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2 Deputy M.R. Higgins of St. Helier of H.M. (Her Majesty) Attorney General regarding the interception errors reported in ‘Regulation of Investigatory Powers (Jersey) Law 2005 and Police Procedures and Criminal Evidence (Jersey) Law 2003: Report of the Investigatory Powers Commissioner 1st January to 31st December 2018’ (R.112/2019): (OQ.214/2019)

Will H.M. Attorney General advise Members how the interception errors reported by the Investigatory Powers Commissioner in his 2018 report came about and how will he ensure that no further errors will occur in the future; and is it the case that intercepting a person’s communications in error is likely to be a breach of the Data Protection (Jersey) Law 2018?

Mr. R.J. MacRae, H.M. Attorney General:

It is right to note that in the conclusion to Lord Anderson’s report, he observed that the investigatory powers under review were, as a rule, exercised during the year in question in a “compliant, proportionate and conscientious manner”. But he noted at paragraph 52 that 2 errors had taken place during the year referred to in the Deputy’s question. Taking those 2 errors in term. The first involved the hard copy of a warrant collected by the States of Jersey Police from my office. The warrant was taken away, actioned and the warrant was copied immediately, scanned into the system at the police station. The original was destroyed in error. The fact of the destruction of the original was picked up by the States Police’s own internal processes. That was reported to me and notified to the Commissioner on his annual inspection. He was not very concerned by this issue, as is clear from his report. The document in question never left the police station. It was destroyed in that location. But there has been a change in process to eliminate the risk of any further accidental destruction and new fields have been added to the in-house audit trail to ensure this cannot occur again. In relation to the interception of an incorrect telephone number - the second error referred to in the report of the Information Commissioner - the number intercepted was the subject of an approval granted by me. The number had been properly sourced, but the number was not, in fact, linked to the subject of the consent. This will happen from time to time, because information the police receive is not always accurate.

The Deputy Bailiff:

Attorney, I must ask you to, if you can, bring your answer to an end.

The Attorney General:

I can within the next 30 seconds, if that is sufficient, Sir.

The Deputy Bailiff:

That will take you one minute over the normal allocated time, but please do continue.

The Attorney General:

I am grateful, Sir. As indicated by the report itself, processes have been improved. The key thing is what the police did in those circumstances and it is plain from the report that as soon as the error was identified, the call was concluded. So, once it was clear that the wrong phone number had been connected, the interception immediately terminated. There is no question of a breach of Data Protection Law, because this was a lawful intercept. It might be different, of course, if a number had been intercepted which was not the subject of a warrant.

3.2.1 Deputy M.R. Higgins:

I would like clarification from the Attorney General. He says that the call was terminated and it was a lawful intercept. Surely, if the mistake has been made - and perhaps the Attorney General can tell us - whether they listened to any part of the conversation and whether the people concerned that they were listening to were any way connected to the investigation that was going on.

The Attorney General:

I cannot give any more information than I have.

[10:00]

One call was intercepted. When it was realised there was an error, the intercept was terminated. The reason this was a lawful intercept was because it was the subject of a consent given by me. It would be different, of course, if a number was intercepted, which was not the subject of a lawful consent. The police were plainly acting in good faith, but sometimes the information they receive is inaccurate, hence the fact a number not connected to the subject was the subject of this lawful intercept.