

**Information and Data Protection Commissioner**

**FOI/13/2023**

**Caroline Muscat**

**vs**

**Lands Authority**

**FOI REQUEST**

1. On the 18<sup>th</sup> January 2023, Ms Caroline Muscat (the **“applicant”**) made a request pursuant to the requirements set forth in article 6(1) of the Freedom of Information Act (the **“Act”**) requesting the Lands Authority (the **“Public Authority”**) to provide an electronic *“[c]opy of all engagement contracts related to Maxilene Bonett until the day of reply of this FOI request”*.
2. On the 31<sup>st</sup> January 2023, the Public Authority informed the applicant that her request could not be met *“as per Art 32(1)(c)(i) of the FOI Act i.e. “the disclosure of such information would or could reasonably be expected to, unreasonably affect that person adversely in respect of his lawful business or professional affairs”*.
3. On the 4<sup>th</sup> March 2023, the applicant submitted a complaint through the Internal Complaints Procedure and requested the Public Authority to reconsider its decision on the basis that the *“PA is obliged to be transparent and accountable on how to spend public funds and who to engage”*.
4. On the 14<sup>th</sup> March 2023, the Public Authority issued its final reply and informed the applicant that *“the Lands Authority reiterates its previous decision of not accepting this request as per Art 32(1)(c)(i) of the Freedom of Information Act”*.

**FOI APPLICATION**

5. On the 16<sup>th</sup> March 2023, 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 Public Authority had dealt with the requirements of the Act when it refused to provide access to the requested document.

### Admissibility of the FOI 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, together with the procedural steps involved between the applicant and the Public Authority in the request for the document, the Commissioner deemed the application made by the applicant as admissible for the purpose of article 23(2) of the Act.

### **INVESTIGATION**

7. As part of the investigation procedure, by means of an information notice dated the 17<sup>th</sup> March 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 had complied with the requirements of the Act. In particular, the Commissioner requested the Public Authority to provide a copy of the document requested by the applicant in order to determine whether the document is indeed exempt from disclosure in terms of the provisions of the Act.
8. On the 30<sup>th</sup> March 2023, the Public Authority submitted the following salient arguments in relation to the information notice issued by the Commissioner:
  - a. that the information being requested by the Public Authority is a type of exempt document which is prohibited from disclosure in terms of article 32(1)(c)(i) of the Act;
  - b. that the Public Authority refused to accede to the request of the applicant on the basis that it would have unreasonably affected Dr Bonett adversely in respect of her professional affairs;
  - c. that said reasoning constitutes one of the legal bases on which an entity could withhold a document in terms of article 35(2) of the Act; and
  - d. that, in addition, and without prejudice to the foregoing, the Public Authority cited article 5(3)(a) of the Act as the employment contract is deemed to be ‘*personal data*’ of the employee, and so said information cannot be relayed to third parties.

A copy of the employment contract was provided by the Public Authority in order to enable the Commissioner to inspect the contents of the requested document.

9. On the 3<sup>rd</sup> April 2023, the Commissioner provided the applicant with the opportunity to rebut the arguments submitted by the Public Authority. However, the applicant informed the Commissioner that she would like to rely on her FOI application and requested the Commissioner to proceed with the decision notice in terms of article 23(3)(b) of the Act.

## LEGAL ANALYSIS AND DECISION NOTICE

10. For the purpose of the investigation of this FOI application, the Commissioner proceeded to inspect the contents of the employment contract entered into between Dr Maxilene Bonett and the Chief Executive Officer of the Lands Authority in relation to the post of ‘*Senior Professional Officer – Legal*’ in order to establish whether the document is indeed exempt in terms of the Act.
11. In the replies dated the 31<sup>st</sup> January 2023 and the 14<sup>th</sup> March 2023, the Public Authority cited article 32(1)(c)(i) of the Act as the reason of the refusal to provide access to the employment contract pertaining to Dr Maxilene Bonett on the basis that “*the disclosure of such information would or could reasonably be expected to, unreasonably affect that personal adversely in respect of his lawful business or professional affairs*”.
12. During the course of the investigation, the Public Authority referred to article 5(3)(a) of the Act and further submitted that the refusal of the FOI request is based on the fact that the employment contract contains the personal data of Dr Maxilene Bonett.
13. After assessing the contents of the employment contract, the Commissioner established that the information contained in the employment contract, specifically the responsibilities and the salary, relating to an identified natural person, constitutes ‘*personal data*’ within the meaning of article 4(1) of the General Data Protection Regulation<sup>1</sup>, and which, generally, triggers the non-applicability of the Act.
14. Disclosure of personal data to the public certainly involves a level of intrusion into the right to the protection of personal data of the individual concerned. However, this has to be seen on a case-by-case basis and disclosure may be warranted depending on a number of criteria, which includes *inter alia*, the nature and content of the information, the contribution to a debate of public interest, the role occupied by the person, the conduct and the reasonable expectation of

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<sup>1</sup> Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation).

the individual concerned, and the circumstances at the time of the collection of the personal data and at the time of the FOI request.

15. As a general rule, individuals occupying headship positions should expect their employment contracts to be disclosed to the public as these roles carry a great level of accountability, particularly, due to the fact that these individuals are entrusted to make decisions and also likely to be responsible for the expenditure of public funds. Consequently, in such cases, disclosure of personal data of individuals occupying headship positions is warranted and in fact, this has been repeatedly confirmed by the Information and Data Protection Appeals Tribunal and the Court of Appeal.
16. However, after inspecting the employment contract, in particular the annual salary and the key responsibilities assigned to the role of a ‘Senior Professional Officer - Legal’, it resulted that Dr Maxilene Bonett does not occupy a headship position where she is responsible for making decisions or managing the Public Authority, and, thus, there is no overriding public interest which would merit the disclosure of her employment contract to the public.

**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 to provide a “[c]opy of all engagement contracts related to Maxilene Bonett until the day of reply of this FOI request” is justified on the basis of article 5(3)(a) of the Act.**

Ian  
DEGUARA  
(Signature)

Digitally signed  
by Ian DEGUARA  
(Signature)  
Date: 2023.06.14  
11:18:23 +02'00'

**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.