Determination and Sanction

Investigation regarding the handling of a Data Subject Access Request ("DSAR") received by Collas Crill ("Collas Crill" or "the Controller")

Breach Determination Notice

The Authority is making a determination that Collas Crill has breached an operative provision of the Data Protection (Bailiwick of Guernsey) Law, 2017 ("the Law"), namely:

- **Section 15** relating to an individual's right to be given a copy of their personal data by the controller.

Background to the determination

1. On 6 August 2025, a complaint was submitted to the Authority by the representative of the Complainant.

2. The matter related to the purchase of a property by [**redacted**] ("the clients"). The Complainant donated the funds for this purchase, via a gift letter, a copy of which was not retained by the Complainant. The clients then disclosed this letter to Collas Crill who were acting on their behalf in the purchase of the property.

3. Following this, a dispute arose between the Complainant and the clients, which is being taken through civil court. The Complainant's representative has a power of attorney in place.

4. In July 2025, the Complainant's representative contacted Collas Crill who confirmed possession of a copy of the gift letter.

5. On 30 July 2025, the Complainant submitted a DSAR to Collas Crill, requesting any documentation and personal information relating to the funds provided for the purchase of the relevant property.

6. On 11 August 2025, Collas Crill provided their formal response to the Complainant by letter. The letter in question provided a limited summary of personal data processed by Collas Crill, namely: full name, residential address, bank account details and email address. The response did not include the gift letter nor the majority of its contents.

7. The Complainant's representative raised concerns with Collas Crill regarding this response. Collas Crill responded stating that they are only required to provide information rather than the actual documents. No exemptions or exceptions under the Law were raised by Collas Crill regarding personal data withheld.

8. As a result, a complaint was submitted to the Authority on behalf of the Complainant.

9. Following receipt of the complaint, the Authority initially engaged with Collas Crill in an effort to informally resolve the matter and a copy of the gift letter was provided by Collas Crill in response to the Authority's Information Notice.

10. On 24 October 2025, Collas Crill advised the Authority that they considered the gift letter exempt from disclosure under both Schedule 8, paragraph 5 ("Privileged items") and section 16 of the Law ("Exception to right of portability or access involving disclosure of another individual's personal data") and, therefore, did not intend to disclose the document to the Complainant. As per their initial response to the DSAR, Collas Crill proposed to provide limited information extracted from the gift letter, namely: the Complainant's address, full name, image of signature and date of signature.

11. Based on the information provided, the Authority assessed there were the grounds to initiate an investigation to establish whether provisions of the Law had been breached. Notice of an investigation ("the Investigation") was subsequently sent on 27 October 2025.

Reasons for the determination

12. *Section 15 of the Law*

Section 15 relates to the "Right of access".

In particular, sub-section 15(1) provides that:

> *"An individual has a right to be given the following information in accordance with subsections (2) to (4) – "*

Sub-section 15(1)(a) adds:

> *"confirmation as to whether or not personal data relating to the individual is being processed in the context of a controller"*

Sub-section 15(1)(b)(ii) provides that:

"If personal data relating to the individual is being processed in the context of a controller – one copy of the personal data…"

Furthermore, sub-section 15(2) provides that:

"On request by an individual, the controller must give the individual that information."

13. The Authority is of the view that Collas Crill has failed to comply with the requirements of these provisions by virtue of the below:

14. On 4 November 2025, Collas Crill provided their formal response to the Authority. Collas Crill re-confirmed their statements made on 24 October 2025, namely that they had assessed that the gift letter was exempt from disclosure under both Privileged items and section 16 of the Law. With regards to Privileged items, Collas Crill specifically cite section 24(1)(c)(i) of the Police Powers and Criminal Evidence (Bailiwick of Guernsey) Law, 2003 ("PPACE").

15. In consideration of the above, the Authority sought legal advice to specifically address whether the gift letter would be subject to application of legal professional privilege, thereby ensuring an informed and proportionate response.

Privileged items

16. Schedule 8; paragraph 5 of the Law exempts "Privileged Items" from the provisions of Part III of the DP Law. Section 111 of the DP Law defines "Privileged Items" as:

    a. *"items subject to legal professional privilege, within the meaning given by section 24 of the Police Powers and Criminal Evidence (Bailiwick of Guernsey) Law, 2003; and*

    b. *any communication between a professional legal adviser and the adviser's client in connection with the giving of legal advice to the client with respect to the client's duties, liabilities or rights under this Law."*

17. Section 24(1) of ("PPACE") defines "items subject to legal professional privilege" as:

    a. *"communications between a professional legal adviser and his client or any person representing his client made in connection with the giving of legal advice to the client; ("Professional advice privilege")*

b. *communications between a professional legal adviser and his client or any person representing his client or between such an adviser or his client or any such representative and any other person made in connection with or in contemplation of legal proceedings and for the purposes of such proceedings; ("Litigation privilege") and*

c. *items enclosed with or referred to in such communications and made –*

i. *in connection with the giving of legal advice; or*
ii. *in connection with or in contemplation of legal proceedings and for the purposes of such proceedings,*

when they are in the possession of a person who is entitled to possession of them."

18. For both definitions, the enclosed document [as per 24(1)(c) of PPACE], must have been created or produced for the purpose of obtaining legal advice in the relevant legal context at the relevant time. This agrees with the fundamental principles for Professional advice privilege, applied by the Guernsey courts, which are largely derived from English law.

19. For Litigation privilege, there must be confidential communication/documents between the relevant parties for the dominant purpose of use in litigation, in connection with or in contemplation of litigation.

20. Privilege does not automatically attach to documents simply because they were provided to a lawyer, the documents themselves must satisfy the requirements of privilege to be protected. This point is recognised in the ICO Exemptions Guide, which states legal professional privilege "*does not apply to all the processing that a lawyer or a law firm carries out*".

21. It should be noted that, prior to their email correspondence dated 24 October 2025, Collas Crill did not communicate the application of any exemptions or exceptions under the Law to either the Complainant or the Authority.

22. It is important to note that, as per 2.4(f) and 2.5(e) of Collas Crill's formal response, the Controller did not initially consider the gift letter to be privileged, and the information was not withheld from the Complainant on this basis.

23. This is categorically supported by Collas Crill's previous comments regarding the purpose of the letter:

- 8 September 2025 (email to Complainant's representative) –

  "*we did not facilitate or act in any way in relation to such letter*"

  and

  "*We had no instruction as is usual to comment on or deal with this letter in any way*"

24. The comments above are clear in that the gift letter was not **made** nor provided to Collas Crill for the purpose of obtaining legal advice, nor for the dominant purpose of use in, in connection with or in contemplation of litigation. The gift letter therefore cannot satisfy the requirements of 24(1)(c) of PPACE which, as per 2.7(d) and (f) of Collas Crill's formal response, is the basis on which Collas Crill is applying the Privileged items exemption.

25. Rather, the gift letter was authored and signed by the Complainant, containing largely their personal information, and clearly addressed directly to the Bank (not the clients) for the mortgage process, not seeking legal advice either for herself or on the clients' behalf.

26. The purpose, as per Collas Crill's previous comments, instead appears to relate purely to the corroboration of funds, confirmation of the status of the monies (as a gift) and certification by a Collis Crill advocate:

    - 8 September 2025 (email to Complainant's representative) –

      *"We do however require information explaining the source of funds, and in this case, a local property matter where [**redacted**] is gifted funds by [**redacted**], this being supported by independent documentation (a gift letter stating as much and signed by [**redacted**]) there were no grounds for us to do anything further."*

    - 29 September 2025 (email to the Authority) –

      "*The Gift Letter was volunteered to us by our Clients as corroboration of the source of funds for the transaction*"

    - Para 1.3 of Collas Crill's formal response –

*"…the letter was provided to us by our Clients bringing a physical copy of the gift letter to a meeting at our offices with the result that a copy of the Gift Letter was taken and certified by [**redacted**] on 26 June 2023."*

27. Documents or communications which were originally not privileged cannot acquire privilege retrospectively. Nowhere in early correspondence (including their response to the DSAR) does Collas Crill contend that the gift letter was the subject to the Privileged items exemption. Furthermore, none of the above purposes would automatically entitle the clients to claim privilege over the gift letter, thus Collas Crill cannot assert privilege that did not attach to the original document.

28. The onus is on Collas Crill to demonstrate how the gift letter itself is privileged. At no stage has Collas Crill demonstrated that relevant communications pertaining to legal advice does, in fact, exist or was provided to the clients. Additionally, there is no information to suggest that the gift letter was provided to Collas Crill for the dominant purpose of use in litigation, in connection with or in contemplation of litigation. As per the above statement, it appears that the only action taken by Collas Crill was to certify and retain a copy of the physical document presented by the clients.

29. The narrative displayed by Collas Crill regarding their consideration of legal privilege is concerning and aggravated by the fact they are a law firm. Communications, to both the Complainant and the Authority, are inconsistent with the Controller's formal response and potentially contradictory from the outset. Were legal privilege a valid exemption in these circumstances, the assertion should have been made long before the Authority's involvement and in fact at the point of responding to the Complainant's original DSAR, as per requirements under section 27(2) of the Law.

30. Based on the information provided, the Authority is of the view that the gift letter is not covered by the Privileged items exemption.

Section 16

31. The Authority has considered Collas Crill's comments regarding their rationale for the application of section 16.

32. Contrary to Collas Crill's formal response, taking into account the considerations under section 16(3), there are multiple factors that support the disclosure of the gift letter to the Complainant, namely:

- The Complainant/requestor is the author and signatory of the gift letter.

- The gift letter is almost entirely the personal data of the Complainant and is written in the first person as a statement/declaration.

- The gift letter contains minimal personal data relating to the third party (the clients), none of which is sensitive or special category. The fact it relates to financial matters does not increase the risk as all information therein the Complainant would have reasonably been aware of as author.

- As stated above, the gift letter was provided indirectly to the Controller and was not created to seek or provide legal advice, rather it was created for the clients to evidence that funds were gifted by the third party.

- Considering the Complainant is the source of the gift letter and nothing would have prevented the Complainant from copying the information at the time, there is a reasonable expectation that the same information being returned to the Complainant would not impact any of the relevant parties.

- Based on the nature of the civil dispute and the fact the funds originated from the Complainant, we view the Complainant's significant interests as being most at risk.

- Collas Crill has not adequately demonstrated how the clients' significant interests would be impacted by the disclosure. The gift letter was written for their benefit by the Complainant who is fully aware of the circumstances of the property purchase and their own funds. This was not a confidential communication from the bank to the clients and to argue that disclosure of such information, back to the source, poses a risk to the clients is unsound.

- Collas Crill asserts that legal action on the part of the Complainant's representative is sufficiently adverse to the significant interests of the clients to justify the application of section 16. In this case the Authority is of the view that this threshold was not suitably evidenced by Collas Crill. Furthermore, Collas Crill have already accepted that the representative has the authority to represent the Complainant and as such, whether the Complainant's interests are aligned with the clients or not, this is not a suitable reason to withhold personal data.

33. The Authority notes Collas Crill did not receive consent from the clients [in accordance with section 16(3)(a)-(c)]. Whilst consent is a factor in the balancing exercise, it is context dependent and may not override requirements to disclose to the requestor. In this case it is the Authority's view that lack of consent does <u>not</u> provide a basis for withholding the personal data in question.

34. In 2.7(p) of their formal response, Collas Crill highlighted other options available to the Complainant in order to obtain the gift letter. The presence of these alternate routes does not impact the balancing test for each individual controller, does not negate the Complainant's data rights, nor does it remove the responsibilities of a controller when responding to a DSAR and therefore has been discounted.

35. As a result, the Authority is of the view that section 16 would not allow for the withholding of the gift letter in these circumstances and therefore Collas Crill's application of the exception is inappropriate and incorrect. This view is consistent with guidance published by the Authority on the application of section 16.

36. Paragraph 2.4(e) and (g) of the formal response claim that Collas Crill considered section 16 from the outset of this DSAR and in fact withheld information that overlapped with the personal data of the clients. The facts of the matter do not support this assertion. A reliance on section 16 was neither communicated to the Complainant (contrary to requirements under section 27(2) of the Law) nor to the Authority until 24 October 2025, where Collas Crill stated…

> *"Further to previous correspondence and brief conversations between us, we have in light of the ODPA's position once again considered our disclosure obligations as regards [**redacted**] under the Data Protection (Bailiwick of Guernsey Law ("DPL") and specifically as requested reconsidered disclosing the gift letter to the Complainant…"*

37. The above and subsequent wording of that email strongly suggests that section 16 had not been considered prior to this email. This is further supported by two calls that took place between an Authority Investigator and a Collas Crill Advocate on 22 October 2025, during which the Investigator suggested reviewing section 16. In their representations, Collas Crill emphasise the fact that this particular Advocate was not fully familiar with the history of the case at the time and was stepping onto the call to assist.

Observations by the Authority

38. In Collas Crill's email to the Authority, dated 21 October 2025, they offered to disclose a portion of the gift letter's contents to the Complainant, as part of an informal resolution. Notably, the information Collas Crill were willing to disclose at that time was substantially more than their original response to the DSAR (11 August 2025) and their subsequent formal response (24 October 2025).

39. In response, the Authority raised concerns that this offer still did not capture all the personal data to which the Complainant was entitled under the Law. Collas Crill subsequently revised their position on 24 October 2025 and have notably not addressed this under paragraph 2.6 of their formal response.

40. The fluctuation in the information Collas Crill is willing to disclose conflicts with assertions of confidentiality made by the Controller regarding the gift letter. It also undermines their arguments of impact to the significant interests of the clients, with respect to section 16 of the Law.

41. When considering the exemption/exceptions raised by Collas Crill, it is also important to note their stance regarding the contents of the gift letter and what they deemed to be personal data. Previous communications from Collas Crill stated that all personal data within the gift letter had been provided to the Complainant. The Authority had concerns the original DSAR response did not include all personal data to which the Complainant was entitled and therefore attempted to clarify the definition of personal data through our letter dated 17 October 2025.

42. Collas Crill subsequently responded to the letter stating "*…we do not necessarily agree with your assessment of what may constitute personal data…*".

43. The above comment is relevant as it is demonstrative of the Controller's understanding of the Law and its understanding of the definition of personal data.

44. These communications also appear to contradict Collas Crill's formal response, which asserts that the Complainant's personal data ("*data related to [the Complainant's] actions*") were excluded from the disclosure where it also comprised the personal data of the clients (see para 2.4(e) of the formal response).

45. Despite the Authority's guidance on the matter, which is aligned with guidance provided by other data protection authorities including the ICO, Collas Crill appears to deny the fact that the majority of the document's body contains the Complainant's personal data, yet simultaneously now relies on exemptions that are only applicable to personal data.

Conclusion

46. In conclusion:

- Collas Crill's application of Schedule 8, paragraph 5 of the Law (Privileged items), in order to withhold the disclosure of the gift letter and its contents therein, is not compliant with the Law.

- Collas Crill's application of section 16 of the Law, in order to withhold the disclosure of the gift letter and its contents therein, is misapplied and not compliant with the Law.

- Collas Crill has failed to comply with the Complainant's right of access and unlawfully withheld personal data captured within the scope of the original DSAR, dated 30 July 2025.

- Collas Crill's handling of the DSAR, its series of inconsistent and, contradictory statements and its ultimate formal stance regarding the disclosure of the gift letter gives the Authority cause for concern. The behaviour suggests a concerning interpretation of data protection law, ultimately leading to a frustration of the DSAR rights of the Complainant.

Representations

47. On 2 July 2026, Collas Crill provided their formal response to the Authority's 'Notice of Intention to make a Breach Determination and Proposed Sanction'. Representations regarding the body of the proposed determination have been considered, and where appropriate, amendments have been made to the contents of the final determination. No objection was made to the proposed sanction.

48. The Authority is satisfied that these changes do not alter the facts of the case and, by extension, the Authority's determination and, therefore, the decision was made that there was no need to revise the proposed determination.

Sanction

49. When the Authority determines that a controller has breached an operative provision of the Law, it may impose a sanction against that controller as outlined within section 73 of the Law.

50. The Authority hereby issues an enforcement order under section 73(1)(c) of the Law. For the purpose of 73(1)(c), subsection (2)(c) will apply.

1. **The Authority has appended a copy of the gift letter with appropriate redactions applied (Appendix D). Collas Crill must provide a copy of this document to the Complainant.**

Please note, the Authority does not deem it reasonable to extract the relevant personal data from this gift letter for the purposes of disclosure nor apply additional redactions to those already applied by the Authority.

In accordance with section 10 of the Data Protection (General Provisions) (Bailiwick of Guernsey) Regulations, 2018 an unredacted copy of this information must be retained by Collas Crill for a minimum of 6 years following disclosure of the revised DSAR material and must be provided to the Authority upon request.

2. **Term 1 must be complied with within 7 days of the issuance of a notice under section 73 of the Law. Collas Crill must provide written confirmation to the Authority within this 7-day period that it has complied with term 1 of this Order.**

51. Where Collas Crill is required to produce any written documentation in compliance with the terms of this Order, it must produce such documentation in a manner that is disclosable to the Authority. In the event that any relevant information becomes subject to legal privilege as a result of complying with this Order, documentation evidencing compliance with the terms of the Order must be produced in a manner free from legal privilege.