

23.05.23

8 Deputy M. Tadier of the Chief Minister regarding the advice received to support the decision not to proceed with an independent review of the circumstances surrounding the unlawful search of premises (OQ.95/2023)

Further to the response to Written Question 147/2023, does the Chief Minister agree that taking independent advice is not the same as commissioning a full independent inquiry into the circumstances surrounding the unlawful search of premises; will she publish the independent advice received and if not, why not?

Deputy I.J. Gorst:

Sir, I am answering this question, as discussed with your Chambers.

The Bailiff:

Thank you very much, yes.

Deputy I.J. Gorst (The Minister for Treasury and Resources - rapporteur):

The statement made by the Chief Minister on 22nd November 2022 when this issue came to light, referred to an independent review, not an inquiry.

[10:45]

As stated last month in respect of the question regarding the investigation led by Jersey's Economic Crime and Confiscation Unit, which sits within the Law Officers' Department, after taking independent advice, the Government is satisfied that the Attorney General and the Chief of Police have reviewed the circumstances around how the operation error with the warrants are raised and have agreed measures that have now been put in place to ensure that such an operational error concerning the application of warrants does not happen again. Therefore, it is the case that independent advice was taken and that a process took place to assess how the error happened, followed by the implementation of measures to ensure it cannot happen again. As the Deputy will also note from the statement made in January 2023, there is ongoing work being undertaken by all parties on the memorandum of understanding which was developed when the Economic Crime and Confiscation Unit was established. While there is an ongoing investigation we should and cannot say any more on this issue at this time. This also means that it would not be appropriate to share the independent legal advice.

3.8.1 Deputy M. Tadier:

Let us be precise. In fact, it was not legal advice that the Minister promised and she did not use the word "inquiry", to be fair, but she did say: "I have therefore requested an independent review that is undertaken following recent media reports, so that we can have confidence in our system, essentially." Does the Minister accept that the written answer acknowledges that the legal advice sought is not the same as having an independent review, because it says in that written answer that the advice obviates the need for a review? It does not say because it is a review. In fact, there is a presumption that an independent review should be reviewed by somebody who is independent, not by Government. Can the Minister confirm those 2 things are not the same and that what this constitutes is a U-turn at the very top level of Government?

Deputy I.J. Gorst:

While I am happy to say that independent advice is not a review - of course I am - they are 2 different things, I do not accept the statement the Deputy has just made. It was appropriate, in my view, for the Chief Minister to have made her initial statement. Appropriate actions were then taken, delegated to others, because of the circumstances that this Assembly heard about at the last sitting. Those actions, based on the independent advice, are appropriate as well.

3.8.2 Deputy R.J. Ward:

Can I ask the Minister who gave the independent legal advice?

Deputy I.J. Gorst:

Independent lawyers.

3.8.3 Deputy R.J. Ward:

Can the Minister confirm that advice can be published with the consent of lawyers or the consent of the client?

Deputy I.J. Gorst:

No, I cannot advise that. As the Deputy knows, it is an ongoing case and I would not wish to do anything which might prejudice that ongoing case.

Deputy R.J. Ward:

Sorry, that was not the question. The question was: is the Minister aware that advice can be published with the consent of lawyers and the client themselves? It was not to do with whether it is an active case now. That was, I believe, a diversionary answer.

The Bailiff:

It was an answer that addressed what I thought was the thrust of the question, but are you able to answer the specific question: do you know whether as a matter of law if the giver of the advice and the receiver of the advice both agree the advice can be published?

Deputy I.J. Gorst:

My understanding is that under normal circumstances that would be the case, but it would require some quite difficult decisions on behalf of the client around legal privilege and in consultation with lawyers. My answer to the question was I am not proposing that for the reasons I outlined.

3.8.4 Deputy M. Tadier:

The Chief Minister in November said, and this is a direct quote, that she did not think the matter would impact on ongoing legal proceedings. We have been promised a review by this "A Better Way" Government in response to the media, is what the Chief Minister said, but she wanted an independent review. We find ourselves a few months later having not had an independent review, the Government has been given legal advice which we have not seen, which we do not know even who did it, we do not know how much it cost and we do not know what it said. Does the acting Assistant Chief Minister acknowledge the fact that it is not simply enough for reassurance to be given that Government is satisfied with the system that this will not happen again, but that the public need to be reassured that if their officers or their homes are raided it will be done legally and if it is done illegally that they can get the same recourse to an apology from the Chief of Police personally and to some compensation if ever that happens again?

Deputy I.J. Gorst:

Sir, I fully understand the look on your face in listening to that question. The Deputy well knows that Ministers are appointed by this Assembly to take decisions. Sometimes those decisions can be difficult, as I said at the start. The Chief Minister is absolutely right in my view to make the statement that she did. Actions were taken arising out of that statement. They may not have been to the liking of the Deputy. In relation to his final point, I take reassurance that processes have been put in place that the errors do not happen again. Of course, it would be open to any member of the public in any given situation to challenge the processes that they had been subjected to and they would be rightly considered by appropriate processes. I cannot comment on those without having further detail or it having happened.