

3.2 Deputy M.R. Higgins of the Attorney General regarding the use of disclosure rules in respect of enforcement actions under the Planning and Building Law (Jersey) 2002:

Again the question was phrased to the Attorney General but I will phrase it to the Solicitor General. Will the Solicitor General advise Members of the rules relating to a prosecutor's duty to disclose or have disclosed to defendants in criminal cases, all information relevant to a case and confirm whether such disclosure rules have been adhered to since the beginning of 2010 in respect of enforcement actions under the Planning and Building Law (Jersey) 2002 and, if not, why not

The Solicitor General (Rapporteur):

The *Attorney General's Guidelines on Disclosure in Criminal Cases* were published in August 2006 and available on the Law Officers' Department website. In summary, the prosecution's duty is to disclose all material which either undermines the prosecution case or might assist the defence. This test for disclosure is well-established, well-known, is applied by prosecution advocates as a matter of practice and I have no reason to believe that full and proper disclosure has not been made in prosecutions arising from breaches of the 2002 Planning Law.

3.2.1 Deputy M.R. Higgins:

I am aware of 2 cases where emails exist which show that ... it almost implies in the information that is being sought from the Planning Department that if the information is not available, and in the case of one of the enforcement officers who circulated to his colleagues asking for information which was to be disclosed in the court: "If you cannot find it, it has been lost or whatever, you do not need to worry about it." Is that acceptable as a policy? Surely every effort should be made to hand over everything, including going through the backup tapes at Cyril Le Marquand House on all emails, which have not been done to date. Would the Solicitor General feel that the department should do everything to reveal everything regarding the case to give the defendant equality of arms in a case?

The Solicitor General:

Clearly, if a defendant feels that they are not getting full disclosure they can apply to the trial judge or court that is dealing with their case to seek orders for disclosure. If the defendant feels there has been a disclosure problem that has only materialised after the proceedings have ended that disclosure issue may give right to an appeal. It is the courts that should decide issues of disclosure and therefore I decline to comment on the specific cases. But I entirely accept, of course, that a prosecution should take all reasonable steps to ensure that there has been disclosure in respect of the test I have already outlined.