

Information and Data Protection Commissioner

CDP/FOI/10/2025

Caroline Muscat

vs

Planning Authority

FREEDOM OF INFORMATION REQUEST

1. On the 10th January 2025, Ms Caroline Muscat (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:
 - *“list of termination payments made to Mr Oliver Magro upon his resignation/sacking according to various clauses to his contract as Executive Chairman*
 - *Copy of engagement contract related to Mr Johann Buttigieg as Exec Chair”.*
2. On the 7th February 2025, the Public Authority provided the following response to the applicant:

“Re item 1: The list of information as requested does not exist
Re item 2: copy of contract may be viewed at the Planning Authority offices”.
3. On the 7th February 2025, the applicant submitted a complaint through the internal complaints procedure and requested the Public Authority to reconsider its decision. The applicant argued that the *“1. PA is obliged to produce a list with the info if it does exist 2. We asked for an electronic copy and not a visit to see the contract. PA had no problems in complying with this requirement before”.*
4. On the 19th February 2025, the Public Authority informed the applicant that *“[w]e reiterate that the Planning Authority does not have a list of Mr Oliver Magro’s termination benefits. Our previous decision regarding the contract of Mr Johann Buttigieg is to stand”.*

FREEDOM OF INFORMATION APPLICATION

5. On the 19th February 2025, the applicant applied for a decision notice pursuant to article 23(1)(a) of the Act, requesting the Information and Data Protection Commissioner (the “Commissioner”) to decide whether the Public Authority had handled the freedom of information request of the applicant pursuant to the requirements of the Act.

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, the Commissioner deemed 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 an information notice dated the 6th March 2025, issued in terms of article 24(1)(a) of the Act, the Commissioner requested the Public Authority to furnish information in relation to the application made by the applicant. In particular, the Commissioner requested the Public Authority to provide the following information:
 - a. to clearly indicate if Mr Oliver Magro had received any termination payments;
 - b. to state the reason as to why access to the requested engagement contract pertaining to Mr Johann Buttigieg was not granted in the way preferred by the applicant; and
 - c. to indicate on which legal ground in terms of article 12(2) of the Act is the Public Authority relying in order not to provide the requested contract in the way preferred by the applicant.
8. By means of an email dated the 5th April 2025, the Public Authority provided its reply to the information notice as follows:

- a. that Mr Oliver Magro did not receive any termination payments from the Public Authority;
 - b. that the Public Authority decided to provide viewing access instead of a physical copy in order to be consistent with previous decisions pertaining to the same matter;
 - c. that the Public Authority cited decision FOI 13/17 dated the 21st March 2018, following a request made by Mr Ivan Camilleri for a “*copy of all engagement contracts signed between the Planning Authority and former MEPA with Mr Johann Buttigieg since 2013 until the date of reply to this request covering all past and present posts since 2013*”, where the Commissioner ordered the Public Authority “*to give the applicant the opportunity to inspect the employment agreements of Mr Buttigieg, by no later than twenty-five (25) working days from receipt of this decision*”; and
 - d. that the refusal of the Public Authority to make the document available to the applicant in her preferred way is based on article 12(2)(b) of the Act and cited data protection concerns as the reason for its refusal.
9. Pursuant to the internal investigative procedure of this Office, the Commissioner provided the applicant with the opportunity to rebut the arguments of the Public Authority. By means of an email dated the 8th April 2025, the applicant informed the Commissioner that “[o]ur *only remark is that in the case of Mr Magro we are satisfied with the reply and so there is no need to investigate further that part*”.

LEGAL ANALYSIS AND DECISION

10. For the purpose of this legal analysis, the Commissioner focused on the second part of the freedom of information request, namely the request for a “[c]opy of engagement contract related to Mr Johann Buttigieg as Exec Chair”. The applicant specified in her request that her preferred method of access is to receive a copy of the document in electronic format. However, the Public Authority refused to send a copy of the contract to the applicant and instead invited her to inspect the contract at its offices. The applicant was not satisfied with how the Public Authority handled her request, and subsequently, lodged a freedom of information application and requested the Commissioner to decide whether the refusal of the Public Authority to provide the document in her preferred manner was compliant with the requirements of article 12(2) of the Act.

11. The Act grants applicants the right to access the data in their preferred manner, and therefore, the public authorities are legally obliged to disclose a document as specified by the applicant in the request. This obligation derives from article 12(2) of the Act, which is being reproduced hereunder:

“(2) Subject to article 13, the public authority shall make the document available to the applicant in the way preferred by the applicant unless to do so would –

(a) impair efficient administration; or

(b) be contrary to any legal duty of the public authority in respect of the document; or

(c) prejudice the interests protected by Part V or Part VI and (in the case of the interests protected by Part VI) those interests are not outweighed by a contrary public interest” [emphasis has been added].

12. Article 12(2) of the Act establishes that, as a general rule, the Public Authority shall make available the document in the way preferred by the applicant unless one of the exceptions set forth in article 12(2)(a) to (c) of the Act applies. During the course of the investigation, the Commissioner requested the Public Authority to clearly indicate which legal ground in terms of article 12(2) of the Act is the Public Authority relying on for not providing the contract in the manner preferred by the applicant. In the submissions dated the 5th April 2025, the Public Authority cited article 12(2)(b) of the Act and substantiated its reasoning by referring to a decision issued by the former Commissioner and arguing that the engagement contract contains personal data pertaining to Mr Buttigieg.

13. The Commissioner referred to article 12(2)(b) of the Act which provides that the disclosure of the document in the manner preferred by the applicant would be contrary to any legal duty of the public authority in respect of the document. The Public Authority argued that the requested contract contains ‘*personal data*’ within the meaning of article 4(1) of Regulation (EU) 2016/679, and therefore, sending the document directly to the applicant would be contrary to the data protection legislation. However, while the Commissioner emphasizes that the other two exceptions provided for under article 12(2) of the Act do not apply, it has been repeatedly

confirmed by the Information and Data Protection Appeals Tribunal¹ and the Court of Appeal² that the engagement contracts pertaining to individuals occupying the highest level of management within public authorities should be made available to the public. The public shall have the right to know about the responsibilities, conditions, allowances, benefits and remuneration of employees who are paid by public funds to make decisions in relation to the management of public authorities. Therefore, it is abundantly clear that the data protection legislation does not hinder the Public Authority from making the document available to the applicant in the manner specified in the request. The Public Authority shall, however, redact certain personal data that are generally contained in an employment contract, such as, identity card number, residential address, and signatures.

On the basis of the foregoing considerations, in terms of article 23(3)(b) of the Act, the Commissioner is hereby serving a decision notice and deciding that the Public Authority failed to comply with the requirement set forth in article 12(2) of the Act.

Pursuant to article 23(4)(b) of the Act, the Commissioner is hereby ordering the Public Authority to make available the “[c]opy of engagement contract related to Mr Johann Buttigieg as Exec Chair” in the manner preferred by the applicant in terms of article 12(1)(b) of the Act within twenty (20) working days from the date of service of this decision notice. The Public Authority shall redact certain personal data that are generally contained in an employment contract, such as, identity card number, residential address, and signatures.

Action taken to comply with this decision notice shall be made available to the Commissioner immediately thereafter.

Ian
DEGUARA
(Signature)

Digitally signed
by Ian DEGUARA
(Signature)
Date: 2025.04.17
11:56:15 +02'00'

Ian Deguara
Information and Data Protection Commissioner

¹ Appell Numru 5/2017, Public Broadcasting Services Limited vs Il-Kummissarju għall-Informazzjoni u l-Protezzjoni tad-Data, decided on the 12th July 2018 and Appell Numru CDP/FOI/92/2021, ‘Caroline Muscat vs Public Broadcasting Services Limited’, decided on the 2nd March 2023.

² Appell Inferjuri Numru 11/2020 LM, Allied Newspapers Limited vs Foundation for Medical Services, decided on the 18th November 2020.

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 Tribunal³ shall be made in writing and addressed to ‘The Secretary, Information and Data Protection Appeals Tribunal, 158, Merchants Street, Valletta’.

³ Further information on the appeals procedure is available at: <https://idpc.org.mt/appeals-tribunal/>