

2020.07.13

8 Deputy J.M. Maçon of St. Saviour of the Attorney General regarding the Electoral Register: (OQ.193/2020)

Will Her Majesty's Attorney General advise to what extent the electoral register is a public document in law, stating in particular the legal position in respect of viewing the register at the library or in Parish Halls, of taking written notes, and of taking either photographs or electronic copies?

Mr. M.H. Temple Q.C., H.M. Attorney General:

Legal rights are given to allow viewing of electoral registers during office hours at the relevant Parish Hall and at the Jersey Library and also at the Judicial Greffe, that is done by Article 11 of the Public Elections (Jersey) Law 2002. In addition, Article 12 provides that for the purpose of an election the electoral administrator for the Parish shall cause a copy of the register for the district as in force at midday on the day before the first nomination is held; that is to be published in printed form and made available to electoral candidates free of charge. The Public Elections (Jersey) Law is silent on the question of taking notes, copies or photographs of the register that is made available for inspection under Article 11. While the Public Elections (Jersey) Law does not prohibit taking record or copies of the register, where a person does so it is likely that the processing of that information would be governed by the Data Protection (Jersey) Law. Finally, the Intellectual Property (Unregistered Rights) (Jersey) Law 2011 contains restrictions on access to databases. It provides at Article 196 that a person infringes database rights in a database if, without the consent of the owner of the right, he or she extracts or reutilises all or a substantial part of the contents of the database. There is a relaxation in Article 206 but that is subject to 2 conditions. Firstly, the extraction must be for the purpose which does not involve reutilisation of all or a substantial part of the contents of the register. Then the second condition is that it must be with the authority of the appropriate person, which in this case would be the electoral administrator at the Parish, the librarian of the Jersey Library or the Judicial Greffier. Where a substantial part of the register is to be reproduced, whether by taking written notes or photographs or electronic copies, those persons would have to decide in each case whether they allow it, depending on the purpose for the data is sought.

3.8.1 Deputy J.M. Maçon:

Is my understanding correct then, the Jersey electoral register is not really a public document as, say, it would be in the United Kingdom?

The Attorney General:

I am not familiar with the exact status of the equivalent document in the United Kingdom but it is not a fully accessible public document. There are absolute rights to view it but there are limitations on the right to make notes or copies of it in the way that I have previously set out.

3.8.2 Deputy M.R. Higgins:

Just clarifying that position. If a member of the public wants to look at the electoral role, not for the purpose of election, and is not going to be using it for commercial purposes but wishes to take some reasonable notes or photographs or whatever, would they be allowed to do so under the law?

The Attorney General:

As I said, there are provisions in the Intellectual Property (Unregistered Rights) (Jersey) Law 2011, which essentially mean that the electoral administrator of the Parish or the Judicial Greffier or the librarian of the Jersey Library can allow that to happen, but there needs to be some check on the

purpose of that copying exercise and the extent of it because there are controls about the substantial copying of all or a substantial part of the relevant database, in this case the electoral register. There are some controls over the copying of an electoral database.

The Deputy Bailiff:

Supplementary, Deputy Higgins?

Deputy M.R. Higgins:

No, that is fine. I was talking about ordinary people, not for commercial use. Thank you.

3.8.3 Deputy M. Tadier:

In practice the instruction that has been given out, certainly by the Parish Halls that I have attended and the library ... so, for example, the library requires people to sign a form saying who they are and that they should not take any photographs of the electoral roll. Could the Attorney General just confirm that instruction should perhaps change given the fact that there is nothing inherently unlawful about taking a photographic copy of parts of the document?

The Attorney General:

As I have said in my previous answers, there are some controls over the right to take copies, and that includes taking photographs. If the person is taking copies of all of the electoral register, it is permissible to limit doing that in the way the Deputy suggests that the Parishes and the library are already doing because the 2011 law contains restrictions on the copying of all or a substantial part of the database.

3.8.4 Deputy M. Tadier:

Did the Attorney General suggest that it was conditional on the subsequent usage of that data?

The Attorney General:

Yes, that is a relevant factor. It is for decision by the electoral administrator or the librarian or the Judicial Greffe. So if someone, for example, is perhaps conducting research which is not for a commercial purpose and they are prepared to give, for example, an undertaking as to confidentiality over the use of or preserving confidentiality of the details of particular persons on the register, that might be looked at in a wholly different way from someone who is looking to take a copy of the register for commercial purposes. These are individual decisions that will need to be taken by the relevant persons.

3.8.5 Deputy G.P. Southern:

I am just wondering what constitutes a legitimate purpose for taking copies of the electoral register. What might the legal interpretation of someone who wanted to try to ensure that the maximum number got on the electoral roll? The maximum number of people?

The Attorney General:

The Deputy is asking a very specific question there and the law does not spell out a list of purposes, so these are individual decisions that will need to be taken, as I said, by the electoral administrator, the Judicial Greffier or by the librarian. It really does. It is an individual decision. It depends on the safeguards that are put in place as to the confidentiality and use of that information. The law does not set out an exhaustive code of all the different purposes that might be expected or that are to be factored into individual decisions.

[15:30]

Deputy G.P. Southern:

Me thinks that perhaps it should.

The Attorney General:

It is not a matter for me.

3.8.6 Deputy J.M. Maçon:

I am just thinking how to craft this. Given what the Attorney General has said then, those electoral administrators, would they then not be able to prohibit access and use of the electoral register for someone who wanted to, say, encourage people to get on to the electoral register, given that after 3 years people fall off our electoral register over here?

The Attorney General:

Could the Deputy repeat the question?

Deputy J.M. Maçon:

Can an electoral administrator prohibit an individual from using the data in the electoral register for purposes of getting people on to the electoral register?

The Attorney General:

I do not think the starting point would be a blanket prohibition on the use that the Deputy has just specified. It is not a commercial use and it would really depend on the sort of safeguards that might be offered by that person as to the use and the retention of that sort of information. I think I would need to consider that specific question further in order to be able to give a definitive answer. I am happy to meet the Deputy, if necessary, if he wishes to pursue that point.

Deputy J.M. Maçon:

I am grateful and will follow up. Many thanks for the answers.