

2020.02.25

1 Deputy M.R. Higgins of St. Helier of H.M. Attorney General regarding the compliance of the Law Officers' Department with the Data Protection (Jersey) Law 2018: (OQ.27/2020)

Will Her Majesty's Attorney General advise how it is ensured that the Law Officers' Department fully complies with the Data Protection (Jersey) Law 2018?

Mr. M.H. Temple Q.C., H.M. Solicitor General (*rapporteur*):

The Law Officers' Department is registered with the Jersey Office of the Information Commissioner and has a designated senior information risk officer with responsibility for data protection in the Department. Together with the Department's data protection lead they ensure compliance with legislation and liaise with the Government of Jersey's appointed corporate data protection officer, as necessary. The Department adheres to the Government of Jersey's data protection policy and works closely with the data protection team, who provide further guidance and training on all areas of data protection, including on the handling of subject access requests and security breaches. In addition, Lexcel is a leading legal practice quality mark and in 2019 the Law Officers' Department was independently assessed and awarded Lexcel accreditation for excellence in practice management. The successful assessment included a review of the Department's personal data management and compliance with data protection legislation.

3.1.1 Deputy M.R. Higgins:

I must admit, I am surprised that the Department has been awarded the particular standard he mentioned, as I have got major concerns about the data handling, especially with subject access requests. One such request took 11 months and it is supposed to take 40 days. In addition to that, 2 or 3 cases, although full information has been asked for, it has not been delivered. This applies both to the civil and the criminal division. Will the Attorney General (sic) please meet with me and try and expedite these things, because people are being denied justice. If they cannot get their records they need to prove points and the case falls out of time, it is argued they have got some information they should be able to bring a legal action, if they cannot get it all then they are being prevented from taking any action. Will the Solicitor General meet with me on this matter?

The Solicitor General:

I am, of course, very happy to meet with Deputy Higgins. It is the first I have heard ... I am not aware of any specific information about any individual cases that he mentions. I would add that under the Data Protection (Jersey) Law, the Law Officers' Department is one of the competent authorities that is listed in Schedule 1 to that Law, which modifies the provisions of the Data Protection Law in relation to those competent authorities. That does include certain relaxations of time limits in relation to those competent authorities. Nevertheless, the overall point remains I am very happy to meet with the Deputy to explore the matters that he raises.

3.1.2 Deputy K.F. Morel of St. Lawrence:

Due to the sensitive nature of the work of the Law Officers' Department, I can understand why it does take time to comply with subject access requests. I was wondering how many subject access requests approximately were received last year, or are received on an annual basis and does the Department have someone specifically tasked with providing the information for those requests?

The Solicitor General:

I am afraid I do not know the number of subject access requests that were received, or that were directed at the Law Officers' Department. I am happy to find out and to let the Deputy know.¹ Yes, as I said in my answer to Deputy Higgins's questions, we do have a data protection officer whose responsibility it is to answer subject access requests. In addition, we are obviously well-versed in data protection compliance issues so the answer to that question is yes.

3.1.3 Senator K.L. Moore:

Would the Attorney General (sic) be able to tell the Assembly what the average time is allotted by his Department to respond to subject access requests and at the moment is he aware how many subject access requests have been handed in, but are as yet unfulfilled within the allotted time?

The Solicitor General:

As I said in relation to Deputy Morel's questions, I am not aware of the number of subject access requests received by the Department this year, so, therefore, I am not aware of the numbers that are outstanding. I have to say, I personally am not aware of any, but no one has raised that with me, but I will make enquiries and I will let the Deputy know. As I said, the Law provides that we are one of the Schedule 1 Authorities that is listed under the Law, which means that the time periods are relaxed. In addition, there are exemptions under the Law which concern the provision of legal advice where there is privileged information that is obviously not subject to an information request. So there may be many reasons for why particular subject access requests are either delayed or are not granted at all. But I can look into the matter and let both Deputy Morel and the Senator know in relation to the numbers.

3.1.4 Deputy M.R. Higgins:

Can I just ask the Solicitor General whether he thinks it is justifiable, or excusable, for restrictions to be placed in the case of lawyers who are provided information that they were told that they could not share it with their client who, although vulnerable, could have the information shared with them in the right circumstances and the vulnerable person is the only person who could have vouched for, or said, whether the records, *et cetera*, were correct? Therefore, by not allowing that person to see

¹ H.M. Solicitor General subsequently circulated the following information to Members:

The three Subject Access Requests received by the Department since the start of 2019 were handled as follows.

2019: One Subject Access Request (SAR) received:

1) SAR received on 25 October 2019

An extension of two weeks was requested to 13 December 2019. The response was provided within this timeframe.

Follow up questions were received on 17 December. A response to the follow up questions was provided on 19 December. There has been no subsequent follow up from the Information Commissioner's Office (ICO) and the request is considered closed.

2020 (to 27 February): Two SARs received:

1) SAR received on 16 January 2020

No extension requested. Response provided within the initial four week timeframe, on 13 February. There has been no subsequent follow up from the ICO and the request is considered closed.

2) SAR received on 24 January 2020

No extension requested. Response provided one day after the initial four week timeframe, on 24 February. The one day delay was due to the large quantity of material being disclosed and awaiting a response from the requester as to how they wanted to receive the material. There has been no subsequent follow up from the ICO and the request is considered closed.

There are no outstanding SARs to the Law Officers' Department.

the records, they are put at a major disadvantage, as were the people who were trying to assist. Is that acceptable practice?

The Solicitor General:

The Deputy is obviously referring to a specific situation. I am not aware of the specifics of that situation. I would say that, obviously, it is normal in a relationship between a client and their legal adviser for a client to receive information that is communicated to the lawyer and normally the lawyer would be under a duty to pass that information on. There may be certain specific situations where that rule does not apply, but they are usually unique situations but it would very much depend on the particular circumstances, so I am afraid I cannot answer the Deputy any further than that.