

2015.01.20

4.3 Deputy M.R. Higgins of the Minister for Planning and Environment regarding the Planning and Environment Department's policy for the retention and disposal of records:

Will the Minister advise Members what the Planning and Environment Department's policy is for the retention and disposal of records and what safeguards there are to ensure that the policy is followed and that no accidental or deliberate disposal of records can occur?

Deputy S.G. Luce of St. Martin (The Minister for Planning and Environment):

My department has a records management policy and records are retained and disposed of in accordance with this policy. The purpose of the records management policy is to ensure that full and accurate records of all activities and decisions of the Department of the Environment are created, managed, retained or disposed of appropriately in accordance with relevant legislation. This policy provides a framework and outlines responsibilities for the operation of the department's record management programme. This programme has been established by the department in accordance with the Public Records (Jersey) Law 2002, the Data Protection Law 2005, the Freedom of Information (Jersey) Law 2011. The policy has been authorised by the chief executive officer of the department and all staff must comply with this policy and associated records management procedures. The department is developing section-specific retention schedules covering records relating to its core functions and activities.

[10:00]

The schedules include timescales after which records should be transferred to the Jersey Archive or confidentially destroyed. The policy and retention schedules are available from the department and I have arranged for copies of these to be forwarded to Deputy Higgins. With regard to ensuring that the policy is followed the department expects all staff to comply with States and department policies. Any breach of policy by an employee of the States Employment Board following an investigation would be dealt with by the department's chief officer or his nominee in accordance with the States of Jersey disciplinary procedure. If the Deputy has any questions or concerns regarding the retention or disposal of records by my department I ask that he forward these to me and I can make sure that they are either answered, investigated or both.

4.3.1 Deputy M.R. Higgins:

I am pleased the Minister has given that statement. I will be providing him with information of where his officers are starting to cull files where there are disputes. People are being told that no emails are contained in the files, which they have requested under subject access request, some of which other copies exist elsewhere, but the department is claiming they do not have it. They do not have file notes. They do not have other things. Will the Minister ensure that his officers, to comply with the Human Rights (Jersey) Law and Article 1 Protocol 1, which requires that all actions of the department are carried out in accordance with the law and are proportionate, that they will retain all the records regarding decisions, including all file notes, all relevant telephone messages, all emails, so the people, if they wish to challenge the law, can do so because the records are there and not culled? I will provide him with the information. Will the Minister please give an assurance that all file notes and all emails relating to cases which could be in dispute will be retained?

The Deputy of St. Martin:

My department recognises that records are a vital asset to facilitating information accessibility and protecting the rights and interests of the States of Jersey, its customers, clients and most importantly the members of the general public. As I said before, all staff, whether permanent, contract, temporary, student or work experience must comply with this policy. But I do have to say to the

Deputy that there are a number of items which are destroyed - or not retained is possibly a better way - and these include things like low-level meeting agendas, trivial emails, draft letters, working papers, obsolete publications and superseded addresses and distribution lists. For my department to retain absolutely everything they have is extremely difficult. However, I will say and reiterate to the Deputy that if he has any questions or concerns I will certainly look into them if he can provide me with the detail.

4.3.2 Deputy M.R. Higgins:

I will be providing the Minister with relevant information but what does concern me is the fact that individual officers who are dealing with the cases are not making the decisions about what they are going to delete. In terms of emails and so on, I will say that there has been a recent case where a criminal conviction was overturned in the Royal Court on the basis of irregular ... not irregular, I am trying to think of the term. It was to do with procedural and other problems. In fact personally I think it should have gone further, it should have involved perjury. What I would say is that the information that was used by the court to quash the conviction and pay compensation to the person and so on, the information would only have come out had all the emails, *et cetera*, which were provided to the court and to the Law Officers had they been made available. It should not be for officers to decide which emails are relevant because even a very minor email relating a case or to an architect or to another officer could be relevant in deciding whether a person has been badly treated or not. So I would ask the Minister to have a darn good look at the policy, especially in light of the information I will provide.

The Bailiff:

Have a very good look.

Deputy M.R. Higgins:

Yes, thank you, Sir.

The Deputy of St. Martin:

I would say to the Deputy that my department operates a procedure called S.A.F.E. which stands for Sender Always Files Emails. If the sender decides to retain an email it should be treated like any other document and it is saved in the relevant and appropriate location. This relates to departmental email correspondence only. Unfortunately we cannot rely on other agencies or outside departments to follow the same procedure. But if the Deputy has emails which he thinks are relevant, again if he would forward them to me I will look at them and investigate.