

[REDACTED]

vs

[REDACTED]

## COMPLAINT

1. On the 22<sup>nd</sup> November 2023, Ms [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 Regulation<sup>1</sup> (the “Regulation”) alleging that the [REDACTED] (the “controller”) published her full name and identity card number on its website even though she is not a scholarship awardee of the [REDACTED]. The complainant referred to section 13.9 of the [REDACTED] (the [REDACTED]), which states that the [REDACTED]. As supporting documentation, the complainant submitted a copy of the list published on the website of the controller<sup>2</sup>, which shows her name, surname, and identity card number.

## INVESTIGATION

2. Pursuant to the internal investigation procedure of this Office, the Commissioner provided the controller with a copy of the complaint and requested the controller to submit any information which it deemed relevant and necessary to defend itself against the allegation raised by the

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<sup>1</sup> Regulation (EU) 2016/679 of the European Union 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.

[REDACTED]

complainant. By means of a letter dated the 18<sup>th</sup> December 2023, the controller submitted the following:

- a. that the complainant submitted her online electronic application for [REDACTED] on the 26<sup>th</sup> June 2023 and upon submission, the complainant automatically received a copy of her application via email on the email address she provided;
- b. that when submitting her application, the complainant confirmed that she had “*read and agreed to the [REDACTED]*” by ticking the appropriate box;
- c. that the [REDACTED] are publicly available on the [REDACTED] website:  
[REDACTED]  
[REDACTED]
- d. that section 13.8 of the [REDACTED] read as follows: [REDACTED]  
[REDACTED]  
[REDACTED] *In applying for an award, Applicants shall give consent for such publication if their application is successful”;*
- e. that following the submission of the application, the complainant was called for an interview on the 18<sup>th</sup> August 2023, and given that the complainant was successful in her interview, the complainant was provisionally selected for the scholarship as per section 10.3<sup>3</sup> of the [REDACTED];
- f. that the name, surname, and identity card number of the complainant, together with her ranking and total marks, were published on the [REDACTED] website in line with section 13.8 of the [REDACTED];
- g. that the list was published on the 14<sup>th</sup> November 2023 and on the same day all [REDACTED] applicants were also notified via email;

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<sup>3</sup> “An Applicant is considered to have passed the interview if the Applicant obtains a pass mark (that is 50% of the total allotted marks) in each one of the criteria (b), (c) and (d) above. Obtaining a pass mark does not automatically mean that a [REDACTED] is being awarded”.

- h. that further to the [REDACTED], on the 2<sup>nd</sup> June 2023, the controller held an online information session for prospective [REDACTED] and the applicants were once again informed of the publication of the rankings;
  - i. that the publication of personal data, namely ID card number, name, and surname, of applicants provisionally selected for the [REDACTED] the Ranking Order list is based on article 6(1)(e) of the Regulation which states that the processing shall be lawful if *“processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller”*;
  - j. that [REDACTED] financed by [REDACTED], i.e., through public funds and thus, the controller is obliged to ensure accountability, integrity and transparency in the disbursement of the total annual government budget allocation for the [REDACTED] not only to the successful applicants who are competing for such a scholarship but also to the public at large;
  - k. that the annual budget is allocated to a number of successful applicants based on the ranking order and thus the publication of the identity of each successful applicant in the ranking order is essential in the public interest; and
  - l. that it is amply evidence that the controller did its utmost to inform the complainant and all [REDACTED] applicants that, should their application be deemed successful, the ID card number, name and surname would be published on the [REDACTED] website on the Rankings Order list, which processing was done in accordance with the principles of article 5 of the Regulation.
3. The Commissioner provided the complainant with the opportunity to rebut the submissions of the controller. By means of an email dated the 20<sup>th</sup> December 2023, the complainant submitted the following salient arguments for the Commissioner to consider during the legal analysis of the case:
- a. that section 13.8<sup>5</sup> of the [REDACTED] states *“provisionally selected”*, which phrase leaves ample room for interpretation as it is not straightforward and clear as to whose information is to be published;

[REDACTED]

<sup>5</sup> Section 13.8 of the [REDACTED] *“reserves the right to publish the names and I.D numbers of Applicants provisionally selected for [REDACTED] the website*

- b. that the website does not specify that the department reserves the right to publish the information of all those who pass the interview; and
  - c. that section 13.8 of the [REDACTED] provides that the controller has the “*right to publish the names and I.D numbers of Applicants*” yet those were published together with the relevant grades, which are not mentioned.
4. On the 12<sup>th</sup> March 2024, the controller provided its final submissions in relation to this complaint and submitted the following:
- a. that the selection process for the [REDACTED] is explained, step by step, in the said [REDACTED] during the information session for all applicants and in the email sent by the [REDACTED] with the rankings;
  - b. that it is therefore clear that applicants who pass the interview are deemed to be successful applicants eligible for the scholarship, and thus, are provisionally selected and due to the differences in the amounts to be disbursed according to each scholarship, it is next to impossible to determine how many and who of these successful applicants are actually awarded the scholarship;
  - c. that this also depends on the total annual government budget allocation for the [REDACTED] [REDACTED] which is then disbursed according to the ranking list and that there might also be instances where a person is offered a scholarship and for various reasons, this is refused and thus it goes to the next on the list;
  - d. that in her original complaint, the complainant stated that the controller committed a personal data breach by publishing her ID card number, name and surname on the [REDACTED] website and did not refer to the relevant grades, and therefore, the second argument raised in the rebuttal of the submissions is not related to her original complaint but rather an addition to it;
  - e. that without prejudice to the above, the controller is obliged to ensure accountability, integrity and transparency in the disbursement of the total annual government budget allocation for the [REDACTED] not only to the successful applicants who are competing for such a scholarship but also to the public at large; and

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[REDACTED] *In applying for an award, Applicants shall give consent for such publication if their application is successful.*”

- f. that it is thus in the public interest to publish the ranking order, the identity (name, surname, ID number) and total marks of each successful applicant in the ranking order.
5. The Commissioner referred to the submissions provided by the controller, wherein it submitted that the processing activity is based on article 6(1)(e) of the Regulation. In terms of article 58(1)(a) of the Regulation, the Commissioner requested the controller to clarify which is the legal provision upon which it is relying to process the data of the complainant. The controller submitted that it is relying on the first part of article 6(1)(e) of the Regulation which states that processing shall be lawful if “*processing is necessary for the performance of a task carried out in the public interest*” and provided the following:

- a. that the State is duty bound to offer tertiary education and this is done in multiple formats and the controller does not believe that all formats need to be included in the law;
- b. that the law states that the State is to ensure the provision of post compulsory and tertiary education, and this takes place in different formats, such as the provision of teaching through various institutions as well as various scholarship schemes;
- c. that article 4(2)(f) of Cap. 605 states as follows: “*In particular, it shall be the duty of the State to ensure the provision of post-compulsory and tertiary education for students who have completed their secondary education*”; and
- d. that without prejudice to the above, article 11 of the Constitution reads as follows:

*“11(1) Capable and deserving students, even if without financial resources, are entitled to attain the highest grades of education.*

*(2) The State shall give effect to this principle by means of scholarships, of contributions to the families of students and other provisions on the basis of competitive examinations.”*

## **LEGAL ANALYSIS AND DECISION**

6. For the purpose of this legal analysis, the Commissioner shall solely focus on the subject-matter of the complaint, which is strictly related to the publication of the name, surname and identity card number of the complainant on the website of the controller<sup>6</sup>. Therefore, the Commissioner

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last accessed by this Office on the 12<sup>th</sup> April 2024.

sought to establish whether the processing activity conducted by the controller, namely the publication of the personal data of the complainant on the website of the controller, is compliant with the provisions of the Regulation.

7. As a preliminary step of the investigation, the Commissioner sought to establish the legal basis of the processing activity conducted by the controller in terms of article 6(1) of the Regulation. 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.
8. The submissions of the controller referred to section 13.8 of the [REDACTED], which reads as follows: "[REDACTED] reserves the right to publish the names and I.D numbers of Applicants provisionally selected for [REDACTED] [REDACTED] ***In applying for an award, Applicants shall give consent for such publication if their application is successful***" [emphasis has been added]. The controller explained that it publishes the names, surnames, and identity card numbers of all the applicants who are provisionally selected for a scholarship due to the differences in the amounts to be disbursed according to each scholarship, and therefore, it is impossible to determine how many and who of these successful applicants are actually awarded the scholarship.
9. The Commissioner clarifies that consent shall only serve as the appropriate legal basis if it is freely given, specific, informed, and unambiguous. In such case, consent is not the appropriate legal basis as it could never fulfill all the conditions of consent. Despite the fact that the [REDACTED] [REDACTED] appear to indicate that consent is the legal basis of the processing, the controller stated that the processing activity is based on the first part of article 6(1)(e) of the Regulation, which provides that processing is necessary for the performance of a task carried out in the public interest.
10. Article 6(3) of the Regulation states that the basis for the processing referred to in article 6(1)(e) of the Regulation shall be laid down by EU law or Member State law to which the controller is subject. The corresponding recital 45 delineates that this does not have to be an explicit statutory provision insofar as the legal basis or legislature measure is clear and precise and its application should be foreseeable to persons subject to it.

11. The Court of Justice of the European Union in the judgment ‘Norra Stockholm Bygg AB vs Per Nycander AB’<sup>7</sup> held that:

*“The combined provisions of Article 6(1)(e) of the GDPR and Article 6(3) thereof therefore require there to be a legal basis – national in particular – which serves as a basis for the processing of personal data by the relevant controllers acting in the performance of a task carried out in the public interest or in the exercise of official authority”.*

12. For this reason, the Commissioner sought a clarification in relation to article 6(1)(e) of the Regulation and requested the controller to clearly specify the law which lays down the task(s) of the controller. The controller explained that the State has an obligation to ensure the provision of tertiary education and to enable capable and deserving students to attain the highest grades of education by means of scholarships on the basis of competitive examinations. Accordingly, the Commissioner examined the following provisions, which were cited by the controller in its reply dated the 1<sup>st</sup> April 2024:

Article 4(2)(f) of the Education Act (Cap. 605 of the Laws of Malta):

*“(2) In particular, it shall be the duty of the State –*

*...*

*(f) to ensure the provision of post-compulsory and tertiary education for students who have completed their secondary education”.*

Article 11 of the Constitution:

*“11. (1) Capable and deserving students, even if without financial resources, are entitled to attain the highest grades of education.*

*(2) The State shall give effect to this principle by means of scholarships, of contributions to the families of students and other provisions on the basis of competitive examinations”.*

13. In such case, the Commissioner is of the view that making available the names, surnames and identity card numbers of applicants provisionally selected for scholarships in a ranking order is

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<sup>7</sup> Case C-268/21, decided on the 2<sup>nd</sup> March 2023.

indeed necessary for the performance of a task carried out in the public interest. This is also necessary to ensure transparency in the selection process and the manner how public funds are disbursed, in particular, considering that the State has an obligation to offer education to capable and deserving students by means of scholarships on the basis of competitive examinations. This is also in line with the principle of good administration as well the spirit of the Freedom of Information Act (Cap. 496 of the Laws of Malta). Whereas the FOI Act does not impose an obligation upon the public authorities to act proactively, public authorities are encouraged to promote added transparency and ensure accountability in the performance of their public tasks.

14. However, making available the data to the public should be carried out in a manner to respect the rights and freedoms of the data subjects and subject to the appropriate safeguards in accordance with the principles set forth in article 5 of the Regulation. To this end, the controller should demonstrate that it had conducted a proper balance between, on the one hand, the objective of public interest pursued by the publication of the data on its website, and on the other hand, the rights, and freedoms of the data subjects.
15. For this reason, the Commissioner considered the risks which are associated with the online environment, particularly, that the data are published on the website of the controller without any controls or safeguards, and consequently, the data are accessible to a potentially unlimited number of persons, with the result that such processing of personal data is freely accessed by individuals who, for reasons completely unrelated to the objective pursued by the controller, could possibly use and abuse. By making use of open-source software, nowadays information published by the controller on its website may be scraped by unknown individuals and coupled with other information obtained from public sources, such as social media or public registers, to create profiles and used for reasons which may go beyond the legitimate ones pursued by the controller. The CJEU also recognises the risks which are related to the publication of personal data on the internet:

*“Furthermore, the potential consequences for the data subjects resulting from possible abuse of their personal data are exacerbated by the fact that, once those data have been made available to the general public, they can not only be freely consulted, but also retained and disseminated and that, in the event of such successive processing, it becomes increasingly difficult, or even illusory, for those data subjects to defend themselves effectively against abuse”<sup>8</sup>.*

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<sup>8</sup> Joined Cases C-37/20 and C-601/20, decided on the 22<sup>nd</sup> November 2022, para. 43.



16. Mindful of the risks to the rights and freedoms of the data subjects which are associated with the online environment, the Commissioner emphasises that the controller should always seek to implement those measures which are the least intrusive to achieve its intended objective, such as, giving the public a reasonable opportunity to inspect the document at its premises. In the present case, the objective of the controller could be effectively achieved by using other means which pose less risks to the rights and freedoms of the data subject.

**On the basis of the foregoing considerations, the Commissioner is hereby deciding that the controller failed to take into account the risks to the rights and freedoms of the data subjects which are presented by the publication of personal data on its website and to effectively demonstrate that the interference with the complainant's right to the protection of personal data is proportionate, especially after considering that the objective of the controller could be effectively achieved by other means which are less intrusive, such as by making the printed lists available on the controller's noticeboard.**

**By virtue of article 58(2)(d) of the Regulation, the Commissioner is ordering the controller to remove the list from its website and make the necessary amendments to the [REDACTED] within twenty (20) days from the date of receipt of this decision and inform the Commissioner of the action taken immediately thereafter.**

Ian  
DEGUARA  
(Signature)

Digitally signed  
by Ian DEGUARA  
(Signature)  
Date: 2024.04.12  
13:27:58 +02'00'

**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.