

COMPLAINT

1. On the 15th November 2024 [REDACTED] (the “complainant”) lodged a data protection complaint with the Information and Data Protection Commissioner (the “Commissioner”) pursuant to article 77(1) of the General Data Protection Regulation¹ (the “Regulation”), alleging that the [REDACTED] (the “controller”) failed to provide a full copy of her personal data undergoing processing.
2. The complainant held that her “*original request was for all communications between [REDACTED] and any foreign departments, local institutions, or agencies involved in the processing of my application, not just the application itself. The only new and important information provided was on page 9 of the documents, where the director responsible for [REDACTED] requested comments from the [REDACTED] regarding the issuance of the citizenship. This request was dated more than 18 months ago (April 11, 2023) and therefore there must have been feedback. I am particularly interested in the feedback provided by the [REDACTED] and any additional information exchanged on my behalf, which still appears to be missing or incomplete in the process of my application*”.
3. The complainant provided a copy of the document dated the 11th April 2023, which was mentioned in the complaint. This document is a letter from an employee of the controller addressed to the [REDACTED] in which the controller formally requested the disclosure of information pertaining to the records of the complainant.

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.

4. The Commissioner proceeded to assess the documentation, which was submitted alongside the complaint, which included the following exchange of emails:

Date of Email	Contents of Email
6 th June 2024	The complainant exercised her right of access and requested the controller to provide information “related to my pending citizenship application with [REDACTED]” and the “release of the data on the communication with external parties and internal departments on all media, electronic and paper”.
14 th October 2024	The controller provided a reply as follows: “Your request has been examined in terms of the said Regulation and the following documents which are stored in relation to your application for Maltese citizenship by registration in terms of Article 6, Cap. 188 of the Laws of Malta are being attached. Please note that all correspondence exchanged with you electronically is not being included. The attached document, as mentioned above, consists of your application for registration as a citizen of Malta dated 4 th April 2023 including the supporting documents requested at the time of application and a copy of the Letter sent to the [REDACTED] – Reds 1 – 9 refer”.
16 th October 2024	<p>The complainant was not satisfied with the information provided by the controller and requested the controller to reconsider the request:</p> <p><i>“I would like to clarify that the information provided is not what I had originally requested. The attached document consists of a scanned copy of my application and the paperwork I initially submitted to the agency when I applied.</i></p> <p><i>My request with both the data protection officer (DPO) and the information and data protection commissioner (IDPC) office specifically concerns the release of the data subject which is any information exchanged with foreign institutions and local departments on my behalf throughout my application process. I am seeking the corroborated information that was shared in this exchange”.</i></p>

INVESTIGATION

Submissions of the controller

5. As part of the internal investigative procedure of this Office, the Commissioner provided the controller with a copy of the complaint and enabled the controller to provide any information which it deemed relevant and necessary to defend itself against the allegation of the complainant. By means of an email dated the 2nd December 2024, the controller submitted the following information in relation to the complaint:

“Please note that citizenship applications require a due diligence process. Such applications are therefore referred to our national authorities, including the [REDACTED]. The decision of the Minister responsible for citizenship matters rests on the feedback of such authorities. In view that Article 19 of the Maltese Citizenship Act (Cap 188) stipulates as follows:

The Minister shall not be required to assign any reason for the grant or refusal of any application under this Act and the decision of the Minister on any such application shall not be subject to appeal to or review in any court.

It is therefore not possible for the Agency to provide the said document as providing a copy of such would be in conflict with the provisions of the said article

In this regard I kindly refer you also to the restriction contained in sub-regulation 4(i) of SL 586.09”.

6. Pursuant to article 58(1)(e) of the Regulation, the Commissioner requested the controller to indicate if it had informed the complainant of the restriction invoked in terms of the Restriction of the Data Protection (Obligations and Rights) Restrictions, Subsidiary Legislation 586.09 (the “S.L. 586.09”). By means of an email dated the 5th December 2024, the controller informed the Commissioner that the “complainant was not informed of the restriction in terms of regulation 6 of S.L. 586.09. Given that complainant lodged her formal request through IDPC, the controller is submitting its reply to [REDACTED] through IDPC”.

Submissions of the complainant

7. The complainant was provided with the opportunity to rebut the arguments of the controller. On the 11th December 2024, the complainant submitted the following arguments for the Commissioner to take into consideration during the legal analysis of the case:
- a. that article 19 of the Maltese Citizenship Act (Cap. 188 of the Laws of Malta) pertains to the final decision of the Minister concerning the grant or refusal of citizenship, however, the citizenship application pertaining to the complainant is still pending;
 - b. that regulation 4(i) of S.L. 586.09 explicitly applies when the citizenship application has been refused and since the application has not yet been refused, this provision is irrelevant to the case and cannot serve as a justification to restrict the right of access;
 - c. that in terms of the Regulation and the Data Protection Act (Cap. 586 of the Laws of Malta), the complainant has the right to access her personal data unless a restriction is proven to be both necessary and proportionate under article 23 of the Regulation; and
 - d. that the controller has not demonstrated how withholding the data of the complainant was indeed necessary or proportionate.

Final Submissions of the controller

8. The controller was provided with the final opportunity to provide its arguments in relation to the submissions of the complainant. The controller argued that the *“decision regarding an application for Maltese citizenship is a consequence of the feedback provided by the stakeholders. Giving any information at this stage would prejudice the Minister’s power provided by the said Article. Hence, the fact that the application is being processed does not give any right for the access of information which divulging is prohibited by law”*.

Further Clarifications Sought by the Commissioner

9. In terms of article 58(1)(e) of the Regulation, the Commissioner requested the controller to indicate whether the application for the acquisition of Maltese citizenship, submitted by the complainant under the Maltese Citizenship Act (Cap. 188 of the Laws of Malta), had been accepted. By means of an email dated the 23rd April 2025, the controller informed the

Commissioner that “the application for Maltese citizenship lodged by [REDACTED] has been finalised and the decision has been communicated to applicant by means of a refusal letter sent by registered mail dated 28th February 2025”.

LEGAL ANALYSIS AND DECISION

10. As a preliminary step, the Commissioner proceeded to assess the subject-matter of the complaint, in which the complainant alleged that the controller had failed to provide her with a complete copy of all her personal data being processed, including information processed by the controller as a result of the due diligence exercise conducted in the performance of its function as set forth in regulation 3(a) of the Community Malta Agency (Establishment) Order, Subsidiary Legislation 595.38.
11. As part of the investigation, the Commissioner requested the controller to provide any information which it deemed relevant and necessary to defend itself against the allegation raised by the complainant. By means of the submissions dated the 2nd December 2024, the controller submitted that “citizenship applications require a due diligence process. Such applications are therefore referred to our national authorities, including the [REDACTED]. The decision of the Minister responsible for citizenship matters rests on the feedback of such authorities”. The controller also referred to article 19 of the Maltese Citizenship Act (Cap. 188 of the Laws of Malta), which provides that the Minister responsible for citizenship shall not be required to assign any reason for the grant or refusal of any application, and therefore, the controller cited regulation 4(i) of S.L. 586.09 as the ground for partially restricting the right of access of the complainant.

The obligation to inform the complainant about the restriction

12. Before entering into the merits of the applicability of the restriction, the Commissioner sought to determine whether the complainant had been informed about the restriction invoked by the controller in relation to her request to access her personal data. For this reason, pursuant to his investigative power as set forth in article 58(1)(e) of the Regulation, the Commissioner requested the controller to clearly indicate whether the complainant had been informed that her right of access was partially being restricted in terms of the law as required by article 12(4) of the Regulation and regulation 6 of S.L. 586.09. By means of an email dated the 5th December 2024, the controller informed the Commissioner that the “complainant was **not informed of the restriction** in terms of regulation 6 of S.L. 586.09. Given that complainant

lodge her formal request through IDPC, the controller is submitting its reply to [REDACTED] through IDPC” [emphasis has been added].

13. The Commissioner clarifies that the complainant did not lodge her request to access her personal data through his Office. On the 6th June 2024, the complainant exercised her right of access directly with the controller pursuant to article 15 of the Regulation. However, the controller failed to provide a response within one (1) month from receipt of the request. Consequently, the complainant lodged a complaint with the Commissioner in terms of article 77(1) of the Regulation. Pursuant to article 58(2)(c) of the Regulation, the Commissioner issued an order directing the controller to respond to the request of the complainant. The controller complied with this order by providing a response directly to the complainant on the 14th October 2024, however, the complainant was not satisfied with the reply, and subsequently, lodged another complaint with the Commissioner.

14. The Commissioner referred to article 12(4) of the Regulation, which provides as follows:

“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].

15. The European Data Protection Board (the “EDPB”) in its Guidelines 01/2022 states that when the controller refuses to act on a request, even partially, the controller must provide the data subject with the reason:

“In line with Art. 12(4) GDPR, if controllers refuse to act on an access request in whole or partly, they must inform the data subject without delay and at the latest within one month of receipt of the request of

- *the reason why,*
- *the right to lodge a complaint with a supervisory authority,*
- *the possibility to seek a judicial remedy”².*

² Guidelines 01/2022 on data subject rights – Right of Access, Version 2.1, adopted on the 28th March 2023, paragraph 193.

16. In addition, article 23(2)(h) of the Regulation provides that any national legislative measure that restricts the scope of the obligations and rights provided for in articles 12 to 22 of the Regulation shall contain “*the right of data subjects to be informed about the restriction, unless that may be prejudicial to the purpose of the restriction*”. This is also reflected in recital 8 of the Regulation which states as follows:

“Where this Regulation provides for specifications or restrictions of its rules by Member States may, as far as necessary for coherence and for making the national provisions comprehensible to the persons to whom they apply, incorporate elements of this Regulation into their national law”.

17. Accordingly, regulation 6 of S.L. 586.09 imposes an obligation on the controller to inform the data subject about the reason of the restriction of a data protection right where relevant:

“The data controller shall inform the data subject about any restriction provided for under these regulations:

Provided that such a disclosure will not be prejudicial to the purposes of the restriction applied pursuant to these regulations”.

18. The EDPB in its Guidelines 10/2020 provides an example of a situation in which it may be justified not to inform the data subject of the restriction:

*“For example, where a data subject specifically asks to exercise a particular right at a very delicate moment of a given administrative investigation, the data subject should, if possible, be informed of the reasons for the restriction. However, if informing the data subject of the reasons for the restriction would result in cancelling the effect of the restriction (i.e. would hamper the preliminary effects of the investigation), that information may not be disclosed. Restrictions may be adopted to protect investigations. In this case, **restrictions must remain necessary and proportionate and to do so an assessment should be performed by the controller to check whether informing the data subject of the restriction is prejudicial to the purpose of the restriction.***

In other words, in extraordinary circumstances, for instance in the very preliminary stages of an investigation, if the data subject requests information if he or she is being investigated, the controller could decide not to grant that information at that moment - if this restriction is lawful and strictly necessary in the specific case to what would be prejudicial to the purpose of the restriction”³ [emphasis has been added].

19. Therefore, as a general rule, the data subjects must be informed when their right to exercise their personal data is subject to a restriction, even if the right is partially restricted, along with the reason of the restriction. An exception to this rule applies only in exceptional circumstances where providing this information would prejudice or undermine the purpose of the restriction. In the present case, the controller clearly explained that, as part of its functions, it carries out a due diligence exercise for the purpose of determining whether to grant citizenship in terms of Cap. 188 of the Laws of Malta, and, therefore, informing the applicant of the reason for the partial restriction would not have been prejudicial to the purpose of the restriction.

The Restriction

20. The Commissioner proceeded to assess the restriction invoked by the controller for not providing the complainant with information which was processed as part of its due diligence assessment. To this end, the Commissioner referred to regulation 4(i) of S.L. 586.09 that reads as follows:

“Any restriction to the right of the data subject referred to in Article 23 of the Regulation shall only apply where such restrictions are a necessary measure required:

(i) for matters relating to Maltese citizenship where the Minister responsible for citizenship or any person authorised to act on his behalf, refuses an application for the acquisition of Maltese citizenship under the Maltese Citizenship Act”.

21. The controller substantiated its reasoning by citing article 19 of the Maltese Citizenship Act (Cap. 188 of the Laws of Malta), which provides as follows:

³ Guidelines 10/2020 on restrictions under Article 23 GDPR, Version 2.1, adopted on the 13th October 2021, paragraphs 65 and 66.

“The Minister shall not be required to assign any reason for the grant or refusal of any application under this Act and the decision of the Minister on any such application shall not be subject to appeal to or review in any court”.

22. The Commissioner examined the submissions of the complainant who contended that regulation 4(i) of S.L. 586.09 applies solely to cases where a citizenship application is refused, and consequently, the complainant argued that the restriction should not apply when such application is pending.
23. The Commissioner noted that the wording being used in regulation 4(i) of S.L. 586.09 is that the restriction shall apply where the Minister responsible for citizenship or any person authorised to act on his behalf “*refuses an application for the acquisition of Maltese citizenship under the Maltese Citizenship Act*”. This restriction has also to be read in light of article 19 of the Maltese Citizenship Act, which provides that the “*Minister shall not be required to assign any reason for the grant or refusal of any application under this Act*”.
24. While the Commissioner acknowledges that the wording of the restriction may lack precision, it is important to clarify that the restriction is intended to cover information processed by the controller in the course of, or for the purposes of, the deliberative process pertaining to its function of determining whether the Minister shall grant citizenship pursuant to the Maltese Citizenship Act (Cap. 188 of the Laws of Malta).
25. Without prejudice to the foregoing, at the time of the issuance of this decision, the Commissioner established that the application made under the Maltese Citizenship Act (Cap. 188 of the Laws of Malta) pertaining to the complainant had been refused, and therefore, the restriction invoked by the controller in terms of regulation 4(i) of S.L. 586.09, applies.

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

- a. **the controller had not informed the complainant of the reason for partially restricting the right of access, and therefore, the controller infringed article 12(4) of the Regulation and regulation 6 of S.L. 586.09; and**
- b. **the application of the restriction in terms of regulation 4(i) of S.L. 586.09 is a necessary measure, and consequently, justified.**



Pursuant to article 58(2)(b) of the Regulation, the Commissioner is hereby serving the controller with a reprimand for failing to inform the complainant about partially restricting the right of access.

Ian
DEGUARA
(Signature)

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by Ian DEGUARA
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Date: 2025.04.29
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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 thereof.⁴

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*”.

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