject Access Request was marked complete on the electronic file by Police Employee 1 on 20 May 2014, with a note stating that disclosure had been made on 8 February 2013. Another was marked complete on the electronic file by Police Employee 1 on 21 May 2014, with a note stating that disclosure had been made on 27 March 2013. Given Police Employee 1's admission that he did not have time to make contemporaneous notes in relation to decision making and rationale, it would be difficult to verify, without contacting the applicants, if these entries accurately reflected when disclosure was made. This type of action was particularly noticeable in the time period leading up to Police Employee 1 leaving the SoJP, when it

seems that there was a surge in electronic files being retrospectively updated.

14.14.5 As an employee of the SoJP, Police Employee 1 was subject to the Disciplinary Rules of the States of Jersey. These rules apply to all States of Jersey employees 'regardless of pay group'. As well as the Disciplinary Rules, the States of Jersey have also published a policy document outlining how disciplinary matters are to be investigated and dealt with. This policy document describes misconduct as 'incidents that infringe rules and regulations, including unsatisfactory behaviour'.

14.14.6 In the absence of integrity in his record keeping, particularly in relation to the Complainant's Subject Access Request, it is possible that Police Employee 1 breached the States of Jersey Disciplinary Rules. As Police Employee 1 is no longer an employee of the States of Jersey, he cannot be subject to misconduct proceedings, however if he had still been employed the Enquiry Team would have recommended this course of action.

**14.15 Serious organisational and individual failings by the SoJP, in respect of the processing of Subject Access Requests, were not confined to the Complainant's case**

14.15.1 Paragraph 11 outlines the unsatisfactory experiences of other witnesses in relation to their Subject Access Requests to the SoJP. It is clear that the Complainant's was not a stand-alone case.

14.15.2 There was a failure to recognise requests for information and a failure to categorise them correctly as either 'Section 3' Subject Access Requests or FoI requests.

14.15.3 None of the additional witnesses detailed in paragraphs 11.2, 11.3, 11.4, 11.6 and 11.7 received their disclosure within the prescribed statutory time limit.

14.15.4 There does not appear to have been any monitoring or tracking of these Subject Access Requests, or any escalation process to ensure that they were finalised within the prescribed statutory time limit.

14.15.5 Both the Complainant and Witness 5 requested copies of the Devon and Cornwall Police report. On 28 July 2009, Police Officer 1 wrote to Witness 5 informing him that he would not be provided with a copy of the Devon and Cornwall Police report, sanitised or otherwise. On the same day, Police Officer 1 also wrote to the Complainant, providing him with a redacted version of the Devon and Cornwall Police report.

- 14.15.6 The Complainant was not asked to complete a Subject Access Request form until 2011, despite making previous requests for disclosure without them. Witness 5 was also not required to complete a Subject Access Request form for his requests prior to 2011. SoJP Policy in relation to the requirement to complete this form had been in force since December 2005.
- 14.15.7 There was a failure by Police Officer 1 to understand the SoJP's obligations of the Data Protection (Jersey) Law 2005 and the Codes of Practice. This was illustrated when he replied to the Complainant on 6 May 2010 and to Witness 5 on 28 July 2009 and gave his reasons for not disclosing information, as it was not police policy to do so. These assertions clearly demonstrate a lack of understanding of Data Protection (Jersey) Law.
- 14.15.8 Police Officer 1's failure to correctly interpret the applicable legislation led to flawed decision making. During interview, Police Officer 1 stated that he believed that Data Protection (Jersey) Law 2005 did not allow for him to disclose information if it was required in connection with legal proceedings. This was incorrect and the opposite is true. Article 35(2) Data Protection (Jersey) Law 2005 allows for a discretionary disclosure if it 'is necessary for the purpose of, in connection with or in contemplation of, any legal proceedings'.
- 14.16 The SoJP did not have an adequate and robust internal performance management regime in place, concerning the processing of 'Section 3' Subject Access Requests**
- 14.16.1 The Enquiry Team uncovered a number of broad failings by SoJP in how they responded to and processed 'Section 3' Subject Access Requests.
- 14.16.2 A good assurance framework is an essential part of any internal performance management regime. Such an assurance framework should consist of clear policy and procedures, line management compliance, corporate assurance and internal audit.
- 14.16.3 It is the view of the Enquiry Team that the SoJP's poor performance demonstrated that there was an absence of both an effective internal performance management regime and an assurance framework.

**14.17 The SoJP's performance around 'Section 3' Subject Access Requests has improved significantly**

- 14.17.1 Since the creation of the role occupied by Police Employee 3 requests for disclosure, on the whole, have been prioritised and addressed promptly. Subject Access Requests are now processed within the prescribed statutory time limit as the norm rather than the exception.
- 14.17.2 On appointment, Police Employee 3 reviewed the processing of 'Section 3' Subject Access Requests. He implemented changes resulting in improvements to the process.
- 14.17.3 Improvements have also been introduced to enhance the monitoring and tracking of 'Section 3' Subject Access Requests.
- 14.17.4 The establishment of a managerial level between Police Employee 3 and the police rank that Police Officer 1 occupied has resulted in more effective overall management of the processing and finalisation of 'Section 3' Subject Access Requests.

**14.18 There is now an external accountability framework in place in relation to the SoJP**

- 14.18.1 The SoJP's role is legislated under 'The States of Jersey Police Force Law 2012'. The Chief Officer is accountable to the Minister for Home Affairs for carrying out their functions. They are further accountable to the Jersey Police Authority for the general administration, governance and business of the SoJP.
- 14.18.2 The Minister has overall and ultimate responsibility for the functioning of the SoJP. This includes setting police policies regarding key aims and objectives and other management policies of the SoJP, which may impact on the Force's reputation or image or the image or reputation of Jersey and its people. The Minister is also responsible for ensuring that the Jersey Police Authority carries out its functions properly.
- 14.18.3 The Jersey Police Authority has a duty to ensure that the SoJP is an efficient and effective police force and delivers, with the resources available, on key aims and objectives set by the Minister. It also has a duty to ensure that the SoJP acts in accordance with any management policies set by the Minister.
- 14.18.4 This accountability framework is shown as law in Jersey at 1 January 2015, however the Enquiry Team note that this is outside the core timeframe of this investigation. Whilst the Enquiry Team cannot categorically state that the prior existence of such an external accountability framework would have prevented the prolonged systematic failings evidenced in this report, it is hoped that because

such a framework is now in place, such shortcomings are likely to be identified and remedial action taken at an earlier stage.

**14.19 Witnesses interviewed during the course of the Enquiry Team's investigation have voiced their concerns as to the effectiveness of the Office of the Information Commissioner**

14.19.1 The Office of the Information Commissioner is an independent statutory authority responsible for the supervision of all persons and businesses with regard to ensuring compliance with the Data Protection (Jersey) Law 2005 and the Freedom of Information (Jersey) Law 2011. Part of their role is to deal with concerns raised by members of the public in relation to requests for disclosure. Members of the public are advised to raise their issue with the organisation responsible in the first instance. If the organisation has been unable or unwilling to resolve it then the matter should be raised with the Office of the Information Commissioner. The Office of the Information Commissioner, in some cases, collates information on similar issues within any organisation to assess an organisation's performance and to assist them in deciding improvements that the organisation might be expected to make.

14.19.2 Several of the witnesses who engaged with the Enquiry Team have recorded dissatisfaction as to the actions and response of the Office of the Information Commissioner when they informed the Office of difficulties they were having with the SoJP. The Enquiry Team felt it was appropriate to include the experiences of those witnesses who had brought matters to the attention of the Information Commissioner.

14.19.3 Witness 1 informed the Enquiry Team that she had accompanied the Complainant to a meeting with the Information Commissioner in summer 2015 and that the Information Commissioner had "said she was disgusted", at the level of disclosure they had received and undertook to examine it. Witness 1 claimed that nothing further was heard from the Information Commissioner.

14.19.4 Witness 5 has stated that following the failure of the SoJP and the Jersey Police Association to respond to his Subject Access Requests within the 40 day timeframe, he contacted the Office of the Information Commissioner on 14 February 2012. He was advised to either write to the SoJP giving them a further seven day deadline or to make a formal complaint to the Information Commissioner. On 29 March 2012, Witness 5 again contacted the Office of the Information Commissioner. He was advised to submit a complaint. Witness 5 informed the Office of the Information Commissioner on 2 April 2012 that he wished to make a formal complaint against the SoJP. On 30 April 2012, Witness 5 contacted the Office of the Information Commissioner asking for advice as the SoJP had disclosed a small amount of data to him. He was advised that, as the SoJP appeared

to be taking steps to address his Subject Access Request he should delay his complaint against the SoJP. On 6 December 2012, Witness 5 informed the Office of the Information Commissioner that he had still not had disclosure from the SoJP. On 25 January 2013, Witness 5 contacted the Information Commissioner directly. The Information Commissioner is reported to have informed Witness 5 that they would make enquiries. He claimed that he never heard back from the Information Commissioner.

14.19.5 Witness 6 has stated that he contacted the Office of the Information Commissioner on 12 May 2014, following the failure of the SoJP to respond to his Subject Access Request and provide disclosure within 40 days. He requested that an assessment was carried out to ascertain if the SoJP had breached Data Protection (Jersey) Law 2005. He did not receive a response to this request until May 2015, when the Information Commissioner informed him that the decision made by the SoJP not to disclose information to him had been upheld. In October 2016, the SoJP decision on disclosure was reversed and Witness 6 was provided with the disclosure he had been seeking, most of which had been available at the time of his Subject Access Request which had been submitted over two years earlier on 22 January 2014.

14.19.6 It is now clear that there were serious failings by the SoJP in adherence to the Data Protection (Jersey) Law 2005. These shortcomings have continued over a considerable number of years. The Office of the Information Commissioner is the body tasked by the States Assembly with ensuring adherence to Data Protection and FoI matters. They are therefore the most appropriate body to have ensured that the SoJP was complying with the requirements of Data Protection and FoI. They had, and continue to have, the powers to tackle matters relating to one-off and systemic failures to adhere to these requirements and have a number of legally enforceable tools to be able to do this.

14.19.7 The role and function of the Office of the Information Commissioner is outside the TOR and for that reason the Enquiry Team did not pursue these suggestions and as such these allegations remain unsubstantiated.

**14.20 There are weaknesses in the SoJP's policy relating to the issue, administration and retention of the Pocket Note Book and Day Book**

14.20.1 The SoJP's policy is to issue a day book to all officers above the rank of Inspector, Specialist Officers and those involved in a major enquiry. The day book is deemed to be an official document and always remains property of the SoJP. The day books are distributed by the Pocket Notebook (PNB) Administrator and as per the policy, completed day books must be returned to this person. Day books

required for official purposes are required to be logged out by the PNB Administrator, signed for and returned, with the date of return noted on a database.

- 14.20.2 These mechanisms failed in the case of Police Officer 2, who was able to leave the SoJP without returning his day books.
- 14.20.3 The policy does not require Senior Police Staff in Managerial/Strategic roles within the SoJP to maintain official day books.
- 14.20.4 Police Employee 1 stated in interview that he maintained journals, which he claimed contained mostly personal information. On terminating his employment with the SoJP, he destroyed all his journals except one. He did not destroy this particular book as it contained information in relation to the re-grading of his role in the SoJP. He referred to this journal during interview when recalling a meeting with the Complainant in December 2013.
- 14.20.5 The Enquiry Team examined Police Employee 1's remaining journal. The vast majority of entries in this journal are work related, although there some entries that relate to Police Employee 1's home life. The book has been stamped throughout with an official SoJP date stamp, which tends to suggest that the contents relate to Police Employee 1's role within the SoJP.



## 15. RECOMMENDATIONS

Following on from the 20 key findings identified in paragraph 14 above, the Enquiry Team would make the following 20 recommendations. These are sub-divided into five of a strategic nature and 15 which relate to operational matters.

### **Strategic**

1. The draft States of Jersey Police Force (Chief Officer and Deputy Chief Officer) (Jersey) Regulations should be implemented forthwith. The Enquiry Team are now aware that, prior to printing this report, the new Regulations were enacted on 21 February 2017.
2. The SoJP should review all relevant policies referred to in this report.
3. The Minister for Home Affairs may wish to assure herself that a robust Internal Assurance Framework is now in place within the SoJP, in order to ensure good performance and strict compliance with the Data Protection (Jersey) Law 2005.
4. The Minister for Home Affairs may wish to consider the statements of those witnesses who have voiced their concerns regarding the Office of the Information Commissioner.
5. The Jersey Police Authority may wish to review their oversight and accountability mechanisms regarding the issues referred to in this report.

### **Operational**

6. Consideration should be given to ensuring that there are appropriate mechanisms in place for staff to record decision making and rationale relevant to their roles. SoJP may wish to consider the issuing of day books, or similar, to staff in senior or critical roles.
7. The SoJP should review the current Pocket Note Book/Day Book Policy to ensure it is fit-for-purpose. Particular consideration should be given to the section of the policy relating to their retention by the SoJP when a member leaves or retires. If the decision is taken to provide day books to Senior Police Staff, this would also need to be reflected in any review of the policy.
8. The SoJP should ensure that any staff member regularly performing the role of Data Protection Audit Officer is adequately trained in Data Protection.
9. The SoJP should ensure that the immediate Line Manager of the Data Protection Audit Officer is adequately trained in Data Protection.

10. The SoJP should ensure that all officers and staff have an awareness of all current and updated policies, and guidance concerning Data Protection and FoI. Particular attention should be drawn to recognising what constitutes a request for disclosure under Data Protection and FoI.
11. The SoJP should ensure that adequate training is provided to those officers/staff involved in the redaction of documents.
12. The SoJP should review current redaction methods and redaction tools employed by the SoJP. The SoJP should ensure that these are fit-for-purpose.
13. The SoJP should devise a 'Process Map' in respect of 'Section 3' Subject Access Requests. This will ensure that, should the Data Protection Audit Officer not be available, other SoJP staff can, as a temporary measure, process Subject Access Requests effectively, efficiently and within the prescribed statutory time limit.
14. In respect of 'Section 3' Subject Access Requests, the SoJP should design and utilise a specific document to record rationale concerning decisions of disclosure/non-disclosure. This document should be held electronically along with Form SA1.
15. The SoJP should ensure that, if meetings are deemed necessary between senior police or staff to discuss more challenging 'Section 3' Subject Access Requests, an appropriate record of the meeting is made and stored in an accessible format, preferably on the electronic Masterfile.
16. The SoJP should ensure that, if face-to-face meetings are deemed necessary between SoJP and the 'Section 3' Subject Access Request applicant, to discuss more challenging Subject Access Requests, the content of such meetings is captured and stored in an accessible format, preferably on the electronic Masterfile.
17. The SoJP should ensure that if a delay occurs in the processing time of a 'Section 3' Subject Access Request, such a delay should be drawn to the applicant's attention as soon as possible, letting them know the reason for the delay and the intended response time. This communication should be recorded on the electronic case file.
18. The SoJP should satisfy itself that it has a robust process in place to escalate concerns should the Data Protection Audit Officer fail to adhere to electronic expedites concerning the processing of 'Section 3' Subject Access Requests within the prescribed statutory time limit.

19. The SoJP should ensure that a quarterly review of 'Section 3' Subject Access Request performance be introduced. It is recommended that this review is conducted by appropriate Line Management and forms part of the internal assurance framework overseen by the relevant member of the Senior Executive Team. Particular attention should be paid to adherence to the prescribed statutory time limit.
20. The SoJP should ensure that all police officers and staff are advised of the importance of maintaining professional standards in all communications and correspondence, both internally and externally.

## 16. CONCLUSION

This enquiry has been progressed as expeditiously as possible and in accordance with the States of Jersey Police Force (Chief Officer and Deputy Chief Officer) (Jersey) Regulations (the Draft Regulations). I can confirm that I have delivered against the Terms of Reference as established by the Assistant Minister for Home Affairs, Jersey. In the absence of the Draft Regulations being enforced during the period of my investigation, the legislation referenced throughout this report is the law applicable to the States of Jersey at the relevant time.

I have conducted a detailed investigation into the two allegations raised by the Complainant.

In relation to **Allegation 1**, that the SoJP failed to disclose documents which were relevant to his Subject Access Requests and did so as a deliberate act to prevent the Complainant bringing a claim against the SoJP. The evidence gathered by my Enquiry Team has concluded that this allegation is partially upheld.

As outlined in this report, the SoJP demonstrated a wilful disregard for their duties and obligations under the Data Protection (Jersey) Law 2005. The reason for this is less clear, but I particularly note that the failings appeared to be systemic and that the SoJP failed to provide appropriate disclosure to a range of persons, not only the Complainant. Whilst there is evidence of a disrespectful and unprofessional attitude towards the Complainant and his disclosure requests, the weight of evidence tends to suggest serious organisational and individual failings, as opposed to deliberate or malicious actions on behalf of any one person.

In relation to **Allegation 2**, that the Complainant was deliberately given information during a meeting on 13 July 2012, which indicated that his claim was not time barred and could not become time barred and that the SoJP would not resist his claim. The evidence gathered by my Enquiry Team has concluded that this allegation is not upheld. Unfortunately, there are no contemporaneous notes of this meeting and the accounts of the parties present are at variance.

Other evidence, such as the records of the States' Insurer and the Finance Director, Home Affairs Department add some support to the proposition that the SoJP was still of the view that the Complainant's claim could have been progressed and was not time barred. In relation to the Complainant's allegation that the SoJP had advised him that any claim would not have been resisted, the evidence suggests that it is equally as likely that the Complainant may have misheard or misunderstood the information he was provided. It is regrettable and indeed unprofessional that the SoJP chose not to correct the Complainant's misapprehension, when there was sufficient opportunity to do so in response to the Complainant's written requests for such confirmation.

In accordance with the Terms of Reference, I have made a series of recommendations for the purposes of organisational learning for the SoJP.

These 20 recommendations are sub-divided into five of a strategic nature and 15 which relate to operational matters and have arisen from a range of observations made during the course of my enquiry. I have also attached and referenced a number of Appendices which support the findings of the investigation.

In respect of the recommendations, it should be noted that there is evidence that the SoJP has already made some progress in improving their Data Protection processes, record keeping, training and administration. This, in turn, has led to an improvement in the SoJP's compliance rates for the completion of Subject Access Requests within the legislated timeframe.

I trust that this investigation will be found to be thorough and comprehensive, however if the Assistant Minister of Home Affairs, Jersey wishes any further clarification or additional work conducted within the TOR, I am only too happy to assist.

A handwritten signature in black ink, appearing to read 'G. Hamilton', with a horizontal line extending to the right.

**GEORGE HAMILTON**  
Chief Constable

09 June 2017