

4.12 Deputy T.M. Pitman of the Chief Minister regarding the difference between a ‘criminal’ and ‘regulatory’ breach of the Data Protection (Jersey) Law 2005:

Will the Chief Minister explain what the difference is between a “criminal” breach of the Data Protection (Jersey) Law 2005 and a so-called “regulatory” breach?

Senator I.J. Gorst (The Chief Minister):

The Data Protection (Jersey) Law 2005 is available publicly and online. From the Law it is clear that a regulatory breach refers to a breach of the data protection principles which are Schedule 1, Part 1 of the law, and a criminal breach refers to a breach of those Articles in the law which carry a criminal sanction.

4.12.1 Deputy T.M. Pitman:

Thank you. I hope the Chief Minister has read the Articles that he refers to. Proportionality to the offence and any action that is subsequently brought has to be the key human rights issue here. This said, can the Chief Minister explain what methodology is utilised to decide upon the charge brought? For instance, theft of personal data must be a criminal offence.

Senator I.J. Gorst:

I am not sure what the question was then. The Deputy seems to be asking me what methodology the Data Protection Commissioner uses.

Deputy T.M. Pitman:

I think it is quite a clear question. What methodology is used in deciding what charges are brought, when clearly something like a criminal offence such as theft is not acted upon in the Office of Data Protection as it should be? How are those decisions reached? It comes within the Chief Minister’s department, to be fair.

Senator I.J. Gorst:

I thought that Article 55 was quite clear, unlawful obtaining or disclosure of personal data. The law, as I read it, is quite clear. If the Deputy has specific instances once again which he seems to feel have not been acted upon within the law then obviously he needs to raise that with the Data Protection Commissioner. It is not for us in this Assembly to be involving ourselves in individual cases like this.

4.12.2 Deputy M.R. Higgins:

I want to take issue with the Chief Minister’s last question. If there are blatant examples of where material has been stolen and released to the public, surely that is a matter of public concern, especially when the person concerned was a Member of this House, and yet that person was not prosecuted by the Data Protection Commissioner. Surely there is a public interest issue on that particular matter? Does the Chief Minister agree?

Senator I.J. Gorst:

Once again the Deputy or questioner is indicating that an individual in this Assembly, in their opinion, has acted unlawfully. If that is the case then I imagine that he has put that information to the Data Protection Commissioner and I have no doubt that she will have not done anything other than handle it appropriately. As I said in my opening answer it is quite clear in the law the difference between a regulatory and a criminal breach and the Data Protection Commissioner, when considering criminal proceedings, requires consent from the Attorney General’s office before continuing with one of those cases. I do not see that there is an issue.

4.12.3 Deputy T.M. Pitman:

The Chief Minister attempts to dodge the question by referring me back to the Data Protection Commissioner. Well, I could ask him, has he ever tried putting a question to the Data Protection

Commissioner's office? I have and you do not get any answers. So when, as Deputy Higgins says, there is a public interest issue here, being that this relates to a Member of this Assembly, why is the Chief Minister himself not getting involved and doing something, as that falls within his department? Public interest.

Senator I.J. Gorst:

This is the problem that we sometimes have in this Assembly where Members are standing up on their feet and suggesting that I and other politicians should be involved in individual cases. That is not what our role is. Our role is to agree the legislation, which we have done and we have approved it. Your role, Sir, in the courts, is to interpret that. If we are dissatisfied with that interpretation then we should amend the law. The law is quite clear. The difference between a regulatory and a criminal breach is quite clear. There are processes in place which also I think we can be satisfied with. If Members have any question then they should address them to the Data Protection Commissioner.

4.12.4 Deputy T.M. Pitman:

A supplementary. The Chief Minister cannot keep getting away with it week-after-week because he cannot answer a question. Only the last session we saw an answer given to me by the Attorney General completely untrue, gainsaid by a judge. What the Chief Minister is saying is not true, so I would like him to explain what does one do?

The Bailiff:

Just a moment, Deputy. You cannot accuse the Member. You can say it is inaccurate but not that it is untrue.

Deputy T.M. Pitman:

I will save that for outside the Assembly then, Sir. Yes, it is completely inaccurate and I demonstrated it was thus so. How can one go and get action on these matters when the Office of Data Protection that you are referred to will not speak to you or does nothing? The Chief Minister is the Chief Minister. Does he not think he has got responsibility to take some form of action?

Senator I.J. Gorst:

The Data Protection Commissioner acts in line with the law that we have approved in this Assembly. If we are dissatisfied with the way that the law is operating then we in this Assembly should bring forward amendments to that law.

[11:00]

This Assembly cannot be prosecutor, judge and jury over every piece of legislation that we have passed. There are, rightly, independent bodies that go off and interpret the law. If we are dissatisfied with how a law is functioning then it is incumbent upon us to come forward, have a debate and ask this Assembly to amend pieces of legislation, not to endeavour to act as prosecutor, judge and jury in individual cases where we may or may not disagree with the outcome of a particular case. Having said that, of course, I have no evidence to suggest anything other than appropriate action has been taken.