



Bailiwick of Guernsey  
Financial Intelligence Service

# ***Guidance on Requests for Additional Information***

*Financial Intelligence Service  
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# *Guidance on Requests for Additional Information*

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This guidance is not exhaustive and it is the responsibility of the person, third party or relevant person subject to the request for information to adhere to the law and regulations detailed in this guidance

This guidance relates to powers conferred by the Disclosure (Bailiwick of Guernsey) Law, 2007 and supporting Regulations in relation to the Financial Intelligence Service ('FIS') obtaining additional information and associated matter specifically:

- Regulation 2 Requests
- Regulation 2A Requests
- Regulation 2 (11A) Requests
- The submission of a SAR following a request
- Tipping Off

Please be aware that there are separate but identical provisions in respect of terrorist financing under the Terrorism and Crime (Bailiwick of Guernsey) Law, 2002 and supporting regulations. For ease of reading, this guidance does not separately refer to these provisions, but they should be taken as included within its scope.

## **1. Caveat**

For the avoidance of doubt, this guidance is issued by the FIS to assist industry in discharging their legal duties and does not constitute legal advice. Anyone who has concerns about any of the matters covered in this guidance should obtain independent legal advice. This guidance may be revoked or amended at any time.

## **2. Overview**

The FIS is the designated Financial Intelligence Unit (FIU) for the Bailiwick of Guernsey as defined by Financial Action Task Force (FATF) Recommendation 29. As such, the FIS is the National Centre for;

- The receipt, analysis and dissemination of Suspicious Activity Reports ('SARs') - The receipt of other information relevant to money laundering, associated predicate offences, terrorist financing and proliferation financing, for the analysis thereof, and for the dissemination of the results of that analysis.
- The submission of SARs is facilitated by the provisions of The Disclosure (Bailiwick of Guernsey) Law 2007 ('the Law').

In respect of access to information, FATF Recommendation 29 C (a) 5 states the following:

## *C. Access to Information*

### *(a) Obtaining Additional Information from Reporting Entities*

*5. In addition to the information that entities report to the FIU (under the receipt function), the FIU should be able to obtain and use additional information from reporting entities as needed to perform its analysis properly. The information that the FIU should be permitted to obtain could include information that reporting entities are required to maintain pursuant to the relevant FATF Recommendations (Recommendations 10, 11 and 22)<sup>i</sup>.*

The FIS currently obtains additional information through statutory powers under the provisions of the Disclosure (Bailiwick of Guernsey) Regulations 2007 ( "the 2007 Regulations"), commonly referred to as Regulation 2 and Regulation 2A requests.

The information obtained through the service of these requests is analysed, to determine whether to commence a money laundering investigation, or to disseminate the information in order that a decision may be made as to whether to start a criminal investigation.

The Regulation 2 and 2A powers are limited in that they can only be utilised to obtain additional information identified in an existing SAR.

Following amendments to the Law and the introduction of The Disclosure (Bailiwick of Guernsey) (Information) Regulations, 2019 , the FIS now also has the power to obtain additional information from any person following a report/request made to the FIS by a party listed at Section 11A of the Law. These parties include domestic law enforcement authorities, other government bodies, regulatory bodies and other competent authorities (Financial Intelligence Units) and law enforcement agencies. The Regulations came into force on 22nd July 2019 and are in addition to the provisions under Regulation 2 and 2A, as detailed in this guidance.

This document will provide guidance to all reporting entities on the actions required when the FIS issues a request under the Law and supporting Regulations.

This guidance should be read in conjunction with Chapter 13 - Reporting Suspicion of the Guernsey Financial Services Commission (GFSC) Handbook on Countering Financial Crime and Terrorist Financing (13 June 2019), in particular Chapter 13.15 FIS Requests for Additional Information.<sup>ii</sup>

## **3. Regulation 2**

Under Regulation 2 of the 2007 Regulations, a prescribed police officer may serve a written request on a person who has made a disclosure under section 1, 2 or 3 of the

Law, 'the initial disclosure', requiring that person to provide additional information relating to the initial disclosure as specified in the request, within such a period and in such a form and manner specified.

The period within which the information must be provided, specified in the request, will not be less than 7 days, unless the prescribed police officer is satisfied that the additional information is required as a matter of urgency, and a period of less than 7 days is authorised.

A prescribed police officer may, by written request, extend the period specified within the request. This would be in exceptional circumstances whereby the person could not provide the additional information within 7 days.

The reporting entity may be required to justify, in writing, as to why the period needs to be extended by the FIS, on receipt of this justification the FIS will consider the application and extend the period accordingly (or not, if it was considered an unjustifiable request).

The request will detail the additional information that is required. For example;

Subject Name:

Subject Address:

Bank Account Number / Sort-Code:

In accordance with Regulation 2 of the Disclosure (Bailiwick of Guernsey), Regulations, 2007 I require you to provide me with the following additional information in relation to the subject(s) detailed in this request:-

- All Customer Due Diligence documents
- All Source of Wealth documents
- All Internal risk assessment documents
- All compliance documents

This additional information should be provided in electronic format.

The request will detail the 'Form and Manner' in which the additional information must be provided; i.e. electronic (secure) format, hardcopy format, etc. The additional information should not be submitted via THEMIS, unless it specifically states that this is the form and manner required in the request.

To comply with the request, the person must provide to the prescribed police officer all of the additional information or documents required in the form and manner specified. If a person fails to provide additional information which is required under a request given under Regulation 2, within the period specified, and in the form and manner specified, they may be guilty of an offence.

#### **4. Regulation 2A**

Under Regulation 2A of the 2007 Regulations, a prescribed police officer may serve a written request on a third party if satisfied that there are reasonable grounds to believe that the third party possesses relevant information and that there are reasonable grounds to believe that the information is necessary for the FIS to properly discharge its functions.

Regulation 2A applies where a person has made a disclosure under section 1, 2 or 3 of the Law, 'the initial disclosure', and the initial disclosure contains sufficient information for a prescribed police officer to believe, as a result, that a third party may be in possession of relevant information.

The request under Regulation 2A may contain only limited information about the matters that were within the initial disclosure (i.e. bank account number and sort-code), as there is no legal requirement under the Law or Regulations to provide details of the account holder within the request.

The request will detail the additional information that is required. For example;

Subject Name:

Subject Address:

Bank Account Number / Sort-Code:

In accordance with Regulation 2A of the Disclosure (Bailiwick of Guernsey), Regulations, 2007 I require you to provide me with the following additional information in relation to the subject(s) detailed in this request;-

- All Customer Due Diligence documents
- All Source of Wealth documents
- All Internal risk assessment documents
- All compliance documents

This additional information should be provided in electronic format.

The form and manner in which the additional information must be provided under a request served under Regulation 2A to the FIS is identical to the guidance provided above. It is also an offence not to comply with a request as detailed above.

#### **5. Regulation 2 (11A)**

The Disclosure (Bailiwick of Guernsey) (Information) Regulations, 2019, introduced in July 2019, provides for the FIS to obtain additional information from any parties following a report/request for information made to the FIS by a party listed at Section 11A of the Law, without the requirement for an initial disclosure or SAR to be made under the Law.

The FIS will, on receipt of information submitted by parties in the form of a report/request, consider if obtaining the additional information requested is necessary or expedient for the FIS to discharge its functions as prescribed in the Law.

The FIS obtains additional information in order to identify specific targets, to follow the trail of particular activities or transactions, and to determine links between targets and possible proceeds of crime, money laundering, predicate offences and terrorist financing, and to perform strategic analysis to identify money laundering and terrorist financing related trends and patterns in line with International standards set by the FATF.

The FIS, on receipt of a report from any parties scheduled under the Regulations, will ensure that it meets the criteria as outlined in the Law and Regulations prior to issuing a request to any parties that the FIS consider may be in possession of the information sought in the report.

The request may relate to a 'Natural Person', 'Legal Person' or 'Legal Arrangement' or a product or service that you may provide i.e. bank account number and sort-code. Therefore, the wording on the Regulation 2 (11A) will differ to the wording on the Regulation 2 and 2A requests.

The request will, in accordance with the Regulation, require the information to be provided to a prescribed police officer within a specified time period, and form and manner, which will be on the request. Failure to provide the information specified, may make you liable to an offence under the Regulations.

The Regulation 2 (11A) request will contain the following wording:-

Dear Sir/Madam, The Financial Intelligence Service (the 'FIS') has received a report within section 11A (4) of the Disclosure (Bailiwick of Guernsey) Law, 2007, ('the Law') and the FIS reasonably considers that there is information relating to that report within your possession and control which is necessary or expedient for the proper discharge by the FIS of its functions.

Therefore in accordance with Regulation 2 of the Disclosure (Bailiwick of Guernsey) (Information) Regulations, 2019 ('the Regulations') and section 11A of the Law you are required to provide me with information relating to the following subject(s):

The request will then specify the additional information that you are required to produce relating to the subjects of the request.

## 6. Should I submit a SAR on receipt of a request pursuant to Regulation 2A or 2 (11A)?

This guidance document, as detailed in the caveat section above, does not constitute legal advice or a direction in respect of reporting a SAR to the FIS on receipt of a request 2A or 2 (11A). It is the obligation of the person receiving the request to determine if there is sufficient knowledge or suspicion to file a SAR to the FIS pursuant to section 1, 2 and 3 of the Law.

The GFSC handbook<sup>ii</sup> and stated case law<sup>iii</sup> (R v Hilda Gondwa Da Silva and Shah v HSBC) provide further guidance on the definition of knowledge and suspicion and the obligation to disclose to the FIS in accordance with the requirements of the Laws and Regulations. The handbook states that a suspicion may be based upon information from other sources, including law enforcement agencies, other government bodies (for example, Income Tax), the media, intermediaries or the customer themselves. Therefore, this guidance should be read in conjunction with the handbook, specifically Sections 13.2 Definition of Knowledge or Suspicion and 13.3. Obligation to Disclose.

The person receiving the request should consider Part II of the Proceeds of Crime (Bailiwick of Guernsey) Law, 1999<sup>iv</sup> in relation to offences in connection with the Proceeds of Criminal Conduct, specifically in relation to disclosing a suspicion or belief that any property is, in whole or in part, directly or indirectly, another person's proceeds of criminal conduct.

## 7. Tipping Off

Do I commit an offence if I disclose to a third party that I have been served with a request?

The Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999, The Forfeiture of Money, etc. in Civil Proceedings (Bailiwick of Guernsey) Law, 2007, and the Disclosure Law have 'tipping off' provisions clearly defined in the respective laws, whereby if any person discloses information relating to a criminal or civil forfeiture investigation respectively, that person commits an offence.

Therefore, subject to the circumstances outlined below, if a person discloses that a request has been served on them under regulation 2, 2A or 2 (11A) or has been served on any other person, they commit an offence.

An offence would not be committed if the person discloses the existence of a request within their own organisation or group or to a legal advisor in respect of seeking legal advice in relation to the request served. There are also some limited statutory

exemptions to tipping off. Anybody who is unsure whether an exemption might apply should seek legal advice.

## 8. Caveat

This guidance is issued by the FIS to assist industry in discharging their legal duties and does not constitute legal advice.

Issued by the Guernsey FIS

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<sup>i</sup> *Financial Action Task Force recommendation 29 Financial Intelligence Units section 29.3* <https://www.fatf-gafi.org/media/fatf/documents/methodology/FATF%20Methodology%2022%20Feb%202013.pdf>

<sup>ii</sup> *Guernsey Financial Services Commission, Handbook on Countering Financial Crime and Terrorist Financing.* <https://www.gfsc.gg/sites/default/files/20190613%20-%20Handbook.pdf>

<sup>iii</sup> *Case Law (R v Hilda Gondwa Da Silva and Shah v HSBC)* <https://www.lawsociety.org.uk/support-services/advice/articles/case-summaries/shah-v-hsbc-update/>

<sup>iv</sup> *The Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999* <http://www.guernseylegalresources.gg/article/97901/Criminal-Justice-Proceeds-of-Crime-Bailiwick-of-Guernsey-Law-1999-Consolidatedtext>