

CDP/COMP/847/2023

[REDACTED]
vs
[REDACTED]

COMPLAINT

1. On the 15th September 2023, [REDACTED] (the “**complainant**”) lodged a complaint with the Information and Data Protection Commissioner (the “**Commissioner**”) in terms of article 77(1) of the General Data Protection Regulation¹ (the “**Regulation**”) alleging that the [REDACTED] (the “**controller**”) unlawfully published the results of the interview for the position of a [REDACTED], including his full name and identity card number at both the [REDACTED] and the [REDACTED]. As supporting documentation, the complainant provided a photo of the result sheet in connection with the post of the [REDACTED] as per [REDACTED].

INVESTIGATION

2. Pursuant to the investigation procedure of this Office, the Commissioner gave the controller the opportunity to provide its submissions in relation to this case in order to defend itself against the allegation raised by the complainant. By means of an email dated the 21st November 2023, the controller submitted the following salient arguments for the Commissioner to consider during the legal analysis of this case:

¹ 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).

- a. that the results of public calls issued by the Public Service are regulated by the Manual on Industrial Relations and the Selection and Appointment Process under Delegated Authority in the Malta Public Service (the “Manual”);
- b. that section 5.1 of the Manual provides that the results are published for access to the general public, which section reads as follows: “*In the case of posts/positions below salary scale 5, the result shall be immediately displayed on a notice board, accessible to the public, in the respective Ministry and department and on the notice boards in all the other offices, branches or institutions of the department where the vacancies exist. A note should be posted on the notice board stating that no photos of results may be taken*”;
- c. that, therefore, the controller acted and published the results completely in line with the mentioned provisions of the Manual;
- d. that at application stage, the applicant is informed of the publication of the result on the notice board, and consequently, the controller referred to clause 9 of the [REDACTED] issued on [REDACTED] which reads as follows:

“Other general provisions concerning this call for applications, with particular reference to:

applicable benefits, conditions and rules/regulations;
reasonable accommodation for registered persons with disability;
the submission of recognition statements in respect of qualifications;
the publication of the result;
the process for the submission of petitions concerning the result;
medical examination;
access to application forms and related details;
retention of documents;

*may be viewed by accessing the website of the People & Standards Division at the address [REDACTED]
or may be obtained from the Human Resources Department, [REDACTED]
[REDACTED] These general provisions are to be regarded as an integral part of this call for applications.”*

- e. that the general provisions document linked with the call informs the applicants that “[i]n the case of posts below Scale 5, the result will be published by, and exhibited on the notice board of, the Department/Division/Directorate which is issuing the call for applications”;
 - f. that the document used for the publication of such results is pursuant to the templates and acts in accordance with the instructions issued by the pertinent Directorate responsible for the harmonised HR procedures across the general public service;
 - g. that, as a result, the controller followed the applicable procedures as per cited Manual and even provided the necessary information to the complainant of such publication prior to the submissions of his application; and
 - h. that the controller referred to the photo provided by the complainant with the full results of the call for applications and stated that the complainant breached the instructions attached to the notice board which clearly state that no photos shall be taken.
3. On the 23rd November 2023, in terms of article 58(1)(a) of the Regulation, the Commissioner requested the controller to indicate if the Manual cited in its submissions is derived and established by law. The controller replied that the Manual in question is issued in terms of article 15 of the Public Administration Act (Cap. 595 of the Laws of Malta), which reads as follows:

“15. (1) The Principal Permanent Secretary may issue directives as variously specified in this Act and may in addition issue directives on any matter relating to the organisation and management of the public service.

(2) Public officers shall comply with all applicable directives issued by the Principal Permanent Secretary, and officers who fail to comply shall be liable to proceedings under the Disciplinary Regulations.

(3) Directives issued by the Principal Permanent Secretary may apply for a definite or an indefinite period and to any or all ministries, department, specialised units and public officers, according to the nature of the provisions contained therein or as specified by the Principal Permanent Secretary.

(4) The Principal Permanent Secretary may codify standing directives, together with any amendments that he may make thereto from time to time, in the form of the Public Service Management Code or other manual on specific matter which he may issue for this purpose.

(5) The Prime Minister may give directions to the Principal Permanent Secretary concerning the issue, amendment or revocation of any directives.”

4. The Commissioner provided the complainant with the opportunity to rebut the submissions of the controller, however, the complainant did not wish to make any further submissions, and therefore, the Commissioner proceeded with the legal analysis of this case.

LEGAL ANALYSIS AND DECISION

5. For the purpose of this complaint, the Commissioner proceeded to determine whether the controller had a valid lawful basis pursuant to article 6(1) of the Regulation to publish the full name and identity card number of the complainant, and to display this information on a notice board which is made accessible to the public.
6. Together with his complaint, the complainant submitted a photo of the result sheet, which shows the full names and identity card numbers of all the candidates in an order of merit and the marks obtained. For this reason, the Commissioner requested the controller to justify this processing activity, which involves the making available of the full name and identity card number of the eligible, interviewed candidates who obtain a pass mark.
7. The Commissioner highlights that every processing operation which falls within the meaning of article 4(2) of the Regulation needs to have a legal basis in terms of article 6(1) of the Regulation. Pursuant to the principle of accountability as set forth in article 5(2) of the Regulation, the controller shall be responsible for, and be able to demonstrate the lawfulness of the processing activity.
8. The Court of Justice of the European Union (the “CJEU”) held that *“Article 7 of Directive 95/46 sets out an exhaustive and restrictive list of cases in which the processing of personal data can be regarded as being lawful and that the Member States cannot add new principles relating to the lawfulness of the processing of personal data or impose additional requirements that have the effect of amending the scope of one of the six principles provided for in that*

article”². In a recent judgment, the CJEU reaffirmed that “*it must be pointed out that any processing of personal data ... must satisfy the conditions of lawfulness set by Article 6 of the GDPR*”³ [emphasis has been added].

9. It therefore follows that the processing of personal data is deemed lawful if it comes within one of the six grounds as mentioned in article 6(1) of the Regulation, which are as follows: (a) consent; (b) contract; (c) compliance with a legal obligation; (d) vital interest; (e) performance of a task carried out in the public interest or in the exercise of official authority vested in the controller; and (f) legitimate interest. In the present case, the controller needed to demonstrate that the processing of the personal data pertaining to the complainant was based on at least one of these legal grounds.
10. During the course of the investigation, the controller explained that the requirement to publish the results of public calls issued by the Public Service and to display them on a notice board are requirements which are derived from the Manual on Industrial Relations and the Selection and Appointment Process under Delegated Authority in the Malta Public Service.
11. The Commissioner proceeded to examine paragraph vi of section 4.2 of the Manual, which states that the result sheet (order of merit) shall contain the following information:

“the set maximum mark and pass mark, the names and ID numbers of eligible, interviewed candidates in order of merit, and the final mark given. In the case of candidates who fail to obtain a pass mark, the name is to be omitted and the letter “F” is to be inserted in the “Order of Merit” column. The result sheet should include only successful and failed candidates. Each copy of the result sheet is to have the full name and signature of the Chairperson and each member of the Selection Board on each page” [emphasis has been added].

12. Additionally, section 5.1 of the Manual requires the controller to publish the result sheet on a notice board, which is accessible to the public:

“In the case of posts/positions below salary scale 5, the result shall be immediately displayed on a notice board, accessible to the public, in the respective Ministry and department and on the notice boards in all the other

² Case C-582/14, Patrick Breyer vs Bundesrepublik Deutschland, decided on the 19th October 2016, para. 57.

³ Case C-268/21, Norra Stockholm Bygg AV v Per Nycander AB, decided on the 2nd March 2023, para. 29.

offices, branches or institutions of the department where the vacancies exist.
A note should be posted on the notice board stating that no photos of results may be taken.” [emphasis has been added].

13. Accordingly, the Commissioner proceeded to examine article 15(4) of the Public Administration Act (Cap. 595 of the Laws of Malta), which states that the “*Principal Permanent Secretary may codify standing directives, together with any amendments that he may make thereto from time to time, in the form of the Public Service Management Code or other manuals on specific matters which he may issue for this purpose*”. The Commissioner noted that for the purpose of the Public Administration Act, the Manual is considered to be a codification of standing directives. Given that the Manual is assigned the legal status of a directive under the Public Administration Act, the provisions of the Manual are binding and enforceable in terms of article 15(2) of the Public Administration Act.
14. Article 15(2) of the Public Administration Act further states that “[p]ublic officers shall comply with all applicable directives issued by the Principal Permanent Secretary, and officers who fail to comply shall be liable to proceedings under the Disciplinary Regulations”. Therefore, the Commissioner noted that failure to comply with the Manual issued by the Principal Permanent Secretary will result in disciplinary action pursuant to the Public Service Commission Disciplinary Regulations (S.L. Const.07).

Although the Commissioner may not necessarily agree with the contents of the Manual, in particular those sections which deal with the publication of results sheets including the full names of eligible, interviewed candidates who obtain a pass mark, the Commissioner is deciding that the controller’s obligation to publish the full name and identity card number of the complainant, and to display this information on a notice board which may be accessed by the public, is derived from paragraph vi of section 4.2 and section 5.1 of the Manual on Industrial Relations and the Selection and Appointment Process under Delegated Authority in the Malta Public Service, and therefore, the processing activity is deemed to be lawful in terms of article 6(1)(c) of the Regulation.

Ian
DEGUARA
(Signature)

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by Ian DEGUARA
(Signature)
Date: 2024.02.16
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Ian Deguara
Information and Data Protection Commissioner

Right of Appeal

The parties are hereby being informed that in terms of article 26(1) of the Data Protection Act (Cap. 586 of the Laws of Malta), any person to whom a legally binding decision of the Commissioner is addressed, shall have the right to appeal to the Information and Data Protection Appeals Tribunal within twenty (20) days from the service of the said decision as provided in article 23 thereof.

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.