

**Matthew Caruana Galizia**

**vs**

**Malta Film Commission**

**FREEDOM OF INFORMATION REQUEST**

1. On the 28<sup>th</sup> August 2023, Mr Matthew Caruana Galizia (the “**applicant**”) made a request pursuant to the requirements set forth in article 6(1) of the Freedom of Information Act (the “**Act**”), Chapter 496 of the Laws of Malta, requesting the Malta Film Commission (the “**Public Authority**”) to provide an electronic copy of “[a]ll receipts for flight bookings, commercial or private, and accommodation, hotel or otherwise, incurred by the Film Commissioner, Johann Grech, and/or his entourage, over the period 2018 – 2023, inclusive”.

2. On the 22<sup>nd</sup> September 2023, the Public Authority refused the request of the applicant on the basis that:

*“The list of all expenses with regard to travel between the period 2018 up to September 2020 has been already made available. With reference to all travel expenses for the period end year 2020 to year 2023, the Public Authority informs the applicant that the requested information is still being compiled. The information will be made public, once all data is compiled”.*

3. On the 2<sup>nd</sup> November 2023, the applicant requested the Public Authority to revise its decision pursuant to its internal complaints procedure and submitted the following argumentation:

*“I complain that although according to Article 14(2) of the Freedom of Information Act, Cap. 496 of the Laws of Malta a request made in accordance with Article 6 of the Act may be refused (if) (d) the document requested is publicly available or will be published within three months. However, in this rejection no timeline or deadline for publication was*

*provided for expenses for the period end year 2020 to year 2023 whilst it is unclear where the expenses with regard to travel between the period of 2018 up to September 2020 were made available”.*

4. On the 20<sup>th</sup> November 2023, the Public Authority reiterated its refusal and stated that “[a]s per the reply dated 22<sup>nd</sup> September 2023, the Malta Film Commission reiterates that the information in relation to travel expenses for the period end year 2020 to year 2023 will be published, once all data is compiled”.

## **FREEDOM OF INFORMATION APPLICATION**

5. The applicant applied for a decision notice pursuant to article 23(1)(a) of the Act and requested the Information and Data Protection Commissioner (the “**Commissioner**”) to decide whether the request for documents made by the applicant to the Public Authority was handled pursuant to the requirements of the Act. The applicant referred to the refusal of the Public Authority and contended that “[i]t is unclear whether the published travel expenses from 2018 to 2020 refers to the National Audit Office’s Annual Audit Report of Public Accounts 2020 (published in December 2021) or the Economic Impact Study on the Impact of the Film and Production Industry on Malta’s Economy. If the response is referring to either of these reports, they both do not include the requested receipts that are mentioned in the Original Request. Rather, the reports give an overview of travel expenditure of the Commission for 2018, 2019 and 2020; and the estimated financial impact of the film industry, respectively”.

## **INVESTIGATION**

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

### The Issuance of the Information Notice

7. As part of the investigation procedure, by means of an information notice dated the 12<sup>th</sup> March 2024, 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 substantiate its replies provided to the applicant and to indicate from where the public could access the information requested by the applicant.

#### Submissions received from the Public Authority

8. On the 24<sup>th</sup> April 2024, the Public Authority provided the full list of all expenses with regard to travel between the period 2018 up to 2023 and informed the Commissioner that this list may be forwarded to the applicant. Furthermore, the Public Authority stated that the “*MFC would like to clarify that data with respect to travels between 2018 and September 2020 was already made public following another Freedom of Information Request, whilst data up to Year 2023 was being compiled*”.

#### **LEGAL ANALYSIS AND DECISION**

9. For the purpose of this legal analysis, the Commissioner proceeded to assess the freedom of information request made by the applicant pursuant to the requirements set forth in article 6(1) of the Act, where the Public Authority was requested to submit in electronic format a copy of “[a]ll receipts for flight bookings, commercial or private, and accommodation, hotel or otherwise, incurred by the Film Commissioner, Johann Grech, and/or his entourage, over the period 2018 – 2023, inclusive”.
10. In the replies dated the 22<sup>nd</sup> September 2023 and the 20<sup>th</sup> November 2023, the Public Authority refused the request of the applicant on the basis that “[t]he list of all expenses with regard to travel between the period 2018 up to September 2020 has been already made available. With reference to all travel expenses for the period end year 2020 to year 2023, the Public Authority informs the applicant that the requested information is still being compiled. The information will be made public, once all data is compiled”.
11. The response of the Public Authority seems to refer to article 14(d) of the Act, which states that a request made in accordance with article 6 may be refused if “*the document requested is publicly available or will be published within three months*”. Given that the Public Authority failed to indicate in its replies the public source from where the applicant could access the information and an indication of when the information is to be published within three (3) months from the date of receipt of the request, the Commissioner issued an information notice pursuant to article 24(1)(a) of the Act and requested the Public Authority to substantiate its reason of refusal.

12. During the course of the investigation, the Public Authority provided the Commissioner with a copy of the full list of all expenses with regard to travel between the period 2018 up to 2023 and informed the Commissioner that this list may be forwarded to the applicant. The Public Authority further added that the “*MFC would like to clarify that data with respect to travels between 2018 and September 2020 was already made public following another Freedom of Information Request, whilst data up to Year 2023 was being compiled*”.
13. The Commissioner points out that information which is provided by the Public Authority to another applicant by means of a freedom of information request should not be interpreted as meaning that the information is publicly available in terms of article 14(d) of the Act. This is in fact an incorrect interpretation of the law as the information is deemed to be publicly available if the information is made freely accessible to everyone by the Public Authority. In such case, it did not result that the requested documents were made publicly available at the time of receipt of the FOI request or within three months after receipt of the FOI request. This is naturally without prejudice to the fact that the FOI request made by the applicant is clearly for invoices and not for a list of expenses, and thus, the reply of the Public Authority is referring to a document which is not requested by the applicant.
14. Article 2 of the Act defines a document as “*any article that is held by a public authority and on which information has been recorded in whatever form*”, and therefore, the request for copies of receipts is referring to documents which are held by the Public Authority. The law does not grant the Public Authority any discretionary power to decide on the form as to how the information is to be provided to the applicant if the request is clearly for documents which are held by the Public Authority in that same form as requested by the applicant. This can also be inferred from article 12(2) of the Act, which provides that a “*public authority shall make the document available to the applicant in the way preferred by the applicant*” unless one of the exceptions listed in article 12(2)(a) to (c) apply. This means that not only the applicant has the right to receive copies of the documents as exactly requested, but to also receive them in the way preferred by the applicant.

**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 reason of the refusal cited by the Public Authority in its replies dated the 22<sup>nd</sup> September 2023 and the 20<sup>th</sup> November 2023 is not applicable.**

**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 “[a]ll receipts for flight bookings, commercial or private, and**

*accommodation, hotel or otherwise, incurred by the Film Commissioner, Johann Grech, and/or his entourage, over the period 2018 – 2023, inclusive” in electronic format.*

**The Public Authority shall comply with this order 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.**

Ian  
DEGUARA  
(Signature)

Digitally signed  
by Ian DEGUARA  
(Signature)  
Date: 2024.05.10  
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**Ian Deguara  
Information and Data Protection Commissioner**

**Right of Appeal**

In terms of article 39(1) of the Act, “[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’.