

**FREEDOM OF INFORMATION REQUEST**

1. On the 15<sup>th</sup> January 2024, Mr Matthew Caruana Galizia (the “**applicant**”) made a freedom of information request pursuant to the requirements set forth in article 6(1) of the Freedom of Information Act (the “**Act**”), Chapter 496 of the Laws of Malta, requesting the Planning Authority (the “**Public Authority**”) to provide the following information in electronic format:

*“In the application PA/04672/23 for development of an ODZ piece of land the following statement is marked as “true”: “I am not an owner of the entire site, but I have notified the owner/s of my intention to apply by registered letter of which a copy is being herewith attached/uploaded and the owner/s has/have granted consent to such proposal”. I am requesting the said letter or notification, addressed to the owner of the site, attached/uploaded along with the application”.*

2. On the 13<sup>th</sup> February 2024, the Public Authority refused the request of the applicant on the basis that:

*“The documents requested would provide information on the owners of the land which is considered as personal data subject to the data protection act. Hence article 5(3)(a) of Cap 496 applies. Furthermore, article 33 (2)(a) of Cap 552 states that the Authority shall publish all applications containing the name of the applicant and so the publication of the names of the land owners is not allowed. Hence article 5(3)(b) of Cap 496 applies”.*

3. On the 29<sup>th</sup> February 2024, the applicant requested the Public Authority to revise its decision pursuant to its internal complaints procedure and argued *“that the decision taken by the Planning Authority by means of which it has refused my request to provide the document requested of it is wrong, and the Planning Authority is therefore kindly requested to rescind its decision and to accede to the request”*.
4. On the 15<sup>th</sup> March 2024, the Public Authority reiterated its refusal and stated that *“[n]o reasons to support the complaint have been provided other than that the applicant contends that the decision by the PA is wrong. This is not a justified reason for overturning our original decision”*.

### **FREEDOM OF INFORMATION APPLICATION**

5. On the 1<sup>st</sup> April 2024, the applicant, through his legal counsel, applied for a decision notice pursuant to article 23(1)(a) of the Act and requested the Information and Data Protection Commissioner (the **“Commissioner”**) to decide whether the request for information made by the applicant to the Public Authority was handled pursuant to the requirements of the Act. The applicant reiterated the arguments which were submitted to the Public Authority as part of the internal complaints procedures and added:
  - a. that the ownership of immovable property in Malta, along with transfers of such property and requests for development or planning permission, constitutes a matter of public interest and has been regulated for centuries through public deeds published by warranted notaries. These public deeds are recorded in the public registry, ensuring that the process of property ownership, transfer and development is conducted publicly and not in private;
  - b. that the Public Authority represents the public interest by receiving, vetting and deciding upon development applications to ensure alignment with national or local development policies and plans, and therefore, the publication of application notices ensures public scrutiny by preventing abuse of the process and promoting transparency;
  - c. that making the planning application process public, through notices in local newspapers and affixed to properties visible from public roads, requires landowner applicants to declare ownership as a requisite for obtaining planning permission. The reason for this is that the ownership of the property is as important as the location, size, nature and other physical attributes of the property in question. The identity of

the owner is an important consideration, especially if that individual has a history of routinely abusing or circumventing planning laws; and

- d. that public interest is amplified in the cases of applications that concern the development of property in those zones of the country that have been declared outside development (ODZ). This is because the scope for abuse is higher, given that the land in question is subject to far higher restrictions than land situated in urban or developable areas. This public interest is arguably greater than the interest of the individual to protect their identity. The balance between public interest and the private interest of individuals, including the right to privacy, is governed by article 35 of the Act, which requires weighing the benefits of disclosure against those of privacy.

## **INVESTIGATION**

### Admissibility of the Freedom of Information Application

6. 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 that the application made by the applicant as admissible for the purpose of article 23(2) of the Act.

### The Issuance of the Information Notice

7. As part of the investigation procedure, by means of the information notice dated the 17<sup>th</sup> April 2024, 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 had complied with the requirements of the Act. In particular, the Commissioner requested the Public Authority:
  - a. to provide any information which it deems relevant and necessary to support its decision and rebut the arguments made by the applicant. 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 5(3)(a) and article 5(3)(b) of the Act; and
  - b. to provide with its reply, a true copy of the requested documentation.

### Submissions received from the Public Authority

8. On the 16<sup>th</sup> May 2024, the Public Authority provided a copy of the requested documentation and stated:

- a. that article 5(3)(a) of the Act was cited because the requested document contains personal information about the owner's address, which should not be disclosed to the public;
- b. that article 5(3)(b) of the Act was cited as the Development Planning Act, Chapter 552 of the Laws of Malta ("Cap. 552") prohibits the publication of owner details;
- c. that the applicant argues that ownership of immovable property is regulated by public deeds published by notaries, however, the Public Authority noted that the freedom of information request was not for a copy of the deed but for a copy of the registered notification to the owner;
- d. that the applicant argues that public scrutiny of applications prevents abuse. The Public Authority submitted that access to documents is governed by the Act and freedom of information requests must comply with its provisions. Furthermore, applications may still be scrutinised according to article 33 and article 71(6) of Cap. 552;
- e. that the applicant contends that owners are required to declare ownership in application forms. In reply, the Public Authority explained that application forms address various ownership circumstances and only establish a direct link when the applicant is the owner. The application form does not indicate that personal details of the owner, such as his address, should be made public; and
- f. that the applicant argued that on the ODZ there is a higher scope of abuse, and the public interest is greater than the private interest and refers to article 35 of the Act. The Public Authority noted that applications on the ODZ and applications on other zones within the Maltese territory do not differ with regard to the application form. Furthermore, there are policies that apply accordingly and recourse to enforcement action/court action where applicable.

## **LEGAL ANALYSIS AND DECISION**

9. For the purpose of the investigation of this freedom of information application, the Commissioner proceeded to examine in detail the request made by the applicant, wherein he

specifically requested the Public Authority to provide a copy of the letter or notification in application PA/04672/23 for the development of an ODZ plot of land, addressed to the site owner, along with its attachments.

10. The Commissioner examined the reply provided to the applicant on the 13<sup>th</sup> February 2024, in which the Public Authority refused to provide the requested documentation. The Public Authority cited that the information regarding the landowners constitutes personal data protected under the Data Protection Act (Cap. 586 of the Laws of Malta), thereby invoking article 5(3)(a) of the Cap. 586. Additionally, the Public Authority referenced article 33(2)(a) of Development Planning Act (Cap. 552 of the Laws of Malta), which mandates the publication of applications “*containing the name of the applicant and details of the proposal, including documents and detailed plans*”, and thus the Public Authority also invoked article 5(3)(b) of the Act.

#### Article 5(3)(b) of the Act

11. In its replies, the Public Authority invoked the non-applicability of the Act pursuant to article 5(3)(b) of the Act, which states that the Act shall not apply to documents in so far as such documents contain “*information the disclosure of which is prohibited by another law*”.
12. The Commissioner examined article 33(2) of the Development Planning Act (Cap. 552 of the Laws of Malta) as the other law which enables the public to have access to information:

*“Without prejudice to the generality of sub-article (1), the Authority shall keep and make available for public inspection at such reasonable times as it may determine, a register or registers:*

*(a) of all applications for development permission received by it containing the name of the applicant and details of the proposal, including documents and detailed plans;*

*(b) all decisions including documents and detailed plans made on such applications”.*

13. After assessing the wording of article 33(2) of Cap. 552, the Commissioner noted that this provision obliges the Public Authority to keep and make available for public inspection a register of all applications for development permission and all decisions. In addition to article 33(2)(a) and (b) of Cap. 552, the Public Authority is also legally obliged to make available a

number of documents pursuant to the second proviso to article 33(2) of Cap.552. Therefore, the Commissioner is of the view that the documents which are specifically mentioned in article 33(2) of Cap. 552 fall outside the scope of the Act on the basis of article 5(1)(d) of the Act. The Commissioner emphasises that, in such case, the appropriate reason of refusal is article 14(a) of the Act, which permits the Public Authority to refuse a freedom of information request if the documents are excluded from the scope of the Act by virtue of article 5.

#### Article 5(3)(a) of the Act

14. During the investigation, the Commissioner carefully reviewed the relevant legal provisions under article 33(2)(a) of Cap. 552, which mandates the Public Authority to maintain and make available for public inspection a register containing key details of development permission applications. This register must include the name of the applicant, the nature of the proposal, and accompanying documents, such as detailed plans. Moreover, the Commissioner proceeded to further examine the proviso of article 33(2) of Cap. 552, which states that:

*“Provided further that for the purposes of this article, in the case of a file held by the Authority, any person shall have access to that part of the file containing the following information:*

*(i) the application report of all applications and any planning report regarding such applications;*

*(ii) all decisions relating to development permissions issued by the Authority together with the relative plans and documents including the reasons for the grant of such permissions or refusal;*

*(iii) all environmental impact statements, environmental planning statements and traffic impact statements; and*

*(iv) all alternative site assessments and cost-benefit analysis”.*

15. In light of these obligations, the Commissioner conducted a review of available public records, utilising the relevant online resources provided by the Public Authority. Specifically, the Commissioner accessed the Public Authority’s digital platform at <https://eapps.pa.org.mt/>, which serves as an online application platform for managing planning-related applications and services. The Commissioner noted that through the platform, the general public can access a

specific application and view the details of the submitted planning application, including plans, supporting documentation and the progress of the application.

16. The Commissioner specifically searched for the application with the reference number PA/04672/23. In reviewing the available information, the Commissioner noted that the name and surname of the applicant were publicly available, however, the details pertaining to the landlords, including the landlord's name, surname and postal address, were not publicly accessible on the platform. This distinction prompted the Commissioner to examine the Public Authority's refusal to disclose the requested information on the basis that the provisions of the Act do not apply as the documents contain personal data of natural persons. As part of the investigative procedure of this Office, the Commissioner inspected the documents requested by the applicant in order to ascertain whether the information contained in the documentation constitutes "*personal data*" within the meaning of article 4(1) of the General Data Protection Regulation (the "**Regulation (EU) 2016/679**").
17. Consequently, the Commissioner noted that the documentation requested contained the landlords' name and surname, postal address, the address of the land to be developed, as well as the applicant's name and surname, address, signature and identity card number.
18. 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)*".
19. 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*'<sup>1</sup> 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***

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<sup>1</sup> Case 28/08, '*European Commission v The Bavarian Lager Co. Ltd*', Judgment of the Court (Grand Chamber) of 29 June 2010.

*held that surnames and forenames may be regarded as personal data”*  
[emphasis has been added].

20. Consequently, the Commissioner concluded that the landlords’ name and surname and their postal address, as well as the applicant’s identity card number and signature, constitute personal data in terms of article 4(1) of Regulation (EU) 2016/679. Since the landlords do not perform a public function or hold a public office, they have no reasonable expectation of their personal data being subject to public scrutiny. Consequently, the absence of a public function reduces any significant public interest in disclosing this information.

**On the basis of the foregoing considerations, pursuant to article 23(3)(b) of the Act, the Commissioner is hereby serving a decision notice and deciding:**

- a. that article 5(3)(b) of the Act does not apply as Cap. 552 is not prohibiting the disclosure of the requested documents; and**
- b. that the documents requested contain personal data, specifically the landlords’ name and surname, as well as the applicant’s identity number and signature within the meaning of article 4(1) of the Regulation (EU) 2016/679 and therefore, article 5(3)(a) of the Act applies, however, subject to the proviso to article 5(3) of the Act, the document can be released with such data redacted.**

**In this regard, 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 personal data within the meaning of article 4(1) of Regulation (EU) 2016/679, specifically the landlords’ name and surname, as well as the applicant’s identity number and signature.**

**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.**

Ian  
DEGUARA  
(Signature)

Digitally signed  
by Ian DEGUARA  
(Signature)  
Date: 2025.01.20  
11:33:49 +01'00'

**Ian Deguara  
Information and Data Protection Commissioner**



### **Right of Appeal**

In terms of article 39(1) of the Act where a “[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*’.