

FREEDOM OF INFORMATION REQUEST

1. On the 1st July 2023, Ms Caroline Muscat (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**”), requesting the Malta Film Commission (the “**Public Authority**”) to provide the following documentation in electronic format:

*“- List of All activities forming part of Mediterrane Film Festival between June 25 - 30 2023 (“**Request I**”)*

*- List of ALL costs per activity forming part of Mediterrane Film Festival as above, including cost (value), supplier and scope, if by tender or direct order. (List should be per activity) (“**Request II**”)*

*-List of all non-paying guest lists per activity - Name, surname and designation enough (“**Request III**”)*

*- Copies of All invoices and payments made to David Williams” (“**Request IV**”)*

2. On the 4th August 2023, the Public Authority informed the applicant that the “[l]ist of All activities forming part of Mediterrane Film Festival between June 25 - 30 2023: <https://mediterrane.com/schedule/> -By virtue of Article 14 (a), the list of guests is excluded from the scope of this Act by virtue of article 5. - by virtue of Article 14 (d) of the Freedom of Information Act, the Malta Film Commission informs you that the majority of information requested is in the process of being published. Also, MFC is not in possession of any invoices

from David Walliams". The applicant was not satisfied with the decision of the Public Authority, and on the 16th August 2023, she presented a complaint through the internal complaints procedure seeking the reconsideration of the refusal of the Public Authority, by arguing that "[a]ll documents requested involve a festival clearly organised by the Malta Film Commission. The PA is also obliged by law to pass the request to the responsible PA if it is not in the possession of a requested document. The administration of public funds requires full transparency and accountability".

3. On the 4th September 2023, the Public Authority provided its final reply and informed the applicant that "[w]ith reference to your FOI Request reference:465230303895, dated 1st July 2023, we inform you that the entity follows the Public Procurement Regulations, particularly para. 111(2) of the same rules and regulations. Therefore, MFC reiterates that, in line with and by virtue of Article 14 (d) of the Freedom of Information Act, the documents with regard to the Mediterranean Film Festival are in the process of being published.

FREEDOM OF INFORMATION APPLICATION

4. On the 4th September 2023, the applicant applied for a decision notice pursuant to article 23(1)(a) of the Act, requesting the Information and Data Protection Commissioner (the "**Commissioner**") to decide whether the Public Authority had dealt with the requirements of the Act when handling her freedom of information request.

INVESTIGATION

Admissibility of the Freedom of Information Application

5. 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, the Commissioner deemed the freedom of information application made by the applicant as admissible for the purpose of article 23(2) of the Act.

The Issuance of the Information Notice

6. As part of the investigation procedure, by means of an information notice issued in terms of article 24(1)(a) of the Act, the Commissioner requested the Public Authority to provide a true copy of the requested documents and any other information which it deemed relevant and

necessary in relation to the freedom of information application for the purpose of enabling him to exercise his functions under the Act and to determine whether the Public Authority complied with the requirements of the Act. In particular, the Commissioner requested the Public Authority:

- a. to specify which sub-article of article 5 of the Act was invoked by the Public Authority to refuse the applicant's request for a copy of the "*[l]ist of all non-paying guest lists per activity - Name, surname and designation*";
- b. to clarify which of the information requested will be made publicly available after taking into consideration that the Public Authority informed the applicant that "*that the majority of information requested is in the process of being published*"; and
- c. to determine whether the "*[c]opies of All invoices and payments made to David Williams*" pertains to documents that are "*not held by the authority but is believed by the person dealing with the request to be held by another public authority*".

Submissions received from the Public Authority and the Applicant

7. On the 16th October 2023, the Public Authority submitted its reply to the Commissioner without providing a copy of the requested documents. The reply contained the following salient arguments for the Commissioner to consider during the legal analysis of this case:
 - a. that with regard to Request I, the Public Authority noted that the list of all activities forming part of the Mediterrane Film Festival, held between the 25th June until the 30th June 2023, can be accessed online¹;
 - b. that regarding Request II, in line with the previous replies, the Public Authority reiterated that it follows the Public Procurement Regulations (Subsidiary Legislation 601.03), particularly, regulation 111(2). Hence, information and invoices pertaining to the Mediterrane Film Festival are in the process of being published;
 - c. that with reference to Request III, the Public Authority insists that pursuant to article 5(3)(a), the Act does not apply to documents containing personal data subject to the

¹ Mediterrane Film Festival, 'Festival Schedule' available at: <https://2023.mediterrane.com/schedule/>

Data Protection Act (Cap. 586 of the Laws of Malta), and therefore, the request should be refused; and

- d. that as for Request IV, the Public Authority informed the Commissioner that “[w]ith respect to Mr David Walliams, the Malta Film Commission informs the Office of the Information and Data Protection Commissioner that it did not directly enter into a contractual relationship with the said person. Hence why the request should be refused”.
8. On the 17th October 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 submitted that “[t]he PA is obliged to be transparent and accountable for how to spend money from public coffers”.
 9. Pursuant to the investigation procedure of this Office, the Commissioner provided the Public Authority with the final opportunity to rebut the submissions of the applicant, however no reply was forthcoming.
 10. On the 3rd April 2024, the Commissioner sought further clarification on the following points:
 - a. that with reference to the submissions made, particularly “Part 3: List of ALL costs per activity forming part of Mediterrane Film Festival as above, including cost (value), supplier and scope, if by tender or direct order. (List should be per activity) & Copies of All invoices and payments made to David Williams”, it has been noted that the Public Authority reiterated its adherence to the Public Procurement Regulations, specifically regulation 111(2) of the same rules and regulations. Therefore, information and invoices related to the Mediterrane Film Festival were in the process of being published. In this regard, the Commissioner requested a confirmation from the Public Authority whether these invoices have been published, and if not, a true copy of this documentation was requested;
 - b. that in accordance with the information notice sent on the 15th September 2023, the Commissioner requested clarification on whether the “[c]opies of All invoices and payments made to David Williams” pertains to documents that are “not held by the authority but is believed by the person dealing with the request to be held by another public authority”. Since the Public Authority alleged that it does not have the documentation requested, the Commissioner requested the Public Authority to

provide a sworn declaration made by the head of the Public Authority to this effect, to clearly explain, *inter alia*, the reasons why such document is not held by the Public Authority; and

- c. that in relation to the list of non-paying guests per activity, the Commissioner once again requested the Public Authority to provide a true copy of the requested documentation.

11. The Public Authority failed to provide a reply to the Commissioner's request mentioned in the preceding paragraph.

LEGAL ANALYSIS

Preliminary Considerations

12. 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.

13. This has been supported by the jurisprudence of the Court of Appeal in the judgment '*Din l-Art Helwa vs l-Awtorita' tal-Ippjanar*², which held that "[l]-Att dwar il-Liberta' tal-*Informazzjoni hi ligi intiża biex tippovdi b'mod ampju iżda b'restrizzjonijiet ċari fl-istess ligi, sens ta' trasparenza u kontabilita fid-deċiżjonijiet, ordnijiet jew direttivi fl-amministrazzjoni pubblika li wara kollox qiegħda hemm ghas-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 jipprovdi ċerti garanziji għat-twettiq fil-prattika tal-libertà tal-informazzjoni bħala s-sisien tal-libertà fundamentali tal-espressjoni*".

² Appeal Number 7/2019, '*Din l-Art Helwa vs l-Awtorita' tal-Ippjanar*', decided on the 16th May 2019.

³ Appeal Number 11/2020 LM, '*Allied Newspapers Limited vs Foundation for Medical Services*' decided on the 18th November 2020.

14. Moreover, the Court of Appeal in the judgment *'Allied Newspapers Limited vs Projects Malta Ltd'*⁴ made reference to the parliamentary debates in relation to the freedom of information legislation, which accentuate the spirit and scope of the legislation:

“Fi kliem l-Onor. Prim Ministru meta kien qiegħed jippilota l-Att dwar il-Libertà tal- Informazzjoni mill-Parlament: “il-prattika kienet li l-informazzjoni tibqa’ kunfidenzjali sakemm ma jkunx hemm raġuni biex isir mod ieħor. ... Bil-proposta ta’ din il-liġi qegħdin naqilbu din il-prattika kompletament ta’ taħt fuq, għax issa il-premessa li qegħdin inressqu għall-konsiderazzjoni tal-Qorti hija premessa li tghid li l-informazzjoni issa se tkun soġġetta li tiġi żvelata sakemm ma jkunx hemm raġuni valida skont kriterji stabbiliti mil-liġi għaliex m’għandhiex tkun żvelata. ... It-trasparenza hija wkoll mezz ewlieni biex tiżgura li l-korruzzjoni u l-abbuż ta’ poter ma jaqbdux għerug u li jinkixfu u jinquerdu fejn ikunu preżenti.”

Request I

15. For the purpose of the investigation of this freedom of information application, the Commissioner proceeded to examine the first request made by the applicant, wherein she specifically requested the Public Authority to provide the “[l]ist of All activities forming part of *Mediterrane Film Festival* between June 25 - 30 2023”.
16. In this regard, the Commissioner consulted the official website⁵ of the 2023 *Mediterrane Film Festival*, specifically the section dedicated to the festival’s schedule⁶. Upon examining this section, the Commissioner noted that the schedule is complete with the corresponding dates, times and locations, and it categorised events into panel discussions, masterclasses, roundtables, conferences and screenings.
17. Thus, the Commissioner established that the 2023 *Mediterrane Film Festival*’s website⁷ provides an exhaustive record of all the activities that were organised as part of the *Mediterrane Film Festival* between the specified dates. Consequently, the Commissioner concludes that the information requested in Request I is accessible online, and therefore, available for public consumption. Consequently, the reason of refusal invoked by the Public Authority in its reply is justified pursuant to article 14(d) of the Act.

⁴ Appeal Number 33/2019LM, *'Allied Newspapers Limited vs Projects Malta Ltd'*, decided on the 2nd September 2020.

⁵ 2023 *Mediterrane Film Festival*, available at: <https://2023.mediterrane.com/>

⁶ 2023 *Mediterrane Film Festival*, *'Schedule'*, available at: <https://2023.mediterrane.com/schedule/>

⁷ *Ibid* 5.

Request II

18. In Request II, the applicant sought a “[l]ist of ALL costs per activity forming part of Mediterranean Film Festival as above, including cost (value), supplier and scope, if by tender or direct order. (List should be per activity)”. On the 4th September 2023, the Public Authority informed the applicant that “the entity follows the Public Procurement Regulations, particularly para. 111(2) of the same rules and regulations. Therefore, MFC reiterates that, in line with and by virtue of Article 14 (d) of the Freedom of Information Act, the documents with regard to the Mediterranean Film Festival are in the process of being published”.
19. During the investigation of this freedom of information application, the Public Authority reiterated its adherence to the Public Procurement Regulations (Subsidiary Legislation 601.03), specifically citing regulation 111(2), which states that:

“Every six months the Head of the contracting authority shall publish in the Gazette a full list of all departmental contracts awarded by him with a value exceeding five thousand euro (€5,000) and a list of all cases involving variations which exceed the original contract values by more than five per cent” [emphasis has been added].

The Commissioner acknowledges that this provision in the Public Procurement Regulations (Subsidiary Legislation 601.03) aligns with the objectives of transparency and accountability, however, the Act is the applicable law in relation to the timeframes for the provision of information. In its reply of refusal, the Public Authority cited article 14(d) of the Act, which enables a public authority to refuse a request if “*the document requested is publicly available or will be published **within three months***” [emphasis has been added]. This effectively demonstrates that a request may be refused only in two specific instances: (i) when the information is already made publicly available by the Public Authority at the time of reply of the request; or (ii) when the information will be made publicly available by the Public Authority within three (3) months from the date of reply of the request.

20. In the present case, the applicant exercised her right of access to information on the 1st July 2023 and the Public Authority refused the freedom of information request in terms of article 14(d) of the Act on the 4th August 2023. During the course of the investigation, the Public Authority failed to provide any evidence or information to the Commissioner to effectively demonstrate that the information requested by the applicant was published within this prescribed timeframe. Yet again, the Public Authority has failed to adhere to its commitment

to make the information public⁸, leading the Commissioner to conclude that with this kind of behaviour and attitude, the Public Authority is exacerbating its position insofar as accountability requirements and credibility aspects are concerned.

Request III

21. For the purpose of the investigation of this freedom of information application, the Commissioner proceeded to examine the third request made by the applicant, wherein she requested the Public Authority to provide a “[l]ist of all non-paying guest lists per activity - Name, surname and designation enough”. It is pertinent to clarify that this Office was not provided with a copy of this list despite the fact that the Commissioner specifically requested a copy of such documents by means of the information notice issued in terms of article 24(1)(a) of the Act. Therefore, the Commissioner based his legal analysis on the information provided to the applicant, namely, that the request for the list of the names, surnames and designation of the non-paying guests, was being refused in terms of article 5(3)(a) of the Act.
22. Therefore, the Commissioner proceeded to examine article 5(3)(a) of the Act which provides that the “Act shall not apply to documents in so far as such documents contain - (a) personal data subject to the Data Protection Act”. This provision is subject to the proviso that reads as follows: “Provided that where it is possible to release a document with such data or information deleted, this shall be done in accordance with article 13(1) and (2)”.
23. Article 4(1) of Regulation (EU) 2016/679 defines ‘personal data’ as “any information relating to an identified or identifiable natural person (‘data subject’); an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name”. The Court of Justice of the European Union in ‘European Commission v The Bavarian Lager Co. Ltd’⁹ confirmed that:

“It should be noted that, in paragraph 104 of the judgment under appeal, the General Court, in examining Article 2(a) of Regulation No 45/2001, that is to say the definition of the concept of ‘personal data’, correctly held that surnames and forenames may be regarded as personal data”.

⁸ CDP/FOI/4/2024, ‘Matthew Caruana Galizia vs Malta Film Commission’, decided on the 10th May 2024.

⁹ Case 28/08, Judgment of the Court (Grand Chamber), ‘European Commission v The Bavarian Lager Co. Ltd’ decided on the 29th June 2010.

24. This led the Commissioner to conclude that the names and surnames of the non-paying guests, together with their designation, are indeed personal data within the meaning of article 4(1) of the Regulation, which generally ought to be protected from disclosure. Having said that, the Act is intended to provide the widest access to documents, and therefore, the Public Authority should seek to determine how to give the right of access its broadest effect. The Commissioner noted that the designation of the non-paying guests could only be disclosed insofar as it does not lead to the identification of natural persons, such as, by singling out these individuals. Therefore, the Public Authority could partially comply with this request by disclosing information that would not constitute ‘*personal data*’ in terms of article 4(1) of the Regulation.

Request IV

25. The Commissioner examined the fourth request submitted under article 6(1) of the Act, wherein the applicant requested “[c]opies of All invoices and payments made to David Williams”. The Commissioner scrutinised the reply of the Public Authority, particularly that the “MFC is not in possession of any invoices from David Walliams”. Furthermore, the Commissioner referred to the submissions of the Public Authority, presented on the 16th October 2023, specifically stating that “[w]ith respect to Mr David Walliams, the Malta Film Commission informs the Office of the Information and Data Protection Commissioner that it did not **directly** enter into a contractual relationship with the said person. Hence why the request should be refused” [emphasis has been added].

26. The Commissioner refers to the lack of transparency in the replies provided to the applicant, including the submissions provided throughout the course of the investigation. Due to the fact that the Public Authority failed to reply to the request made by this Office for further clarifications, the Commissioner proceeded to assess the limited information provided on the 16th October 2023. The word ‘*directly*’ is pivotal in understanding the nature of the relationship between Mr Walliams and the Public Authority, in fact the use of ‘*directly*’ seems to imply potential indirect engagements through agents or third parties. This suggests that while there may be no direct contractual relationship or invoices on record with the Public Authority involving Mr Walliams, it does not rule out the possibility of transactions or interactions occurring through intermediaries acting on his behalf.

27. Mr Walliams participated in the 2023 Mediterranean Film Festival, an event organised by the Public Authority and therefore this indicates some form of a relationship, whether direct or indirect. Such participation generally necessitates arrangements to be entered into between the parties, which are typically formalised through contracts or agreements, where invoices and

payments will ensue. The involvement of Mr Walliams suggests that, while the direct documentation might not exist in the Public Authority's records, indirect records should theoretically exist either within the Public Authority's broader financial dealings or with a third-party intermediary.

28. The main determining factor which needs to be taken into account by the Public Authority upon receipt of the freedom of information request is to establish whether the applicant is requesting a document **which is held by the Public Authority** in terms of the definition of a 'document' as set forth in article 2 of the Act. Therefore, irrespective of the nature of the relationship between the involved parties, the Public Authority **should hold a record of the payment** made to Mr Walliams or through any other third party [emphasis has been added].
29. The Commissioner also referred to a previous freedom of information investigation, involving Mr Walliams, specifically in the case, '*Rebecca Bonello Ghio vs Malta Film Commission*'. During the course of such investigation, the Commissioner found that an invoice related to Mr Walliams was issued through his agent rather than to him directly and the Court of Appeal confirmed the decision notice of the Commissioner that ordered the Public Authority to disclose the invoice¹⁰. The Commissioner consider this to be a futile attempt perpetrated by the Public Authority to deliberately conceal the information, in particular, after considering that the Court of Appeal has already delivered a judgment against the Public Authority in relation to the same subject-matter.

On the basis of the foregoing considerations, pursuant to article 23 of the Act, the Commissioner is hereby serving this decision notice on the applicant and the Public Authority.

Request I

The Commissioner examined the request submitted by the applicant and concluded that the official website¹¹ of the 2023 Mediterranean Film Festival provided a detailed record of all the activities that formed part of the event between the 25th June to the 1st July 2023. Consequently, the Commissioner decides that the information requested in Request I is readily available online for the general public, and therefore, the reason cited by the Public Authority is justified.

¹⁰ Appell Inferjuri Numru 83/2023 LM, '*Rebecca Bonello Ghio vs Malta Film Commission*' decided on the 31st January 2024

¹¹ Ibid 5.

Request II

The Commissioner decides that the reason of refusal of the Public Authority to provide the applicant with a copy of the “[l]ist of ALL costs per activity forming part of Mediterrane Film Festival as above, including cost (value), supplier and scope, if by tender or direct order. (List should be per activity)” in terms of article 14(d) of the Act is not justified.

By virtue of article 23(4)(a) of the Act, the Public Authority is hereby being ordered to provide the applicant with an electronic copy of the requested documents in Request II, after redacting any personal data within the meaning of article 4(1) of Regulation (EU) 2016/679, which may include *inter alia*, identity card numbers, addresses, bank details and, or signatures of natural persons.

The Public Authority shall comply with this order within twenty (20) working days from the date of service of this decision notice, and confirmation of the action taken shall be notified to the Commissioner immediately thereafter.

Request III

The Commissioner decides that the refusal of the Public Authority to provide the applicant with a copy of a “[l]ist of all non-paying guest lists per activity - Name, surname and designation enough” is partially not justified.

Therefore, by virtue of article 23(4)(a) of the Act, the Public Authority is hereby being ordered to provide the applicant with the list that contains the designation of those non-paying guests insofar as the information does not lead to the identification of such individuals. This shall be provided in electronic format within twenty (20) working days from the date of service of this decision notice, and confirmation of the action taken shall be notified to the Commissioner immediately thereafter.

Request IV

The Commissioner decides that the refusal of the Public Authority to provide the applicant with a copy of the requested documentation in Request IV, is not justified.

By virtue of article 23(4)(a) of the Act, the Public Authority is hereby being ordered to provide the applicant with an electronic copy of the requested documents, after redacting any personal

data within the meaning of article 4(1) of Regulation (EU) 2016/679, which may include *inter alia*, identity card numbers, addresses, bank details and, or signatures of natural persons.

The Public Authority shall comply with this order within twenty (20) working days from the date of service of this decision notice, and confirmation of the action taken shall be notified to the Commissioner immediately thereafter.

The Commissioner hereby decides that when the Public Authority refused to provide access to the requested document, the applicant was not informed on which specific legal ground the Public Authority is relying in order to refuse access pursuant to the Act.

In this regard, the Commissioner emphasises, and draws the attention of the Public Authority, that decisions taken by the public authorities refusing requests for access to information, shall be accompanied by reasoned and specific justification(s) in order to enable applicants to clearly understand such decisions. The purpose of this obligation derives from article 15(1)(a) of the Act, which provides that: “[w]here a request made in accordance with this Act is refused, the public authority shall - (a) subject to article 34, give the applicant the reasons for the refusal”.

Ian
DEGUARA
(Signature)

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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*’.