

CDP/FOI/46/2023

Christoph Schwaiger

VS

Office of the Prime Minister

FREEDOM OF INFORMATION REQUEST

1. On the 18th July 2023, Mr Christoph Schwaiger (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 Office of the Prime Minister (the “**Public Authority**”) to provide an electronic copy of “*the emails received by Prime Minister Robert Abela containing the keywords “Jean Paul Sofia” and “Sofia” and “Jean Paul” between the 1st of December 2022 and the 18th of July 2023*”.
2. On the 17th August 2023, the Public Authority informed the applicant that “*the request is being refuted as it is unconceivable that communications sent by private citizens and the relative replies, should be made public*”. The applicant was not satisfied with the decision of the Public Authority, and on the same day, he presented a complaint through the internal complaints procedure seeking the reconsideration of the refusal of the Public Authority, for the following reasons, which are being outlined hereunder:

“The applicant notes that the Public Authority has not informed him on which specific legal ground the PA is relying in order to refuse access to the documentation pursuant to the FOI Act. Any decision made by the OPM should be accompanied by reasoned and specific justification in order to enable this applicant to clearly understand the denial of access.

Furthermore, the applicant once again reiterates his request for the requested documentation in full and in the original manner in which it was requested”.

3. On the 1st September 2023, the Public Authority reiterated its decision, by stating that *“the request in and of itself falls outside the parameters of the law”*.

ISSUANCE OF AN ENFORCEMENT NOTICE

4. On the 3rd September 2023, 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, with article 15(1)(a) thereof, as it did not provide the applicant with a sufficient reason to enable him to understand 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 6th September 2023, and requested the Public Authority to comply with the provisions of the Act and thus, provide the applicant with the appropriate and clear legal justifications for refusing his request.
5. On the 3rd October 2023, the Public Authority abided by the instructions of the Commissioner given in the Enforcement Notice and informed the applicant that his request is being refused *“by virtue of Article 14(h) of the Freedom of Information Act. As already stated, it is inconceivable that communications sent by any private citizen or individual (and the relative replied) to the Public Authority, are made available to the public”*.

FREEDOM OF INFORMATION APPLICATION

6. On the 18th October 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:
 - a. that article 14(h) of the Act stipulates that a freedom of information request may be refused if *“the request is frivolous or vexatious or that the information requested is trivial”*;
 - b. that, on the 3rd December 2022, Jean Paul Sofia, a 20-year-old Maltese youth, was killed in a construction site incident that also injured five (5) other people;

¹ Registered internally with file number CDP/FOI/40/2023.

- c. that the applicant noted that the Public Authority is arguing that a request for documentation to shed light on its conduct in relation to this death is ‘*frivolous*’, ‘*vexatious*’ or ‘*trivial*’;
- d. that the applicant recognises article 3 of the Universal Declaration of Human Rights (the “**UDHR**”), which states that “[*e*]veryone has the right to life, liberty and security of person”;
- e. that article 19 of the UDHR holds that “[*e*]veryone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers”;
- f. that, on the 7th July 2023, a petition was started to support a public inquiry into the death of Jean Paul Sofia, which has since been signed over thirty thousand (30,000) times²;
- g. that, on the 12th July 2023, the Prime Minister opposed the motion put forth by the democratically elected opposition. This motion aimed to consider the aforementioned rights and consequently blocked the initiation of a timely public inquiry into the death of Jean Paul Sofia³;
- h. that Malta’s democratically elected opposition has accused the Prime Minister of leading a ‘*cover-up*’ on the death of Jean Paul Sofia⁴;
- i. that, on the 17th July 2023, the Prime Minister acceded to the wishes of the young victim’s family and accepted a public inquiry into the incident⁵;
- j. that “[*i*]n that a public inquiry was set up to look into the incident;

² Charge.org, ‘*Petition to Members of Parliament to support a Public Inquiry on the death of Jean Paul*’, available at: <https://www.change.org/p/petition-to-members-of-parliament-to-support-a-public-enquiry-on-the-death-of-jean-paul>

³ Times of Malta, ‘*Motion for public inquiry into Sofia’s death defeated as MPs vote on party lines*’, available at: <https://timesofmalta.com/article/motion-public-inquiry-sofia-death-defeated-mps-vote-party-lines.1043237>

⁴ Malta Independent, ‘*PN accuses Abela of ‘cover-up’ in Jean Paul Sofia’s death, Abela says PN is just putting on a ‘show’*’, available at: <https://www.independent.com.mt/articles/2023-07-06/local-news/PN-accuses-Abela-of-cover-up-in-Jean-Paul-Sofia-s-death-Abela-says-PN-is-just-putting-on-a-show-6736253153>

⁵ Times of Malta, ‘*Large crowds gather in Valletta for Sofia vigil, despite U-turn*’, available at: <https://timesofmalta.com/article/crowds-gather-valletta-sofia-vigil-despite-uturn.1044157>

- i. *Since Prime Minister Robert Abela rejected claims that he is trying to cover up for someone in the case of Sofia's death⁶*
 - ii. *Robert Abela has requested the board of the public inquiry to determine whether the Maltese state had the necessary regulations in place and if the state ensured the enforcement of said regulations.⁷*
 - iii. *Robert Abela has requested the board of the public inquiry to determine whether there were any failings by the Maltese state in the incident.*
 - iv. *Given the inconsistencies in the Prime Minister's actions, first moving heaven and earth to prevent a public inquiry and then ordering one, first denying any blame and then ordering a public inquiry to determine if the state has any blame to share, given that the inquiry is open to the public including the public's participation;⁸*
 - v. *There is therefore a significant public interest case for the documents requested in FOI Request 431230273914 to be publicly released in full and in the original manner in which they were requested given that they may shed light on the PM's erratic and contradictory actions, behaviour with public consequences, and forced position which led to the reluctant opening of a public inquiry of national interest and importance”;*
- k. that the applicant finds it inconceivable that the request for documentation, which can only serve to further illuminate this tragic and serious case, is labelled by the Public Authority as trivial or frivolous; and
- l. that regarding whether the freedom of information request can be considered ‘vexatious’, the applicant similarly dismisses this allegation, noting that the Public Authority has produced no evidence to substantiate this unfounded claim.

⁶ TVM News, ‘Parliament debates Opposition’s motion to appoint inquiry into Jean Paul Sofia’s death’, available at: <https://tvmnews.mt/en/news/parliament-debates-oppositions-motion-to-appoint-inquiry-into-jean-paul-sofias-death/>

⁷ <https://www.gov.mt/mt/Documents/Press%20Coverage/pr231208a.pdf>

⁸ Malta Independent, ‘Prime Minister announces public inquiry into Sofia’s death, blasts magisterial inquiry delay’, available at: <https://www.independent.com.mt/articles/2023-07-17/10cal-news/Pri%20me-Minister-says-he-wil-add%20ress-t%20he-nation-this-eveninq-as-inquirv-pressu%20re-mou%20nts-6736253411>

INVESTIGATION

Admissibility of the Freedom of Information Application

7. 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

8. As part of the investigation procedure, by means of the information notice dated the 30th October 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 has complied with the requirements of the Act. In particular, the Commissioner requested the Public Authority to make submissions in relation to the decision taken to refuse access to the requested documentation on the basis of article 14(h) of the Act.

Submissions received from the Public Authority and the Applicant

9. On the 24th November 2023, the Public Authority submitted that *“by deciphering the request, the applicant is asking for email/s covering a period of eight (8) months which contain one or more of three (3) keywords. Without delving into the matter on the fact that the applicant is requesting communications sent by private citizens, the sole fact that the applicant (by his request) is asking for communication/s containing just a keyword clearly contains the indicators which identify a request as being frivolous, vexatious and/or trivial”* [emphasis added by the Public Authority].
10. On the 3rd March 2023, pursuant to this Office’s internal investigative procedure, the Commissioner provided the applicant with the opportunity to rebut the arguments made by the Public Authority. By means of an email dated the 27th June 2023, the applicant put forward the following salient arguments:

- a. that the Public Authority did not specify whether the refusal was based on the request being allegedly ‘*frivolous*’, ‘*vexatious*’, ‘*trivial*’ or a combination of these factors, and this lack of clarity makes it more challenging for the applicant to counter the Public Authority’s arguments;
- b. that the UK Information Commissioner’s Office (the “**ICO**”) addresses the topic of vexatious requests in its guidance for public bodies and it refers to four (4) broad themes developed by the Upper Tribunal in Dransfield. It notes that:
“*The four broad themes considered by the Upper Tribunal in Dransfield were:*
 - *the burden (on the public authority and its staff);*
 - *the motive (of the requester);*
 - *the value or serious purpose (of the request); and*
 - *any harassment or distress (of and to staff)*”⁹;
- c. that the evidence presented by the Public Authority to justify its decision focuses on the assertion that the freedom of information request “*is asking for communication/s containing just a keyword*”;
- d. that the original freedom of information request included three (3) separate, albeit similar and related, keywords. Nonetheless, with the Public Authority’s assertion that ‘*just a keyword*’ was being presented indicates that there was no significant burden placed on the Public Authority and its staff. This is because the request did not include an extensive list of keywords that might have necessitated a long search;
- e. that article 6(1)(b) of the Act requires applicants to “*provide such information concerning the document as is reasonably necessary to enable a responsible officer of the public authority to identify it*”;
- f. that in his original request, the applicant provided the Public Authority with the specific keywords to search for the documentation. This serves the dual purpose of excluding all other documentation that does not contain those

⁹ Information Commissioner’s Office, ‘*What are the four broad themes?*’, available at: <https://ico.org.uk/for-organisations/foi/freedom-of-information-and-environmental-information-regulations/section-14-dealing-with-vexatious-requests/what-are-the-four-broad-themes/>

keywords (thus severely limiting the volume of documentation that may be requested under the Act, as well as including all the specific documentation that should be included in this request being discussed);

- g. that the ICO Guidance goes on to consider whether the request has an objective public interest in the information sought, and in fact, it says “[t]he public interest can encompass a wide range of values and principles relating to what is in the best interests of society, including, but not limited to:
- holding public authorities to account for their performance;
 - understanding their decisions;
 - transparency; and
 - ensuring justice”;
- h. that in consideration of the documentation being requested, which aims to facilitate public comprehension of the rationale behind specific decisions, enhance transparency, and contribute to the ongoing public inquiry for the sake of ensuring justice, the applicant strongly believes that the public interest is best served by disclosing the requested documentation in its entirety and in the original format of the request;
- i. that the emails being requested may help the public to evaluate the response of the government and/or of any individual Minister, and furthermore, they may provide essential contextual information for understanding other political matters that were of concern at the time;
- j. that in regard to the motive aspect mentioned by the UK’s ICO, the applicant notes that article 6(2) of the Act stipulates that: “[n]o applicant shall be required to justify or give any reasons for a request under this Act, and any beliefs of public authorities as to what are the applicant’s reasons for seeking access shall not affect that request” and thus the applicant will abide by this rule;
- k. that the UK’s ICO guidance also deals with the harassment or distress aspect of requests explaining such instances could include “unacceptable language, a request or series of requests, which make unsubstantiated allegations of criminal behaviour or wrong doing can be vexatious” none of which appear

in the request and no evidence of which has been presented by the Public Authority; and

that “[t]he idea of the PA that the topic of the death of a young construction worker days before Christmas is trivial and/or frivolous runs contrary to the fact that a public inquiry into the matter was set up, to the sentiment of the general population of the Maltese islands, to the motion and vote of the Parliamentary Opposition, and contrary to the aforementioned referenced Republic Day honours from the President of the Republic”.

11. On the 7th March 2023, the Commissioner requested the Public Authority to provide any additional comments or arguments regarding this case, however no further submissions were provided.

LEGAL ANALYSIS AND DECISION

12. The Commissioner proceeded to examine the freedom of information request submitted by the applicant on the 18th July 2023, wherein he requested the Public Authority to provide “[a] copy of the emails received by Prime Minister Robert Abela containing the keywords “Jean Paul Sofia” and “Sofia” and “Jean Paul” between the 1st of December 2022 and the 18th of July 2023”. This request was refused by the Public Authority on the 17th August 2023 and the 1st September 2023 on the basis that “it is unconceivable that communications sent by private citizens and the relative replies, should be made public” and “the request in and of itself falls outside the parameters of the law”.

Failure to cite the appropriate reason of refusal

13. The Commissioner observed that the replies provided by the Public Authority to the applicant failed to state the reason as to why the request of the applicant was being refused pursuant to one of the reasons set forth in article 14(a) to (h) of the Act. This article provides a non-exhaustive list of the reasons that permits the Public Authority to refuse a request made in accordance with article 6. This has to be read in conjunction with article 15(1)(a) of the Act, which states that where a request is refused, the Public Authority shall give the applicant the reasons for the refusal. Therefore, the Public Authority should have clearly cited the reason(s) of refusal pursuant to article 14 of the Act in order to enable the applicant to clearly understand the reason(s) of the refusal and to seek the appropriate remedies provided by law.

14. The Commissioner emphasises that public authorities should provide clear and meaningful reasons when refusing requests by applicants. This is absolutely necessary to promote fairness, transparency, and accountability, and to enable the applicant to challenge the decision of the Public Authority in the most effective manner. This is also in line with the case-law of the Court of Justice of the European Union (the “CJEU”) in relation to Regulation 1049/2001¹⁰, which emphasises that EU institutions should state the reasons on which the decision of the refusal of a document is based. The CJEU stated that:

*“That obligation on the part of EU institutions to state the reasons on which a decision is based is not merely taking formal considerations into account, but is intended to enable the EU judicature to exercise its power to review the lawfulness of the decision and the persons concerned to know the reasons for the measure adopted so that they can defend their rights and ascertain whether or not the decision is well founded. Thus, the parties concerned can make genuine use of their right to a judicial remedy only if they have precise knowledge of the content of and the reasons for the act in question”*¹¹ [emphasis has been added].

15. After establishing that the Public Authority failed to comply with its obligation under the Act, the Commissioner proceeded with the issuance of an enforcement notice on the 3rd September 2023 pursuant to the requirements set forth in article 25 of the Act. Accordingly, the Commissioner ordered the Public Authority to communicate the appropriate reason of refusal to the applicant pursuant to article 14(a) to (h) of the Act.

Article 14(h) of the Act

16. On the 3rd October 2023, the Public Authority informed the applicant that his request was being refused in terms of article 14(h) of the Act, which provides that a request may be refused if “*the request is frivolous or vexatious or that the information requested is trivial*”. For the purpose of this legal analysis of the present case, the Commissioner sought to establish whether the reason cited by the Public Authority in terms of article 14(h) was indeed justified.

¹⁰ 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 documents.

¹¹ Case T-185/19, Public.Resource.Org.Inc, Right to Know CLG v. European Commissioner, decided on the 14th July 2021, paragraph 82.

17. This reason of refusal is intended to protect public authorities by permitting them to refuse a freedom of information request where it is manifestly clear that the request of the applicant is vexatious, frivolous and trivial. The law fails to define what constitutes a frivolous or vexatious or trivial request. However, sections 11.2 and 11.3 the Code of Practice for Public Authorities provide guidance as to what is considered to be a vexatious request and which circumstances would, could prompt the Public Authority to cite article 14(h) of the Act:

*“11.2 Determining whether a request is vexatious implies recourse to its context and history. As a first step, it is to be determined whether a request is likely to cause **unjustified distress, disruption or irritation to staff** (e.g. use of hostile or abusive language; unreasonable fixation on an individual member of staff; mingling of accusations and complaints; repeated vaguely worded requests that are not clarified by the applicant).*

11.3 Secondly, it would have to be considered whether:

- a) the request appears **obsessive**; and/or,*
- b) whether complying with the request **would impose a significant burden on the Public Authority, disrupting its operations (including the handling of other requests in terms of the Act)** [emphasis has been added].*

18. Given that the Tribunal and the Court of Appeal have never been given the opportunity to pronounce themselves on this specific matter, the Commissioner proceeded to consider the case-law of other jurisdictions to better understand how these notions are interpreted within the context of other legislative frameworks that are similar to Malta.
19. The Commissioner examined the extensive UK case-law in relation to the interpretation of what constitutes a vexatious request and noted that sections 11.2 and 11.3 of the Code of Practice for Public Authorities are very much aligned to this case-law.
20. The UK Information Tribunal repeatedly referred to the criteria established by the ICO¹² to identify a vexatious freedom of information request. The ICO considers a request to be vexatious if the request meets one of these criteria: (a) Can the request fairly be seen as obsessive?; (b) Is the request harassing the Public Authority or causing distress to staff?; (c) Would complying with the request impose a significant burden in terms of expense

¹² ICO Guidance, ‘When can a request be considered vexatious or repeated?’

and distraction?; (d) Is the request designed to cause disruption or annoyance?; and (e) Does the request lack any serious purpose or value?

21. The Commissioner considered the judgment ‘Ahilathirunayagam vs Information Commissioner and London Metropolitan University’¹³, delivered by the UK Information Tribunal that found a freedom of information request to be vexatious by taking into account the following:

“i. There is no statutory definition for the term vexatious and its normal use is to describe activity that is likely to cause distress or irritation, literally to vex a person to whom it is directed.

ii. The fact that several of the questions purported to seek information which the Appellant clearly already possessed and the detailed content of which had been previously been debated with the University.

iii. The tendentious language adopted in several of the questions, demonstrating that the Appellant’s purpose was to argue and even harangue the University and certain of its employees and not really to obtain information that he did not already possess.

iv. The background history between the Appellant and the University ... and the fact that the request, viewed as a whole, appeared to us to be intended simply to reopen issues which had been disputed several times before”.

22. Section 11.2 of the Code of Practice for Public Authorities states that when determining whether a request is vexatious, the Public Authority should consider the wider context and the history of the request. This is also the approach adopted by the decision of ‘Betts vs Information Commissioner’¹⁴, wherein the UK Information Tribunal held that a request was deemed to be vexatious when the request was a continuation of a pattern of behaviour and part of an ongoing campaign to pressure the public authority for years. The UK Tribunal concluded that:

¹³ EA/2006/0070, 20th June 2007.

¹⁴ EA/207/0109, 19th May 2008.

“The Appellant behaved in an obsessive manner in relation to his exchanges with the Council on the matter of risk assessment. The Council would be justified in treating any further request for information relating solely to risk assessment as vexatious, within the meaning of s. 14(1).”

23. In the case of ‘Poulton and Ann Wheelwright vs ICO’¹⁵, the UK Information Tribunal decided that a request was vexatious on the basis that the complainant had made three freedom of information requests relating to a dispute which has been ongoing for 20 years, during which time, the complainant has made various allegations against the authority in question. Therefore, the UK Tribunal held that:

“... viewed in the round it is clear that these applications for information are part of a relentless challenge to the council which has gone on for many years, at great expense and disruption to the council, some distress to its staff, with negligible tangible results and little prospect of ever attaining them. It is simply pointless and a waste. It is manifestly unreasonable for a citizen to use information legislation in this way”.

24. In the case ‘Coggins vs ICO’¹⁶, the UK Information Tribunal established that a request is vexatious if it causes a significant administrative burden to the public authority:

“... long, detailed and overlapping in the sense that he wrote on the same matters to a number of different officers, repeating requests before a response to the preceding one was received... the Tribunal was of the view that dealing with this correspondence would have been a significant distraction from its core functions ...”.

25. Whereas there is ample UK case-law on the term ‘vexatious’, the terms ‘frivolous’ or ‘trivial’ are not clearly defined or explained. These terms however are generally interpreted in their own ordinary meaning. The term ‘frivolous’ indicates that a freedom of information request is one that is not made for a genuine need, but rather for some other purpose. This generally would encompass any request made in bad faith. Tied to this, the term ‘trivial’ would generally refer to a subject matter that is inane and the request appears to have no serious purpose.

¹⁵ EA/2011/0302, EA/2012/0059, & EA/2012/0060, 8th August 2012.

¹⁶ EA/2007/0130, 13th May 2008.

26. As part of the investigative procedure of this Office, the Commissioner requested the Public Authority to clearly substantiate its reasoning that led to the refusal of the freedom of information request. The Public Authority argued that *“by deciphering the request, the applicant is asking for email/s covering a period of eight (8) months which contain one or more of three (3) keywords. Without delving into the matter on the fact that the applicant is requesting communications sent by private citizens, the sole fact that the applicant (by his request) is asking for communication/s containing just a keyword clearly contains the indicators which identify a request as being frivolous, vexatious and/or trivial”*.
27. The Commissioner emphasises that any decision taken by the Public Authority to refuse a request on the basis of article 14(h) of the Act should be made on highly reasoned grounds, particularly, when considering that the scope of the Act is to provide the widest possible access to documents held by public authorities. Consequently, it remains the responsibility of the Public Authority to concretely demonstrate how the request of the applicant is indeed frivolous, vexatious, or trivial and to clearly explain the detrimental impact of compliance. During the course of the investigation, the Commissioner was not provided with any evidence at all to effectively show that the request of the applicant would cause unjustified distress, disruption, or irritation to staff, or that the request is obsessive, or would impose a significant burden on the Public Authority. This therefore led the Commissioner to conclude that the Public Authority arbitrarily cited article 14(h) of the Act.
28. In his assessment, the Commissioner also considered the argument raised by the Public Authority where it contended that the *“request in and of itself falls outside the parameters of the law”*. The Public Authority appears to invoke the non-applicability of the Act, however, it falls short of explaining its reasoning.
29. The Commissioner clarifies that the Act applies to all the information that is held by the Public Authority irrespective of its form or how it is stored. Article 2 of the Act defines the term ‘document’ as *“an article that is held by a public authority and on which information has been recorded in whatever form, including electronic data”*. Article 3 of the Act grants the applicants the right of access to documents held by public authorities in accordance with and subject to the provisions of the Act, and therefore, the Commissioner has always assigned a wide interpretation of the term ‘document’ in order to give the broadest effect to this right. In fact, the Court of Appeal in the judgment

‘Caroline Muscat vs Malta Film Commission’¹⁷ confirmed the wide interpretation of the term ‘document’ and stated that:

*“B’hekk sewwa kkunsidra wkoll it-Tribunal li l-informazzjoni msemmija kienet taqa’ taht it-tifsira mogħtija mill-artikolu 2 tal-Kap. 496 tal-kelma ‘dokument’, fejn il-Qorti tirrileva li fil-każ in kwistjoni **hija rilevanti l-ewwel parti ta’ din it-tifsira**, li tipprovdi li dokument ifisser ‘kull oġġett miżmum għand awtorità pubblika u li fuqu kienet irregistrata informazzjoni fi kwalunkwe forma”* [emphasis has been added].

30. The definition of a ‘document’ is also assigned a wide interpretation by the Court of Justice of the European Union (the “CJEU”). The definition of a document as set forth in Regulation 1049/2001 encompasses “documents drawn up or received by it and in its possession, in all areas of activity of the European Union”. In the judgment ‘European Commission vs Patrick Breyer’¹⁸, the CJEU stated that the following:

*“Accordingly, the definition contained in Article 3(a) of Regulation No 1049/2001 is essentially based **on the existence of content that is saved and that may be copied or consulted after it has been generated**, it being understood that the nature of the storage medium on which content is saved, the type and nature of the content stored, and the size, length, volume or presentation of the content have no bearing on the question whether or not it falls within the abovementioned definition”* [emphasis has been added].

31. In the present case, the applicant requested copies of all email correspondence received by the Prime Minister in connection with Jean Paul Sofia between the 1st December 2022 and the 18th July 2023. For that reason, the request does reveal distinguishing characteristics about the information requested by the applicant, namely, the type of communication, the keywords that would enable a targeted search, the location of the information, and a specific period as to when these emails were received. This leads to the conclusion that the request of the applicant is valid pursuant to article 6(1)(b) of the Act on the basis that the applicant provided all that information concerning the documents as is reasonably necessary to enable a responsible officer of the Public Authority to search and identify the documents.

¹⁷ Appeal Number 72/22/LM, decided on the 22nd February 2023.

¹⁸ Judgment of the Court (Grand Chamber) of the 18th July 2017.

On the basis of the foregoing considerations, pursuant to article 23(3)(b) of the Act, the Commissioner is hereby serving the Public Authority with a decision notice on the basis that it has failed to demonstrate that the reason cited in its reply is justified and, additionally, it has failed to provide access to “[a] copy of the emails received by Prime Minister Robert Abela containing the keywords “Jean Paul Sofia” and “Sofia” and “Jean Paul” between the 1st of December 2022 and the 18th of July 2023”, where it is required to do so under the Act.

Given that the request is not deemed vexatious, frivolous or trivial, the Commissioner is hereby ordering the Public Authority to handle the valid request of the applicant in accordance with the requirements of the Act 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)

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by Ian DEGUARA
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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’.