

FREEDOM OF INFORMATION REQUEST

1. On the 5th October 2022, Prof. Arnold Cassola (the “**applicant**”) made a freedom of information request pursuant to the requirements set forth in article 6(1) of the Freedom of Information Act (Cap. 496 of the Laws of Malta) (the “**Act**”), wherein Infrastructure Malta (the “**Public Authority**”) was requested to provide an electronic copy of the following information:

“In relation to the following articles

<https://timesofmalta.com/articles/view/marsa-junction-project-investigated-potential-corruption.984356>

<https://timesofmalta.com/articles/view/inside-marsa-project-yorgens-fee-debtridden-bidder-billionaire.984362>

*1. The article states that Robert Yildirim states (in relation to the Marsa Project) “I had zero earnings. Thank God Infrastructure Malta gave some side roads for us to asphalt, at a very cheap price.” Please provide copies of all tenders, direct orders, agreements which Infrastructure Malta made with Robert Yildirim and/or any company/joint venture/collective or partnership with which he is/was involved including (but not limited to) Shining Star Infrastructure and Construction. Kindly provide rates of remuneration provided. (“**Request I**”)*

2. Copies of any form of communication - including but not limited to emails/Whatsapp/text or hard copies - from Infrastructure Malta (including past officers such as the former CEO Fredrick Azzopardi) to former Transport Minister Ian Borg or to the Ministry of Transport or Infrastructure regarding

Ayhanlar difficulties in completing the project/ Robert Yildirim's involvement in the Project. (“Request II”)

3. Date, time, duration, location, minutes and description of people present during any meetings where Mr Yildirim was introduced to the minister Ian Borg/his Ministry (This meeting is referred to by Minister Ian Borg himself). (“Request III”)

4. Copy of minutes of meeting of Board of Directors of Infrastructure Malta when the Marsa Project, Aylanhar, Mr Robert Yildirim, Shining Star Infrastructure and Construction was discussed. (“Request IV”)

5. Copy of resolution of Infrastructure Malta Board of Directors authorising the re-assignment of the tender to Mr Yildirim's Shining Star Infrastructure and Construction. (“Request V”)

5. If the above does not exist, copies of the authorization from within Infrastructure Malta authorising the re-assignment of the tender to Mr Yildirim's Shining Star Infrastructure and Construction” (“Request VI”).

2. On the 3rd November 2022, the Public Authority informed the applicant that his request was being extended by up to twenty (20) working days pursuant to article 11(1)(a) of the Act on the basis that *“the request is for a large number of documents or necessitates a search through a large number of documents”*.
3. On the 15th November 2022, the Public Authority informed the applicant that *“by virtue of Part V or Part VI, there is good reason for withholding the document requested. Disclosure of information related to the Marsa project works is excluded as per Freedom of Information (FOI) Act. Rates for other works carried out at Hal Far, Paola, Pieta and Mqabba are all public domain”*.
4. On the 16th November 2022, the applicant presented a complaint through the internal complaints procedure seeking the reconsideration of the refusal of the Public Authority, for the following reasons:

“On the 15th November 2022 Infrastructure Malta refused my request for the reasons indicated below. I am making this request for the reconsideration of this refusal. My comments are below in bold.

Infrastructure Malta said:

"With reference to your request dated 05/10/2022 received by Infrastructure Malta, we regret to inform you that your request/complaint cannot be met because: by virtue of Part V or Part VI, there is good reason for withholding the document requested." Infrastructure Malta did not specify what the reason was. It gave a generic reply. Part V or Part VI (Infrastructure Malta did not even specify which part) include some 35 subarticles - yet Infrastructure Malta did not specify which one of these subarticles it is basing its reasons of refusal on. Infrastructure Malta is simply being vague and not providing reasons as every public authority is duty bound to do.

Infrastructure Malta said,

"Disclosure of information related to the Marsa project works is excluded as per Freedom of Information (FOI) Act. Rates for other works carried out at Hal Far, Paola, Pieta and Mqabba are all public domain." Again this is a vague non-answer which does not even specify which part of the FOI Act Infrastructure Malta is relying on. Moreover it is not even clear which parts of the request are being refused.

Kindly answer my FOI request”.

5. On the 1st December 2022, the Public Authority reiterated its decision, by stating that, *“by virtue of Part V or Part VI, there is good reason for withholding the document requested. Mr Cassola, your FOI request has been already answered in FOI RefNo: 513220923365”.*

ISSUANCE OF AN ENFORCEMENT NOTICE

6. On the 1st December 2022, the applicant submitted his initial application to the Information and Data Protection Commissioner (the **“Commissioner”**) to investigate the case¹. After considering the replies provided by the Public Authority, it transpired that the Public Authority failed to comply with the requirements of Part II of the Act, in particular, article 15(1)(a) thereof, as it did not provide the applicant with a sufficient reason to enable him to understand

¹ Registered internally with file number CDP/FOI/84/2022.

the refusal of his request in terms of article 14(a) to (h). Therefore, pursuant to article 25(1) of the Act, the Commissioner issued an Enforcement Notice dated the 7th December 2022, and requested the Public Authority to comply with the provisions of the Act and thus, provide the applicant with the appropriate legal justifications for refusing his request.

7. On the 16th January 2023, the Public Authority complied with the instructions of the Commissioner given in the Enforcement Notice and informed the applicant that his request was being refused on the basis that: “[d]isclosure of information related to the Marsa project works is excluded as per Freedom of Information (FOI) Act, under article 30 (1), since these works are subject to investigations by competent entities. With regards to requests for Whatsapp communications, kindly note that the Agency is not in possession of such requested communications. Other information requested involving meetings with MTIP, and authorisations are to be referred to MTIP and the Department of Contracts respectively”. A copy of the Public Authority’s reply is being marked and annexed as **IDPC DN 2**.

FREEDOM OF INFORMATION APPLICATION

8. On the 19th January 2023, the applicant applied for a decision notice pursuant to article 23(1)(a) of the Act, requesting the Commissioner to decide whether the Public Authority had dealt with the requirements of the Act on the basis that:

“I complained (first internally to IM and then to your offices because IM refused my request on the following vague grounds:

With reference to your request dated 05/10/2022 received by Infrastructure Malta, we regret to inform you that your request/complaint cannot be met because: by virtue of Part V or Part VI, there is good reason for withholding the document requested.

An enforcement notice was issued from your office and IM came up with a NEW reason of refusal - namely:

“Disclosure of information related to the Marsa project works is excluded as per Freedom of Information (FOI) Act, under article 30 (1), since these works are subject to investigations by competent entities. With regards to requests for Whatsapp communications, kindly note that the Agency is not in possession of such requested communications. Other information requested involving meetings with

MTIP, and authorisations are to be referred to MTIP and the Department of Contracts respectively”.

This reply is unsatisfactory and legally unsound for the following reasons:

1. Infrastructure Malta does not specify which subsection of Article 30 (1) is being cited. I take this to be another measure intended to stonewall my queries, as a request for clarification will take up even more time.

*2. Infrastructure Malta has not explained **how** - if at all - my questions can prejudice the conduct of an investigation of a breach, or possible breach, of the law, or a failure, or possible failure to comply with a law relating to taxation or prejudice the enforcement or proper administration of the law in a particular instance (subsection a). The answer to my queries will result in transparency. If the replies are of any help to any investigative authorities, I will naturally pass them on to such authorities and this will help not prejudice any investigations. Moreover the fact that any investigation is taking place does not cancel and nullify the public's right to know how a publicly-funded entity and its officers are behaving and acting.*

3. Infrastructure Malta has not explained how answering my query will result in the disclosure, enablement or ascertainment of the existence or identity of a confidential source of information, or the non-existence of a confidential source of information, in relation to the enforcement or administration of the law (subsection b). I am not asking for the identity of any informer. I am asking for records of meetings, resolutions taken by a public entity and public officers or servants in relation to a project which was funded with taxpayers and EU money. I am trying to glean information about authorizations of a public authority. Shouldn't the public be allowed to know who is authorising decisions which may impact public taxes and national projects? Why not?

4. Infrastructure Malta has not explained how answering my query will result in endangering the life or physical safety of any person.

(subsection c). How on earth can asking for a copy of records of meetings, resolutions taken by a public entity and public officers or servants in relation to a project which was funded with taxpayers and EU money, result in endangerment of life and limb to anyone? ”.

INVESTIGATION

Admissibility of the Freedom of Information Application

9. After having considered that the applicant is an eligible person in terms of article 2 of the Act and the nature and background of the freedom of information application, together with the procedural steps involved between the applicant and the Public Authority in the request for an electronic copy of the requested documentation, the Commissioner deemed the application made by the applicant as admissible for the purpose of article 23(2) of the Act.

The Issuance of the Information Notice

10. As part of the investigation procedure, by means of the information notice dated the 2nd February 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 freedom of information 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:
 - a. provide any information which it deems relevant and necessary to support its decision and rebut the arguments made by the applicant;
 - b. make submissions in relation to the decision taken to refuse access to the requested documentation on the basis of article 30(1) of the Act; and
 - c. specify which sub-article of article 30(1) of the Act is invoked by the Public Authority to refuse the applicant’s request for information.

Submissions received from the Public Authority and the Applicant

11. On the 27th February 2023, the Public Authority submitted the following arguments for the Commissioner to consider in the legal analysis of this case:

- a. that, in essence, the queries pertain to the Department of Contracts tender titled *'Upgrade of Triq il-Labour, and part of Vjal Sir Paul Boffa, Vjal Sta Lucija, and Triq Giuseppe Garibaldi (Phase 3) of the construction of a multi-level interchange at Nodes EA20'* (Department of Contracts reference CT 3068/2017), commonly known as the Marsa Project;
- b. that following the submissions of the freedom of information request on the 14th October 2022, the Public Authority was officially notified by the National Audit Office (the "NAO") that the Public Accounts Committee had requested the NAO to investigate the said contract. Concurrently, as the project involved EU funds, an EU audit was also being conducted;
- c. that the NAO investigation was initiated in response to a newspaper and social media article containing allegations, some of which were unfounded and untrue, circulated during that period, including posts made by the applicant himself. As a result, it was strongly believed by the Public Authority that the authorities should be allowed to conduct their investigation without any external influence that might prejudice the investigation;
- d. that taking into account these circumstances, the Public Authority concluded that there are compelling grounds for withholding official documents pertaining to the Marsa Project under article 30(1)(a) of the Act, which states that "[a] document is an exempt document if its disclosure under this Act would, or could reasonably be expected to: (a) prejudice the conduct of an investigation of a breach, or possible breach, of the law, or a failure, or possible failure, to comply with a law relating to taxation or prejudice the enforcement or proper administration of the law in a particular instance";
- e. that regarding the other freedom of information requests for information not directly linked to the Marsa Project, the Public Authority provided the following response. In the original freedom of information reply, concerning the other works carried out by Shining Star (Request I), the Public Authority responded that *'Rates for other works carried out at Hal Far, Paola, Pieta and Mqabba are all public domain'*. These works were allocated according to the established framework system that the Public Authority operates, which is fully compliant with Public Procurement Regulations and is published in the Government Gazette. Therefore, in accordance with article 5(1)(d), the Act shall not apply to documents that are accessible to the public under any other law;

- f. that regarding the Request II, Request III, Request IV and Request V, originally considered to fall under the Marsa Project umbrella, clarification provided in the email subsequent to the Commissioner’s Enforcement Notice, the Public Authority stated that “[w]ith regards to requests for Whatsapp communications, kindly note that the Agency is not in possession of such requested communications. Other information requested involving meetings with MTIP, and authorisations are to be referred to MTIP and the Department of Contracts respectively”; and
 - g. that in the Public Authority’s opinion, its position is justified and in compliance with the provisions of the Act.

12. On the 3rd March 2023, pursuant to this Office’s internal procedure, the Commissioner provided the applicant with the opportunity to rebut the arguments made by the Public Authority. In this regard, the applicant resubmitted the same arguments originally submitted with the freedom of information application.

13. On the 7th March 2023, the Commissioner requested the Public Authority to provide any additional comments or arguments regarding this case, however on the same day, the Public Authority confirmed that no further comments would be provided. Subsequently, the Commissioner requested submissions in support of the Public Authority’s decision to refuse access to all the requested documentation on the basis of article 30(1)(a) of the Act, which was the exemption invoked by the Public Authority on the 16th January 2023:
 - a. for **Request I**, the Public Authority was asked to clarify whether any tenders, direct orders and/or agreements, as mentioned in the request, have been issued. The Commissioner requested the Public Authority to enclose with its reply, under confidential cover, a true copy of the requested documentation. Furthermore, the Public Authority was requested to specify whether the mentioned tenders and/or direct orders with Shining Star Infrastructure and Construction were published, and if so, to indicate where they were published;
 - b. for **Request II**, considering that the request pertains to obtaining copies of any form of communication from the Public Authority, indicating the likely possession of these documents, the Commissioner has asked the Public Authority to confirm whether it indeed held such documentation. If not, the Commissioner requested a sworn declaration, signed by the Head of the Public Authority, stating

that no record is held. However, if these documents were in the possession of the Public Authority, the Commissioner requested them to provide a true copy of the aforementioned documentation along with the response;

- c. for **Request III**, the Public Authority was asked to clarify the existence of the document requested by the applicant. If the document did not exist, the Commissioner requested a sworn declaration signed by the Head of the Public Authority, affirming that no record is held by the Public Authority and that the Ministry for Transport, Infrastructure and Capital Projects possesses these documents. However, if these documents were indeed in the possession of the Public Authority, the Commissioner requested the Public Authority to provide a true copy of the aforementioned documentation;
- d. for **Request IV** relating to a copy of the meeting minutes of the Board of Directors of the Public Authority, the Commissioner requested a confirmation of whether such documentation was held by the Public Authority. If in the negative, the Commissioner requested a sworn declaration, signed by the Head of the Public Authority, declaring that no record is held by the Public Authority and that the Ministry for Transport, Infrastructure and Capital Projects was in possession of these documents. However, if these documents were in the possession of the Public Authority, the Commissioner requested the Public Authority to provide a true copy of the aforementioned documentation;
- e. for **Request V** pertaining to obtaining a copy of the resolution of the Public Authority's Board of Directors and considering the likelihood of these documents being held by the Public Authority, the Commissioner requested confirmation of the possession of such documentation by the Public Authority. If the Public Authority did not possess these documents, the Commissioner requested a sworn declaration, signed by the Head of the Public Authority, confirming that no record was held by the Public Authority and that the Ministry for Transport, Infrastructure and Capital Projects was in possession of these documents. However, if these documents were held by the Public Authority, the Commissioner requested the Public Authority to provide a true copy of the aforementioned documentation; and
- f. for **Request VI**, considering that the request pertains to obtaining copies of the authorisation from within Infrastructure Malta authorising the re-assignment of the tender to Mr Yildirim's Shining Star Infrastructure and Construction, which

implies the probable possession of these documents by Infrastructure Malta, the Commissioner requested confirmation of whether such documentation is held by the Public Authority. If not, a sworn declaration, signed by the Head of the Public Authority, declaring that no record is held by the Public Authority and that the Ministry for Transport, Infrastructure, and Capital Projects is in possession of these documents was requested. If, however, these documents were in the possession of the Public Authority, the Commissioner requested the Public Authority to enclose a true copy of the aforementioned documentation.

14. On the 13th September 2023, the Public Authority provided a “*copy of the Contract and other documentation for additional works that were published in the Government Gazette*”, “*true copies of the meeting minutes of the Board of Directors of Infrastructure Malta*” and a true copy of the recommendation letter for approval with regard to **Request VI**. The actual authorisation for the assignment of the tender was made by the Department of Contracts, as the Central Government Authority. The Public Authority also provided the requested sworn declaration signed by Mr Ivan Falzon, together with its written submissions, declaring that the Public Authority does not hold any records of such information and, or documentation in relation to **Request II**, **Request III** and **Request V** respectively.

15. On the 12th April 2024, the Commissioner requested the NAO to confirm whether the investigation into the Marsa Junction project was still ongoing. On the 15th April 2024, the Auditor General confirmed that “*our investigation regarding the Marsa Junction project, as mandated to us by the Public Accounts Committee, is still ongoing*”.

LEGAL ANALYSIS AND DECISION

Preliminary Considerations

16. The Commissioner acknowledges that the spirit and scope of the freedom of information legislation is to establish a right to information in order to promote added transparency and accountability in public authorities. The legislation reflects the fundamental premise that all information held by public authorities is in principle public, save for those documents that specifically fall within the exemptions provided for by law.

17. This has been supported by the jurisprudence of the Court of Appeal in the judgment *Din l-Art Ħelwa vs l-Awtorità tal-Ippjanar*², which held that “[l]-Att dwar il-Libertà tal-Infommazzjoni hi ligi intiża biex ttipprovi b’mod ampju iżda b’restrizzjonijiet ċari fl-istess ligi, sens ta’ trasparenza u kontabilita fid-deċizzjonijiet, ordnijiet jew direttivi fl-amministrazzjoni pubblika li wara kollox qiegħda hemm għas-servizz tas-soċjeta.” Similarly, the Court of Appeal in the judgment *Allied Newspapers Limited vs Foundation for Medical Services*³ highlighted that the “leġiżlatur permezz tal-Kap. 496 jagħti tifsira legali u jipprovi ċerti garanzji għat-twettiq fil-prattika tal-libertà tal-infommazzjoni bħala s-sisien tal-libertà fundamentali tal-espressjoni”.
18. Whereas the objective of the Act is to confer on the applicants as wide a right of access to information, this right is nonetheless subject to certain limitations based on exemptions as set forth in Part V and Part VI of the Act. Within this context, the law provides for a number of exemptions that enable the public authorities to refuse access to information where its disclosure would or could undermine the protection of one of the interests intended to be protected by Part V and Part VI of the Act. Notwithstanding this, the Commissioner emphasises that the exemptions derogate from the principle of the widest possible access to information, and as a result, the exemptions should be interpreted and applied strictly.
19. In this regard, the refusal of a public authority to provide the requested information must be clearly substantiated by how the disclosure would effectively prejudice the interest protected by the exemptions. Accordingly, the CJEU in its settled-case law in relation to the interpretation of Regulation 1049/2001 states that:

*“If the institution concerned decides to refuse access to a document which it has been asked to disclose, it must, in principle, **explain how disclosure of that document could specifically and actually undermine the interest protected by the exception** — among those provided for in Article 4 of Regulation No 1049/2001 — upon which it relies. In addition, the risk of the interest being undermined must be reasonably foreseeable and must not be purely hypothetical (see judgment of 17 October 2013, *Council v Access Info Europe*, C-280/11 P, EU:C:2013:671, paragraph 31 and the case-law cited; judgment of 3 July 2014, *Council v In ’t Veld*, C-350/12 P, EU:C:2014:2039, paragraph 52).”*⁴
[emphasis has been added].

² Appeal No. 7/2019, decided on the 16th May 2019.

³ Appell Inferjuri Numru 11/2020 LM, decided on the 18th November 2020.

⁴ Case T-644/16, *ClientEarth vs European Commission*, Judgment of the General Court (Eighth Chamber) of the 11th July 2018, para. 22.

Article 30(1)(a) of the Act

20. The Public Authority invoked article 30(1)(a) of the Act as the ground for denying the requested documentation, which provision stipulates that “[a] document is an exempt document if its disclosure under this Act would, or could reasonably be expected to: (a) prejudice the conduct of an investigation of a breach, or possible breach, of the law, or a failure, or possible failure, to comply with a law relating to taxation or prejudice the enforcement or proper administration of the law in a particular instance”.
21. The crux of the exemption relies primarily on the potential prejudice to ongoing investigations. In this regard, the Commissioner reviewed the submissions provided on the 27th February 2023, wherein the Public Authority indicated that subsequent to the freedom of information request on the 14th October 2022, the NAO formally notified the Public Authority regarding the initiation of an investigation as requested by the Public Accounts Committee, specifically pertaining to Request I. Additionally, the Public Authority stated that an EU audit was concurrently underway due to the involvement of EU funds in the project.
22. The Commissioner took into consideration the declaration provided by the Auditor General, specifically, that the NAO’s “*investigation regarding the Marsa Junction project, as mandated to us by the Public Accounts Committee, is still ongoing*”.
23. Throughout the course of the investigation, the Commissioner confirmed that a separate audit was also being conducted by the European Public Prosecutor’s Office and that such investigation was still ongoing.
24. Given the involvement of public funds and the seriousness of the allegations, it is imperative that the investigative bodies like the NAO and the EU audit carry out their duties without external influence or premature disclosure of information. Allowing these investigations to proceed unimpeded is crucial to maintaining the integrity of their findings and upholding public trust in the investigative process.
25. The Commissioner emphasises that while transparency and accountability are fundamental principles in freedom of information requests, the circumstances surrounding this case warrant a cautious approach to disclosure. Balancing the public’s right to information with the need to protect the integrity of ongoing investigations is indeed essential.

Request II, Request III and Request V

26. During the investigation process, the Commissioner sought to establish, to the extent appropriate, whether the Public Authority has complied with the requirements of the Act. In this regard, the Commissioner examined the reply provided by the Public Authority on the 16th January 2023, wherein the applicant was informed that his freedom of information request could not be met on the basis that the “[d]isclosure of information related to the Marsa project works is excluded as per Freedom of Information (FOI) Act, under article 30 (1), since these works are subject to investigations by competent entities. With regards to requests for Whatsapp communications, kindly note that the Agency is not in possession of such requested communications. Other information requested involving meetings with MTIP, and authorisations are to be referred to MTIP and the Department of Contracts respectively”.
27. In its submissions, the Public Authority submitted that it is not in possession of the documentation in connection with **Request II, Request III and Request V**. However, the reply provided by the Public Authority on the 16th January 2023 refers to article 30(1)(a) of the Act which provision could only be invoked if it is in possession of such documentation and if they prejudice the conduct of an investigation. After examining the freedom of information application lodged by the applicant pursuant to article 23(1)(a) of the Act, together with article 15(1)(a) thereof, which provides that the Public Authority shall give the applicant the reasons for the refusal, the Commissioner established that the replies provided are not compliant with the requirements of the Act as it resulted that the Public Authority is not in possession of the documentation in connection with **Request II, Request III and Request V**. For this reason, the Public Authority’s reply provided to the applicant is incorrect.
28. For the purpose of this legal analysis, the Commissioner noted the declarations made by the Public Authority, wherein the Public Authority declared that it is not in possession of the requested documentation, particularly **Request II, Request III and Request V**.
29. The Commissioner is disappointed to note that the Public Authority only came up with the actual circumstances related to the applicant’s request for information and, on the strength of which, the decision should have been taken, during the course of his investigation. The Public Authority is duty-bound to carry out its functions in accordance with the law and therefore provide the applicant with all these facts, in a clear and unequivocal manner, together with the reasoning which it followed to reach its decision to refuse the freedom of information request in terms of the reasons for refusal as set forth in article 14(a) to (h) of the Act. This is necessary

to enable the applicant to seek the review of the decision of the Public Authority and to exercise his right of review and appeal in the most effective manner.

30. Accordingly, the Commissioner noted that article 15(1)(a) should also be interpreted in line with the settled-case law⁵ of the Court of Justice of the European Union in its interpretation of article 7(1) of Regulation 1049/2001⁶, which provides that “*the purpose of the obligation to state the reasons for an individual decision is to provide the person concerned with sufficient information to make it possible to determine whether the decision is well founded or whether it is vitiated by an error which may permit its validity to be contested*”.

Request IV

31. For the purpose of this legal analysis, the Commissioner proceeded to assess the Request IV made by the applicant pursuant to the requirements set forth in article 6(1) of the Act, specifically a “[c]opy of minutes of meeting of Board of Directors of Infrastructure Malta when the Marsa Project, Aylanhar, Mr Robert Yildirim, Shining Star Infrastructure and Construction was discussed”.
32. As a starting point, the Commissioner reviewed the entirety of the unredacted board minutes requested from the applicant. In doing so, the Commissioner acknowledges that while there were sections directly pertinent to the Marsa Project, the subject of the freedom of information request, there also existed meeting minutes addressing affairs going beyond the scope of the Marsa Project, which included discussions on unrelated projects being undertaken by the Public Authority.
33. Moreover, the Commissioner noted that the meeting minutes also documented the attendees and those excused from the Public Authority’s board meeting.

Request VI

34. The Commissioner proceeded to examine the final request of the applicant, particularly “[i]f the above does not exist, copies of the authorization from within Infrastructure Malta authorising the re-assignment of the tender to Mr Yildirim’s Shining Star Infrastructure and Construction”. The Commissioner scrutinised the submissions provided by the Public

⁵ Case T-187/03 *Scippacercola v Commission* [2005], para 66; Joined Cases T-551/93 and T-231/94 to T-234/94 *Industrias Pesqueras Campos and Others v Commission* [1996], para. 140; Joined Cases T-46/98 and T-151/98

⁶ Regulation (EC) No. 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission decision.

Authority stating that “*the actual authorisation for the assignment of the tender was made by the Department of Contract, as the Central Government Authority*”. However, with its submissions, the Public Authority provided a recommendation for approval.

35. The Commissioner reviewed the documentation provided by the Public Authority and identified that it contained generic information. Therefore, while the Public Authority had provided input, it did not include specific details that would hinder ongoing investigations or compromise the integrity of the process.

36. Furthermore, the Commissioner referred to the Public Authority's submissions dated 27th February 2023, wherein it specifically stated that “*the Public Accounts Committee has requested the NAO to investigate the said contract*” [emphasis has been added]. However, it's worth noting that the emphasis of this reference was solely on the contract itself, with no mention of the board meeting minutes or the recommendation for approval letter.

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:

- i. the refusal of the Public Authority to provide the applicant with “*copies of all tenders, direct orders, agreements which Infrastructure Malta made with Robert Yildirim and/or any company/joint venture/collective or partnership with which he is/was involved including (but not limited to) Shining Star Infrastructure and Construction. Kindly provide rates of remuneration provided*” is justified in terms of article 30(1)(a) of the Act; and**

- ii. the refusal of the Public Authority to provide the applicant with a “[*c*]opy of minutes of meeting of Board of Directors of Infrastructure Malta when the Marsa Project, Aylanhar, Mr Robert Yildirim, Shining Star Infrastructure and Construction was discussed” and the “*copies of the authorization from within Infrastructure Malta authorising the re-assignment of the tender to Mr Yildirim’s Shining Star Infrastructure and Construction*” is not justified in terms of article 30(1)(a) of the Act.**

By virtue of article 23(4)(a) of the Act, the Public Authority is hereby being ordered to provide the applicant with a copy of the documentation requested in Request IV and Request VI, within twenty (20) working days from the date of receipt of this decision notice, and confirmation of the action taken shall be notified to the Commissioner immediately thereafter.

Furthermore, the “[c]opies of any form of communication - including but not limited to emails/Whatsapp/text or hard copies - from Infrastructure Malta (including past officers such as the former CEO Fredrick Azzopardi) to former Transport Minister Ian Borg or to the Ministry of Transport or Infrastructure regarding Ayhanlar difficulties in completing the project/ Robert Yildrim’s involvement in the Project”, the “[d]ate, time, duration, location, minutes and description of people present during any meetings where Mr Yildrim was introduced to the minister Ian Borg/his Ministry (This meeting is referred to by Minister Ian Borg himself)” and the “[c]opy of resolution of Infrastructure Malta Board of Directors authorising the re-assignment of the tender to Mr Yildrim’s Shining Star Infrastructure and Construction” do not exist and there is no information held by the Public Authority which could effectively meet the terms of these requests. Additionally, the reason cited by the Public Authority to refuse access to the requested information is incorrect.

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 parts of his 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.

Ian
DEGUARA
(Signature)

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by Ian DEGUARA
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Date: 2024.05.22
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Ian Deguara
Information and Data Protection Commissioner

Right of Appeal

In terms of article 39(1) of the Act, a public authority on which a decision notice has been served by the Commissioner may appeal to the Information and Data Protection Appeals Tribunal against the notice. 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'.