

**WRITTEN QUESTION TO THE ATTORNEY GENERAL
BY DEPUTY J-A. BRIDGE OF ST. HELIER**

ANSWER TO BE TABLED ON TUESDAY 7th JUNE 2005

Question

On 2nd June 1987, the then Attorney General gave an opinion to the States that *'a member has a clear right of access to Committee minutes and papers in the custody of the Greffier'*. As a result all members are currently able to view all Part A and Part B Minutes at the States Greffe.

On 10th May 2005, the President of the Policy and Resources Committee, in answer to a question from Deputy J.L. Dorey, explained that, in the ministerial system, the record of a ministerial decision *'will be prepared by individual States departments for signature by the minister who is legally responsible for such decisions and will then be forwarded on to the States Greffe'*.

Would the Attorney General advise members whether the same legal considerations on members' access to papers in the custody of the Greffier that currently apply to Committee minutes will apply to the minutes of the Council of Ministers and records of ministerial decisions at the States Greffe? If not, would the Attorney General advise whether members could be prevented from accessing these records held by the Greffier and, if that is the case, would he confirm that the States are competent to adopt a proposition to ensure that members have access to these records even if some are exempt from public access?

Answer

Members are of course required to act consistently with the Data Protection (Jersey) Law 1987, and similarly will be subject to the Data Protection (Jersey) Law 2005, when that comes into force. On occasion there may also be implications arising out of the Article 8 rights to respect for private and family life as set out in the European Convention on Human Rights. It is accordingly unnecessary in this answer to address these issues which will continue to require the same attention under the ministerial system of government as at present.

The question put to me does not fully summarise the Attorney General's opinion of 2nd June 1987, because the extract is incomplete. What the Attorney General said was as follows –

'.. A member has a clear right of access to Committee minutes and papers in the custody of the Greffier and a right of access to other information in the possession of a Committee unless there are good grounds for denying access.'

The reasoning set out in that opinion points to this being the established position because Committees were originally the delegates of the States. That of course is not always the position, and was not so in 1987. Some Committees act by legislation passed by the States which makes the Committee and not the States the decision taker. Examples of this are the consents given by the Housing Committee under the Housing (Jersey) Law 1949, and Regulations made thereunder; or consents given by the Environment and Public Services Committee under the Island Planning (Jersey) Law 1964.

The Attorney General went on to say that the right of access would not be enforced by a court of law.

In my view this qualification is fundamental to the question now put to me. In jurisprudential terms, a right, measured against the law which is to be applied to it, is something which a court of law will, in an appropriate case, enforce. If the court will not in any circumstances enforce what is claimed to be the right, it follows that one must be careful in distinguishing what the 'right' really means.

The opinion expressed by the Attorney General in 1987 has generally been accepted and applied by members, despite his making it clear that the matter was a political and not a legal one. No doubt there have been occasions when it has not been applied to the satisfaction of a particular member in relation to papers held in the possession

of a particular Committee; but essentially, the States and its Committees have given political authority to the 1987 opinion by the Greffier and Committees acting consistently with it, despite the absence of any legal sanctions if the Greffier or Committees decided to ignore it. It would be expected that the Greffier would act in this type of matter in accordance with the view expressed to the States by the Attorney General unless he were directed to do otherwise by the States.

It is of course true that the rationale of the 1987 opinion is not consistent with the divisions between executive and legislative competence made by the States of Jersey Law 2005, but as compliance with the 1987 opinion was always a matter of political agreement rather than one of justiciable right, it does not seem to me that different considerations will apply when the States of Jersey Law 2005, has been brought into force than hitherto. Access to records held by the Greffier as an officer of the States, whatever records those may be, is a matter which ultimately falls within the competence of the States to determine.