

## COMPLAINT

1. On the 13<sup>th</sup> 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 Regulation<sup>1</sup> (the “**Regulation**”), alleging that the reply provided by [REDACTED] (the “**controller**”) following the exercise of his right of access in terms of article 15 of the Regulation is not pursuant to the requirements of the law for the following reasons:

*"I received a total of 2800 pixelated photos. On these you cannot see anything (see 1 picture as an example). The transaction list must be available to me in machine readable form".*

In support of his allegation, the complainant submitted a copy of the document which he received from the controller in reply to his request, which is herewith being marked and annexed as **Doc. IDPC1**.

## INVESTIGATION

2. On the 25<sup>th</sup> October 2023, pursuant to the internal investigation procedure of this Office, the Commissioner presented the controller with two (2) options: either to furnish the complainant with his personal data undergoing processing in a clearly legible manner or to provide its submissions on this complaint and any other information it considered relevant and necessary

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<sup>1</sup> 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.

to submit concerning the allegation to demonstrate that the subject access request has been fully adhered to according to the law.

3. On the 3<sup>rd</sup> November 2023, the controller provided the Commissioner with a link to the documents that were provided to the complainant following his subject access request and held that *“the complainant has received the requested transaction list, as well as the GDPR report. All personal data received, which the complainant previously provided us with, has been provided in a structured, commonly used, and machine-readable format. It is important to note that the transaction list is a report that is extracted from our system, and none of the data shown on the list has been provided by the complainant.”*

## LEGAL ANALYSIS AND DECISION

4. As a preliminary step of the investigation, the Commissioner proceeded to assess the contents of the complaint lodged by the complainant pursuant to article 77(1) of the Regulation, wherein the complainant alleged that the controller failed to comply with the requirements of the Regulation for two (2) reasons: (a) that the *“transaction list must be available to me in machine readable form”*; and (b) that the complainant *“cannot see anything”* when attempting to read the information provided by the controller in reply to his request to access his personal data.

### The Format of the Reply to the Right of Access

5. The complainant exercised his right of access pursuant to article 15 of the Regulation and requested the controller to provide a copy of the information processed in relation to him. This right enables the data subject to be aware of, and verify, the lawfulness of the processing concerning him<sup>2</sup>. The European Data Protection Board (the “EDPB”) in its ‘Guidelines 01/2022 on data subject rights – Right of Access’<sup>3</sup> emphasises that pursuant to the principle of accountability as set forth in article 5(2) of the Regulation, *“the controller should always be able to demonstrate, that the way to handle the request aims to give the broadest effect to the right of access and that is in line with its obligation to facilitate the exercise of data subjects rights (Art. 12(2) GDPR)”*<sup>4</sup>.

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<sup>2</sup> Recital 63 of the Regulation.

<sup>3</sup> Version 2.1, adopted on the 28<sup>th</sup> March 2023.

<sup>4</sup> Page 17 of Guidelines 01/2022.

6. Article 12(3) of the Regulation states that “[w]here the data subject makes the request by electronic form means, the information shall be provided by electronic means where possible, unless otherwise requested by the data subject”. This requirement is further complemented by means of article 15(3) of the Regulation, which provides that “[w]here the data subject makes the request by electronic means, and unless otherwise requested by the data subject, the information shall be provided **in a commonly used electronic form**” [emphasis has been added].
7. In the present case, the Commissioner established that the controller made his request by electronic means, and therefore, the controller was legally obliged to provide the information in a commonly used electronic form pursuant to the requirement set forth in article 15(3) of the Regulation. The Regulation does not define what is a commonly used electronic form and this may include several conceivable formats<sup>5</sup>. In the absence of a definition, the Commissioner proceeded to assess the guidance issued by the EDPB concerning the format of the information that must be provided by the controller in reply to a subject access request:

*“What could be considered as a commonly used electronic form should be based on an objective assessment and not on what format the controller uses in its daily operations. In order to determine what format is to be considered as a commonly used format in the situation at hand, the controller will have to assess if there are specific formats generally used in the controller’s area of operation or in the given context. When there are no such formats generally used, open formats set in an international standard, such as ISO, should, in general, be considered as commonly used electronic formats. However, the EDPB does not exclude the possibility that other formats may also be considered to be commonly used within the meaning of Article 15(3). When assessing if a format is a commonly used electronic format, the EDPB considers that it is of importance how easily the individual can access information provided in the current format. In this regard it should be noted what information the controller has provided to the data subject about how to access a file which has been provided in a specific format, such as what programs or software that could be used, to make the format more accessible to the data subject.”<sup>6</sup>.*

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<sup>5</sup> Paragraph 148 of Guidelines 01/2022.

<sup>6</sup> Paragraph 149 of Guidelines 01/2022.

8. The controller provided the information to the complainant in jpeg format, however, the complainant argued that the information should have been provided to him in a machine-readable format<sup>7</sup>. The Commissioner clarifies that the requirement to receive the personal data in a machine-readable format is only derived from the right of data portability pursuant to article 20(1) of the Regulation, which right shall only apply in the case where the data subject consents to the processing operation, or the processing is based on a contract to which the data subject is a party. The EDPB indeed confirms that:

*“It should be noted that the provisions on format requirements are different regarding the right of access and the right of data portability. Whilst the right of data portability under Art. 20 GDPR requires that the information is provided in a machine-readable format, the right to information under Art. 15 does not. Hence, formats that are considered not to be appropriate when complying with a data portability request, for example pdf-files, could still be suitable when complying with an access request”<sup>8</sup> [emphasis has been added].*

9. This led the Commissioner to conclude that article 15(3) of the Regulation imposes an obligation on the controller to provide the information in a commonly used electronic format, and not to provide the information in a machine-readable format. Therefore, in such case, the Commissioner considers that the jpeg format is a well-established form, and for the purpose of article 15(3) of the Regulation, this form is considered to be commonly used.

#### Principle of Transparency

10. In his complaint, the complainant argued that he “received a total of 2800 pixelated photos. On these you cannot see anything (see 1 picture as an example”. Accordingly, the Commissioner sought to establish whether the information received by the complainant was provided in a clearly legible manner, and thus, in full compliance with the principle of transparency.

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<sup>7</sup> Recital 21 of Directive 2013/37/EU defines ‘machine readable’ as: “a file format structured so that software applications can easily identify, recognize and extract specific data, including individual statements of fact, and their internal structure. Data encoded in files that are structured in a machine-readable format are machine-readable data. Machine-readable formats can be open or proprietary; they can be formal standards or not. Documents encoded in a file format that limits automatic processing, because the data cannot, or cannot easily, be extracted from them, should not be considered to be in a machine-readable format”. In the Guidelines on the Right to Data Portability, the EDPB mentioned XML, JSON and CSV as examples of machine-readable formats.

<sup>8</sup> Paragraph 156 of Guidelines 01/2022.

11. The requirement to provide the information in a clearly legible manner emerges from article 12(7) of the Regulation, which states that the “*information to be provided to data subjects pursuant to Articles 13 and 14 may be provided in combination with standardised icons in order to give in an easily visible, intelligible and clearly legible manner a meaningful overview of the intended processing*” [emphasis has been added]. The corresponding recital<sup>9</sup> to article 12(7) of the Regulation makes explicit reference to the principles of fairness and transparency. Whereas article 12(7) and recital 60 of the Regulation refer to the information that the controller is legally obliged to provide to the data subjects in relation to the processing of their personal data in terms of article 13 and 14 of the Regulation, it stands to reason that the requirement to provide the information in a clearly legible manner also applies to the provision of information that the controller is legally obliged to provide in terms of article 15 of the Regulation. Otherwise, this would render the right of access completely futile and useless.
12. Pursuant to the principle of accountability, it remains the responsibility of the controller to effectively demonstrate how it gave the broadest effect to the right of access. The provisions of the Regulation intend to offer a high level of protection to the rights and freedoms of data subjects<sup>10</sup>, and for this reason, the Regulation imposes a number of specific practical requirements to facilitate the rights of the data subjects, for example, the quality, accessibility, and comprehensibility of the information provided to the data subjects. Hence, it is abundantly clear that the law intends to put a number of obligations on the controller to ensure that the data subjects exercise their right to access in the most effective manner.
13. Furthermore, the right of access has to be seen in light of other provisions of the Regulation, which include *inter alia*, the principle of transparency as set forth in article 5(1)(a) of the Regulation. The controller should ensure full compliance with the principle of transparency insofar as the rights of data subjects are concerned, particularly, the controller should comply with the quality of the communications as set out in article 12 of the Regulation and facilitate the exercise of the data subjects’ rights under articles 15 to 22 of the Regulation. The ‘Guidelines on Transparency under Regulation 2016/679’ highlight that:

*“The GDPR requirements in relation to the exercise of these rights and the nature of the information required are designed to **meaningfully position data subjects***

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<sup>9</sup> Recital 60 of the Regulation.

<sup>10</sup> Recital 10 of the Regulation.

*so that they can vindicate their rights and hold data controllers accountable for the processing of their personal data”<sup>11</sup> [emphasis has been added].*

14. The Court of Justice of the European Union (the “CJEU”) in ‘F.F. vs Österreichische Datenschutzbehörde’<sup>12</sup> made specific reference to the element of presentability, which plays an important role in guaranteeing transparent access to information. The CJEU recognises that the right of access ties in with the principle of transparency:

*“In particular, where personal data are generated from other data or where such data result from empty fields, that is to say, where there is an absence of information which provides information about the data subject, the context in which the data are processed is an essential element in enabling the data subject to have transparent access and an intelligible presentation of those data.”<sup>13</sup> [emphasis has been added].*

15. Taking into account the foregoing considerations and the circumstances of the present case, the Commissioner is of the view that the controller did not present the information to the complainant in a clearly legible manner, particularly, after considering the voluminous amount of information, which makes it even more difficult for the complainant to read the information.

**After assessing the format and content of the information provided by the controller, the Commissioner is hereby deciding that:**

- a. the Regulation does not impose a requirement on the controller to provide the information to the complainant in a machine-readable format, and therefore, the provision of information in jpeg format is compliant with the requirement set forth in article 15(3) of the Regulation which obliges the controller to provide the information in a commonly used electronic form; and**
- b. the information which the complainant received from the controller is not provided in a clearly legible manner, and consequently, this constitutes an infringement of the principle of transparency pursuant to article 5(1)(a) of the Regulation.**

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<sup>11</sup> Article 29 Working Party, adopted on the 29<sup>th</sup> November 2017, as last revised and adopted on the 11<sup>th</sup> April 2018, paragraph 55.

<sup>12</sup> Case C-487/21, Judgement of the Court (First Chamber), 4<sup>th</sup> May 2023.

<sup>13</sup> *ibid* 12, paragraph 42.

**In terms of article 58(2)(b) of the Regulation, the Commissioner is hereby issuing a reprimand to the controller and warned that in the event of a repetitive infringement, the Commissioner will be taking the necessary corrective action pursuant to law.**

**By virtue of article 58(2)(c) of the Regulation, the Commissioner is hereby ordering the controller to provide the complainant with a copy of the information he requested in a clearly legible manner. The controller shall comply with this order within twenty (20) days from the date of service of this decision and information on the action taken, in particular, evidence that the information was provided to the complainant in a clearly legible manner, shall be provided to the Commissioner immediately thereafter.**

**Non-compliance with the order of the Commissioner within the set time frame, shall in accordance with article 83(2) of the Regulation, be subject to an administrative fine.**

Ian  
DEGUARA  
(Signature)

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**Ian Deguara  
Information and Data Protection Commissioner**

### Right of Appeal

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 in writing to the Tribunal within twenty days from the service of the said decision as provided in article 23*".

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*'<sup>14</sup>.

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<sup>14</sup> More details may be accessed at this link: <https://idpc.org.mt/appeals-tribunal/>