

## **FOI APPLICATION**

1. On the 26<sup>th</sup> April 2023, Ms Caroline Muscat (the “**applicant**”) applied to the Information and Data Protection Commissioner (the “**Commissioner**”) for a decision notice in accordance with article 23(1)(a) of the Act, to investigate whether the decision taken by the Central Bank of Malta (the “**Public Authority**”) to charge a fee of forty Euro (€40) for access to a “[1]ist of all direct orders issued by the Central Bank between 1 January 2021 until the date of reply to this FOI. List should include purpose, value, name of beneficiary/company, which CBM official approved the direct order” is compliant with the requirements of the Act.

## **INVESTIGATION**

### FOI Application

2. After having considered that the applicant is an eligible person in terms of article 2 of the Act and the nature and background of this FOI application, together with the procedural steps involved between the applicant and the Public Authority, the Commissioner deemed the application made by the applicant as admissible for the purpose of article 23(2) of the Act.

### Submissions received from the Public Authority

3. As part of the investigation procedure, by means of an information notice dated the 4<sup>th</sup> May 2023 issued in terms of article 24(1)(a) of the Act, the Commissioner requested the Public Authority to provide information in relation to the FOI application for the purposes of enabling him to exercise his functions under the Act and to determine whether the Public Authority has complied with the requirements of the Act. In particular, the Public Authority was requested to

provide any information which it deems relevant and necessary to support its decision to charge the fee. To this effect, the Commissioner requested the Public Authority to provide a cost breakdown as to how it reached its decision to charge a fee of forty Euro (€40) in terms of the Fees Charged by Public Authorities for Access to Documents Regulations, Subsidiary Legislation 496.01.

4. On the 8<sup>th</sup> May 2023, the Public Authority submitted the following arguments:
  - a. that reliance was made on the services of three (3) senior officials who each performed work over a period in excess of five (5) hours;
  - b. that the costs involved in preparing the documentation exceed by far the fees contemplated under the Fees Charged by Public Authorities for Access to Documents Regulations (S.L. 496.01); and
  - c. that the Public Authority limited itself to imposing the maximum fee contemplated under regulation 5 of Subsidiary Legislation 496.01.

## LEGAL ANALYSIS AND DECISION

5. For the purpose of determining this FOI application in terms of article 23(1)(a) of the Act, the Commissioner sought to establish whether the decision of the Public Authority to charge the applicant a fee of forty Euro (€40) is excessive in terms of the requirements of the Act and the regulations made thereunder.
6. Article 9(1) of the Act enables public authorities to charge a fee to an applicant for access to a document and, to this effect, article 9(2) thereof provides that regulations may be issued to prescribe a range of standard fees.
7. In this regard, the applicable regulations are the ‘Fees charged by Public Authorities for Access to Documents Regulations’, Subsidiary Legislation 496.01 (the “**Subsidiary Legislation 496.01**”), which allow the public authorities to charge standard fees for access to documents or information in accordance with the Schedules contained in the Act.
8. These regulations set two types of fees, namely the processing fees and the additional fees. The regulations only provide a definition of “*processing*”, which is defined as “*activities relating to the identification, search or collation of documents or information, consultations conducted*

*with any person or body of persons in relation to the possible disclosure of documents or information, or otherwise editing the documents or information in order to meet a request by an applicant” [emphasis has been added].*

9. Within this context, the Commissioner assessed the reply of the Public Authority dated the 8<sup>th</sup> May 2023, wherein it stated that *“the Central Bank of Malta confirms that **in compiling the information** requested by the applicant, reliance was made on the services of three senior officials who each performed work over a period in excess of five (5) hours.”* [emphasis has been added]. Thus, in terms of the definition of *“processing”* as defined in regulation 2 of Subsidiary Legislation 496.01, the Commissioner could ascertain that the fee charged by the Public Authority is in relation to the processing of the FOI request made by the applicant.
10. The First Schedule of the Subsidiary Legislation 496.01 provides that the Public Authority may charge the applicant a processing fee of a maximum of twenty Euro (€20) if the request requires at least four (4) man-hours of processing. Notwithstanding the fact that the Public Authority is claiming that the FOI request required more than five (5) hours to be processed, the maximum processing fee that could be charged by the Public Authority in terms of the First Schedule is twenty Euro (€20).
11. Therefore, the Public Authority could only charge more than twenty Euro (€20) if it were able to concretely demonstrate that additional expenses, over and above the processing expenses, were involved to make the requested information available to the applicant. For this reason, regulation 4 of Subsidiary Legislation states that additional fees could be charged if the Public Authority incurs expenses to make the requested documentation available to the applicant. In this respect, the Second Schedule enables the Public Authority to charge fees in relation to photocopies, faxes and the cost price of the digital medium used (e.g. disc). Furthermore, the same regulation and the Third Schedule permit the Public Authority to charge the applicant an additional fee if the applicant expresses preference and is given access to a document by inspecting it at the premises of the Public Authority.
12. For this reason, the Commissioner assessed the FOI request dated the 1<sup>st</sup> August 2021, wherein the applicant requested the Public Authority to provide an electronic copy of the *“[l]ist of all direct orders issued by the Central Bank between 1 January 2021 until the date of reply to this FOI. List should include purpose, value, name of beneficiary/company, which CBM official approved the direct order”*. Therefore, in terms of article 12(2) of the Act, the Public Authority should have made the requested documentation available to the applicant in the way preferred in her FOI request, unless there is a justified reason in terms of article 12(2)(a) to (c) of the Act

not to do so. Given that the applicant did not request photocopies, nor did she express preference to be given access to the requested documentation by inspecting it at the premises of the Public Authority, the Commissioner concluded that there is no ground in terms of the Second and the Third Schedule of Subsidiary Legislation 496.01 to charge an additional fee, which is over and above the processing fee.

13. It therefore follows that regulation 5 of Subsidiary Legislation 496.01 could only apply if the Public Authority had incurred processing and additional expenses to make the information available to the applicant, which when summed up together, exceed the amount of forty Euro (€40). However, it resulted that the Public Authority had only incurred expenses in relation to the processing of the FOI request, and therefore, regulation 3 read together with the First Schedule of Subsidiary Legislation 496.01, is the applicable provision which sets twenty Euro (€20) as the maximum standard processing fee that could be charged by the Public Authority.

**On the basis of the foregoing considerations, pursuant to article 23(3)(b) of the Act, the Commissioner is hereby serving a decision notice and establishing that the processing fee of forty Euro (€40) charged by the Public Authority is excessive and not in compliance with regulation 3 and the First Schedule of Subsidiary Legislation 496.01.**

**The Public Authority is hereby being ordered to revise its processing fee and charge a fee in terms of regulation 3 and the First Schedule of Regulation 496.01, which fee shall not exceed twenty Euro (€20). The Public Authority shall comply with this order within twenty (20) working days of the day of receipt of this decision notice and inform the Commissioner of the action taken immediately thereafter.**

Although the Commissioner recognises the fact that the law sets out clear parameters when public authorities are allowed to charge nominal fees to applicants when acceding to requests for access to information, he urges heads of public authorities to advocate better judgment in these circumstances and ensure that common sense prevails.

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DEGUARA            by Ian DEGUARA  
(Signature)         (Signature)  
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**Ian Deguara**  
**Information and Data Protection Commissioner**

## **Right of Appeal**

In terms of article 39(1) of the Act where a “[w]here a decision notice has been served, the applicant or the public authority may appeal to the Tribunal against the notice within twenty working days.”

An appeal to the Information and Data Protection Appeals Tribunal shall be made in writing and addressed to:

**The Secretary  
Information and Data Protection Appeals Tribunal  
158, Merchants Street  
Valletta.**