

2014.09.22

3.3 Deputy R.G. Le Hérissier of St. Saviour of the Chief Minister regarding the extension of the Freedom of Information (Jersey) Law 2011 to agencies like Andium Homes:

Does the Chief Minister consider that agencies like Andium should be subject as soon as possible to the full provisions of the Freedom of Information (Jersey) Law 2011?

Senator B.I. Le Marquand (Deputy Chief Minister - rapporteur):

I am Acting Chief Minister at this moment, so I will answer the question. Members may recall that originally the plan was to bring in the Freedom of Information Law with effect from the end of 2015. This process was, in fact, accelerated forward by the Chief Minister with a view to bringing as much as possible in by 1st January 2015. Members may also recall P.81, which the States passed, in which it amended the categories or the definition of the categories because of ambiguities. Now, one of the effects of that was, in fact, to make it clear that groups like Andium would not be in from 1st January. However, it is the intention of the Chief Minister, if he is still Chief Minister after the 2-stage elections, first of all to bring a proposition to the States to extend to the Parishes from September 2015 and then to phase-in the other such items, including Andium, which potentially lie within the law as soon as is reasonably possible. But there are a number of different organisations potentially caught by the ambit of the law. The way the law is structured is that these are brought in in regulations and any particular group can be brought in by regulations at any time, but there is a need for phasing.

3.3.1 Deputy R.G. Le Hérissier:

I wonder if the Acting Chief Minister could define what he means by “as soon as reasonably possible.” Can he give a target date?

Senator B.I. Le Marquand:

I am slightly embarrassed by that question because I have written instructions and I spoke this morning to be briefed in relation to this. I thought that these were telling me that Andium was by September of next year, but on reading them carefully there is an ambiguity in the notes, so I am not sure about that. It is not clear as to whether this applies to Andium. I think that each organisation is going to have to get itself up to speed to be ready to deal with this. I am sorry I cannot give a more precise date, but I think the Deputy does need to recall we are working early in any event. We are a year ahead on the initial stuff.

3.3.2 Deputy J.A. Martin:

Can the Acting Chief Minister then advise? Up until Andium became Andium and was Housing, any tenant could - and I have been with them - go in and see every record about themselves. Is the Minister saying this is now going to change and it is going to be put off for another 2 years? Why the backwards step if this is so? It is their information.

Senator B.I. Le Marquand:

I am not saying it has been put off for 2 years. I did not give a date because the notes I have are not clear on that. I think the Deputy is right; if there had not been this change then the housing administration would have been brought in the initial start, but Andium will clearly need to get itself up to speed and organise itself so that it is ready to go. It is open to any Member to bring a proposition to the States to add ... well, yes, I know a proposition has been brought by the Deputy of Grouville, but there could be a more specific proposition in terms of an amendment to the law saying Andium will be in from a certain date. That is open to any Member at any given time to do that because it is within the control of this Assembly as to when specific entities are added.

3.3.3 Deputy J.A. Martin:

Sorry, supplementary: it was clear up until Housing became Andium any tenant, with myself or any Member or another friend who they wanted to take in, could see all this information. Is this now denied to the tenant? That is a straightforward question. Until supposedly this comes under a new law, what has changed down at Housing, except for the name? The information is there.

Senator B.I. Le Marquand:

Unfortunately, I cannot give the details of the law. If the information remains at the Housing Department and the information has not been handed, it would still be available prior to the handover. But if it has been handed over under the law, then the availability - under the law, I hasten to add, as opposed to voluntary information given - would have to wait until Andium has been added as an entity within the schedule.

3.3.4 Deputy M. Tadier of St. Brelade:

If and when Andium will be covered by the Freedom of Information Law, will it be retrospective? In other words, in the period between now and when the F.O.I. (Freedom of Information) applies to Andium will the information be made available on request or not?

Senator B.I. Le Marquand:

That must be right because the effect of bringing in an entity does not just bring in information that comes into existence from that date. It is to bring in all the information they have from the past as well.

3.3.5 Deputy M. Tadier:

Will there have been sufficient time for Andium to make sure that their records are in sufficient condition for an F.O.I. Law which does not currently apply to them?

Senator B.I. Le Marquand:

That is the whole point in relation to Andium and any other organisation. They need time to get their records up to scratch and into a state where they can respond reasonably. The same thing applies to any other organisation. I do not know because I am not the Minister for Housing as to how far the Housing Department went in terms of preparing its records with a view to this.

3.3.6 Deputy J.H. Young of St. Brelade:

Could the Minister for Treasury and Resources not use powers of direction to require the new company to comply voluntarily with this new law? In fact, could Andium itself not decide that it comes within the public interest that it would do so?

Senator B.I. Le Marquand:

It is open to Andium to start complying, as it were, providing the information voluntarily. It is open to any organisation without operation of the law. The other question, I am afraid, would have to be addressed to the Minister for Treasury and Resources. I am afraid I lost the vote for Minister for Treasury and Resources 3 years ago. **[Laughter]**

3.3.7 Deputy M.R. Higgins:

Just to try and dispense with some of the confusion on this, I am surprised that the Minister has not mentioned it. The Freedom of Information Law does not mean lack of information for residents. Residents can still get their information under the Data Protection Law. If they file a subject access request, any personal information they are entitled to get. So that information is still available, but I agree that the Freedom of Information Law should be brought to deal with all other aspects of the Housing Department as soon as possible, or Andium Homes as soon as possible. Does the Minister not agree that personal information can be obtained under the Data Protection Law?

Senator B.I. Le Marquand:

Yes, I thank Deputy Higgins very much for that intervention. Yes, he is absolutely right. Of course he is right. Freedom of Information is in addition to the ability for people to obtain personal information by personal subject access.

3.3.8 Deputy R.G. Le Hérissier:

Does the Acting Chief Minister not agree we are making a mountain out of a molehill and that, as a recently released Civil Service department under the excellent leadership of the still current Minister for Housing, Andium will be up to speed and could very quickly move to full Freedom of Information? Does he not believe we are making a total mountain out of a molehill?

[10:00]

Senator B.I. Le Marquand:

Well, I hope that is right. I only heard half the question because the person who succeeded in the election 3 years ago whispered in my left ear that he was quite prepared to instruct them to do it as soon as is reasonably possible.

3.3.9 Deputy R.G. Le Hérissier:

A supplementary: could you give the date by which you will be seeking its full implementation?

Senator B.I. Le Marquand:

Well, I will not be here to do that, of course, as the Deputy well knows. The Chief Minister may not be here either. I am sorry there is an ambiguity in my notes. I thought on first reading the note said September 2015. On reading it now, I see it is referring to the Parishes. This has left me in a position where I am afraid I cannot answer that. I will endeavour to get the Chief Minister to put out a note to all colleagues to tell them what the target date is. I think that is the best way forward.

3.3.10 Deputy R.G. Le Hérissier:

Will the move to the Parishes cover Parish housing schemes?

Senator B.I. Le Marquand:

It will cover all matters administered by the Parish and so if they are Parish houses the answer is yes, but if they are administered by some separate entity the answer is no.