

THE FREEDOM OF INFORMATION REQUEST

1. On the 18th April 2023, Ms Caroline Muscat (the “**applicant**”) submitted a request to Air Malta (the “**Public Authority**”) pursuant to article 6(1) of the Freedom of Information Act, Chapter 496 of the Laws of Malta (the “**Act**”), requesting “*[a] copy of all engagement contracts related to the Executive Chair until the date of reply to this FOI [and a] list of directorships and related honoraria/payments made to Executive Chair as representative of Air Malta on boards of subsidiaries or companies where Air Malta has a stake during 2021, 2022 and 2023 until date of reply to this FOI*”.
2. By means of a communication dated the 18th May 2023, the Public Authority acceded to the request by saying that the applicant “*will be given access to the document/information requested which was submitted on 18/04/2023 within a maximum of ten days from payment of applicable fee (if such fee has been charged). The document/information will be in the format communicated earlier by the Public Authority*”.
3. On the 19th May 2023, through the Internal Complaints Procedure, the applicant requested the Public Authority to revise its decision according to the law as “*no documents have been forwarded to [her] with this e-mail, as requested, despite the PA said that all our requests have been met*”.
4. On the 1st of June 2023, the Public Authority refused the applicant’s request on the basis that, “*[n]o document was provided, because there are no engagement contracts between Air Malta and the Executive Chair*”.

INVESTIGATION

Admissibility of the application

5. After having considered the nature and background of this application, together with the procedural steps involved between the applicant and the Public Authority in the request for information, the Commissioner considered the application as admissible for the purpose of article 23(2) of the Act.

Submissions received from the Public Authority

6. As part of the investigation procedure, by means of an information notice dated the 8th of June 2023, issued in terms of article 24(1)(a) of the Act, the Public Authority was requested to provide information in relation to the freedom of information application for the purposes of enabling the Commissioner to exercise his functions under the Act, and to determine whether the Public Authority has compiled or is complying with the requirements of the Act.
7. On the 4th of July 2023, the Public Authority provided its written submissions and submitted the following considerations for the Commissioner to take into account during the legal analysis of this case:
 - a. that *“1. There are no engagement contracts between the Executive Chair and Air Malta p.l.c.;*

2. The Executive Chair holds non-executive directorships representing Air Malta in the following associated Companies:
 - *World Aviation Group Ltd.*
 - *World Aviation Systems Ltd.*
 - *Centrecom Ltd.*
 - *Aviation Online Ltd.*
 - *BPO Services Ltd. Aviation Services Handling Ltd.*
3. The Executive Chair does not receive any honoraria, directors’ fees, payments or any other form of remuneration, including the years 2021, 2022 up to present date, from these associated companies”.
 - b. that the case was *“ticked as ‘Accepted in Full’”* erroneously, and upon a request for clarification by the applicant, the Public Authority on 19th May 2023 clarified that

“there are no documents to attach” and reiterated the three explanations that have been mentioned;

- c. that *“it was clearly evident that the case had been noted as ‘Accepted in Full’ and not ‘Accepted in Part’ on the FOI portal in error, and the above reply was within the parameters of the original request, and included details of the associated companies in which Mr Curmi is a director appointed by Air Malta. As regards remuneration from these associated companies Mr Curmi reconfirms that no remuneration is received by him from these companies”*.
- d. that in relation to the engagement contracts related to the Executive Chair, the Public Authority submits that *“Mr. Curmi’s appointment as Executive Chair of the Air Malta Board is made by the shareholder, viz. the Ministry of Finance and Employment on behalf of the Government of Malta. There is no engagement contract between Air Malta and Mr David Curmi, but there is a Consultancy Agreement with the Ministry of Finance and Employment to provide services that includes also the role of Chief Executive Officer of Air Malta. The annual consideration for these services is stipulated in the same agreement”*.

LEGAL ANALYSIS AND DECISION

8. Having examined the request submitted by the applicant pursuant to article 6(1) of the Act, whereby the Public Authority was requested to provide *“[a] copy of all engagement contracts related to the Executive Chair until the date of reply to this FOI [and a] list of directorships and related honoraria/payments made to Executive Chair as representative of Air Malta on boards of subsidiaries or companies where Air Malta has a stake during 2021, 2022 and 2023 until date of reply to this FOI”*.
9. Having taken into account the decision taken by the Public Authority in relation to the refusal to provide a copy of the requested information on the basis that *“[t]here are no engagement contracts between the Executive Chair and Air Malta p.l.c.”*.
10. Having assessed the sworn declaration submitted to the Commissioner during the course of the investigation, whereby the Director and Executive Chairman of the Public Authority declared that *“[t]here is no engagement or employment contract between myself and Air Malta plc”* and that *“throughout 2021, 2022 and up to now [he has] not and does not receive any honoraria,*

directors' fees, payments or any other form of remuneration in respect of the above non-executive directorships" [annexed and marked at 'DOC. 1'] .

11. Having also taken into account the Director and Executive Chairman's assertion that "*there is a Consultancy Agreement with the Ministry of Finance and Employment to provide consultancy, strategic guidance and advice to the Ministry and, more specifically to perform the role of Executive Chairman of Air Malta p.l.c. which includes the role of Chief Executive Officer of the Company*".

12. Having examined the reply provided by the Public Authority for refusing to comply with the applicant's request.

Pursuant to article 23(4)(b) of the Act, the Public Authority failed to comply with the requirements of Part II, in particular, with article 15(1)(a) thereof, as it did not provide the applicant with the appropriate and suitable reasons to enable the applicant to understand the refusal of her request in terms of article 14(a) to (h). The Commissioner rebukes the Public Authority on the manner how the applicant's request was handled and emphasises on the requirements incumbent of public authorities to provide applicants with clear and correct reasons when refusing requests for information.

On the basis of the foregoing, in terms of article 23(3)(b) of the Act, the Commissioner hereby decides that, insofar as the facts that he could establish in terms of his powers under the Act, the Public Authority does not hold the requested document.

Ian
DEGUARA
(Signature) Digitally signed
by Ian DEGUARA
(Signature)
Date: 2023.07.27
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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 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 Tribunal shall be made in writing and addressed to:

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