

Information and Data Protection Commissioner

CDP/FOI/73/2022

Christoph Schwaiger

vs

Ministry for Tourism

FOI REQUEST

1. On the 14th September 2022, Mr Christoph Schwaiger (the “**applicant**”) made a request pursuant to the requirements set forth in article 6(1) of the Freedom of Information Act (the “**Act**”), Chapter 496 of the Laws of Malta, requesting the Ministry for Tourism (the “**Public Authority**”) to provide an electronic “*copy of the invoices in connection with visits to Dubai on government business by a minister and/or any other official/s of the public authority during August 2015, February 2016, and November 2016*”.

A copy of the FOI request is being marked and annexed as **Doc. IDPC 1**.

2. On the 16th October 2022, the Public Authority informed the applicant that his request could not be met because “[n]o specific document is held that contains the requested information”.
3. On the 21st October 2022, the applicant presented a complaint seeking the reconsideration of the Public Authority by means of the internal complaints procedure and requested the Public Authority “*to perform another search for the documents requested and to take all reasonable measures set out by the FOI Act*”.

A copy of the complaint presented by the applicant is being marked and annexed as **Doc. IDPC 2**.

4. On the 7th November 2022, the Public Authority replied that “[n]o records pertaining to the request are available since no such travel has taken place in the above-mentioned dates as alleged in your request”.

FOI APPLICATION

5. On the 8th November 2022, the applicant applied for a decision notice pursuant to article 23(1)(a) of the Act, requesting the Information and Data Protection Commissioner (the “**Commissioner**”) to decide whether the request for information made by the applicant to the Public Authority has been dealt with in accordance with the requirements of the Act.
6. The applicant referred to the Parliamentary Question 10194 dated the 13th May 2019, which provides as follows:

*“L-Onorevoli SIMON BUSUTTIL staqsa lill-Onorevoli KONRAD MIZZI (**Ministru għat-Turiżmu**): Jista’ l-Ministru jwieġeb il-mistoqsija parlamentari 9513 u 9712 u ċjoe: B’referenza għall-mistoqsija parlamentari 9237 li fiha l-Ministru għat-Turiżmu ammetta li żar Dubai fil-leġiżlatura li għaddiet, jista’ l-Ministru jgħid meta żar Dubai, bid-dati preċiżi taż-żjarat, għal liema raġuni mar, kemm dam, jekk kienx akkumpanjat minn uffiċjali u f’dak il-każ minn min kien akkumpanjat jew jekk kienx hu li akkumpanja lil haddiehor, u f’dak il-każ lil min akkumpanja? Jista’ jgħid ukoll kemm giet tiswa ż-żjara tiegħu, maqsuma fi spejjeż li jirriflettu l-ispejjeż tal-vjaġġ, tal-lukanda, tal-ikel u spejjeż oħra?”*

Tweġiba:

Ninforma lill-Onor. Interpellant li żort Dubai tlett darbiet fuq xogħol tal-Gvern f’Awwissu 2015, fi Frar 2016 u f’Novembru 2016”.

INVESTIGATION

Admissibility of the FOI Application

7. After having considered that the applicant is an eligible person in terms of article 2 of the Act and the nature and the background of the FOI application, together with the procedural steps involved between the applicant and the Public Authority in the request for an electronic copy

of the invoices, the Commissioner deemed the FOI application made by the applicant as admissible for the purpose of article 23(2) of the Act.

The Issuance of the Information Notice

8. As part of the investigation procedure, by means of an information notice dated the 10th November 2022, 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.

Submissions received from the Public Authority and the applicant

9. On the 14th November 2022, the Public Authority provided the following reply: *“Id-dokumenti mitluba mill-applikant lill-Ministeru għat-Turiżmu ma jeżistux billi f’Awwissu 2015, Frar 2016 u Novembru 2016 ma saru ebda żjarat fuq xogħol tal-Gvern la mill-Ministru responsabbli mit-Turiżmu fid-dati msemmija – ossia f’Awwissu 2015, Frar 2016 u Novembru 2016 – u l-anqas minn xi uffiċjali ieħor tal-istess Ministeru għat-Turiżmu. Ir-riferenza tal-applikant għat-tweġiba mogħtija għall-mistoqsija parlamentari bin-numru 10194 in sostenn għat-talba odjerna tiegħu lill-Ministeru għat-Turiżmu hi inapplikabbli billi tirreferi għal perjodu li fiha l-interpellat (fil-mistoqsija parlamentari bin-numru 10194) ma kienx jokkupa l-kariga ta’ Ministru għat-Turiżmu”.*
10. On the 23rd February 2023, the Public Authority submitted to the Commissioner a sworn declaration dated the 14th February 2023, wherein the Public Authority declared that the *“Ministry for Tourism is not in possession of documentation consisting in a copy of the invoices in connection with visits to Dubai on government business by a minister and/or any other official/s of the public authority during August 2015, February 2016 and November 2016. I declare that such documentation is not held by the said public authority, and furthermore, that I have no grounds for believing that the documentation is held by, or connected more closely with, the functions of another public authority within the Ministry for Tourism, in accordance with Article 14(g) of the Freedom of Information Act (Chapter 496 of the Laws of Malta).”*

A copy of the sworn declaration is being marked and annexed as **Doc. IDPC 3**.

11. As part of the investigation procedure of this Office, the Commissioner provided the applicant with the opportunity to rebut the argument of the Public Authority in relation to the refusal of his FOI request. The applicant submitted that “[i]n light of the PA’s reply, it would appear that the circumstances it is describing should have led it to trigger article 8 of the FOI Act Cap. 496”.

LEGAL ANALYSIS AND DECISION NOTICE

12. In the legal analysis of this case, the Commissioner sought to establish whether the Public Authority has complied with the requirements of the Act, when it refused the request of the applicant on the basis of article 14(g) of the Act.
13. For this purpose, the Commissioner assessed article 14(g) of the Act, which states that a request made in accordance with article 6 of the Act may be refused if “*the document requested is not held by the public authority and the person dealing with the request has no grounds for believing that the document is held by, or connected more closely with the functions of, another public authority*”.
14. In this regard, the Commissioner proceeded to examine the FOI request submitted by the applicant on the 14th September 2022, wherein the Public Authority was requested to provide an electronic “*copy of the invoices in connection with visits to Dubai on government business by a minister and/or any other official/s of the public authority during August 2015, February 2016, and November 2016*”. By means of the replies dated the 16th October 2022 and the 7th November 2022, the Public Authority reiterated that it does not hold the requested invoices “*since no such travel has taken place in the above-mentioned dates as alleged in your request*”.
15. The Commissioner established that it was only at the time of the FOI application that the applicant made reference to parliamentary question 10194¹ and subsequently, clarified that his intention was to obtain copies of invoices in connection with visits to Dubai on government business by Dr Konrad Mizzi during August 2015, February 2016, and November 2016.

¹<https://pq.gov.mt/PQWeb.nsf/7561f7daddf0609ac1257d1800311f18/c1257d2e0046dfa1c1258408004d79b7!OpenDocument>

16. The Public Authority argued that Dr Konrad Mizzi did not serve as the Minister for Tourism during the period indicated in the FOI request² and consequently, the Public Authority did not hold the requested invoices concerning Dr Mizzi's government trips to Dubai. In addition, by means of a sworn declaration, the Public Authority declared that it does not hold any invoices in connection with visits to Dubai on government business by any of its officials during the timeframe mentioned by the applicant in the FOI request (vide Doc. IDPC 3).
17. However, the applicant contended that “[i]n light of the PA's reply, it would appear that the circumstances it is describing should have led it to trigger article 8 of the FOI Act Cap. 496”. The Commissioner clarifies that the requirement to transfer a request to another authority in terms of article 8 of the Act is triggered if the Public Authority believes that the document is held by another authority, and in such case, the Public Authority shall transfer the request within ten (10) working days after the day on which the request is received.
18. After examining the request dated the 14th September 2022, the Commissioner noted that the applicant requested information in relation to “*a minister and or any other official/s of the public authority during August 2015, February 2016, and November 2016*”. This effectively means that the applicant requested information in relation to the former Minister for Tourism, Dr Edward Zammit Lewis³ and, or any other person who occupied a role within the Ministry for Tourism during the period indicated in the FOI request. Given that at the time of the request, the applicant did not specify to the Public Authority that the information which he is seeking is in relation to Dr Konrad Mizzi, the Public Authority did not have any grounds or reasons to believe that the copies of the invoices may be held by another public authority and thus, the obligation to transfer the request did not materialise.

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 deciding that the refusal of the Public Authority in terms of article 14(g) of the Act is justified.

Ian
DEGUARA
(Signature)

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Ian Deguara
Information and Data Protection Commissioner

² <https://parlament.mt/en/13th-leg/political-groups/independent/mizzi-konrad/>

³ <https://www.parlament.mt/13th-leg/political-groups/partit-laburista/zammit-lewis-edward/>

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.