

HOW WE DEAL WITH FORMAL COMPLAINTS

ARTICLE 19 OF THE DATA PROTECTION
AUTHORITY (JERSEY) LAW 2018



CONTENTS

3 Overview

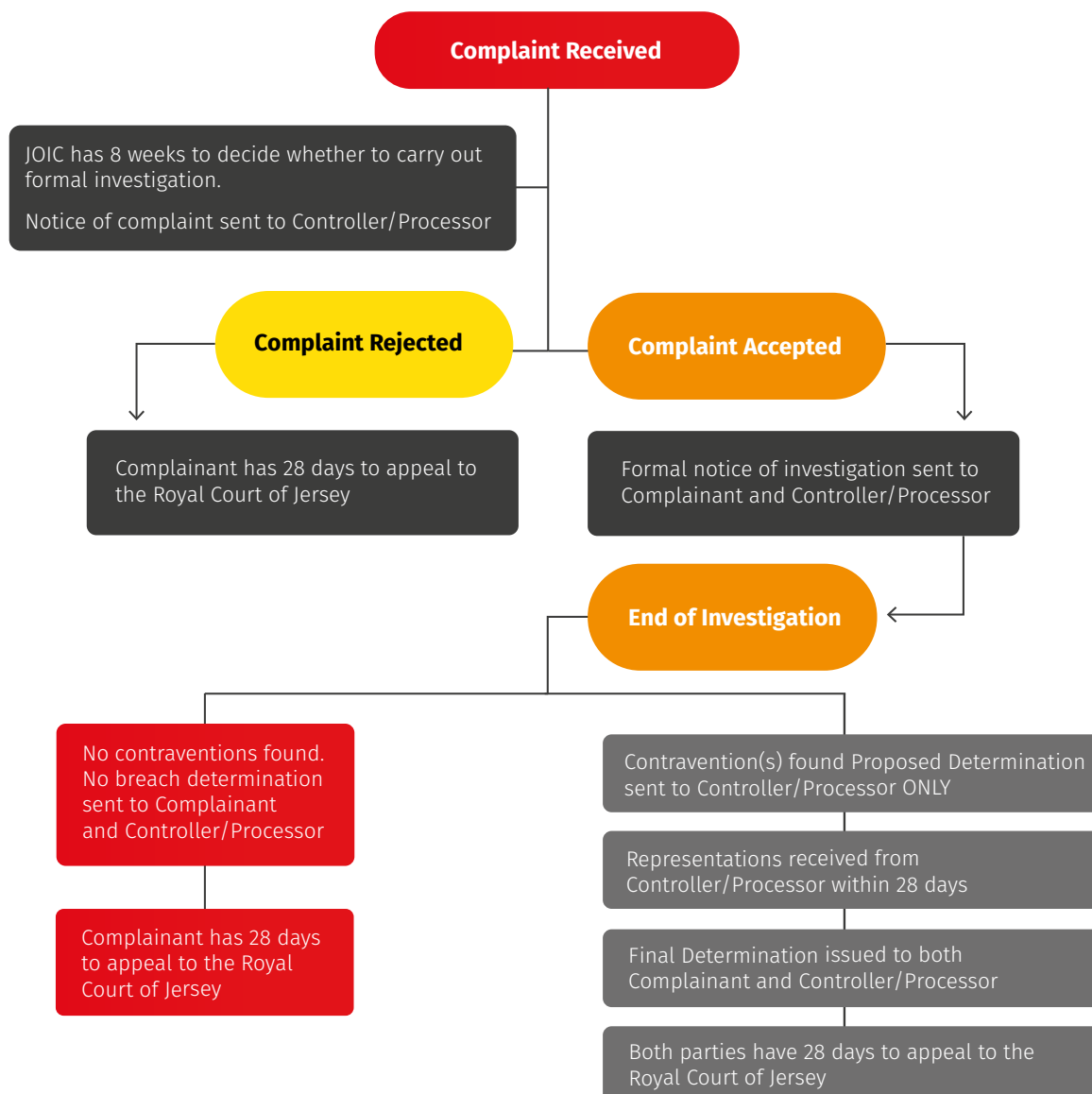
6 What happens when someone makes a complaint?

9 Frequently Asked Questions



OVERVIEW

1. The Jersey Data Protection Authority (the **Authority**) is responsible for enforcing and promoting compliance with the Data Protection (Jersey) Law 2018 (the **DPJL 2018**). These functions (and other day-to-day tasks) are carried out by the Information Commissioner (the **Commissioner**) and their staff, under the banner of the Jersey Office of the Information Commissioner (**JOIC**).
2. This explanatory note explains how we deal with complaints made by individuals under Art.19 of the Data Protection Authority (Jersey) Law 2018 (**DPJL 2018**). For details and further information about our separate Amicable Resolution (**AmRes**) process, please [see here](#).





What happens when someone makes a complaint?

3. Under Art.19 of the DPAJL 2018, any person can make a complaint to the Authority if that person considers that the controller/processor has contravened (breached) or is likely to contravene (breach) the DPJL 2018 and that contravention (breach) involves or affects (or is likely to involve/affect) the personal data of that person.
4. Complaints generally need to be made in writing and we encourage individuals to make complaints via our online form. For individuals that cannot use our online form (either because of disability or for some other significant reason) we do offer alternative assistance to them to allow them the opportunity to raise any concerns with us. We will refer to people raising concerns with us in this way as “Complainants”.
5. Our online form asks Complainants a number of questions about their concerns such as the identity of the controller/processor and their relationship with them. Before coming to us to raise a formal complaint we will usually expect Complainants to have tried to raise/resolve issues with the controller/processor directly and we will ask the Complainant to provide evidence of this and give us copies of any correspondence they have had with the controller/processor.
6. Once received, a caseworker in our Compliance & Enforcement team will be allocated to review the information that has been submitted and Art.20 of the DPAJL 2018 sets out that we have 8 weeks to decide whether or not we’re going to carry out a formal investigation. They will be your primary point of contact throughout any complaint review/investigation.

What happens during the first 8 weeks?

7. We will let the Complainant know that we have received their complaint and they will be sent a letter confirming this so we can make sure that we have correctly understood what their complaint is about and sometimes we will ask for further information. We will do this within seven (7) days.
8. We will also write to the controller/processor to let them know that a complaint has been received and we will do this within 14 days.
9. When we write to the controller/processor we will tell them what the complaint is about and ask for their initial views on what we have been told and anything else that we expect them to do.
10. When we have all the information we need, we review matters and decide whether or not a formal investigation needs to be carried out. The DPAJL 2018 says that we must carry out formal investigations for every complaint received unless we consider that the complaint is:
 - a. Clearly unfounded; or
 - b. Frivolous, vexatious, unnecessarily repetitive or otherwise excessive.
11. We can also decline to carry out a formal investigation if we’ve already taken other action such as issued a public statement or there are other International matters at play (e.g. we’re not the correct/best jurisdiction to investigate).



What happens if the Authority rejects the complaint?

12. If we decide to reject a complaint we need to write to the Complainant and tell them why (Art.20(5) of the DPAJL 2018). We do this by sending the Complainant something we call a “Rejection of Complaint” letter. In that letter we will explain why we have decided not to carry out a full investigation and explain which of the criteria set out in para.10 we are relying on.
13. The Rejection of Complaint letter will be addressed to the Complainant and it will ordinarily be copied to the controller/processor in full. This is so that they also know about and understand our decision.
14. If a Complainant is unhappy with our decision not to investigate they can issue a formal legal appeal to the Royal Court of Jersey and we must tell the Complainant of their right of appeal, which we do in our Rejection of Complaint letter.
15. If the Complainant appeals, they need to explain to the Royal Court why our decision was “unreasonable in all the circumstances of the case” (i.e. it’s not enough that someone doesn’t like our decision). They have 28 days from the day they receive our Rejection of Complaint letter to bring an appeal. If no appeal has been brought, we will send both parties another letter to confirm that our file will be closed and archived.

What happens when the Authority decides to carry out a formal investigation?

16. If we decide that we are going to carry out a formal investigation, we will write to both parties letting them know of our decision and the reason for it. We call this our “Notice of Investigation” letter. It will also set out what our next steps are and what the parties need to do (if anything) to assist us with our investigation.
17. During the course of our investigation, we may ask you for more information about what has happened. We deal with lots of different types of issues including things like failure to respond to subject access requests (including being asked to check why information has been withheld), failure to erase data; failure to correct inaccurate information and understanding why information might have been disclosed and deciding whether that should have been done. Many cases will have similarities but we will usually ask for information about a controller/processor’s decision making process regarding the issue that has been complained about. If we’re dealing with a subject access complaint we will usually ask you to provide information about how you responded to the request and for copies of any information that has been withheld, together with an explanation about any exemptions that have been applied.
18. In all cases we expect controllers/processors to be able to explain to us and justify the decisions they have made and it is often useful to include things like:
 - a. Information about the context of the complaint and the matters being complained about including any relevant background and context.
 - b. Copies of documents that back up anything you say in any written submission.
 - c. Any advice that helped a controller/processor make the relevant decision (although legal advice does not need to be provided).
19. Formal investigations can take many months to investigate properly but the law says that at least once every 12 weeks we must provide both parties with a formal update if the investigation has not been completed. We will usually be in touch with both parties far more frequently than this, but when we write to you formally we will tell you as much as we can about where we are in the process.



What happens once you've made a decision about the complaint?

20. Once we have received and reviewed all the information, we must decide whether or not the controller/processor has contravened the law. We have a process we need to follow which is set out at Art.28 of the DPAJL 2018 and we have to issue our initial views and findings to the controller/processor (we do not have to give that initial view to the Complainant). We set out our initial findings in a document called a "Proposed Determination".
21. A Proposed Determination will set out the complaint and our findings including whether we consider there has been any breach of the DPJL 2018. If we consider the law has been breached we will also set out what sanctions (penalties) we are minded to issue. We have a range of sanctions available to us including:
 - a. Issuing words of advice
 - b. Issuing a formal Reprimand
 - c. Making Orders (i.e. telling a controller/processor what they need to do to put things right)
 - d. Issuing an Administrative Fine.

For more information, please see our [Regulatory Action and Enforcement Policy](#).

22. A controller/processor has 28 days to provide us with either written/oral representations if they wish to do so. Representations are the controller/processor's chance to tell us if they think we got things wrong or why they disagree with the Orders we want to make or will need more time to comply. We also ask the controller/processor to tell us if there is any information contained within the Proposed Determination they think should not be seen by the Complainant (bearing in mind that our Final Determination goes to both parties).
23. We must consider any Representations we receive (Art.28(3) of the DPAJL 2018) and we will then usually proceed to issue our Final Determination.
24. The Final Determination will be addressed to the controller/processor involved but it will be copied to the Complainant as we must provide a copy of this document to both parties (Art.23(2) of the DPAJL 2018).
25. Both parties have a right to appeal our Final Determination to the Royal Court of Jersey. For controller/processors, this right arises under Art.32 of the DPAJL 2018 and for Complainants, it arises under Art.31 of the DPAJL 2018. The test for appeal is the same for both parties namely that our decision was "unreasonable in all the circumstances of the case" and must be brought within 28 days of the relevant notice having been issued.
26. If no appeal is lodged by either party we will send a case closure letter to both parties and they will also receive a link to a survey which will ask questions about how the parties found the process and so we can improve our customer service levels.



What happens if there are Orders that need to be complied with or an Administrative Fine to be paid?

27. If we have issued a controller/processor with Orders, they will usually be given time to comply with them (unless urgent) and we will usually include a requirement that we are provided with evidence to show that the Orders have been complied with to our satisfaction.
28. If we have issued an Administrative Fine, the controller/processor will usually be given a date by which payment must be made. If payment is not made then we can recover this as a civil debt through the Petty Debts or Royal Court.

FAQS

Q: Are formal complaints a person's only option to raise concerns about the behaviour of a controller/processor?

A: No; we have a number of ways people can raise concerns with us. Some people may not want to pursue a full, formal, complaint and we operate an Amicable Resolution process. More about that process can be found [here](#). We do also allow people to raise issues with us confidentially and without giving us their contact details. We call this our "Tell us in Confidence" process and more information about that can be found [here](#). We always encourage people to raise their concerns with the controller/processor before coming to us and before taking any formal regulatory action we will usually require that they do this first and provide us with proof that they have done so.

We strongly encourage parties to try and resolve any dispute between themselves as this will often provide a better outcome for all parties.

Q. What do you expect from me once I've made a complaint?

A. We need you to give us full details of your complaint and we need you to provide us with all evidence you have (e.g. documents, emails, photographs etc). This is so that we can have a complete understanding of what your complaint is about and what has happened and so that we can make a decision based on all the evidence available. When we ask for information, you must provide it to us and in accordance with any deadlines we set.

Q. What does the Authority expect from controllers/processors during this process?

- A. We understand that being involved in a formal investigation can be stressful and time-consuming but we expect all those engaging with our office to:
- a. Be courteous to our staff
 - b. Provide information in the form we request it
 - c. Provide information in a timely manner and in accordance with any deadlines we set.

We aim to be a proportionate, reasonable and approachable regulator but we will take appropriate legal action if our requests and/or Orders are not complied with and any poor conduct may be referred to in our decisions and could be made public.



Q: What happens if a controller/processor refuses to provide the Authority with information they have requested?

A: The Authority expects that everyone engaging with it will do so properly and when we ask for information to be provided to us which we need for our investigation, we expect controllers/processors to comply with those requirements. If a controller/processor refuses/fails to provide the information sought we can issue something called an Information Notice. This is a legal document where we formally set out the information we are asking for and why we need it. Recipients usually have 28 days to respond to that notice but we can impose a shorter deadline in circumstances. If we do not receive the information we have asked for we can issue legal proceedings before the Royal Court.

Q: Does the Authority help Complainants or controllers/processors with formal appeals under Art.21 or Art.22 of the DPAJL 2018?

A: Once we have issued any formal decisions we do not generally engage in any follow up correspondence about our decision/findings. Anyone wishing to formally appeal one of our decisions to the Royal Court of Jersey will need to seek appropriate independent legal advice; we cannot give this to you.

Q: What happens with the information that I send to you? Will it be made public?

A: We have general duties of confidentiality but all parties must bear in mind that anything they write to us/tell us about has the potential to be published in our formal decisions which are received by both parties. Sometimes, we may consider that the case is of particular seriousness that we need to issue a public statement and when we decide to do that, the statements will be published on our website and sent to the local media. A public statement will usually name the controller (not the complainant) and give brief information about what the complaint was about, our findings, and details of any sanctions.

Q. What happens if a controller/processor changes their views during the course of the investigation?

A. Even after we are involved and have accepted the case for investigation, you can discuss the case with the complainant – particularly if this is likely to lead to you resolving the case informally. If you resolve a case without our involvement, please let us know as soon as possible.

You may also achieve an informal resolution as a result of our involvement, either because you subsequently disclose some or all of the requested information for example, or the Complainant accepts that their complaint will not be upheld.

If you come to the conclusion that you could resolve the case (for example by full or partial disclosure of the information, or by otherwise amending your response to the information request) then you should do so. Please inform the Caseworker(s) at the earliest opportunity and send them a copy of any relevant correspondence.

If the Complainant then chooses to withdraw their complaint, we will close the case without it being necessary for us to issue a formal determination. The Complainant may, however, still ask for us to make a formal finding. In these cases we must issue continue with our process (although we may consider whether it remains appropriate to do so or whether such may be halted).

Q. What happens if I don't want to continue with my complaint?

A. You can withdraw your complaint at any time. If you decide that you want to withdraw your complaint, please let us know as soon as possible and please do this in writing. Please note that whilst that may bring any formal investigation into your complaint to an end, we do have the ability to carry out other enforcement activity if significant matters come to light during our investigation that suggest there are significant issues on the part of the controller that we need to deal with.

11011101
101



Jersey Office of the Information Commissioner
2nd Floor
5 Castle Street
St Helier
Jersey JE2 3BT

Telephone number: +44 (0) 1534 716530

Email: enquiries@jerseyoic.org

101

001

1101110
1101

1101