

**Information and Data Protection Commissioner**

**CDP/FOI/34/2023**

**Joseph Gatt**

**vs**

**Planning Authority**

**THE FREEDOM OF INFORMATION REQUEST**

1. On the 4<sup>th</sup> of June 2023, Mr Joseph Gatt (the “applicant”) submitted a request to the Planning Authority (the “Public Authority”) in terms of the requirements set forth in article 6 of the Freedom of Information Act, Chapter 496 of the Laws of Malta (the “Act”), requesting an electronic copy *“of ALL such formal letters that have been sent to date, starting from the very first edition of the Irrestawra Darek scheme, right up to the very last edition”*, which was to the applicant’s understanding *“sent to each successful applicant, describing and listing all the works that said individual applicant may carry out within the context of said scheme”*.
2. On the 3<sup>rd</sup> of July 2023, the Public Authority informed the applicant that the request is not being accepted as *“in terms of article 14(f) of the Freedom of Information (Cap 496), the resources required to (i) identify, locate or collate a document or documents; (ii) examine a document or consult any person or body in relation to its possible disclosure; or (iii) make a copy, or an edited copy, of a document would substantially and unreasonably divert the resources of the public authority from its other operations, and it has not proved to possible for the applicant, with advice from the public authority, to redefine his request in such a manner as to make it more easily addressed by the authority”*.
3. The applicant was not satisfied with the Public Authority’s decision and on the 7<sup>th</sup> of July 2023, pursuant to the Internal Complaints’ Procedure, requested the Public Authority to reconsider its position in terms of the Act. On the 24<sup>th</sup> of July 2023, the Public Authority reconfirmed its position and remarked that *“there is no justification to reverse the Authority’s original decision”*.

4. The applicant was not satisfied with the Public Authority’s decision and, on the 30<sup>th</sup> of July 2023, in terms of article 23 of the Act, submitted a complaint to the Information and Data Protection Commissioner (the “**Commissioner**”) to investigate the case and issue a decision notice in terms of his powers at law.

## **INVESTIGATION**

### **Admissibility of the FOI application**

5. After having considered the nature and background of this application, together with the procedural steps involved between the applicant and the Public Authority in the request for the documentation, the Commissioner considered the application made by the applicant as admissible for the purposes of article 23(2) of the Act.

### **Submissions received from the Public Authority and from the Applicant**

6. As part of the investigation procedure, by means of an information notice dated the 1<sup>st</sup> September 2023, which was issued pursuant to article 24 of the Act, the Public Authority was requested by the Commissioner 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 determine whether the Public Authority has complied, or is complying, with the requirements of the Act. Additionally, the Commissioner requested the Public Authority to:
  - i. provide the estimated time and cost of complying with the request, specifically taking into account the time or cost spent in: (a) determining whether the Public Authority holds the information, (b) locating the information, or a document which may contain the information, (c) retrieving the information, or a document which may contain the information, and (d) extracting the information from a document containing it; and
  - ii. indicate if the Public Authority has advised the applicant to redefine his request in such a manner as to make it more easily addressed by the Public Authority.
7. On the 22<sup>nd</sup> of September 2023, the Public Authority provided its written submissions and reiterated the legal exemptions cited to the applicant for not acceding to his request. Furthermore, the Public Authority submitted that “*it is not advisable for the Authority to quantify the estimated time and cost required to grant access to ALL formal letters that have*

*been sent to date, starting from the very first edition of the Irrestawra Darek scheme, right up the very last edition since the Irrestawra Darek schemes span over six years and to a time when documentation was not digitised and would entail several human input and unquantifiable working hours”.*

With regard to point (ii), the Public Authority contended that article 7 of the Act does not apply in this case. According to the wording of the law, such assistance is intended to be provided by the authority when the applicant fails to meet the requirements outlined in article 6 of the Act. The Public Authority expressed that the request was clear, and there was no justification for the responsible officer to ask the applicant to redefine the request to facilitate its processing.

8. On the 26<sup>th</sup> of September 2023, the Commissioner provided the applicant with the opportunity to rebut the arguments made by the Public Authority. By means of an email dated 9<sup>th</sup> October 2023, the applicant submitted that the Public Authority’s admission that it lacks a proper record-keeping system reveals its inefficiency and inability to fulfill its responsibilities competently. The request at hand is for a straightforward document: the formal letter issued to successful applicants under the Irrestawra Darek schemes, detailing permissible works. The applicant contended that despite this, the Public Authority claims that providing this information would divert resources, suggesting poor management practices.
9. In line with the internal investigation procedure, on the 10<sup>th</sup> of October 2023, the Commissioner provided the Public Authority with the opportunity to make its final submissions on the rebuttal arguments made by the applicant. By means of a communication dated 23<sup>rd</sup> October 2023, the Public Authority replied that it has no further submissions to make.
10. On the 22<sup>nd</sup> of January 2024, the Commissioner received an email from the applicant indicating that he was engaged in discussions with the Planning Authority in an effort to reach an amicable settlement. However, on the 8<sup>th</sup> of March, 2024, the Planning Authority notified the Commissioner of its withdrawal from the proposed out-of-court settlement and requested that him to proceed with making a decision.

## **LEGAL ANALYSIS AND CONSIDERATIONS**

### **General Considerations**

11. The Commissioner acknowledges that the spirit and scope of the freedom of information legislation is to establish a right to information 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.

12. This has been supported by the jurisprudence of the Court of Appeal in the judgment *Din l-Art Ħelwa vs l-Awtorita' tal-Ippjanar*<sup>1</sup>, which held that “[l]-Att dwar il-Liberta' tal-Infommazzjoni hi liġi intiża biex ttiprovdi b'mod ampju iżda b'restrizzjonijiet ċari fl-istess liġi, sens ta' trasparenza u kontabilita fid-deċiżjonijiet, 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*<sup>2</sup> highlighted that the “leġiżlatur permezz tal-Kap. 496 jagħti tifsira legali u jipprovdi ċerti garanziji għat-twettiq fil-prattika tal-libertà tal-infommazzjoni bhala s-sisien tal-libertà fundamentali tal-espressjoni”.

13. Moreover, the Court of Appeal in the judgment *Allied Newspapers Limited vs Projects Malta Ltd*<sup>3</sup> 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-Infommazzjoni mill-Parlament: “il-prattika kienet li l-infommazzjoni 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 tgħid li l-infommazzjoni 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 għeruq u li jinkixfu u jinqerdu fejn ikunu preżenti.”*

14. In its reply to the request submitted by the applicant, the Public Authority refused this request based on article 14(f) of the Act. For this purpose, the Commissioner examined such article, which provides that requests may be refused if “the resources required to – (i) identify, locate or collate a document or documents; (ii) examine a document or consult any person or body in relation to its possible disclosure; or (iii) make a copy, or an edited copy, of a document, would substantially and unreasonably divert the resources of the public authority from its other operations, and it has not proved possible for the applicant, with advice from the public

<sup>1</sup> Appeal Number 7/2019, decided on the 16th May 2019.

<sup>2</sup> Appeal Number 11/2020 LM, decided on the 18th November 2020.

<sup>3</sup> Appeal Number 33/2019LM, decided on the 2nd September 2020.

*authority, to redefine his request in such a manner as to make it more easily addressed by the authority the disclosure of a document”.*

15. Article 14(f) of the Act is intended to prevent the improper diversion of the Public Authority’s resources from its other operations. This provision aims to strike a balance between the objective of the Act and the need to ensure that the applicant’s request does not cause substantial and unreasonable disruption to the operations of the Public Authority due to the voluminous nature of the request. The word “*substantially*” is to be interpreted as meaning that the diversion of resources shall be more than merely nominal, and the word “*unreasonably*” shall refer to the balancing exercise of the estimated impact on the Public Authority for processing the request against the objective of the Act.
16. After examining the request submitted by the applicant, the Commissioner noted that the request is limited to the letters sent to successful applicants of Irrestawra Darek scheme.
17. In this regard, the Commissioner examined section 13.2 of the Code of Practice for Public Authorities, published in accordance with article 41 of the Act, which provides guidance in relation to situations where article 14(f) of the Act may apply:

*“Public Authorities may consider a request to entail a substantial and unreasonable diversion from other operation of its total cost to the Public Authority reaches or exceed €100.00, calculated with reference to the following rates:*

- i) €5.00 per man-hour of processing;*
- ii) The rates applicable to additional fees in Schedule 2 and 3 of the Fees charged by the Public Authorities for Access to Documents Regulations.”*

18. In his analysis, the Commissioner considered the UK case-law in relation to a voluminous FOI request and the Upper Tribunal Case of ‘*Craven vs The Information Commissioner and the Department of Energy and Climate Change*’ held that “*it must be right that a public authority is entitled to refuse a single extremely burdensome request under regulation 12(4)(b) as “manifestly unreasonable”, purely on the basis that the cost of compliance would be too great”.* In determining whether the cost or burden of responding with a request is ‘*too great*’, public authorities must analyse the proportionality of the burden or costs involved and determine if they are clearly or obviously unreasonable.

19. After examining the request submitted by the applicant, the Commissioner noted that the Public Authority held that it would substantially and unreasonably divert its resources to identify, locate or collate, examine the documents and eventually make a copy, or an edited copy of the requested documents. In this regard, the Commissioner requested the Public Authority to provide an accurate estimate of the time and the cost incurred to manually compile the requested documents to process the applicant's request. The Commissioner analysed the reply provided by the Public Authority on the 22<sup>nd</sup> of September 2023 whereby it provided that it is not advisable to quantify the estimated time and cost required to grant access to all letters sent in the span of six (6) years in relation to the Irrestawra Darek scheme, as documentation is not digitised and would entail several human input and unquantifiable working hours.
20. Moreover, when it is concretely proven that the resources required to comply with a request would substantially and unreasonably divert the resources of the public authority, article 14(f)(i) of the Act obliges the Public Authority to request the applicant *"to redefine request in such a manner as to make it more easily addressed by the authority"*. In this context, the Commissioner observed that the Public Authority did not advise the applicant to redefine his request in a way to make it easier addressed by the authority. For instance, the Public Authority could have suggested narrowing the request to include only the letters sent to successful applicants over the past two (2) years. The Public Authority argued that it did not advise the applicant to redefine his request as article 7 of the Act is not applicable in this case. They argued that assistance is meant to be provided by the authority only when the applicant does not meet the requirements specified in article 6. However, the Commissioner noted that this reference is incorrect, as the relevant provision is article 14(f) of the Act.
21. After taking these considerations into account, the Commissioner concludes that, in this instance, the Public Authority did not provide adequate evidence to demonstrate that fulfilling the applicant's request would substantially and unreasonably divert its resources from its other operations. This is particularly relevant regarding the effort required to locate and copy the letters sent to successful applicants of the scheme. Consequently, the exemption cited by the Public Authority pursuant to article 14(f) is not justified.

**On the basis of the foregoing, pursuant to article 23(3)(b) of the Act, the Commissioner is hereby serving a decision notice and determining that the decision taken by the Public Authority to refuse the applicant's request for a copy *"of ALL such formal letters that have been sent to date, starting from the very first edition of the Irrestawra Darek scheme, right up the very last edition"*, *"sent to each successful applicant, describing and listing all the works that said individual applicant may carry out within the context of said scheme"* is not justified.**

**Consequently, 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 letters sent to the successful applicants in relation to the Irrestawra Darek scheme. Any personal which identify or which could possibly lead to the identification of the applicants shall be redacted.**

**The Public Authority shall comply with this order within twenty (20) working days from the date of receipt of this decision notice and provide the Commissioner with a confirmation of the action taken immediately thereafter.**

Ian  
DEGUARA  
(Signature)

Digitally signed  
by Ian DEGUARA  
(Signature)  
Date: 2024.11.04  
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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’<sup>4</sup>.

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<sup>4</sup> More information is available on this Office’s portal at the following hyperlink: <https://idpc.org.mt/appeals-tribunal/>