

Information and Data Protection Commissioner

FOI/64/2022

Christoph Schwaiger

vs

**Ministry for Transport, Infrastructure
and Capital Projects**

REQUEST

1. On the 8th August 2022, Mr Christoph Schwaiger (the “**applicant**”) made a request pursuant to article 6(1) of the Freedom of Information Act (the “**Act**”), Chapter 496 of the Laws of Malta, requesting Infrastructure Malta to provide an electronic “*copy of the letter of resignation of former Infrastructure Malta CEO Fredrick Azzopardi*”.
2. On the 30th August 2022, Infrastructure Malta transferred the request to the Ministry for Transport, Infrastructure and Capital Projects (the “**Public Authority**”) in terms of article 8 of the Act.
3. By means of an email dated the 16th September 2022, the applicant informed the Public Authority through the internal complaints procedure that “*FOI request 513220213223 was submitted on 08/08/2022 and was informed that “a decision on your request within 20 working days from submission of your request.” Till the time of writing, 11:10 16/09/2022 Malta time, no decision has been forthcoming. To this end, the PA is requested to immediately accept the FOI request in full and in the original manner in which it was requested*”.
4. On the 27th October 2022, the Public Authority granted the applicant with access to the requested document pursuant to article 12(1)(b) of the Act.

FOI APPLICATION

5. On the 27th October 2022, the applicant applied to the Information and Data Protection Commissioner (the “**Commissioner**”) for a decision whether, in any specified respect, the request for information made by the applicant to a public authority has been dealt with in accordance with the requirements of the Act in terms of article 23(1)(a) of the Act. The applicant submitted the following salient arguments:
- a. that the applicant was not given access to the documentation on the first instance within the specified time-limit;
 - b. that the applicant was not given a decision following his internal complaint within the specific time-limit;
 - c. that when ultimately decided in the affirmative, owing to the applicant’s diligence in filing valid requests, the requested documentation was unfortunately delivered grossly later; and
 - d. that, in light of the ongoing media reforms, the applicant sought to ease his concerns that this action by the Public Authority was a one-time failure rather than a systematic failure.

INVESTIGATION

Admissibility of the application

6. 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, 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

7. As part of the investigation procedure, by means of an information notice dated the 3rd November 2022, issued in terms of article 24(1)(a) of the Act, the Commissioner requested the Public Authority to provide information within twenty (20) working days in relation to the

application made by the applicant for the purposes of enabling him to determine whether the Public Authority has complied or is complying with the requirements of the Act.

8. Following several reminders sent by this Office, the Public Authority provided its reply on the 15th February 2023 and stated that the *“Ministry is aware that the time frames were not kept in terms of Article 10(a). This was done inadvertently due to the lack of resources, in view that the Ministry is still building adequate administrative capacity. Notwithstanding this, the requested information was sent to the applicant”*.

LEGAL ANALYSIS AND DECISION

9. For the purpose of the investigation of this FOI application, the Commissioner sought to determine whether the Public Authority had handled the request pursuant to the requirement set forth in article 10 of the Act.
10. The Commissioner emphasises that the timeframes stipulated in the Act are necessary to provide the applicants with sufficient assurances that their FOI requests would be handled by the public authorities within the set timeframes. The requirement of the Public Authority to provide a reply to the FOI request within twenty (20) working days is derived from Article 10 of the Act, which provision states that *“the public authority to which a request is made in accordance with article 6 or is transferred in accordance with article 8 shall, as soon as reasonably practicable, and in any case not later than twenty working days after the day on which the request is received by the authority – (a) decide whether the request is to be granted and, if it is to be granted, in what manner and for what charge (if any); and (b) inform the applicant accordingly in writing”* [emphasis has been added].
11. During the course of the investigation, the Commissioner established that the Public Authority had received the request from Infrastructure Malta on the **30th August 2022**. Pursuant to the requirement set forth in article 10 of the Act, the Public Authority had an obligation to reply to the FOI request by no later than the **29th September 2022**. However, it resulted that the Public Authority had granted the applicant access to the requested document on the **27th October 2022**. Thus, the delayed action of the Public Authority had hindered the applicant from exercising his right to access information within the stipulated timeframe [emphasis has been added].

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 Public Authority had infringed article 10 of the Act.

The Commissioner strongly urges the Public Authority to allocate the necessary resources to safeguard the right of applicants to receive the information within the stipulated legal timeframe and ensure that any future requests are handled pursuant to the requirements of the Act.

Ian DEGUARA Digitally signed by Ian
(Signature) DEGUARA (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, Merchant Street
Valletta.**