

**WRITTEN QUESTION TO THE CHIEF MINISTER  
BY DEPUTY M.R. HIGGINS OF ST. HELIER**

**ANSWER TO BE TABLED ON TUESDAY 30th APRIL 2013**

**Question**

Will the Chief Minister advise members how many times, in each year since 2005 to the present date, the Data Protection Commissioner has been requested to provide assistance; or has granted assistance and/or refused to grant assistance under Article 53 of the Data Protection (Jersey) Law 2005?

Will the Minister outline, in respect of assistance granted or refused –

- (a) the nature of the assistance requested, using the same headings contained under Schedule 10(2)(a), 10(2)(b)(i) and (ii) and 10(3)(a), (b) or (c) relating to legal advice and the conduct of proceedings;
- (b) the total number of persons assisted in each case;
- (c) the financial cost of assistance in each case, using the same headings contained under Schedule 10(2)(a), (b)(i) and (ii) and 10(3)(a), (b) or (c) relating to legal advice and the conduct of proceedings; and,
- (d) the outcome of the assistance given in terms of remedy?

**Answer**

The Data Protection Commissioner has been requested to provide assistance for each of the years as follows:

2005 – 0  
2006 – 0  
2007 – 0  
2008 – 0  
2010 – 12  
2011 – 1

- (a) The relevant provisions from the Data Protection (Jersey) Law 2005 ("the Law") are set out for ease of reference below, which outline the nature of assistance provided.
  - Under Art.53(1) of the Law, *"An individual who is an actual or prospective party to proceedings (whether actual or prospective) under Article 7(12), 10(4), 12(7) or 14, or by virtue of Article 13, that relate to personal data processed for the special purposes may apply to the Commissioner for assistance in relation to those proceedings"*.
  - Under Art.53(2) of the Law, the Commissioner will decide to what extent she will grant assistance *"but shall not grant the application unless, in the opinion of the Commissioner, the case involves a matter of substantial public importance"* (emphasis supplied).
  - Schedule 10 of the Law sets out the further provisions relating to assistance under Art.53 of the Law
  - Schedule 10(2)(a) and (b) confirms that the assistance may include the making of arrangements for, or for the Commissioner to bear the costs of the giving of advice by an Advocate.

- Schedule 10(3) provides further that the Commissioner will indemnify the applicant in respect of any liability to pay costs or expenses arising by virtue of any judgment or order of the Court in proceedings, in relation to settlement, or to pay damages in respect of any undertaking given by the applicant in respect of the obtaining of any interlocutory relief.
- Schedule 4 of the Law provides that the Commissioner shall inform the person against whom proceedings have been commenced that assistance has been or is being provided by the Commissioner in relation to them.

Having outlined this, and with reference to the above, it is not appropriate for the Commissioner to provide further information regarding the extent of assistance given under Art.53 of the Law where proceedings are on-going, particularly if orders are in place which prevent the dissemination of information in that particular case, although on conclusion of any case, and subject to the decisions of the Court, it would seem appropriate to consider the extent to which further information can be provided.

- (b) All applicants, with reference to the above schedule, have been given assistance in accordance with the statutory obligations of the Data Protection Commissioner.
- (c) A question was raised by Deputy Higgins on 29 January 2013 and by which he sought a "break down [of the] expenditure of the Data Protection Commissioner for (a) legal advice and b) prosecutions over the last five years" and an explanation as to "how much money has been budgeted for legal advice and prosecutions during 2013". He also sought an explanation from me as to "whether the Data Protection Commissioner's office is entitled to or has received any funds from the Court and Case Costs Fund and if so how much it has received?"

In response to those questions, I provided an answer as follows:

*"Deputy Higgins has already raised the general issue as to monies being spent by the Data Commissioner in Supplementary Questions to a question asked by Deputy Tadier on 9th October 2012. As I explained at that time the budget for the Data Protection Commissioner is published as a non-executive Ministerial department which is approved by the Assembly and an annual report is produced from the Data Protection Commissioner's office. For information, the relevant link to the States website is [www.statesassembly.gov.je/Pages/Reports.aspx](http://www.statesassembly.gov.je/Pages/Reports.aspx).*

*Deputy Higgins has, on 20th November 2012, asked a question regarding the number of prosecutions brought by the Data Protection Commissioner under the Data Protection (Jersey) Law 2005. The answer I provided to this question clearly stated that prosecutions for offences contrary to the law can only be brought by, and require the consent of, the Attorney General. Details of the costs incurred arising from prosecutions under the law would be a question more appropriately directed to the Attorney General.*

*At the last States Sitting Deputy T. Pitman asked an Oral question relating to money spent on actions under the law. The answer my Assistant Minister gave then explicitly stated that where there are proceedings that are on-going, disclosure of information, including comment on any costs incurred which have been funded from the Court and Case Costs budget, would be sub-judice.*

*The Data Protection Commissioner is able to request funding for particular cases from the Court and Case Costs budget but where proceedings are on-going the disclosure of information risks being sub-judice".*

As such, Deputy Higgins has already been advised as to how he may obtain a copy of the budget and the annual report setting out expenditure from previous years and which would allow him to ascertain the extent of the Commissioner's budget and how that budget has been spent.

He has also been advised that it not appropriate to comment or provide detail in relation to cases which are currently before the Court. On conclusion of any case, however, and subject to the decisions of the Court, it would then be appropriate to consider the extent to which further information can be provided, balancing the pertinent considerations, notably, accountability and individual privacy.

- (d) This question is not entirely clear, but it appears to be asking for information regarding the outcome of any proceedings in relation to any case in which assistance has been provided. Where proceedings are on-going the information sought cannot be provided, and on conclusion of any case, it is a matter for the Courts as to how rulings and outcomes are published, while noting that a public understanding of the relevant issues is important.