

5.12 The Deputy of St. Mary of the Minister for Planning and Environment regarding an alleged pollution incident at the Energy from Waste Plant.

Further to the statement by Her Majesty's Attorney General on 1st March 2011 that there was no protocol preventing the interview, would the Minister tell Members exactly what justification he has for his department not interviewing the whistleblower concerning the alleged pollution incident at the construction site at the incinerator at La Collette and, I should add, in April 2009?

Deputy R.C. Duhamel of St. Saviour (Assistant Minister for Planning and Environment - rapporteur):

Environmental Protection, the Department of the Environment investigated the alleged pollution incident at La Collette under the provisions of the Water Pollution (Jersey) Law 2000 and, in accordance with the enforcement policy and guidance, an extensive case file was prepared by officers and submitted to the Attorney General for his review. The opinion of the Attorney General was that there was insufficient evidence to found a criminal prosecution. The Attorney General further stated that from the paperwork submitted, a thorough investigation of the incident had been undertaken by the department. By the term "whistleblower", I take it that the Deputy is referring to the Project Manager's site representative and whose employment was terminated during the investigation. Environmental Protection obtained a substantial quantity of information from him during the investigation in his capacity as site representative. Following his dismissal, Environmental Protection considered that there was no additional relevant information that he could provide that would benefit the case. Nevertheless, Environmental Protection gave him more than one opportunity to provide a witness statement, to which he declined.

5.12.1 The Deputy of St. Mary:

Here we go again. The Attorney General said that he had insufficient evidence in his decision, which was relayed to the members of the Ramsar Management Group and yet the key person who pointed out the problems down at the site, who insisted that certain procedures were followed and in the end blew the whistle, was not interviewed. My question asks what the justification is for the department not interviewing the whistleblower and the Minister has said: "We got some information from him and we did not feel the need to talk to him." Is this not another case of simply avoiding the difficult evidence?

Deputy R.C. Duhamel:

No, I do not agree with that and furthermore I would recommend that if, indeed, the Deputy of St. Mary has any technical legal questions as to the sufficiency or insufficiency of the evidence that was obtained from the reluctant witness, then he address them to the Attorney General in whatever meetings that can be arranged.

5.12.2 The Deputy of St. Mary:

Can I query his use of the words "reluctant witness"; that is not the story that I am getting?

Deputy R.C. Duhamel:

In terms of criminal proceedings that are taken by this House, it is not right for any Deputy or any States Member to come to this House and to seek to prise out information in order to reopen a case or, indeed, to pooh-pooh the decisions that have been undertaken. I repeat my offer; I think that if the Deputy wishes further

information that can perhaps be given to him on a confidential basis, then he should seek a meeting with myself or, indeed, the ex-Minister or whoever is in charge and the Attorney General or other law officers, and perhaps that is the better way to conduct his investigations.

The Deputy of St. Mary:

Point of order; I am not trying to reopen the case.

The Bailiff:

I will come back to you at the end.

5.12.3 The Deputy of St. John:

Given that my Scrutiny Panel, of which the Deputy of St. Mary is the vice-chair, were reviewing the Energy from Waste plant/Ramsar scenario in 2009 and we requested on umpteen occasions to have this information; now that the Attorney General finds there is no case to answer, could the information now be forwarded to my panel so that we can close the file once and for all on this scenario?

Deputy R.C. Duhamel:

Probably; I will need legal advice on that. If indeed that is able to be done then I would be more than happy that that information be passed to the Scrutiny chairman.

5.12.4 The Deputy of St. Mary:

The guidance for the department consists of 3 documents in how to carry out investigations and one of them is the code on the decision to recommend prosecution. Under the general principles of that document - and this is what the Environment Department follows - we read: "It is important that the right person is prosecuted for the correct offence and that all the relevant facts are presented to the court." I would just like to ask the Minister how he thinks that all the relevant facts can be presented to the court when, again, the key person involved was not interviewed?

Deputy R.C. Duhamel:

It really depends on the interpretation of the words "key facts". The Deputy is at pains to suggest that the information that was taken from the representative has been insufficient in some way, but there is nothing further really that I can add in this particular forum.