

vs

COMPLAINT

1. On the 12th April 2024, [REDACTED] (the “complainant”) lodged a data protection complaint with the Information and Data Protection Commissioner (the “Commissioner”) in terms of article 77(1) of the General Data Protection Regulation¹ (the “Regulation”) alleging that the [REDACTED] (the “controller”) infringed the provisions of the Regulation for the following reasons: “1) *the lack of timely reply*; 2) [REDACTED] *unwillingness to provide data access to, at the very least, personal data concerning me that has been received or exchanged with non-tax entities*; 3) *all data exchanges concerning me between [REDACTED] and other tax authorities unless covered by specific legal framework providing immunity to [REDACTED] to provide this information*; and 4) *the “flip-flopping” nature of the process pendulum swinging between suggestions that “data is available”; “all data is almost collected”; “delays due to controllers travelling”; to finally “exclusion due to official secrecy acts”*”.
2. The complainant provided the following information in support of his complaint:
 - a. that, on the 14th September 2023, the complainant made a formal request to receive access to his personal data by means of a letter addressed to the controller, however, the complainant did not receive a reply even though he had reasons to believe that the

¹ 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.

request was indeed received by the controller, processed, and forwarded to third parties without his consent;

- b. that, accordingly, the complainant proceeded to send another letter dated the 15th November 2023 to the controller; and
- c. that, on the 29th February 2024, the controller denied him access to his personal data and the reason seemed to be that there is a “*legal obligation of official secrecy, as laid down by national legislation, but also by relevant EU law*”.

INVESTIGATION

- 3. Pursuant to the internal investigative procedure of this Office, the Commissioner sent a copy of the complaint, including the supporting documentation, to the controller and provided the controller with the opportunity to provide any information which it deemed relevant and necessary to defend itself against the allegation raised by the complainant.

Submissions of the controller

- 4. By means of an email dated the 12th July 2024, the controller submitted the following salient arguments for the Commissioner to consider during the legal analysis of the case:

The Timeline of the Subject Access Request

- a. that the data protection officer first received the hard copy of the request of the complainant on the 1st December 2023, only to realise that the letter was dated the 15th November 2023;
- b. that, on the 1st December 2023, the data protection officer sent an email to the complainant informing him that she would like to speak to him on video chat in order to be able to establish his identity and discuss what information the complainant was requesting;
- c. that in the letter dated the 15th November 2023, the complainant made reference to a request which he previously submitted in September 2023, and even mentioned a

██████████ representative, who allegedly received the letter, however, the data protection officer inquired about this matter and could not locate the said letter;

- d. that, from there onwards, the data protection officer disseminated the request of the complainant to the relevant ██████████ that might have had the requested information on record;
- e. that the search took until the 12th March 2024 because several attempts had to be made to extract the data requested; and
- f. that following internal discussions, the complainant was informed that the requesting information was covered by official secrecy in terms of the Conventions and EU Directives, governing automatic information exchanges between tax authorities;

Legal obligation to maintain secrecy as set forth in Maltese legislation

- g. that the employees of the controller are bound by secrecy as specified in article 4 of the Income Tax Management Act (Cap. 372 of the Laws of Malta) and the Professional Secrecy Act (Cap. 377 of the Laws of Malta);
- h. that regulation 18 of the Cooperation with Other Jurisdictions on Tax Matters Regulations, Subsidiary Legislation 123.127, binds all automatic exchanges between tax authorities with the obligation of official secrecy, and this includes the automatic exchanges of data requested by the complainant;

Compliance with European Union law

- i. that all tax information is strictly confidential, however, data pertaining to exchanges of information has an extra layer of protection added to it;
- j. that the position of the controller is compliant with the OECD Common Reporting Standard (the “CRS”), the OECD Model Tax Convention, the Multilateral Convention on Mutual Administrative Assistance in Tax Matters and Council Directive 2011/16/EU;

- k. that the OECD Common Reporting Standard, to which Malta is a signatory, calls on jurisdictions to obtain information from their financial institutions and automatically exchange that information with other jurisdictions on an annual basis;
- l. that the CRS sets out the financial account information to be exchanged, the financial institutions required to report, the different types of accounts and taxpayers covered, as well as common due diligence procedures to be followed by financial institutions;
- m. that the CRS contains detailed rules on confidentiality and data safeguards which jurisdictions need to put in place both on a legal and operational level;
- n. that the related OECD Model Tax Convention requires that *“taxpayer information received by a Competent Authority be treated as secret in the same manner as taxpayer information obtained under the jurisdiction’s domestic laws”*;
- o. that the disclosure of such information is restricted to *“persons or authorities (including courts and administrative bodies)”* involved in the assessment, collection, administration, or enforcement of taxes, or in related prosecutions, appeals or oversight (Article 26(2) of the Model Convention with respect to Taxes on Income and on Capital); and
- p. that the Multilateral Convention on Mutual Administrative Assistance in Tax Matters specifies that *“[a]ny information obtained by a Party under this Convention shall be treated as secret and protected in the same manner as information obtained under the domestic law of that Party”* and *“[s]uch information shall, in any case, be disclosed only to persons or authorities (including courts and administrative or supervisory bodies) concerned with the assessment, collection or recovery of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, taxes of that Party, or the oversight of the above”*.

Submissions of the complainant

- 5. Pursuant to the internal investigative procedure of this Office, the complainant was provided with the opportunity to rebut the arguments submitted by the controller. In particular, the

Commissioner requested the complainant to provide any evidence to demonstrate that the request dated the 14th September 2023 was indeed delivered to the controller.

6. By means of an email dated the 28th August 2024, the complainant submitted the following documentation: (a) evidence that the letters dated the 14th September 2023, and the 14th November 2023 were indeed delivered to the offices of the controller; and (b) a copy of the correspondence exchanged between the data protection officer of the controller and the complainant in connection with the subject access request. In addition, the complainant submitted the following counterarguments:
 - a. that the provisions of the Regulation cannot be viewed as a set of general guidelines to be adhered to on a best effort basis;
 - b. that the submissions of the controller lack any relevance to the provisions of the Regulation, but rests exclusively on accumulative arguments harvested through possible misinterpretation of alternative laws and regulations to counter the protected rights under the Regulation;
 - c. that, as a matter of fact, the judgment delivered by the Court of Justice of the European Union (C-175/20) does find that tax authorities cannot depart from the principles of the Regulation unless separately adopted in accordance with the possibilities of making an exemption under article 23 of the Regulation, which is not relevant to the present case;
 - d. that the Common Reporting Standard² under OECD was developed in response to a G20 request to obtain and exchange information from the financial institutions and designed to promote tax transparency as opposed to tax secrecy, and the secrecy provision under CRS covers unlawful data proliferation to irrelevant third parties and has no status under the Regulation;
 - e. that the Income Tax Management Act was enacted pre-Regulation and deals with secrecy provisions as it pertains to the conduct of officials and the obvious need to assure that confidential tax information is not a matter of general public access, and

² The complainant submitted the following link: <https://www.oecd-ilibrary.org/docserver/0e164a20en.pdf?expires=1724840369&id=id&accname=guest&checksum=B9A5823E6C3DA07A472BC743866566E2>

therefore, the Income Tax Management Act does not explicitly provide secrecy cover or exemptions to the general access provision under article 15 or article 23 of the Regulation; and

- f. that Guidelines on the Income Tax Services concerning data protection policy issued by the [REDACTED]³ clearly stipulates the right of access according to article 15 of the Regulation, which is further mentioned in the [REDACTED]
[REDACTED]

7. The Commissioner provided the controller with a copy of the submissions of the complainant, including the supporting documentation, and enabled the controller to provide its final submissions. By means of an email dated the 30th August 2024, the controller reiterated its previous arguments and informed the Commissioner that it does not wish to provide further submissions.

LEGAL ANALYSIS AND DECISION

8. For the purpose of this legal analysis, the Commissioner sought to establish whether: (a) the controller had handled the request of the complainant to access his personal data pursuant to the requirements of the law; and (b) the restriction invoked by the controller was indeed necessary and proportionate pursuant to law.

The Handling of the Subject Access Request

9. The Commissioner proceeded to assess the contents of the complaint, wherein the complainant alleged that the controller failed to reply to his subject access request in a timely manner. The complainant explained that he sent two (2) letters by registered post to the controller, the first letter was dated the 14th September 2023 and the subsequent letter was dated the 15th November 2023. During the course of the investigation, the controller reiterated that it had never received the first letter. It was only on the 1st December 2023 that the data protection officer of the controller became aware of the second letter, which was dated the 15th November 2023.
10. In view of this, the Commissioner requested the complainant to substantiate his claim and provide concrete evidence to demonstrate that his letter dated the 14th September 2023 which

³ The complainant submitted the following link: [REDACTED]

contained the request to access his personal data was indeed delivered to the controller. By means of an email dated the 28th August 2024, the complainant submitted a confirmation that his letter was successfully delivered by MaltaPost on the 22nd September 2023. Accordingly, the Commissioner sent a copy of the evidence furnished by the complainant and provided the controller with the opportunity to make its submissions on this matter. On the 30th August 2024, the controller reiterated that this request had never reached the data protection officer and explained that the “**does not handle its own mail (postal) or phone calls – does this**”.

11. The Commissioner emphasises that the law imposes stringent requirements on the manner how the controller handles data protection requests submitted by the data subjects pursuant to Chapter III of the Regulation. The law obliges the controller to reply within a time limit of one (1) month from the date of receipt of the request. Article 12(3) of the Regulation states that:

*“The controller shall provide information on action taken on a request under Articles 15 to 22 to the data subject **without undue delay and in any event within one month of receipt of the request**. That period may be extended by two further months where necessary, taking into account the complexity and number of the requests. The controller shall inform the data subject of any such extension within one month of receipt of the request, together with the reasons for the delay”* [emphasis has been added].

12. Article 12(4) of the Regulation also provides that:

*“If the controller does not take action on the request of the data subject, the controller **shall inform the data subject without delay and at the latest within one month of receipt of the request of the reasons for not taking action and on the possibility of lodging a complaint with a supervisory authority and seeking a judicial remedy**”* [emphasis has been added].

13. In a recent judgment ‘Rebecca Bonello vs National School Support Services (NSSS)’, the Court of Appeal upheld a finding of infringement of Article 12(3) of the Regulation. The ruling was based on the NSSS’s failure to respond to a subject access request within the stipulated timeframe of one (1) month:

“Il-Qorti tqis li ladarba qiegħed jiġi deċiż li t-talba tal-ilmentatriċi saret korretteament fl-24 ta' Mejju, 2022, għandu jsegwi li ladarba hija ngħatat l-informazzjoni mitluba fit-30 ta' Ġunju, 2022, din l-informazzjoni ngħatat tardivament, u għalhekk dan it-tieni aggravju qiegħed jiġi milqugħ ukoll”⁴.

14. The European Data Protection Board (the “EDPB”) in its ‘Guidelines 01/2022 on data subject rights – Right of access’ elucidates that the timeframe set forth in article 12 of the Regulation is triggered upon receipt of the request:

“The time limit starts when the controller has received an Art. 15 request, meaning when the request reaches the controller through one of its official channels. It is not necessary that the controller is in fact aware of the request” [emphasis has been added].

15. In the present case, the Commissioner assessed the data protection policy of the controller, which requires the controller to publish the contact details of the controller and the data protection officer in terms of article 13(1)(a) and (b) of the Regulation. The Commissioner established that the letters of the complainant were sent to the address indicated by the controller in its data protection policy:

Any queries may be addressed to:

(a) The Data Controller, [REDACTED]

(b) The Data Protection Officer, [REDACTED]
0170.

Figure 1 - Extract taken from the Data Protection Policy of the Controller

16. To this end, the Commissioner examined the evidence produced by the complainant to demonstrate that the letter dated the 14th September 2023 was indeed delivered to the postal address mentioned by the controller in its data protection policy:

⁴ Appell Inferjuri Numru 36/2024 LM, delivered on the 6th November 2024.

Your item [REDACTED] was successfully delivered by MaltaPost.
Yahoo/Indbakke
MaltaPost
Fra: no-reply@malta-post.com

[REDACTED]

fre, 22. sep. 2023 kl. 08.31



Dear Client,

Your item with identification number [REDACTED] has been successfully delivered.

For any queries related to this delivery please contact us on info@malta-post.com.

Thanks and Regards,

MaltaPost plc

[REDACTED]

Din ordre [REDACTED]

Forsendelser

Produkt	Afsender	Modtager	Pris ialt ekskl. moms	Mor
Rekommanderet Brev - 2 kg Rek	[REDACTED]	[REDACTED]	0,00	0,00 DKK

[REDACTED]



17. The Commissioner considered the evidence submitted by the complainant to be sufficient to prove that the subject access request dated the 14th September 2023 reached the address of the controller on the 22nd September 2023. This effectively demonstrates that the controller had a legal obligation to reply to the request within one (1) month of receipt of the request. The controller explained that the letter sent by registered post did not reach its data protection officer and this is because '[REDACTED] does not handle its own mail (postal) or phone calls – [REDACTED] does this. As previously mentioned, I had made my own search for [REDACTED]'s letter, but [REDACTED] had informed me that this letter was never found. Unfortunately, this is a common occurrence and once a document gets mislaid, it is almost never found'. The Commissioner emphasises that the controller remains solely responsible for complying with data protection requests received through any of its official communication channels, and therefore, the controller should seek to ensure that it has in place the appropriate processes and procedures to

reply to data protection requests sent by data subjects within the timeframe specified by law. It is indeed very concerning that the controller refers to the misplacement of correspondence received by post as a “*common occurrence*”. This issue requires immediate attention, especially to guarantee that data protection requests are handled in the most effective manner and in accordance with the requirements of the Regulation. This is also in accordance with the Guidelines of the EPDB, which states that “*the specific wording of Art. 15, and the precise deadline for the provision of data under Art. 12(3) GDPR, obliges the controller to be prepared for data subject inquiries by developing procedures for handling requests*”.

18. Without prejudice to the foregoing, the Commissioner noted that the request dated the 15th November 2023 reached the controller on the 21st November 2023 and the data protection officer of the controller initiated communication with the complainant on the 1st December 2023. This was followed by a long exchange of correspondence between the complainant and the data protection officer of the controller covering the period of the 1st December 2023 to the 13th March 2024.
19. Accordingly, the Commissioner proceeded to examine the correspondence exchanged between the parties, particularly, the email dated the 28th February 2024, wherein the controller informed the complainant about the delay in providing a reply to his subject access request.
20. The Commissioner clarifies that the controller may extend the timeframe of one (1) month by two (2) further months where necessary and when it intends to comply with the request, taking into account the complexity and number of the request. The Commissioner could certainly not accept the justifications for the delay provided to the complainant in the response dated the 28th February 2024. This clearly demonstrates that the controller has inherent flaws in the process of handling requests for the exercise of data protection rights.

The Restriction invoked by the Controller

21. Recital 4 of the Regulation provides that the right to the protection of personal data is not an absolute right, and it must be considered in relation to its function in society and be balanced against other fundamental rights, in accordance with the principle of proportionality. This has been reaffirmed by the CJEU in the judgment of Facebook Ireland and Schrems⁵.

⁵ Case C-311/18, ‘Data Protection Commissioner vs Facebook Ireland and Maximillian Schrems’, decided on the 16th July 2020 (para. 172).

22. The fundamental right to the protection of personal data may be subject to some limitations pursuant to article 52(1)⁶ of the Charter. This therefore means that the limitations should be provided by law, respect the essence of the rights and freedoms, and be necessary and proportionate to genuinely meet objectives of general interest or the need to protect the rights and freedoms of others. Therefore, a restriction should not be extensive and intrusive in such a manner that it would void a fundamental right of its basic content.
23. Whereas the Regulation does not define the term '*restrictions*', the EDPB defines it "*as any limitation of scope of the obligations and rights provided for in Articles 12 to 22 and 34 GDPR as well as corresponding provisions of Article 5 in accordance with Article 23 GDPR*". The EDPB further provides that a "*restriction to an individual right has to safeguard important objectives, for instance, the protection of rights and freedoms of others or important objectives of general public interest of the Union or of a Member State which are listed in Article 23(1) GDPR. Therefore, restrictions of data subjects' rights can only occur when the listed interests are at stake and these restrictions aim at safeguarding such interests*"⁷ [emphasis has been added].
24. By means of an email dated the 29th February 2024, the controller refused to provide access to the personal data of the complainant on the basis that "*all the data you requested cannot be divulged, since it is data exchanged between tax authorities and is therefore considered confidential*". During the course of the investigation, the controller reiterated that the personal data of the complainant was restricted due to various provisions of the law which require the controller to maintain confidentiality and secrecy in relation to information communicated between Member States in any form, which information may be used for the assessment, administration and enforcement of law concerning taxes.
25. Based on the submissions of the controller, the Commissioner referred to regulation 4(c) of the Restriction of the Data Protection (Obligations and Rights) Regulations, Subsidiary Legislation 586.09, which enables the controller to restrict the rights of the data subject where such a restriction is indeed a necessary measure required:

⁶ Article 52(1) of the Charter provides that: "*1. Any limitation on the exercise of the rights and freedoms recognised by this Charter must be provided for by law and respect the essence of those rights and freedoms. Subject to the principle of proportionality, limitations may be made only if they are necessary and genuinely meet objectives of general interest recognised by the Union or the need to protect the rights and freedoms of others.*"

⁷ European Data Protection Board, '*Guidelines 10/2020 on restrictions under Article 23 GDPR*' (Version 2.0), adopted on the 13th October 2021 (para. 8).

“for the administration of any tax, duty, fines, fees or other money due or owing to the State, under the Income Tax Act, the Income Tax Management Act, the Value Added Tax, the Customs Ordinance, the Excise Duty Act and the Fees Ordinance, and any other law allowing for generating revenue in any manner for the Government of Malta”.

26. This provision reflects the wording of article 23(1)(e) of the Regulation, which enables Member State law to which the controller is subject to restrict by way of a legislative measure the rights of the data subjects where it is necessary and proportionate to safeguard *“important objectives of general public interest of the Union or of a Member State, in particular an important economic or financial interest of the Union or of a Member States, including monetary, budgetary and taxation matter, public health and social security”*.

27. In addition, the Commissioner noted regulation 21(1) of Cooperation with Other Jurisdictions on Tax Matters, Subsidiary Legislation 123.127 which reads as follows:

“All exchange of information pursuant to these regulations shall be made in conformity with Regulation (EU) 2016/679 of the European Parliament and of the Council (General Data Protection Regulation) and the Data Protection Act. Nevertheless, by application of Article 23(1)(e), Article 13, Article 14(1) and Article 15 of the said Regulation shall not apply, as the provision of information under this regulation constitutes a necessary measure in the interest of taxation matters” [emphasis has been added].

28. During the course of the investigation, the controller submitted that the personal data pertaining to the complainant was information communicated between Member States for the purposes of Cooperation with Other Jurisdiction on Tax Matters Regulations, Subsidiary Legislation 123.127. The controller collaborated this by submitting correspondence from the complainant stating that “[a]ll the [REDACTED] can inform me, is that they have received information from [REDACTED] regarding my pension in Malta ... As you have now received all relevant references and IDs available, I hope you in accordance with GDPR will be able to forward me any information that the [REDACTED] has on file, has received or sent to any destination or reporting platform allowing me to assert, which information the [REDACTED] specifically are requesting”.

On the basis of the foregoing considerations, the Commissioner is hereby deciding:

- i. that the controller failed to provide information to the complainant in relation to his request to access his personal data within one (1) month from receipt of the request; and**
- ii. that the restriction of the right of the complainant in relation to the request to access his personal data is justified in terms of regulation 4(c) of the Restriction of the Data Protection (Obligations and Rights) Regulations, Subsidiary Legislation 586.09 and regulation 21(1) of Cooperation with Other Jurisdictions on Tax Matters Regulations, Subsidiary Legislation 123.127.**

Pursuant to article 58(2)(b) of the Regulation, the Commissioner is hereby serving the controller with a reprimand for failing to handle the request of the complainant pursuant to the timeframe of one (1) month from receipt of the request.

Pursuant to article 58(2)(d) of the Regulation, the Commissioner is hereby ordering the controller to develop an appropriate policy for handling data protection requests submitted by data subjects pursuant to Chapter III of the Regulation within two (2) months from the date of service of this decision.

The controller is hereby being ordered to inform the Commissioner of the action taken to comply with this order immediately thereafter. Failure to comply shall lead to the appropriate corrective action pursuant to article 83(6) of the Regulation.

Ian
DEGUARA
(Signature)

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Ian DEGUARA
(Signature)
Date: 2025.01.14
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Ian Deguara
Information and Data Protection Commissioner

Right of Appeal

The parties are hereby being informed that in terms of article 26(1) of the Data Protection Act (Chapter 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 to the Information and Data Protection Appeals Tribunal within twenty (20) days from the service of the said decision as provided in article 23 thereof⁸.

An appeal to the Tribunal shall be made in writing and addressed to “*The Secretary, Information and Data Protection Appeals Tribunal, 158, Merchants Street, Valletta*”.

⁸ Further information is made available on <https://idpc.org.mt/appeals-tribunal/>