



Guideline for Information Gathering and Enforcement

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Purpose of this guideline

The Jersey Competition Regulatory Authority (the **JCRA**) was established by the Competition Regulatory Authority (Jersey) Law 2001¹. The JCRA has responsibility for the administration and enforcement of:

- Competition (Jersey) Law 2005 (the **Competition Law**)²
- Air and Sea Ports (Incorporation) (Jersey) Law 2015 (the **Ports Law**)³
- Postal Services (Jersey) Law 2004 (the **Post Law**)⁴
- Telecommunications (Jersey) Law 2002 (the **Telecoms Law**)⁵

Within this guideline the Ports Law, the Post Law and the Telecoms Law are together referred to as the **Regulatory Laws**.

Under the Telecoms Law, part 5A concerns the security of Public Electronic Communications and Services, detailing the JCRA's duties in relation to the monitoring and powers for enforcement of the **security duties** imposed on providers of public electronic communications networks and of public electronic communications services (**Providers**⁶). In addition, it grants the JCRA powers to gather information and take associated enforcement action. The JCRA's security duties, information gathering and associated enforcement powers in relation to telecoms security are provided under the Government of Jersey's **telecoms security framework** and referred to as such. This guideline sets out the investigative and decision-making processes the JCRA follows when conducting an investigation under both the Regulatory Laws⁷ and telecoms security framework, which could result in the imposition of a regulatory sanction.

Under Article 24ZE (1) of the Telecoms Law, the JCRA is obliged to publish a statement of its general policy with respect to the exercise of its information gathering powers in relation to the telecoms security framework. Accordingly, this guideline sets out and describes those information gathering powers and associated enforcement powers, as these may be outside of an investigation process carried out under the Regulatory Laws.

¹ [Competition Regulatory Authority \(Jersey\) Law 2001 \(jerseylaw.je\)](#)

² [Competition \(Jersey\) Law 2005 \(jerseylaw.je\)](#)

³ [Air and Sea Ports \(Incorporation\) \(Jersey\) Law 2015 \(jerseylaw.je\)](#)

⁴ [Postal Services \(Jersey\) Law 2004 \(jerseylaw.je\)](#)

⁵ [Telecommunications \(Jersey\) Law 2002 \(jerseylaw.je\)](#)

⁶ In some circumstances the term Provider also includes providers of associated facilities. A Provider may or may not also be a licensee under the Telecoms Law

⁷ The JCRA's approach to investigations under the Competition Law are set out in [Guideline 10 - Investigation Procedures](#)

Notes:

- This guideline is for guidance only. Any variation to the approach set out in this guideline will be explained.
- This guideline should not be relied on as a substitute for the Regulatory Laws. If you have any doubts about your position under the Regulatory Laws, you should seek legal advice.

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1. Introduction

The JCRA

The JCRA is established by way of the Competition Regulatory Authority (Jersey) Law 2001. Further functions and legal duties relating to the Competition Law and the Regulatory Laws have been set out in further legislation passed by the States of Jersey. These functions and duties relate to the promotion of competition in the supply of goods and services in Jersey, the economic regulation of port operations, postal services and the telecoms sector and the JCRA's duties in relation to the security duties of Providers.

The JCRA is not a judicial body. Court rules and procedures do not apply to the decisions that it takes. The JCRA takes administrative action in accordance with powers vested in it that are set out in the legislation that it administers, which includes the Regulatory Laws.

Independence

The JCRA is independent of the Minister for Sustainable Economic Development and of the States of Jersey, and regulates its own proceedings. To support this, as an independent body, the JCRA has a broad range of formal powers given to it by different laws to enable it to administer and enforce the Regulatory Laws.

The JCRA's powers – in relation to contravention of the Regulatory Laws

Where, in the opinion of the JCRA, a licensee is, has been, or appears to be, in contravention one of the Regulatory Laws, which includes contraventions of licences issued under the Regulatory Laws, the Regulatory Laws provide the following powers:

The Ports Law	<ul style="list-style-type: none">• Issuance of a direction to comply with licence conditions• Enforcement of a direction through civil proceedings• Imposition of a financial penalty to enforce a condition• Revocation of licence for failure to comply with a direction to comply with licence conditions
The Post Law	<ul style="list-style-type: none">• Issuance of a direction to comply with licence conditions• Civil proceedings for not having a licence or failing to comply with a direction• Revocation of licence for failure to comply with a direction
The Telecoms Law	<ul style="list-style-type: none">• Issuance of a direction to comply with licence conditions

	<ul style="list-style-type: none"> • Civil proceedings for not having a licence or failing to comply with a direction • Imposition of a financial penalty • Revocation of licence for failure to comply with a direction
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The JCRA may also take action against a person⁸ who is carrying out an activity which requires a licence under one of the Regulatory Laws, without having first been granted a licence under one of the Regulatory Laws.

The JCRA's powers – in relation to the telecoms security framework

The JCRA must seek to ensure that Providers comply with their security duties under Part 5A of the Telecoms Law. In connection with that obligation, the Telecoms Law provide the following powers:

The telecoms security framework	<ul style="list-style-type: none"> • Requiring a Provider to explain a failure to act in accordance with code of practice provision(s). • Issuance of requests for information – to licensed, unlicensed, existing and past Providers, suppliers of associated equipment and facilities and other parties who appear to the JCRA to have relevant information. • Issuance of assessment notices (general and urgent) to Providers. • Enforcing its powers to require information, including by way of giving directions (general and urgent) and/or imposing financial penalties. • Issuance of Directions (general and urgent) in relation to a failure to comply with the telecoms security framework security duties which may extend to imposing financial penalties and/or the suspension or restriction of services. • Issuing instructions (interim steps) to a Provider in relation to contraventions of their security duties.
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⁸ As defined in the Interpretation (Jersey) Law 1954 to include any body of persons corporate or unincorporated.

The powers outlined above, and as part of the introductory chapter, are in addition to those held by the JCRA under Regulatory Laws. Chapter 2 discusses this in more detail.

Through the use of its powers under the Regulatory Laws and the telecoms security framework, the JCRA aims to meet a number of objectives:

- To monitor and ensure the security of telecoms networks and services in Jersey;
- To deter future contraventions in regulated sectors;
- To control or mitigate risk in regulated sectors;
- To raise awareness of regulatory requirements; and
- To prevent financial gain or benefit through non-compliance with regulatory requirements.

2. Approach to information gathering under the telecoms security framework

Introduction

This chapter sets out key aspects of the JCRA's approach to information gathering under the telecoms security framework which is supplementary to its approach to information gathering in relation to regulatory investigations under the Regulatory Laws. Later chapters of this document discuss in more detail the JCRA's approach to investigations and information gathering with respect to Regulatory Laws which is broadly applicable to its work under the telecoms security framework.

To monitor and evaluate compliance with the security duties, the JCRA has the powers to formally request information, in a format and timescale of its choosing, proportionate to the matter being considered. Within the JCRA's procedural guidance these are referred to as information request notices.⁹

The JCRA also makes use of formal and informal information requests in investigations of non-compliance with the security duties – this is covered within the chapters on the JCRA's approach to regulatory investigations later in this document.

In contrast to regulatory investigations, information collected for matters related to security duties may not be related to or necessarily result in an investigation or case being opened as the JCRA has a duty to ensure compliance and so expects to proactively request information.

Fair, transparent and efficient

The JCRA will always aim to be fair, transparent and efficient when requesting information, as such, in respect of information gathering in relation to security duties, the JCRA will:

- Communicate with the recipient of the request and explain the rationale for information being gathered;
- Issue a draft information request where feasible;
- Clearly communicate the deadline, timescales and format of the information required, usually in writing;
- Answer questions from the parties' concerned about process and next steps.

In relation to the telecoms security framework, the JCRA can request information from a current or past Provider whether or not it is licensed. It can also request information from

⁹ [Draft Telecoms Security Procedural Guidance – General statement of policy under Article 24Y of the Telecommunications (Jersey) Law 2002 (JCRA 25/20)]

providers of associated equipment and services and from other persons who appear to the JCRA to have relevant information.

The reasons why the JCRA may request information

Prior to making a decision to send an information request notice, the JCRA will exercise due regard to its relevant duties under the Telecoms Law. The JCRA expects to request information as part of upholding its compliance and monitoring obligations. It may also request information where it considers that a breach of a security duty has occurred or there is a risk of a security compromise or for other statutory purposes.

The JCRA will only send an information request notice once it has examined the matter at hand, and with due regard as to whether this is proportionate, in line with its general principles and objectives.

In determining whether to issue an information request, the JCRA will take into account the purpose for which the information is needed, the feasibility and cost on the parties involved in collecting this information, the intended use of this information, the JCRA's resources required to understand and process this information, whether the information is already available from other sources, and other matters as appropriate.

A statutory information request notice will always explain the purpose of the request, including a description of the information required and the JCRA's reasons for requiring it.

If a stakeholder is concerned about the proportionality of a statutory information notice, they are encouraged to raise this in writing with the relevant Case Officer, keeping info@jcra.je copied.

Legal professional privilege

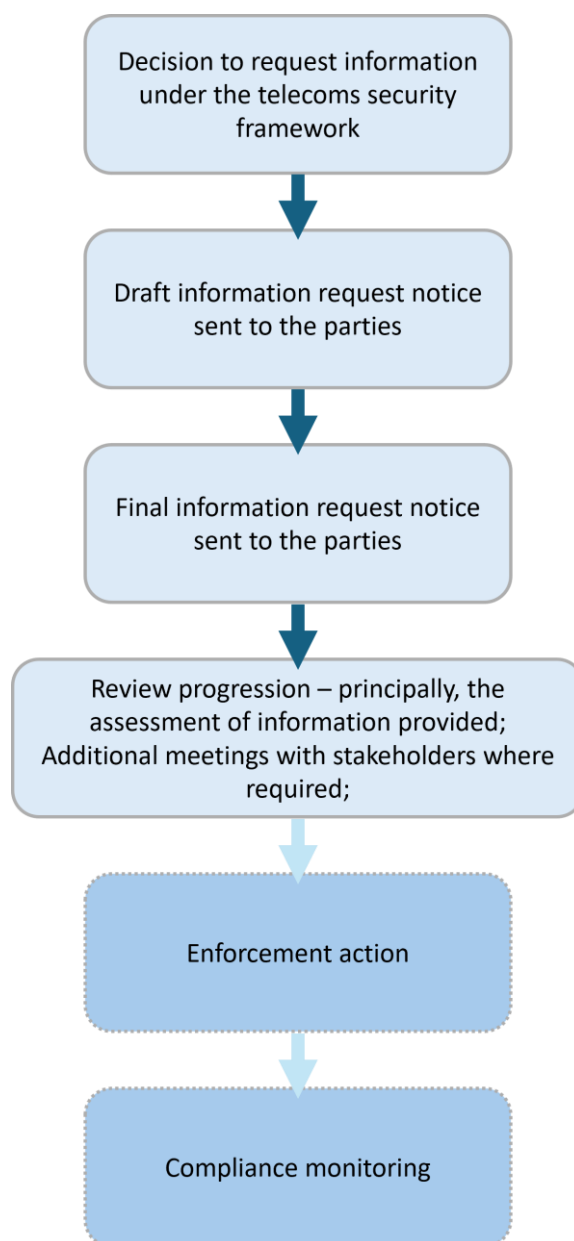
The JCRA may not require the disclosure of information or documents that would be protected from disclosure in the Royal Court on the grounds of legal professional privilege. In general, this privilege covers communications in confidence between a client and a legal practitioner made for the purpose of giving or seeking legal advice.

Process

The process of requesting information for the telecoms security framework has a lot in common with that followed under the regulatory regimes for ports, post and telecoms. This section and those that follow within this chapter discuss key points relating to information gathering under the telecoms security framework with a particular focus on where this differs. Chapter 3 discusses potential enforcement actions the JCRA can take should a recipient of an information request notice fail to comply with it.

The following figure shows the high-level stages for requesting information, indicating that enforcement action may be taken.

Figure 1 - Outline of process around information gathering for the telecoms security framework



How the parties concerned are expected to comply

The recipient of a statutory information request is under a legal duty to act in accordance with the requirements set out within. This includes the requirement to provide complete and accurate responses to all the questions by the deadline set by the JCRA. The consequences of non-compliance can be significant, and include financial penalties. Chapter 3 explains these in more detail.

On receipt of a statutory information request notice, the recipient should carefully read the requirements of all questions (including any applicable definitions) and ensure they understand what is being requested.

If the recipient does not understand any aspect of the notice, or has questions about it or the obligations it places on the recipient, they should contact the relevant JCRA Case Officer as soon as possible.

Mindful of the consequences for a recipient should they fail to comply with the request, the JCRA expects to ordinarily issue information request notices in a draft form to allow the recipient to comment and provide feedback before the notice is issued in a final form.

If the recipient does not consider that it can provide a response by the deadline, it should inform the relevant Case Officer (or member of JCRA staff) immediately and to explain why. Deadlines are likely to have been set taking into account any pre-engagement with stakeholders, draft requests issued and the JCRA's other work. The JCRA will therefore only agree to extend deadlines where there is good reason for doing so. Every extension request will be considered on its own merits.

If the recipient has any doubts about the accuracy of the information in their response, it should clearly explain any problems to the JCRA and provide the information with appropriate caveats. A response can refer to other documents held by the JCRA, but it should not require the JCRA to interpret a response by reference to other information/documents to understand the intended meaning.

The recipient should check the completeness and accuracy of the information provided prior to responding to the notice. An appropriate governance check should also be completed to ensure all responses are properly interrogated, cross-checked, and reviewed. Information provided should be subject to the recipient's standard governance and sign-off procedures, with the highest possible level of assurance provided.

The JCRA may also refine information requested through the information request notice process as it gains experience of the activity, such as the level of detail required or the extent of information gathered in a notice.

Finally, unless the parties concerned were informed in writing that the JCRA has cancelled an information request, the request shall remain in force.

Confidentiality

The JCRA is mindful of its responsibilities under each of the Regulatory Laws and the telecoms security framework to preserve the confidentiality of certain information that is disclosed to it. The JCRA will comply fully with its legal obligations when deciding how and whether to publish or disclose any information provided in the course of an investigation.

The JCRA's treatment information it is in receipt of is discussed further in this chapter in respect of disclosure and later in Chapter 4 and Annex A in respect of information handling.

Assessment of information

The JCRA will review the information received and may follow-up with clarification requirements through informal meetings and correspondence with the recipient, or through further information request notices.

Where information was obtained for a specified purpose and the JCRA wishes to use that information for a different purpose, the JCRA may contact the recipient to explain why the information is needed for a different purpose and ask for the party that provided the information to consent to its use for this new purpose. Alternatively, the JCRA may send the recipient another statutory information request notice requiring the same information to be provided for the new purpose. The following subsection further explains the sharing of information, in cases where the JCRA considers this is required and appropriate.

Once the information has been assessed, the JCRA will progress the matter in line with the process outlined in Figure 1. Directions and/or penalties may be issued, the JCRA may consider launching a regulatory investigation, or no further action may be taken.

Disclosure of information

The JCRA has powers to disclose information gathered under telecoms security framework to certain parties to a certain extent.

Article 24ZG of the Telecoms Law permits the JCRA to share such information with others in the interests of the security of Jersey or in connection with the prevention, detection or investigation of crime. The permitted recipients include the Department for the Economy (the DoE), through the Minister, as the Government of Jersey policy lead for the telecoms sector; the States of Jersey Police; the Jersey Cyber Security Centre (the JCSC), through the Minister, as lead for promoting and improving Jersey's cyber resilience; UK Government departments, including the National Cyber Security Centre (the NCSC) as the UK's technical authority for cybersecurity, and other regulators, including Ofcom¹⁰.

Information gathered under the telecoms security framework will otherwise only be disclosed where the JCRA is in receipt of the information owners' consent or it is required by Jersey's court to disclose it.

The JCRA will only disclose information following an assessment of the concerns or objections raised by the person who provided the information with regards to its disclosure.

¹⁰ [Draft Telecoms Security Procedural Guidance – General statement of policy under Article 24Y of the Telecommunications (Jersey) Law 2002 (JCRA 25/20)]

Disclosure by the JCRA will be announced to the parties concerned, and Officers will try to resolve any objections through dialogue and meetings.

In respect of the publication of decisions, information notes or other JCRA documents, information identified as confidential will generally be redacted.

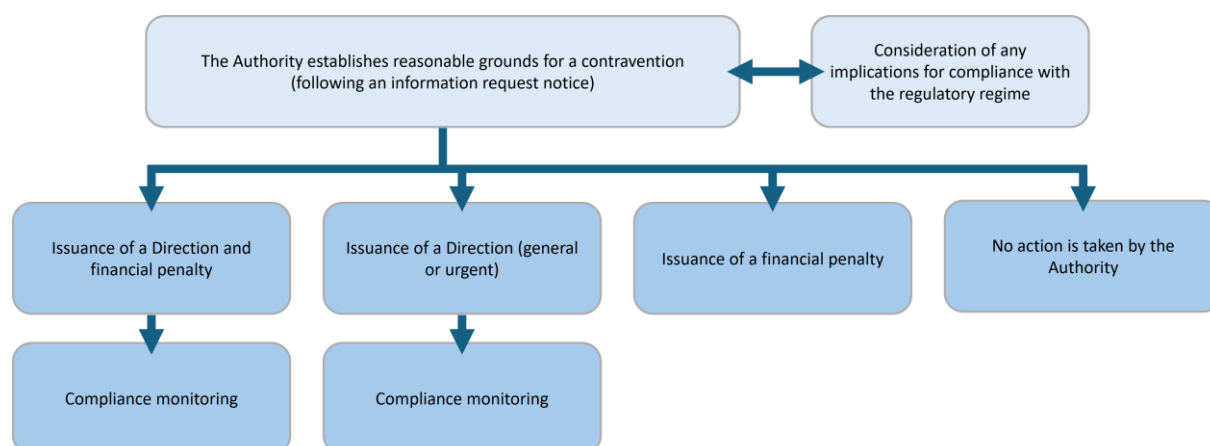
Failure to comply with an information request notice

A company or individual may fail to comply with request for information under telecoms security framework through one or more of the below:

- providing an incomplete response;
- providing a response in a format other than that specified in the request (where relevant); or
- providing a response after the deadline specified in the request

Failure to comply with a telecoms security framework information request notice may result in significant consequences. These can include financial penalties, the imposition of directions (general or urgent) - potentially extending to the suspension or restriction of a network, service or associated facility - or even prosecution. These consequences may be incurred irrespective of whether there may subsequently be an investigation of a failure to comply with a security duty. The figure below outlines potential scenarios in cases of non-compliance.

Figure 2 - Enforcement of information gathering under the telecoms security framework



Enforcement of a failure to comply is detailed further in Chapter 3.

It should be noted that there is also the possibility of additionality to any breach of the regulatory regime. That is, information provided for the telecoms security framework and for telecoms regulation may overlap. Lack of compliance by the recipient may result in enforcement under both regimes.

As discussed previously the JCRA will aim to ensure that any request is understood and anticipated, to a reasonable extent, by providing notice of its intention to issue the request and, in many cases, by issuing a draft information request notices for comment in advance.

Duty to explain failure

The JCRA has additional powers under the Telecoms Law to request information relating to the wider implementation of the telecoms security framework obligations. These include the power under Article 24R of the Law to direct providers to explain any failure to act in accordance with guidance given by the Minister in the Code of Practice.

Assessment notices

The JCRA, in addition to its powers to request information, has the power to issue an assessment notice under Part 1 of Schedule 2 to the Telecoms Law to a Provider. The purpose of such assessment notice is to enable to the JCRA to assess whether the Provider is complying with its security duties. These assessment notices give the JCRA wide powers to, for example, compel the recipient to carry out or permit a third party to carry out specific tests, or to enter into premises and obtain information.

In certain circumstances, the assessment notice can be accompanied by an urgency statement, compelling the recipient to comply with the assessment notice as a matter of urgency. The recipient has the right to appeal against the urgency statement.

The Provider will be responsible for paying the JCRA's costs reasonably incurred in connection with the assessment.

In general, the provisions relating to requesting information will also apply to the issuance of an assessment notice.

Failure to comply with the security duties can also have serious consequences for the relevant Provider, further detailed in Chapter 3.

3. Enforcement of the telecoms security framework

This chapter outlines the key facts about the JCRA's enforcement of:

- its information gathering powers under the telecoms security framework; and
- the duty of each Provider to comply with the security duties set out Part 5A of the Telecoms Law.

Further detail is contained within the relevant Schedule to the Telecoms Law.¹¹

Consequences of failing to comply with an information request

The JCRA may issue a contravention notice where it has reasonable grounds to believe that a person is contravening, or has contravened, an information request issued under Article 24ZC of the Telecoms Law.

As stated previously, a company or individual may fail to comply with request for information under telecoms security framework through one or more of the below:

- providing an incomplete response;
- providing a response in a format other than that specified in the request (where relevant); or
- providing a response after the deadline specified in the request

The contravention notice must comply with the requirements set out in Schedule 3 to the Telecoms Law, including providing a period for the recipient to make representations to the JCRA. It will also set out any steps the JCRA considers the recipient should take and the penalties which will be imposed for failure to comply. If the contravention is serious, the JCRA can also give the recipient directions with which it must comply.

Once representations have been received, or if the recipient does not make any representations, the JCRA must provide the recipient with either:

- a confirmation decision confirming the actions set out in the contravention notice and any directions; or
- notice that no further action will be taken.

A confirmation decision may require immediate action by the recipient or set out a timetable for the recipient to comply the requirement. It may also confirm or reduce the penalty specified in the notification of contravention, in the light of any representations or steps taken by the recipient.

¹¹ https://jerseylaw.je/laws/current/l_1_2002#_Toc181862910 – Schedule 3 of the Telecommunications (Jersey) Law 2002

In certain urgent circumstances, the JCRA may consider it appropriate to progress directly to give directions to a person ahead of completing information gathering and an investigation into a contravention. This may include giving directions to a person instead of issuing a contravention notice, including to suspend or restrict the provision of electronic communications networks or services or associated facilities and the potential requirement to pay compensation to affected customers. The recipient may make representations to the JCRA in relation to the directions and, after the statutory period for making representations has expired, the JCRA must determine whether to confirm or revoke the directions.

In the case of serious or repeated contravention of the duty to provide information to the JCRA, and where, in relation to repeated contraventions, the JCRA has imposed penalties or given a contravention notice and confirmation notice and this has failed to secure compliance, the JCRA may also give directions to suspend or restrict the provision of electronic communications networks or services or associated facilities and the potential requirement to pay compensation to affected customers. The recipient may make representations to the JCRA in relation to the directions and, after the statutory period for making representations has expired, the JCRA must determine whether the contravention did occur and whether in the circumstances it was an urgent case. The case will be urgent where it meets the criteria set out in Paragraph 5(6) of Schedule 3, including there being an immediate risk to the safety or health of Islanders or the security of Jersey.

Failure to comply with the suspension or restriction is an offence and the guilty person will be liable to a fine.

Consequences of failing to comply with security duties

The JCRA may issue a notice of contravention to a Provider if there are reasonable grounds to believe that the Provider is contravening its security duties¹².

A notification of contravention must cover all the areas outlined in Paragraph 4(2) of Schedule 2 to the Telecoms Law. It will set out key information for the recipient, such as the JCRA's determination and the period during which the recipient has an opportunity to make representations to the JCRA. It will also set out any steps the JCRA considers the recipient should take and the penalties which will be imposed for failure to comply.

Once representations have been received, or if the recipient does not make any representations, the JCRA must provide the recipient with either:

¹² These duties arise under Articles 24K to 24N, 24R to 24T, 24U(7), 8(c) and 9 and in relation to assessment notices

- a confirmation decision confirming the actions set out in the notification of contravention and any directions given; or
- notice that no further action will be taken.

A confirmation decision may require immediate action by the Provider or set out a timetable for the Provider to comply the requirement. It may also confirm or reduce the penalty specified in the notification of contravention, in the light of any representations or steps taken by the Provider.

In certain urgent circumstances, the JCRA may consider it appropriate to progress directly to give directions to a person or require them to take interim steps ahead of completing an investigation into a contravention. This may include the requirement to suspend or restrict the provision of electronic communications networks or services or associated facilities and the potential requirement to pay compensation to affected customers. The case will be urgent where the contravention has resulted in, or creates an immediate risk of a serious threat to the safety of the public or security of Jersey, serious economic problems for other communications providers, or serious operational or economic issues for those making use of the networks under consideration, as detailed in the Telecoms Law.

Failure to comply with the suspension or restriction is an offence and the guilty person will be liable to a fine.

Right to appeal

Save in the circumstances set out in Article 24ZA(2) of the Telecoms Law, those affected by a decision of the JCRA in relation to the telecoms security framework may appeal to the Court. The Court may confirm the JCRA's decision or quash it in whole or in part. If the Court quashes or partially quashes the JCRA's decision, the Court may remit the decision back to the JCRA for consideration or substitute the decision with one the JCRA could have made.

4. Approach to investigations and decision-making

Introduction

This chapter and those that follow summarise the JCRA's approach to investigations and decision-making in relation to compliance with the Regulatory Laws and with compliance with the security duties of Providers under the telecoms security framework. It includes guidance on its likely engagement and contact with the subject of the investigation, complainants and third parties, and how it will gather information, publish information and deal with confidential information.

Although the statutory framework for each different type of investigation may differ¹³, the process will broadly be the same for each.

Under the telecoms security framework the principles discussed in this approach are applicable to investigations in relation to security duties. Where this is notably different from regulatory investigations into ports, post and telecoms this has been highlighted in each relevant part of this guidance.

Fair, transparent and efficient

The JCRA seeks to ensure the investigations it carries out are conducted in a fair, transparent and efficient manner. To this end, the JCRA will:

- Engage with the subjects of an investigation at an early stage and ensure that opportunities to provide representations are provided;
- Ensure the subject of an investigation and any other involved persons, e.g. complainants, are informed when key milestones are reached; and
- As and when appropriate, place announcements on its website when an investigation is opened and update where key milestones are reached.

The JCRA will keep the subjects of its investigations up-to-date on the progress of the investigation. The JCRA will meet with the subject of an investigation and complainants or other third parties, and/or provide updates, when it is appropriate to do so on a case-by-case basis, depending on the nature of the investigation and the stage the investigation is at.

Confidentiality

The JCRA is mindful of its responsibilities under each of the Regulatory Laws and the telecoms security framework to preserve the confidentiality of certain information that is

¹³ Depending on the Regulatory Law under which the investigation is being conducted.

disclosed to it. The JCRA will comply fully with its legal obligations when deciding how and whether to publish or disclose any information provided in the course of an investigation.

The JCRA's privacy policy contains information about how personal or confidential data is handled.

Part 5A of the Telecoms Law includes particular provisions relating to the JCRA's sharing of information in respect of the telecoms security framework, Chapter 2 discusses this further and explains the reasons why and when certain information may be shared with certain parties.

Irrespective of whether an investigation is opened following the provision of information, the information will be retained as necessary to enable the JCRA to perform its duties.

Annex A provides further guidance as to the JCRA's treatment of information and the JCRA's wider policies around information confidentiality and storage.

Open mind

If the JCRA opens an investigation, it does not mean that it has determined that a contravention has occurred. The purpose of an investigation is to establish the facts so the JCRA can decide what further action, if any, is necessary and, if so, the nature of that action.

Impact and timescales

The JCRA recognises that a regulatory investigation can be stressful for individuals and disruptive for businesses. The JCRA will therefore only investigate when necessary, for as long as necessary. When it becomes clear there is no need to continue an investigation, the JCRA will end it promptly.

The JCRA will therefore progress its investigations in a timely manner and will conclude its investigations as soon as reasonably practicable.

5. The stages of regulatory investigation and decision-making

Introduction

This chapter sets out the stages of the JCRA's investigative and decision-making processes, including how it initiates the investigative process.

Initiating the investigative process

The JCRA can decide to initiate the investigative process on the basis of a wide range of situations, which give cause for concern that a breach of the Regulatory Laws, licence condition and/or security duties may have occurred. For example,

- A complaint from a member of public or a competitor or customer of a licensee;
- A security compromise is believed to have occurred;
- An apparent failure to comply with a direction issued under one of the Regulatory Laws; or
- A regulatory notification.

A review of the information received, and any supporting evidence, will be conducted. If the review reveals it to be a matter which falls within the JCRA's remit. i.e. under its duties or functions under either the Competition (Jersey) Law 2005 (the **Competition Law**), the Regulatory Laws or in the case of the Telecoms Law the telecoms security framework, a preliminary assessment will be conducted (see below). Note, if the matters falls within the JCRA's Competition Law remit, the following process will progressed in accordance with its [Guideline 10 - Investigation Procedures](#).

The stages of investigation and decision-making

Stage 1	Preliminary Assessment	<p>A preliminary assessment of relevant information will be conducted to determine the likelihood of a contravention having occurred or occurring and, if so, whether it is appropriate to investigate.</p> <p>Under the telecoms security framework, depending on the nature of the potential contravention the JCRA may consider it appropriate at this stage to direct a person to take urgent action or interim steps.</p>
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Stage 2	Information Gathering	<p>Where it is appropriate to investigate, further information will be gathered to establish the facts and evidence of the case. This stage may also include on-site visits, interviews or in the case of the telecoms security framework; assessment notices (general or urgent) or requesting that a provider explain a failure to follow a provision of the Code of Practice.</p> <p>As for Stage 1, under the telecoms security framework, depending on the nature of the potential contravention the JCRA may consider it appropriate at this stage to direct a person to take urgent action or interim steps.</p> <p>Using the information gathered, an investigation (or technical) report will be prepared which outlines the findings of the case and the evidence relied upon to reach those findings and shared with the subject of the investigation for comment.</p>
Stage 3	Contravention	Based on the facts and evidence established through the course of the investigation, the JCRA will make an initial determination on whether a contravention has occurred.
Stage 4	<p>Triviality and subsequent steps</p> <p><i>Not applicable to the telecoms security framework.</i></p>	Based on the JCRA's initial decision and taking into account the full facts and circumstances of the case, the JCRA will decide if the contravention is material and, if it is satisfied with the steps to comply and remedy. Note, the legal test here differs between the Regulatory Laws and does not

		apply to the telecoms security framework (see Chapter 8).
Stage 5	Regulatory Action	If appropriate, the JCRA decides as to the appropriate regulatory action. Under the Regulatory Laws this includes the quantum of the financial penalty and/or the content of the directions.

Engagement with the subject of an investigation

Through the course of an investigation, the subject will be provided with appropriate updates. Further, at Stage 1 of the investigation, the subject will be provided with the name and contact details of the investigation lead who will be their primary contact through the investigation. The following steps in the JCRA's processes where, typically, the investigation lead will engage with the subject of an investigation:

- **Stage 1:** subject will be informed that it is under investigation and the scope of the investigation. Under the telecoms security framework this may include the direction to take urgent action or interim steps;
- **Stage 2:** subject will be invited to comment on the factual accuracy of the draft investigation/technical report prior to it being finalised. Under the telecoms security framework this may include the direction to take urgent action or interim steps;
- **Stage 3:** the subject of the investigation will be informed of the JCRA's initial decision;
- **Stages 3 and 4:** where applicable, the subject will be provided with the opportunity to make representations on the JCRA's decision on contravention, triviality and subsequent steps; and
- **Stage 5:** during the notice period, subject will be provided the opportunity to make representations.

The JCRA will generally provide updates to the subject and any complainant on the progress of investigations, including when it expects to reach specific milestones. The JCRA will also provide updates where this changes.

The Competition Law¹⁴

Certain conduct may infringe both the Regulatory Laws, including conditions of licences issued by the JCRA under those laws, and the Competition Law. For example, licences issued may contain conditions that prohibit a licensee with significant market power from abusing a

¹⁴ The Competition (Jersey) Law 2005.

dominant position in a relevant market, which is similar to the prohibition against abuse of dominance set out in the Competition Law. Where information provided raises a reasonable cause to suspect that the conduct in question may violate both the Competition Law and the Regulatory Laws, the JCRA may investigate under either or both remits.

The telecommunications security framework

It is also possible that certain conduct may infringe the Telecoms Law Part 5A (the telecoms security framework), as well as Regulatory Law. Where information provided raises a reasonable cause to suspect that the conduct in question may violate both laws, the JCRA may also choose to request information under either or both remits. To note, the JCRA may conduct the relevant investigations independently of each other.

Legal professional privilege

The JCRA may not require the disclosure of information or documents that would be protected from disclosure in the Royal Court on the grounds of legal professional privilege. In general, this privilege covers communications in confidence between a client and a legal practitioner made for the purpose of giving or seeking legal advice.

6. Stage 1: Preliminary Assessment in regulatory investigations

Introduction

The preliminary assessment is the early, initial stage of the investigation process. A preliminary assessment is conducted where the JCRA suspects a contravention of a regulatory requirement has occurred, to establish if an investigation should be initiated.

Conducting the preliminary assessment

The information assessed at this stage can come from a number of sources and is typically provided on a voluntary basis. The timeframe for the completion of a preliminary assessment depends on a variety of factors, including:

- The availability of information;
- Timing and resourcing implications;
- The complexity of the situation; and
- The perceived risk.

Outcome of the preliminary assessment

If the preliminary assessment indicates a contravention has occurred, the JCRA, with consideration to its Prioritisation Principles¹⁵, will decide whether to open an investigation. Even if the preliminary assessment indicates a contravention, the JCRA can still decide either not to commence an investigation, or to delay its initiation.

The telecoms security framework provides the JCRA with powers to direct a person to take urgent action or carry out interim steps without issuing a notification of contravention, these powers are not limited to the Provider in scope of a potential investigation. Due to the nature of the potential contraventions in respect of cyber security and the consequences beyond impact to an affected Provider at this stage the JCRA may consider it appropriate to make use of these powers. Chapter 3 discusses these powers in more detail.

Both the decision to issue directions for urgent action or interim steps under the telecoms security framework and whether the JCRA decides to commence an investigation depend on the gravity of the conduct involved; the harm or potential harm caused; the matter's apparent urgency, including any apparent ongoing risk; and the JCRA's available resource, or whether there is a more appropriate method of resolving the issue.

Opening an investigation

The JCRA will consider opening an investigation where:

¹⁵ [jcra-prioritisation-principles.pdf](#)

- A licensee has failed or is failing to comply with one or more of the conditions of the licence issued to it under one of the Regulatory Laws;
- A Provider has failed or is failing to comply with its security duties under the telecoms security framework;
- A licensee has breached or is breaching a direction issued to it under one of the Regulatory Laws; or
- A person is carrying out an activity which requires a licence under one of the Regulatory Laws, but has not been granted a licence under the relevant Regulatory Laws.

If the JCRA decides to investigate a matter, and unless doing so would compromise the investigation, the JCRA will inform the subject of its decision to investigate at the earliest opportunity. The subject will be provided with the following information:

- The scope of the investigation;
- The legal basis for the investigation;
- The reasons for the investigation;
- The case lead¹⁶;
- (If appropriate) A copy of the case opening statement to be published on the JCRA's website;
- (If appropriate) A request for information or information request notice; and
- A copy of this guideline.

Note, the JCRA may expand the scope of an investigation if it becomes aware of new issues that warrant investigation, or reduce the scope if it decides that it is no longer appropriate to pursue particular aspects. When it changes the scope of an investigation, the JCRA will inform the subject and update its website accordingly.

Case opening statement

Unless it is inappropriate for reasons of confidentiality, the JCRA will publish a case opening announcement on its website. The JCRA will not identify the subject(s) of the investigation at this stage, unless there is a good reason for doing so.

Alternative resolution

In some cases, the JCRA may seek to resolve an issue without the need for an investigation. For example, if the JCRA is satisfied the subject has taken, or has offered assurances that it

¹⁶ The person who will lead the case for the JCRA and be the subject's main contact throughout the investigation.

will take, appropriate steps to address any concerns the JCRA has identified such that there is no need for further action.

In such circumstances, the JCRA will write to the subject of the investigation, to explain the basis on which it has decided not to proceed to open an investigation, and the circumstances in which it might reconsider the need to open an investigation in future (for example, in the event that the organisation did not take the steps which it had said that it would or the JCRA received further evidence of a potential compliance issue). Such cases will generally not involve the JCRA taking any decision about whether or not any regulatory or legal provision has been contravened.

7. Stage 2: Information Gathering for regulatory investigations

Introduction

The JCRA relies on accurate information, provided in a timely manner, to progress its regulatory investigations and, therefore, information gathering is the cornerstone of its investigations.

Both the Post Law¹⁷ and the Telecoms Law¹⁸ provide the JCRA with the power to require the provision of information, at a specified time and in a specified manner and form. Licences issued under the Ports Law and the Telecoms Law contain a condition which requires the provision of information, when requested by the JCRA.

In addition to this, the telecoms security framework provides the JCRA with powers to request information from licensed, unlicensed, current and past Providers and others to ensure the security of telecommunications in Jersey. Chapter 2 discusses the JCRA's approach to requesting information outside of an investigation, the following is applicable to information gathering for investigations under the telecoms security framework, also regulatory investigations, with specific reference to previously stated guidance where appropriate. Within the JCRA's procedural guidance information requests are referred to as information request notices, for the purposes of simplifying this guidance, these are also requests for information.

The JCRA will use these powers to obtain information for the purposes of progressing regulatory investigations covered by Chapter 8.

Information Gathering for regulatory investigations

Requests for information

A formal request for information will be issued in writing, using the JCRA's powers under the relevant Regulatory Law and/or licence condition. The request for information will prescribe the information required and for what purpose. The request will stipulate the deadline for response, as well as the manner and form in which the response is to be made.

When making requests, the JCRA will ensure:

- Requests are relevant to the scope of the investigation;
- Requests are proportionate to the uses to which the information is to be put;
- Recipients are reasonably expected to know or be in possession of the information requested; and

¹⁷ Article 77 of the Post Law.

¹⁸ Article 23 of the Telecoms Law.

- Recipients are provided a reasonable timeframe¹⁹ within which to provide the information.

Failure to comply with a request for information issued under the Post Law or the Telecoms Law may constitute a criminal offence. The provision of false or misleading information to the JCRA is also prohibited under the Post Law and the Telecoms Law and so may constitute a criminal offence. Where a criminal offence is suspected, the JCRA will refer the matter to the Attorney General. Failure to comply with a request for information issued under a Ports licence constitutes a contravention which can result in further regulatory action.

Chapters 2 and 3 of this document discuss the consequences of failure to comply with a telecoms security framework request for information (information request notice) in more detail. These can include financial penalties, the imposition of directions (general or urgent) - potentially extending to the suspension or restriction of a network, service or associated facility - or even prosecution.

Other information

If required to progress the investigation, the JCRA will use its information gathering powers under the Regulatory Laws to request information from third parties whom the JCRA considered may be in possession of relevant information. Information may be requested from competitors, customers, employees, suppliers, potential entrants into the affected markets, industry/trade associations, and the Government of Jersey departments.

Assessment of information

The assessment of the information gathered is a critical stage in the JCRA's investigative process. Each piece of information will be considered to establish the facts of the case. Following the assessment, further information may be requested.

Outcome of the information assessment

A report will be produced following the information gathering and assessment. The purpose of the report is to document the findings of the investigation. The evidenced relied upon to reach those findings will be cited within the report. The report will serve as clear, comprehensive and objective record of the investigation.

The subject of an investigation will be provided with a copy of the draft report and invited to make comments on its factual accuracy and submit further information to the JCRA for consideration when finalising the report.

¹⁹ What the JCRA considers a reasonable timeframe may differ depending on the specific circumstances of a case.

The final report will form the basis of the JCRA's further decisions (see Chapter 8) in relation to a case.

The telecoms security framework provides the JCRA with powers to direct a person to take urgent action or carry out interim steps without issuing a notification of contravention, these powers are not limited to the Provider in scope of a potential investigation. Due to the nature of the potential contraventions in respect of cyber security and the consequences beyond impact to an affected Provider, including harm or potential harm caused, the matter's apparent urgency, including any apparent ongoing risk, at this stage the JCRA may consider it appropriate to make use of these powers. Chapter 3 discusses these powers in more detail.

8. Stages 3 to 5: JCRA Decision-making

Introduction

This chapter sets out how the JCRA decides the outcome of a regulatory investigation and the appropriate regulatory action i.e. financial penalty and/or direction. In the case of a failure to comply with a direction, this may extend revocation of the licence. Depending on the Regulatory Law and the nature of the contravention this may involve consideration of matters such as triviality (how serious a contravention is) and the steps taken by persons to comply with the relevant obligation and to remedy a prior contravention.

Stage 3: Contravention

Following the conclusion of stages 1 and 2, the JCRA will make an initial determination if the matter under investigation demonstrates a contravention by the subject of the investigation. To decide, the JCRA will apply the facts of the case, as set out in the investigation report, against the relevant regulatory requirements and/or legal obligations.

The JCRA's initial decision as to whether a contravention has occurred or not will be communicated to the subject of the investigation as soon as practicable after the decision has been made. At this time, the subject will be informed of the JCRA's next steps.

Where it is decided that no contravention has occurred, the investigation will be closed. Where it is decided a contravention occurred, the JCRA is required to consider if regulatory action should be taken (see below).

Stage 4: Triviality and subsequent steps

Not applicable to the telecoms security framework.

The Regulatory Laws provide that the JCRA shall not issue a direction or a financial penalty where it is satisfied that:

- A contravention is trivial; or
- Steps have been taken to comply and remedy following the contravention (known as the **subsequent steps test**). The legal test for this is slightly different depending on the relevant legislation – see table below.

Therefore, where the JCRA has decided a contravention has occurred, it is required to consider the triviality of the contravention. Examples of where the JCRA may consider a contravention to be trivial may include:

- A contravention which did not give rise to any potential or actual harm.

- A contravention of negligible duration.
- A contravention of negligible or no detrimental impact.

If the JCRA determines a contravention to be material (not trivial), it is required to consider the subsequent steps test, i.e. the steps taken by the subject *following* a contravention to comply and remedy. The details of the subsequent steps test varies between each of the Regulatory Laws:

The Ports Law	<p>in relation to the giving of a direction: <i>‘the licensee is taking effective steps to comply with the condition and to remedy any deleterious effects of the contravention.’</i>²⁰ or</p> <p>in relation to the imposition of a financial penalty: <i>‘...the licensee is taking reasonable steps to comply with the condition or to remedy any deleterious effects caused by the contravention.’</i>²¹</p>
The Post Law	<p>in relation to the giving of a direction: <i>‘...the licensee is taking steps to comply with the condition and to remedy the effects of the contravention.’</i>²²</p>
The Telecoms Law	<p>in relation to either giving a direction or the imposition of a financial penalty: <i>‘...the licensee is taking reasonable steps to comply with the condition or to remedy any deleterious effects caused by the contravention.’</i>²³</p>

Note, neither triviality nor a subsequent steps test is applicable where the JCRA is giving consideration to revocation of a licence.

Draft Decision

Following the JCRA’s initial decisions on contravention and where applicable triviality and the subsequent steps test, the subject of the investigation will be issued with a Draft Decision which sets out the JCRA’s decisions on contravention and the reasons for its decisions including triviality and subsequent steps where applied.

Prior to the JCRA finalising its decisions, the subject will be provided with the opportunity to make representations to the JCRA, within a specified timeframe determined by the JCRA.

²⁰ Article 18(8)(c) of the Ports Law.

²¹ Article 20(2)(b) of the Ports Law.

²² Article 20(2) of the Post Law.

²³ Article 19(2G) and Article 19A(13)(b) of the Telecoms Law.

Taking into account any representations received, the JCRA will finalise its written decision which, at the appropriate time, will be published on its website.

Stage 5: Regulatory Action

Where the JCRA is satisfied that a contravention has occurred, and where the Regulatory Law requires, it is further satisfied that it is material and that the subject of the investigation has not met the relevant subsequent steps test, the JCRA is required to give consideration to the appropriateness of a direction and/or a financial penalty.

If the JCRA decides to issue either a direction or financial penalty, it will decide the content of the directions and/or the quantum of financial penalty²⁴. Penalties in respect of the telecoms security framework are subject to the provisions of Part 5A of the Telecoms Law.

The subject of the investigation will then be issued with proposed directions and/or a notification in relation to the proposed financial penalty.

Notice period

The Regulatory Laws

Each of the Regulatory Laws requires the JCRA to notify the subject of an investigation of its intention to take regulatory action(s). The Ports Law and Post Law require 29 days' notice and the Telecoms Law requires 28 days' notice.

During the notice period, subjects have the opportunity make further representations for the JCRA's consideration.

After the review period and taking into account any representations made, the JCRA will finalise and publish all relevant documentation and close the case.

Alternatively if, taking into account any representations made, the JCRA decides the regulatory action previously decided upon is no longer appropriate it will return to an appropriate earlier stage in the process.

The telecoms security framework

Under the telecoms security framework where a notification of contravention is issued there is no set notice period; nonetheless the JCRA will endeavour to set a reasonable and proportionate period for the subject to make representations.

After the period for making representations, the JCRA will notify the subject, either:

- confirming any requirement it has imposed on the subject or any directions the JCRA has given to the subject, or

²⁴ Based upon [Guideline 12A Sector Specific Penalties](#).

- informing the subject that no further action will be taken.

Where the JCRA considers it is appropriate to direct a person to take urgent action as a result of a suspected or actual contravention it may do so without issuing a notification of contravention. The issuing of urgent directions does not require a notice period however the JCRA will specify what it considers to be a reasonable and proportionate period for compliance, based on its understanding of the urgency that action be taken.

Where the JCRA has given a direction to take urgent action, it will give the subject an opportunity to make representations and to propose steps to remedy the situation. The period for making representations will be not less than 3 months and not longer than 6 months from the giving of the direction. The JCRA will then either confirm or revoke the direction.

The JCRA may in certain serious circumstances give a direction to a Provider suspending or restricting the provision of the specified network, services or associated facilities. The notice provisions and provisions relating to making representations will vary depending on the urgency and other circumstances of the issue.

The JCRA may also require a Provider to take interim steps, pending or during an investigation, to prevent or mitigate the effects of a security compromise or to reduce the risk or adverse effects of a security compromise where there is an imminent risk of it occurring. The JCRA will specify what it considers to be a reasonable and proportionate period for making representations.

Publication and case closure.

The JCRA will publish its decision, including the reasons for its decision, on its website, after which the case will be closed.

No further action

The Regulatory Laws

Where the JCRA, is satisfied that a contravention is trivial or that the subject has taken the relevant subsequent steps test the legal threshold for consideration of a direction and/or financial penalty would not be met. Therefore, the JCRA would take no further action in relation to the investigation and the investigation would be closed.

Note, the JCRA's decision in relation to the investigation will be published on its website.

The telecoms security framework

Where the JCRA is satisfied that a contravention of a security duty has not occurred or that it is not appropriate to take enforcement action or impose a financial penalty, the investigation will be closed.

Note, the JCRA's decision in relation to the investigation will be published on its website.

Right to Appeal

Each of the Regulatory Laws provides the subject of an investigation to appeal the JCRA's decision. The right to appeal differs slightly between the Regulatory Laws therefore, whilst summarised below, it is recommended that the Regulatory Laws are considered directly on this matter.

The Ports Law	<p>An appeal may be made:</p> <ul style="list-style-type: none">• By the applicant, where the exercise consists of a refusal of an application;• By the licensee, in so far as the exercise consists of the enforcement of any condition contained in the licence;• By any person, where the exercise consists of the grant of a licence;• By any person, where the exercise consists of giving, or declining to give, a direction under Article 18; or• By any person, where the exercise consists of the imposition of a financial penalty under Article 20.
The Post Law	<p>An appeal may be made:</p> <ul style="list-style-type: none">• By the applicant, where the exercise consists of a refusal of an application;• By any person, where the exercise consists of the grant of a licence, in respect of that grant or against the inclusion or exclusion of a particular condition;• By any person where the exercise otherwise relates to a licence, including giving or deciding not to give, a direction under Article 20.
The Telecoms Law	<p>An appeal may be made:</p>

	<ul style="list-style-type: none"> • By the applicant, where the exercise consists of a refusal of an application; • By the holder of an approval, where the exercise consists of the grant of an approval, to the imposition of any condition to the approval; • By the holder of an approval, where the exercise otherwise concerns an approval, against the exercise; • By any person, where the exercise consists of the grant of a licence, in respect of that grant or against the inclusion of a particular condition; • By any person, where the exercise otherwise relates to a licence, including: <ul style="list-style-type: none"> ○ The giving, or failure to give, a direction under Article 19; ○ The imposition of a financial penalty under Article 19A, or the amount of any such penalty imposed.
<p>The Telecoms Law – Part 5A</p> <p><i>The telecoms security framework</i></p>	<p>Further details in respect of this can be found in Chapter 3.</p>

Annex A – The JCRA’s policies regarding information storage and processing

The JCRA is mindful of its responsibilities under each of the Regulatory Laws and the telecoms security framework to preserve the confidentiality of certain information that is disclosed to it. The JCRA will comply fully with its legal obligations when deciding how and whether to publish or disclose any information provided in the course of an investigation.

The JCRA’s privacy policy contains information about how personal or confidential data is handled.

Irrespective of whether an investigation is opened following the provision of information, the information will be retained as necessary to enable the JCRA to perform its duties.

JCRA privacy policy

The JCRA publishes its privacy policy on its website at <https://www.jcra.je/privacy-policy/>. This policy is applicable to both how the JCRA manages the information shared with it through its website and that which is provided or collected through its performance of its other functions.