

COMPLAINT

1. On the 29th August 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. The complainant submitted that upon checking the electoral register, he discovered that five (5) individuals are registered at his address, [REDACTED] [REDACTED] even though none of them have ever resided there.

INVESTIGATION

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

Submissions of the controller

3. On the 26th September 2024, the controller submitted the following salient arguments for the Commissioner to consider during the legal analysis of this case:

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.

- a. that [REDACTED] and [REDACTED] filled in and signed an application form to be registered as voters, in which they indicated their residential address as [REDACTED];
 - b. that [REDACTED] applied to be registered as a voter on a different address, but later on he signed an application form for a change of residential address in which he requested to update his registered address to [REDACTED]; and
 - c. that the publication of the details of the above five (5) voters in the Local Councils' Electoral Register is in conformity with articles 5 and 7 of the Local Government Act (Cap. 363 of the Laws of Malta) and articles 21(1), 30, 31 and 33(1) of the General Elections Act (Cap. 354 of the Laws of Malta).
4. By means of an email dated the 26th September 2024, pursuant to article 58(1)(e) of the Regulation, the Commissioner requested the controller to indicate if it conducts any checks to verify the accuracy of the information provided by the applicant upon receipt of the "*Form of Application for Registration as a Voter*".
5. By means of an email dated the 2nd October 2024, the controller submitted:
- a. that the controller verifies whether a person is eligible to be registered as a voter according to the criteria set out in articles 57 and 58 of the Constitution of Malta;
 - b. that article 110 of the General Elections Act (Cap. 354 of the Laws of Malta) provides that "[a]ny person who knowingly makes or subscribes to a false declaration or otherwise gives false information in connection with the registration, transfer or cancellation of any voter shall be guilty of an offence against this Act and shall, on conviction, be liable to imprisonment for a term not exceeding one month or to a fine (multa) not exceeding two hundred and thirty-two euro and ninety-four cents (232.94) or to both such imprisonment and fine"; and
 - c. that [REDACTED] collates and carries out relative checks related to the verification of the details concerning the identification of the applicants and their place of residence.

Consultation with Identità

6. Pursuant to article 15(3) of the Data Protection Act (Cap. 586 of the Laws of Malta), the Commissioner requested Identità to provide information as to whether it holds any information in relation to [REDACTED] and [REDACTED] in connection with the address [REDACTED]

All documents had been issued between 2011 & 2015 and have all expired. All five [REDACTED] were registered at [REDACTED] and never on [REDACTED]. Only two Maltese Nationals are presently registered on the given postal address [REDACTED]. It is believed that building [REDACTED] which was once a residence has been developed into a block of apartments after 2015 when the last permit was issued".

Further clarifications sought from the controller

7. A copy of the feedback provided by Identità was forwarded to the controller, along with a request for clarification regarding on why the voters' data remain on the Electoral Register, despite the fact that all five voters have expired identity documents.
8. The controller submitted the following clarifications:
- a. that on application day, all five (5) individuals requested to be registered as voters at [REDACTED] and the controller provided the Commissioner with copies of the applications; and
 - b. that as stipulated in article 26 of the General Elections Act (Cap. 354 of the Laws of Malta), the deregistration process may be initiated once the voter (i) has not been effectively served with his voting document and not having collected his voting document pertaining to elections in the past 12 years **and** (ii) does not hold a valid identity card or residence card.

A meeting held with the controller

9. On the 21st January 2025, the Commissioner held a meeting with the Chief Electoral Commissioner to gain a clearer understanding of the situation and to explore potential remedies for the complainant, taking into account the findings of the investigation conducted by the Commissioner. During the meeting, the controller explained that the law requires the controller to deregister a voter only if all cumulative conditions set forth in article 26(1) of the General Elections Act are fulfilled. The Commissioner raised concerns about this provision, as this could lead to situations where the data are inaccurately processed for a significant period of time, which infringes the principle of accuracy as set forth in article 5(1)(d) of the Regulation.
10. The controller further held that any third party may lodge an appeal to the Revising Officer at the Law Courts - free of charge - up to twenty-one (21) days from the publication of the electoral register to deregister or transfer the registration details of a voter in terms of article 40(1) of the General Elections Act. The controller informed the Commissioner that the next Electoral Register is due to be published in April 2025.

LEGAL ANALYSIS AND DECISION

11. For the purpose of this complaint, the Commissioner proceeded to assess the complaint, wherein the complainant alleged that five (5) individuals were listed as voters on the Local Council Electoral Register as residing at the complainant's address, when in fact, the complainant claimed that these individuals have never been residents at the address, [REDACTED]
[REDACTED]
12. Following consultation with [REDACTED] the Commissioner established that all five (5) voters had expired identity documents. Consequently, the Commissioner sought a clarification from the controller regarding how these individuals remained listed on the Electoral Register. The controller referred to article 26(1) of the General Elections Act (Cap. 354 of the Laws of Malta) which reads as follows:

“(1) Prior to proceeding to the cancellation of the registration of any voter in terms of article 24, the Commission shall by notice in writing by means of a registered letter and, separately and at the same time, an identical letter sent by ordinary post, require such person to provide such information or such proof or

evidence as it may deem necessary to establish such person's right to remain registered as a voter and if such person fails, within ten days of the posting of such notice by the Commission, to provide in writing such information, proof or evidence to the satisfaction of the Commission, the Commission may cancel his registration or expunge his name from the Electoral Register:

*...
Provided further that in the case of the Local Councils' Electoral Register and the European Union Electoral Register, in the event of a person (a) having not been effectively served with his voting document and not having collected his voting document pertaining to elections in the past 12 years; and (b) not having a valid identity card or residence card; and (c) having totally failed to answer the aforesaid notices within the aforesaid period, the Commission shall, on the lapse of the period established in sub-article (1), proceed to cancel the registration of the voter or expunge the voter's name from the Local Councils' Electoral Register and, or the European Union Electoral Register but on doing so it shall attempt to serve upon such person a further notice in writing stating that such cancellation or expunging have been made and it shall publish a notice of the said cancellation or expunging in the Gazette and in at least one local newspaper. The cancellation or expunging aforesaid shall come into effect on the lapse of one month from the date when notice of the same is published in the Gazette."* [emphasis has been added].

13. The cancellation of the registration of any voter in the case of the Local Councils' Electoral Register shall be conducted by the controller if the requirements set forth in article 26(1) of the General Elections Act are met. Consequently, in the present case, the controller is prohibited from erasing the data unless it is confirmed that the voters have neither been effectively served with a voting document nor collected such a document in the past twelve (12) years. The Commissioner expresses his serious reservations about this 12-year period which is considered to be excessive, particularly when taking into account that, during these protracted periods, inaccurate data continues to be processed against the principle of accuracy as set forth in article 5(1)(d) of the Regulation.

On the basis of the foregoing considerations, the Commissioner is hereby deciding that the cancellation of the registration of voters from the Electoral Register is regulated by the provisions of the General Elections Act, and therefore, the data pertaining to the voters in question could not be erased by the controller unless the requirements set forth in article 26 of the General Elections Act are met.

The complainant is being informed that article 40(1) of the General Elections Act grants registered voters the right to appeal and request the Revising Officer to expunge the details of the voters. Article 40(1) of the General Elections Act reads as follows: *“Any registered voter who claims that any other person whose name appears in the Electoral Register either is not entitled to be registered as a voter, or, that the relative designation, address or other particulars are not correctly shown in the Electoral Register in accordance with the provisions of this Act, shall have the right to appeal to a Revising Officer not later than twenty-one days after the publication of the Electoral Register either to have the name of such voter expunged from the Electoral Register or to have the designation, address or other particulars correctly shown”.*

Ian
DEGUARA
(Signature)

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by Ian DEGUARA
(Signature)
Date: 2025.02.12
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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 (Cap. 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 thereof².

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.**

² More information on the appeals procedure is available on our website at the following link:
<https://idpc.org.mt/appeals-tribunal/>