

Dr Aron Mifsud Bonnici

VS

Community Malta Agency

FREEDOM OF INFORMATION REQUEST

1. On the 4th July 2024, Dr Aron Mifsud Bonnici (the “**applicant**”) made a 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 Community Malta Agency (the “**Public Authority**”) to provide the following information in an electronic format:

“I am writing to make a formal request under the Freedom of Information Act for access to documents held by the Community Malta Agency relating to the fit and proper guidelines and evaluations of license holders conducted under Subsidiary Legislation 188.05 – Agents (Licences) Regulations, from the Agency’s inception to the present date.

Specifically, I request access to the following documents:

1. Fit and Proper Guidelines:

- a) Internal guidelines, manuals, or procedural documents detailing the methodology and criteria used for assessing the fit and proper status of agent license applicants and existing license holders.*
- b) Any checklists, scorecards, or evaluation forms used in the fit and proper assessment process.*
- c) Any updates or revisions made to these guidelines and forms during this period.*

2. Evaluation Methodology:

- a) Documents outlining the methodology and criteria used in the evaluation of agents’ fit and proper status.*
- b) Reports or memos detailing any changes or proposed changes to the evaluation process over time.*

3. Evaluation Reports:

- a) Anonymised copies of evaluation reports or assessments conducted on license holders (with personal information redacted) under Subsidiary Legislation 188.05 from the Agency's inception to date.*
- b) Summary documents or statistical data showing the number of evaluations conducted each year and the outcomes (e.g., number of approvals, rejections, or revocations).*

4. Memos and Correspondence:

- a) Internal memos, emails, and other correspondence discussing the fit and proper evaluation process, criteria, and any issues or challenges encountered during assessments.*
- b) Any policy documents or internal memos discussing changes or updates to the fit and proper assessment process since the Agency's inception.*
- c) Any communications with other regulatory bodies (e.g., MFSA) or stakeholders regarding best practices or changes to the fit and proper assessment procedures (with personal information redacted).*
- d) Minutes of meetings where fit and proper assessment criteria or processes were discussed (with sensitive information redacted as necessary).*
- e) Any external audit reports or reviews of Community Malta Agency's fit and proper assessment processes.*
- f) All memos, emails, records of conversations, and correspondence (whether internal or external) relative to the fit and proper evaluation of Dr Aron Mifsud Bonnici (ID [REDACTED]) and to the agency's 1st July 2024 decision to suspend his license.*

5. Training and Guidance Materials:

- a) Training materials or guidance documents provided to staff involved in conducting fit and proper evaluations.*
- b) Any presentations, workshops, or seminars held on the topic of fit and proper assessments.*

6. Complaints and Appeals:

- a) Records of any complaints or appeals made by license holders regarding their fit and proper assessments, including the outcomes of such complaints or appeals.*

If any of these documents contain sensitive information, I request that you provide redacted versions where possible. If you determine that any part of this request is exempt from disclosure, please provide a detailed explanation of the exemption being applied”.

2. On the 2nd August 2024, the Public Authority informed the applicant that the timeframe set out in article 10 of the Act was being extended due to the fact that the Public Authority needed to consult third parties before it could decide on the request, and more time was needed to obtain the necessary feedback.
3. On the 28th August 2024, the Public Authority refused the request of the applicant on the basis of the following arguments:

“The request for anonymised copies of evaluation reports or assessments on other licence holders/related statistical data is being rejected on the basis of Article 14(a) of Cap. 496. Insofar as article 5(3)(b) of the same Act prohibits the disclosure of information which is prohibited under any other law. Regulation 15 of SL 188.05 prohibits the disclosure of such due diligence made by the Agency. Without prejudice, the requested information is also being rejected on the basis of Article 14(b) of Cap. 496, specifically with regards to articles 30(1)(a), 32(1)(c), 36(1) of the same Act. The same articles apply insofar as requests relating to internal memos, email and correspondence, minutes of meetings, records of conversations and related requests.

The remaining requests relating to fit and proper guidelines/criteria/training etc of the Agency are being rejected on the basis of Article 14(g) of the Act. Kindly note that each case concerning the suspension of an agent’s licence is examined on its merits from the available information and documentation in terms of the provisions of Subsidiary Legislation 188.05. The legislation lays clearly the criteria for an agent to be considered fit and proper to fulfill the relative criteria. As regards the auditing of the decision of the Agency regarding the suspension or revocation of an Agent’s licence such decision can be reviewed by an ad hoc Board appointed by the Minister following the request made by the suspended Agent. The documents regarding the evaluation of Dr Aron Mifsud Bonnici’s suspension are the media reports, referred to in the letter of suspension, whereby he is criminally charged in Court. Such circumstances were evaluated in the context of the provisions of Regulation 8(1) of the above-mentioned legislation.

8.(1) When processing an application for a license to act as Agent under these Regulations, the Agency shall, in particular, have regard to:

- (a) the protection of applicants under these regulations;*
- (b) the protection of the reputation of Malta, taking into account Malta’s international commitments; and*
- (c) the promotion of competition and choice.*

specifically vis-à-vis the inherent reputation risk the charge carries”.

4. On the 29th August 2024, the applicant sought the revision of the decision of the Public Authority and submitted a complaint through the internal complaints procedure of the Public Authority. The applicant submitted the following arguments:

“Grounds for Challenging the Refusal

1. Anonymised Evaluation Reports and Statistical Data:

Agency’s Basis for Rejection: The request was rejected based on Article 14(a) of Cap. 496, in conjunction with Article 5(3)(b) of the same Act, citing Regulation 15 of S.L. 188.05, which prohibits the disclosure of due diligence information.

Challenge: My request specifically sought anonymised copies of evaluation reports conducted on licence holders, with personal information redacted, which should mitigate concerns regarding the disclosure of sensitive information. The Agency should clarify how Regulation 15 applies to evaluations of licence holders, as the Regulation instead applies specifically to due diligence conducted on an applicant, defined as a “person who applies for citizenship of Malta by naturalisation under these regulations and includes a dependent or a person who applies on behalf of another person”. Moreover, anonymisation is a well-recognised practice to balance transparency and confidentiality. The Agency should provide a more detailed explanation of how Regulation 15 applies to anonymised data, which arguably does not pose the same confidentiality risks as identifiable due diligence information.

2. Internal Memos, Emails, Correspondence, and Related Documents:

Agency’s Basis for Rejection: The rejection was also based on Article 14(b) of Cap. 496, referencing Articles 30(1)(a), 32(1)(c), and 36(1) of the Act.

Challenge: I contend that the public interest in understanding the methodology and standards used by the Agency in evaluating agents’ fit and proper status outweighs the need for confidentiality in this context. Public scrutiny ensures that the Agency’s processes are transparent, consistent, and fair. Furthermore, I request a more precise clarification on how each of the cited articles applies to the specific documents requested, as this will determine if partial disclosure could be an option. Additionally, the possibility of submitting anonymised information negates the invocation of the cited exemptions from the obligations of disclosure.

3. Fit and Proper Guidelines, Criteria and Training Materials:

***Agency's Basis for Rejection:** The rejection was made under Article 14(g) of Cap. 496, with a general assertion that each case is assessed individually and that the legislation outlines the criteria.*

***Challenge:** While the legislation may outline the criteria, my request concerns the internal guidelines and training materials used by the Agency, which are distinct from the legislative text. Such documents provide critical insights into how the law is operationalised in practice, ensuring transparency and accountability in the Agency's decision-making process. The refusal to provide these documents hinders the public's ability to understand the standards and procedures applied by the Agency. If the Agency contends that it does not use any guidelines and does not provide any training whatsoever to its officers in its regard, it should clearly state so, rather than invoke an exemption from its obligation to disclose.*

4. Failure to Fully Address FOI Request:

The Agency has further failed to address other requests, including:

- a) Internal memos, emails, and other correspondence discussing the fit and proper evaluation process, criteria, and any issues or challenges encountered during assessments.*
- b) Any policy documents or internal memos discussing changes or updates to the fit and proper assessment process since the Agency's inception.*
- c) Any communications with other regulatory bodies (e.g., MFSA) or stakeholders regarding best practices or changes to the fit and proper assessment procedures (with personal information redacted).*
- d) Minutes of meetings where fit and proper assessment criteria or processes were discussed (with sensitive information redacted as necessary).*
- e) Any external audit reports or reviews of Community Malta Agency's fit and proper assessments processes.*
- f) All memos, emails, records of conversations, and correspondence (whether internal or external) relative to the fit and proper evaluation of Dr Aron Mifsud Bonnici (ID 18574M) and to the agency's 1st July 2024 decision to suspend his license.*
- g) records of any complaints or appeals made by license holders regarding their fit and proper assessments, including the outcomes of such complaints or appeals.*

I believe that the public interest in promoting transparency and accountability in the Agency's operations should be given significant weight. The requested documents are essential for

ensuring that the Agency's actions are consistent with the principles of good governance. The Agency has neither provided these documents, nor established a valid basis for declining to disclose them. This puts the Agency in clear breach of its statutory disclosure obligations".

5. On the 11th September 2024, the Public Authority reiterated its refusal of the request on the following grounds:

"1. Anonymised Evaluation Reports and Statistical Data

...

Agency's Reply: The Agency refers to regulation 15(2) which extends to all information obtained through the due diligence process and its sources, and it does not limit the extension to due diligence which is collected about an applicant. Anonymisation of the data related to deprivation or suspension of licenses of other license holders cannot satisfactorily guarantee confidentiality, in particular due to the very small number of such deprivations or suspensions and in view of the publicized nature of some of the rationales relating thereto.

2. Internal Memos, Emails, Correspondence, and Related Documents:

...

Agency's Reply: Whilst the Agency disagrees that the public interest outweighs the need for non-disclosure, the Agency submits that such weighing of the public interest would only be relevant with respect to article 36(1) of the Act, and not the other quoted articles i.e., articles 30(1)(a) and 32(1)(c).

The basis of the rejection on the grounds of article 30(1)(a) is very clear. There is an ongoing pending criminal procedure, and the Agency needs to exercise caution to ensure that it does not provide confidential information which could prejudice the conduct of such proceedings.

The Agency also cited article 32(1)(c) insofar as the documents and information requested may contain information about other Agents or applicants, and anonymization of such data cannot guarantee confidentiality.

With regards to internal documents, article 36(1) of the Act was cited as it prohibits the disclosure of internal memos, opinions, advice, recommendations, and so on, prepared in the course of deliberative processes, which is precisely the process which the request is asking about.

3. Fit and Proper Guidelines, Criteria and Training Materials:

...

Agency's Reply: Article 14(g) clearly provides that such document is not held by the Agency.

4. Failure to Fully Address FOI Request:

...

Agency's Reply: Please refer to point 2 above which already addresses these complaints. Moreover, the Agency wholly rejects the claims that it is in any way, shape or form breaching its statutory disclosure obligations and it has clearly provided its reasons for such disclosures".

FREEDOM OF INFORMATION APPLICATION

6. On the 13th September 2024, 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 request for information made by the applicant to the Public Authority has been dealt pursuant to the requirements of the Act. The applicant submitted the following grounds of appeal:

“1. Incorrect Application of Article 14(a) and Article 5(3)(b) Concerning Anonymised Data

The Agency refused access to anonymised evaluation reports on the basis of Article 14(a) and Regulation 15 of Subsidiary Legislation 188.05, which prohibits disclosure of due diligence information in relation to applicants. However, my request specifically sought anonymised versions of reports in relation to license holders. The Agency did not provide a convincing explanation as to how it is relying on Regulation 15 to refuse disclosure of reports in relation to license holders, and why anonymisation could not sufficiently protect the confidentiality of this data, contrary to accepted legal practices under Maltese law and the EU General Data Protection Regulation (GDPR).

Argument:

Regulation 15 pertains to due diligence information collected on individuals applying for Maltese citizenship, yet my request concerns anonymised reports on licence holders. Hence, Regulation 15 is not applicable in this scenario. Additionally, anonymisation, as a practice, is widely accepted under GDPR as a means of ensuring transparency while safeguarding personal data. The Agency has not demonstrated why anonymisation cannot be applied in this case, especially when anonymisation is an established method to protect sensitive information.

2. Failure to Balance Public Interest Against Confidentiality under Article 14(b)

The Agency's refusal under Article 14(b), citing Article 30(1)(a), 32(1)(c)

...

Argument:

Article 36(1) does exempt internal memos and deliberative documents; however, this discretion should be weighed against the strong public interest in transparency. Given the Agency's regulatory authority, the public has a legitimate interest in ensuring that assessments are conducted fairly and consistently. Public scrutiny helps foster trust in the Agency's processes, which outweighs the overbroad application of exemptions in this case.

3. Failure to Address Public Interest in Procedural Transparency (Article 14(g))

...

Argument:

If such documents truly do not exist, the Agency should have provided a more thorough explanation. The complete lack of internal guidelines or training materials suggests a potential governance failure and raises serious questions about the Agency's procedural integrity. Rather than a simple rejection, a more detailed justification or confirmation of this gap should have been provided, including an explanation as to how the Agency operated in the absence of guidelines and training.

4. Failure to Consider Partial Disclosure or Redaction

The Agency has failed to consider partial disclosure or redaction as alternatives to a full refusal. Anonymisation, as outlined above, is a recognised measure under GDPR. Similarly, redacting sensitive or identifying information would address confidentiality concerns while still fulfilling the FOI Act's objectives of transparency. The failure to explore these options contravenes the principle of proportionality, which is fundamental to both the FOI Act and data protection law. This oversight is particularly significant given the established practice under the GDPR and relevant case law from the European Court of Justice (ECJ). In Case T-403/05 – My Travel Group plc vs Commission, the ECJ underscored that public authorities must examine the possibility of granting partial access to documents where full access is not possible. This principle applies squarely to the current context, where the Agency could have considered redacting sensitive or identifying information, thereby addressing confidentiality concerns while still upholding the FOI Act's transparency objectives.

The Agency's rigid approach in refusing access without considering the feasibility of partial access or redactions contravenes the principle of proportionality, a cornerstone of both the FOI Act and data protection law. The MyTravel Group plc v Commission decision supports the

assertion that transparency and data protection can coexist through careful consideration of partial disclosure, thus ensuring that access is not unduly restricted under the guise of protecting confidentiality. By not even attempting to redact sensitive parts of the requested documents, the Agency has not only overlooked an essential data protection practice but has also potentially breached the public's right to access information of public interest".

INVESTIGATION

Admissibility of the Freedom of Information Application

7. 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

8. As part of the investigation procedure, by means of an information notice dated the 4th October 2024, 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 clearly explain the reasons of refusal, and where applicable, to specify the harm that the third parties or the Public Authority could, or would reasonably be expected to suffer as a result of the disclosure of the requested information.

Submissions of the Public Authority

9. On the 7th November 2024, the Public Authority provided the following salient arguments for the Commissioner to consider during the legal analysis of this case:
 - a. that regarding the first ground of appeal, the Public Authority considered that regulation 15(2) of S.L. 188.05 is clear and the legislator intended for all due diligence related to S.L. 188.05 to be kept secret;
 - b. that although regulation 15(1) of S.L. 188.05 provides specifically for refusal to disclose due diligence results collected about an applicant, it cannot be interpreted that the entire regulation 15 refers only to such due diligence concerning applicants;

- c. that S.L. 188.05 also covers other matters and even the marginal note makes it clear that the obligation for due diligence to be kept secret is not limited to data regarding applicants, and therefore, the Public Authority is of the view that such intention of the legislator is reasonable since due diligence contains data collected from sources which include law enforcement and security services;
- d. that the Public Authority considered the anonymisation of the due diligence information pertaining to other agents, however, this would not protect the data of the agents as one could still infer the subject of the data, particularly if the agent's license has been removed for a specific reason, such as, reports in the media;
- e. that this is exacerbated by the fact that there are a very small number of agents whose license has been suspended or removed by the Public Authority, and anyone involved in the implementation of the said citizenship framework would be able to recognise who the anonymised data is referring to;
- f. that with regards to the second ground of appeal, article 36(1) of the Act was cited as it prohibits the disclosure of internal memos, opinions, advice, recommendations, and so on, prepared in the course of deliberative processes, which is precisely the process which the request is asking about;
- g. that it is important to note that article 36(1) of the Act was cited together with articles 30(1)(a) and 32(1)(c), which do not require the same measure of proportionality of public interest and the Public Authority explained to the applicant that the basis of the rejection on the grounds of article 30(1)(a) is very clear, i.e., that there is an ongoing pending criminal procedure, and the Public Authority needs to exercise caution to ensure that it does not provide confidential information which could prejudice the conduct of such proceedings;
- h. that the Public Authority also explained that the citation of article 32(1)(c) applies insofar as the documents and information requested may contain information about other agents or applicants, and anonymisation of such data cannot guarantee confidentiality;
- i. that with regard to the third ground of appeal, the Public Authority was clear in its reply that it does not hold such documents and the Agency clearly explained that the

assessment is made individually on a case-by-case basis, based on the criteria in the legislation;

- j. that the criteria in the legislation are clear in that the Agency may revoke or suspend a license of an Agent if “it is satisfied that ... the Agent is no longer a fit and proper person to act as an Agent for the purposes of these Regulations”. It is pertinent to note that the Public Authority needs to keep in mind the reputational risk mentioned in the main act, and that the indictment of an agent constitutes such risk; and
- k. that, finally, with reference to the fourth ground of appeal, the Public Authority had already explained why anonymisation and redaction could not apply to the documents which were not provided to the applicant.

Submissions of the Applicant

- 10. As part of the internal investigative procedure of this Office, the Commissioner provided the applicant with the opportunity to rebut the arguments submitted by the Public Authority following the issuance of the information notice. On the 26th November 2024, the applicant provided as follows:

Factual Context of the Freedom of Information Application

- a. that, on the 1st July 2024, the Public Authority suspended the licence of the applicant as an agent, which was clearly a policy decision rather than one based on a deliberative process executed through the assessment of objective criteria on established guidelines;
- b. that the applicant was presented with a *fait accompli* and the suspension of the licence meant that any commercial activity, which was dependent on the licence, was immediately halted and his livelihood threatened, and to the extent that the authorities even refused to effect payment of pending invoices relative to applications that had been concluded before the suspension;
- c. that the Public Authority took this arbitrary action, later citing reputational risk yet disregarded the right of the applicant to the presumption of innocence, and thus, the information requested is essential to assess whether there was sufficient critical evaluation of the facts to ensure that the alleged reputational risk trumped his presumption of innocence and livelihood;

Misapplication of regulation 15 of S.L. 188.05

- d. that regulation 15 of S.L. 188.05 pertains specifically to due diligence on applicants for Maltese citizenship and the request of the applicant concerns anonymised reports for license holders, which falls outside the scope of this regulation;
- e. that Regulation (EU) 2016/679 and established EU case law, such as *‘MyTravel Group plc vs Commission’* recognise anonymisation as an effective means to balance transparency and confidentiality and anonymised data is not personal data under Regulation (EU) 2016/679, and its disclosure does not compromise confidentiality;

Public Interest vs Confidentiality

- f. that the Public Authority has failed to demonstrate how the requested documents relate to, or could prejudice any specific criminal proceedings and blanket assertions of prejudice are insufficient, and therefore, the Commissioner should require the Public Authority to provide detailed reasoning for this claim;

Internal Deliberative Documents

- g. that while deliberative documents are generally protected, exemptions must be weighed against public interest and the requested documents pertain to the Public Authority’s regulatory framework for assessing ‘fit and proper’ status, a matter of significant public concern and transparency in these processes foster trust and accountability, particularly, when the suspension of licenses is involved;

Non-Existence of Internal Guidelines (Article 14(g) of the Act)

- h. that if such foundational documents are genuinely absent, this raises serious governance concerns and the Public Authority should explain how decisions regarding “fit and proper” assessments are made without internal guidelines or training, and transparency requires disclosures of any alternative frameworks or informal practices that guide these assessments;

Refusal to Consider Proportionality and Partial Disclosure

- i. that the GDPR and FOI principles mandate that public authorities should consider partial disclosure through redactions or anonymisation and the Court of Justice of the European Union has emphasised this requirement in ‘*MyTravel Group plc vs Commission*’;
- j. that redacted or anonymised documents would address confidentiality concerns while ensuring transparency and the Agency’s failure to consider this approach is a breach of its statutory obligations; and

General Refusal of Internal Communications

- k. that transparency in decision-making processes is critical, particularly for regulatory authorities and the public interest in understanding the “*fit and proper*” evaluation process outweighs the confidentiality of deliberative documents in this case, and therefore, not all internal communications qualify as deliberative documents, and the Public Authority should be required to identify specific documents rather than invoke a blanket exemption.

Submissions of the Public Authority

11. The Public Authority was provided with a copy of the counterarguments presented by the applicant and presented with the final opportunity to provide any remarks. On the 17th December 2024, the Public Authority submitted as follows:

- a. that the Public Authority would firstly like to clarify and assert that contrary to what was stated by the applicant, the Public Authority does not have any pending invoices;
- b. that, specifically, upon the decision to suspend the applicant’s licence to act as an agent under S.L. 188.05, no pending invoices existed for applications concluded prior to the suspension and any allegation to the contrary may pertain to invoices issued by other authorities which implemented suspension decisions, but the Public Authority is in no way affiliated with such authorities and operates wholly independent of the same;

- c. that the Public Authority would also like to point out that the policy decision was in no way arbitrary, and it was based on the discretion granted for in the same regulations, specifically regulation 11(1)(d) of S.L. 188.05;
- d. that its rationale, including the reputational risk arising from negative media coverage, was explained to the applicant, and the Public Authority clearly outlined the possibility for review of such decision by means of regulation 12 of the same S.L. 188.05 and it would appear that this option had not been utilised by the applicant;
- e. that with reference to the possibility of anonymisation, the Public Authority rejected the assertion that it has not substantiated its position and the Public Authority explained that due to the small total number of individuals to whom the request for information pertains, re-identification from anonymised data is highly likely;
- f. that the Public Authority reiterated its submissions on the application of regulation 15 of S.L. 188.05 which is not limited to due diligence on applicants for Maltese citizenship and the Public Authority also maintains its arguments made in relation to article 30(1)(a) of the Act, emphasising the need for caution due to ongoing criminal procedures;
- g. that the applicant's comments regarding allegedly serious governance concerns go beyond the scope of this FOI request, however, the Public Authority emphasised that its decisions are made on a case-by-case basis in line with the discretion granted under the regulations; and
- h. that the reference to the CJEU decision '*MyTravel Group plc vs Commission*' cited by the applicant further supports the Public Authority's position that internal and deliberative communications are exempt and provides comprehensive reasoning that align with the legislator's intention behind article 36(1) of the Act.

Further Clarifications Sought from the Public Authority

12. The Commissioner requested further clarifications from the Public Authority in relation to its refusal of the documents requested by the applicant. By means of an email dated the 22nd January 2025, the Public Authority provided the following clarifications:

To explain what information is contained in the evaluation reports or assessments conducted on licence holders and when are these assessments conducted and to indicate if these evaluation reports or assessments contain information obtained through the due diligence process

- a. that when an application for a licence is submitted under S.L. 188.05, which was enacted in November 2020, checks are performed on the applicant, as well as on the shareholders and directors of the company, if applicable;
- b. that the application is then forwarded to the national competent authorities and the results of these checks conducted by such authorities form the basis of the evaluation;
- c. that during the period that the licence is valid, no systematic checks are conducted, however, if an alert is raised on the conduct of an agent, further checks will be carried out as necessary, and therefore, the documents requested contain information obtained through the due diligence process;

To indicate if the Public Authority holds information in relation to the number of evaluations conducted each year and the outcomes (e.g., number of approvals, rejections or revocations)

- d. that the Public Authority does not hold statistical data as regards the number of approvals, rejections, or revocations;

To indicate if the Public Authority holds the policy documents or internal memos discussing changes or updates to the fit and proper assessment process since the Public Authority's inception

- e. that the conduct which emerges as regard the fit and proper issues is reviewed on the basis of the provisions in the relevant subsidiary legislation and the Public Authority's Handbook, which also includes the Code of Ethics <https://komunita.gov.mt/en/>;
- f. that there are no specific policy documents or internal memos on this subject;

To indicate if it holds any minutes of meetings where the fit and proper assessment criteria or processes were discussed

- g. that there were no meetings where the fit and proper assessment criteria or processes were discussed in a general or broad manner;
- h. that meetings all relate to decisions taken on the suspension of the specific agent and whether the Public Authority deems the specific agent fit and proper, as provided by the legislation and do not discuss fitness and properness in a general manner;

To indicate if the Public Authority holds any external audit reports or reviews of the Public Authority's fit and proper assessment processes

- i. that the Public Authority does not hold such documentation;

To explain how the disclosure of information would prejudice any specific criminal proceedings

- j. that there are no generic policy documents or memos discussing criteria for a one-size-fit-all fit and proper test, and, thus, any memos or discussions would specifically relate to conduct committed by the specific agent;
- k. that since the applicant is currently being subject to criminal investigations, the Public Authority would not wish to interfere with such investigations by specifying its own conclusions on the fitness and properness of the applicant;

To explain how the disclosure of information would, or could reasonably be expected to, unreasonably affect a person adversely in respect of his lawful business or professional affairs or that organisation or undertaking in respect of its lawful business, commercial or financial affairs

- l. that memos or discussions relate specifically to particular agents and are not generic;
and
- m. that some agents were suspended and later the suspension was lifted, and some agents chose to withdraw their licence and continue to practice their professions, and therefore, the Public Authority feels that the disclosure of discussions into fitness and properness of particular agents could thus reasonably affect such persons.

LEGAL ANALYSIS AND DECISION

13. The Commissioner proceeded to assess the freedom of information application submitted by the applicant in terms of article 23(1)(a) of the Act, wherein he requested the Commissioner to assess whether the Public Authority had complied with the requirements of the Act. The applicant presented four (4) grounds in his application to contest the decision of the Public Authority to refuse access to the requested documents. These grounds are as follows: (i) the incorrect application of article 14(a) and article 5(3)(b) of the Act; (ii) failure to balance public interest against confidentiality under article 14(b) of the Act; (iii) failure to address public interest in procedural transparency (article 14(g) of the Act) and (iv) failure to consider partial disclosure or redaction.

First Ground: The Incorrect Application of Article 14(a)

14. The applicant requested the Public Authority to provide access to the following information:

“3. Evaluation Reports:

a) Anonymised copies of evaluation reports or assessments conducted on license holders (with personal information redacted) under Subsidiary Legislation 188.05 from the Agency’s inception to date.

b) Summary documents or statistical data showing the number of evaluations conducted each year and the outcomes (e.g., number of approvals, rejections, or revocations)”

4. Memos and Correspondence

a) Internal memos, emails, and other correspondence discussing the fit and proper evaluation process, criteria and any issues or challenges encountered during assessments.

...

d) Minutes of meetings where fit and proper assessment criteria were discussed (with sensitive information redacted as necessary).

...

f) All memos, emails, records of conversations, and correspondence (whether internal or external) relative to the fit and proper evaluation of Dr Aron Mifsud Bonnici (ID [REDACTED]) and to the agency’s 1st July 2024 decision to suspend his licence”.

15. The Public Authority refused to provide access to the documents mentioned in points 3, 4(a), 4(d) and 4(f) of the freedom of information request on the basis of article 14(a) of the Act and

regulation 15 of Agents (Licences) Regulations, Subsidiary Legislation 188.05 (the “S.L. 188.05”). The applicant argued that regulation 15 of S.L. 188.05 pertains to the due diligence information collected on individuals applying for Maltese citizenship, yet his request related to anonymised reports on licence holders. Therefore, according to the applicant, regulation 15 of S.L. 188.05 does not apply, and the refusal of his request is not justified.

16. In the submissions dated the 31st October 2024, the Public Authority argued that regulation 15(2) of S.L. 188.05 is intended to cover all the due diligence information related to S.L. 188.05. Although regulation 15(1) of S.L. 188.05 provides specifically for the refusal to disclose due diligence results collected about an applicant, it cannot be interpreted that the entire regulation 15 refers only to such due diligence concerning an applicant. The Public Authority further argued that even the marginal note makes it clear that the obligation for due diligence to be kept secret is not limited to data regarding the applicant and further explained that due diligence information contains data collected from sources which include law enforcement authorities and security services. Additionally, the Public Authority considered that anonymisation of the due diligence information pertaining to other agents would not serve to protect the agent’s data as one could still infer the subject of the data, particularly if the agent’s licence has been removed for a specific reason, which may be due to reports published in the media. This is exacerbated by the fact that there is a very small number of agents whose licence has been suspended or removed by the Public Authority, and anyone involved in the implementation of the said citizenship framework would be able to recognise who the anonymised data is referring to.

17. The Commissioner examined regulation 15 of S.L. 188.05, which reads as follows:

“(1) Notwithstanding any request made to the Agency by any data subject, any officer or employee of the Agency receiving such a request at any time, including during the application or pre-application process, shall be entitled at all times to refuse to disclose any due diligence results generated or collected about an applicant in accordance with the provisions of the Restriction of the Data Protection (Obligations and Rights) Regulations (the "Data Protection Regulations") including in particular regulation 4 thereof. The Data Protection Regulations shall apply to all requests for information that may be made in respect of matters covered by these regulations.

(2) All information obtained through the due diligence process and its sources shall be kept secret.”

18. Regulation 15(1) of S.L. 188.05 enables the Public Authority *qua* controller to restrict the scope of the obligations and rights provided for in Regulation (EU) 2016/679 when such a restriction is a necessary and proportionate measure in a democratic society. The controller may restrict the data protection rights of the data subjects where such restriction is a necessary measure required to safeguard any of the grounds mentioned in regulation 4 of Subsidiary Legislation 586.09, which may include *inter alia*, regulation 4(a) and regulation 4(i).
19. Regulation 15(1) of S.L. 188.05 is specifically referring to “*any due diligence results generated or collected about an applicant*”. Regulation 3 of S.L. 188.05 defines an “*applicant*” as “*the person who applies for citizenship of Malta by naturalization under these regulations and includes a dependent or a person who applies on behalf of another person*”. This therefore means that the Public Authority may restrict a data protection right if the applicant, as defined in regulation 3 of S.L. 188.05, submits a request to exercise any of the data protection rights under Chapter III of Regulation (EU) 2016/679.
20. However, the Commissioner noted that regulation 15(2) of S.L. 188.05 states that “[a]ll *information obtained through the due diligence process and its sources shall be kept secret*”. Contrary to regulation 15(1) of S.L. 188.05, this sub-regulation is not tied to any due diligence results generated or collected about applicants as defined in regulation 3 of S.L. 188.05. Given that sub-regulation 15(2) of S.L. 188.05 is specifically referring to all information which may be obtained through the due diligence process, regulation 15(2) of S.L. 188.05 should be interpreted as encompassing all information that the Public Authority obtains through the due diligence exercise for the purpose of performing its tasks.
21. As part of the investigation of this freedom of information application, the Commissioner requested the Public Authority to clearly explain what information is contained in the evaluation reports or assessments conducted on licence holders. In an email dated the 22nd January 2025, the Public Authority confirmed that it conducts checks that serve as the basis for its evaluations. Consequently, the information requested by the applicant would reveal information obtained through the due diligence process, which the law classifies as ‘secret’.
22. Without prejudice to the foregoing, the Commissioner requested further information about the number of agents whose licence has been suspended or removed by the Public Authority. The Public Authority furnished this information to the Commissioner, who observed that, given the very limited number of agents whose licences has been suspended and the public nature of certain suspensions, redacting information would not sufficiently achieve anonymisation. According to recital 26 of Regulation (EU) 2016/679, a data subject can still be considered

identifiable even if their identity cannot be determined directly from the data itself. This means that if a third party has access to additional information or can make reasonable inferences that lead to the identification of the individual, the data should still be treated as personal data within the meaning of article 4(1) of Regulation (EU) 2016/679.

23. Consequently, this led the Commissioner to conclude that the refusal of the Public Authority to disclose the documents specified in points 3, 4(a), 4(d) and 4(f) of the request as justified in terms of article 14(a) of the Act insofar that the requested documents contain information obtained through the due diligence process.

Second Ground: Failure to Balance Public Interest Against Confidentiality under Article 14(b)

24. The Commissioner proceeded to examine the second ground of the freedom of information application in relation to the request for internal memos, emails, correspondence, and related documents. The applicant requested the following documentation:

“4. Memos and Correspondence

a) Internal memos, emails, and other correspondence discussing the fit and proper evaluation process, criteria and any issues or challenges encountered during assessments.

b) Any policy documents or internal memos discussing changes or updates to the fit and proper assessment process since the Agency's inception.

c) Any communications with other regulatory bodies (e.g., MFSA) or stakeholders regarding best practices or changes to the fit and proper assessment procedures (with personal information redacted).

d) Minutes of meetings where fit and proper assessment criteria or processes were discussed (with sensitive information redacted as necessary).

e) Any external audit reports or reviews of Community Malta Agency's fit and proper assessment processes.

f) All memos, emails, records of conversations, and correspondence (whether internal or external) relative to the fit and proper evaluation of Dr Aron Mifsud Bonnici (ID [REDACTED]) and to the agency's 1st July 2024 decision to suspend his licence”.

25. During the course of the investigation, the Commissioner requested the Public Authority to clearly indicate if it holds the following documents as requested by the applicant. The Public Authority provided the following responses which are provided hereunder:

Documents Requested by the Applicant	Clarifications provided by the Public Authority during the course of the investigation
<i>“Any policy documents or internal memos discussing changes or updates to the fit and proper assessment process since the Agency’s inception”.</i>	<i>“We had already indicated that any conduct which emerges as regards Fit and Proper issues, this is reviewed on the basis of the provisions in the relevant subsidiary legislation and the Agency’s Handbook, which also includes the Code of Ethics https://komunita.gov.mt/en/. There are no specific policy documents or internal memos on this subject”.</i>
<i>“Any communications with other regulatory bodies (e.g., MFSA) or stakeholders regarding best practices or changes to the fit and proper assessment procedures (with personal information redacted).”</i>	<i>“There are no such “communications”.</i>
<i>“Minutes of meetings where fit and proper assessment criteria or processes were discussed (with sensitive information redacted as necessary)”</i>	<i>“There were no meetings where fit and proper assessment criteria or processes were discussed in a general or broad manner. The meetings all relate to decisions taken on the suspension of the specific agent and whether the Agency deems the specific agent fit and proper, as provided by the legislation and they do not discuss fitness and properness in a general manner”.</i>
<i>“Any external audit reports or reviews of Community Malta Agency’s fit and proper assessment processes”.</i>	<i>“There are none”.</i>

26. Therefore, for the purpose of this part of the legal analysis, the Commissioner considered only the documents mentioned in points 4(a), 4(d) and 4(f) of the freedom of information request. In the submissions dated the 31st October 2024 and provided to this Office on the 7th November

2024, the Public Authority explained the exemptions cited in its replies to the applicant as follows:

Exemption Cited by the Public Authority	The reason of the Public Authority for non-disclosure
Article 30(1)(a) of the Act	<i>“There is an ongoing pending criminal procedure, and the Agency needs to exercise caution to ensure that it does not provide confidential information which could prejudice the conduct of such proceedings”.</i>
Article 32(1)(c) of the Act	<i>“information requested may contain information about other Agents or applicants, and anonymisation of such data cannot guarantee confidentiality”.</i>
Article 36(1) of the Act	<i>“article 36(1) of the Act was cited as it prohibits the disclosure of internal memos, opinions, advice, recommendations and so on, prepared in the course of deliberative processes, which is precisely the process which the request is asking about”.</i>

Article 30(1)(a) of the Act

27. Article 30(1)(a) of the Act states that a document is deemed exempt if its disclosure under the Act would, or could reasonably be expected to *“prejudice the conduct of an investigation of a breach or possible breach, of the law, or a failure, or possible failure, to comply with a law relating to taxation or prejudice the enforcement or proper administration of the law in a particular instance”*. This exemption is categorised under Part V of the Act, which outlines conclusive reasons for non-disclosure, and therefore, the applicability of article 30(1)(a) of the Act is not subject to the public interest test as set forth in article 35 of the Act.

28. The Commissioner referred to the decision delivered by the Information and Data Protection Appeals Tribunal (the “**Tribunal**”) ‘*Rebecca Bonello Ghio vs Malta Enterprise*’¹ dated the 3rd October 2024, where the appellate submitted a freedom of information request in terms of article 6 of the Act and requested the Malta Enterprise to provide access to the following documentation:

“any written (including email) correspondence between Malta Enterprise and/or its representatives and the Ministry for the Economy, Investment and Small Business, and/or its representatives or the NAO and/or its representatives regarding the October MoU being requested”; and

“any internal correspondence or minutes of internal meetings between the representatives of Malta Enterprise regarding the October MoU being requested”.

29. The Tribunal held that the documentation cited in the preceding paragraph is exempt due to the magisterial inquiry which was pending at the time of the request. The Tribunal decided as follows:

*“Dwar iż-żewġ dokumenti l-oħra iżda dan it-Tribunal ma jaqbilx mal-Kummissarju li dawn id-dokumenti għandhom jiġu mgħoddija kemm għaliex ma humiex fl-interess pubbliku; kemm għaliex huma meqjusa dokumenti eżenti u materjal eżenti ai termini tal-artikolu 2 tal-Kap 496 u kif ukoll stante li **tali dokumenti huma meqjusa eżenti ai termini tal-artikolu 14(b) u 30 (1)(a) u 30(2) tal-Kap 496 tal-Ligijiet ta’ Malta**”.*]

30. In the reply dated the 28th August 2024, the Public Authority informed the applicant that *“each case concerning the suspension or revocation of an Agent’s licence is examined on its merits from the available information and documentation in terms of the provisions of Subsidiary Legislation 188.05. This legislation lays clearly the criteria for an agent to be considered fit and proper to fulfill the relative role. As regards the auditing of the decision of the Agency regarding the suspension or revocation of an Agent’s licence such decision can be reviewed by an ad hoc Board appointed by the Minister following the request by the suspended Agent. **The documents regarding the evaluation of Dr Aron Mifsud Bonnici’s suspension are the media reports, referred to in the letter of suspension, whereby he is criminally charged in Court.***

¹ Appell Numru FOI/23/2022.

Such circumstances were evaluated in the context of the provision of Regulation 8(1) of the above-mentioned legislation” [emphasis has been added].

31. The applicant contended that the Public Authority has failed to demonstrate how the requested documents relate to, or could prejudice any specific criminal proceedings. During the course of the investigation, the Commissioner requested the Public Authority to clearly explain how the disclosure of the requested documents would, or could prejudice any specific criminal proceedings. On the 22nd January 2025, the Public Authority clarified that:

*“There are no generic policy documents or memos discussing criteria for a one-size-fits-all fit and proper test. Thus, any memos or discussions would specifically relate to conduct committed by the specific agent. **Since the conduct reported in the media, relating to the person making the FOI request, is currently being subject to criminal investigations, the Agency would not wish to interfere with such investigations by specifying its own conclusions on the fitness and properness of the Agent in relation to the person making the FOI request**” [emphasis has been added].*

32. Given that the documents regarding the evaluation of the applicant’s suspension are based on the conduct of the applicant as reported by the media and the disclosure of such documentation would reveal the Public Authority’s conclusions on the fitness and properness of the applicant, the Commissioner is of the view that the exemption cited by the Public Authority in relation to documents that concern the applicant is justified in terms of article 30(1)(a) of the Act.

Article 32(1)(c)(i) of the Act

33. The Commissioner proceeded to assess the refusal of the Public Authority in relation to “[i]nternal memos, emails, and other correspondence discussing the fit and proper evaluation process, criteria and any issues or challenges encountered during assessments” and the “[m]inutes of meetings where fit and proper assessment criteria or processes were discussed”. In the submissions dated the 31st October 2024, the Public Authority held that “the citation of 32(1)(c) applies insofar as the documents and information requested may contain information about other Agents”. The Public Authority further clarified that “the memos or discussions relate to particular agents and are not generic. As stated previously, some agents were suspended and later the suspension was lifted. Some agents chose to withdraw their license and continue to practice their professions. The Agency feels that the disclosure of discussions into fitness and properness of particular agents could thus reasonably affect such persons”.

34. The Commissioner proceeded to assess article 32(1)(c)(i) of the Act, which provides that a document is exempt if its disclosure under the Act would disclose:

“(c) information (other than trade secrets or information to which paragraph (b) applies) concerning a person in respect of his business or professional affairs or concerning the business, commercial or financial affairs of an organisation or undertaking, being information: (i) the disclosure of which would, or could reasonably be expected to, unreasonably affect that person adversely in respect of his lawful business or professional affairs or that organisation or undertaking in respect of its lawful business, commercial or financial affairs”.

35. Considering the specific and sensitive nature of the information concerning the fit and proper evaluation process related to the agents, the very limited number of agents or agents that previously held a licence, and the explanation provided by the Public Authority, the Commissioner is hereby deciding that the exemption cited by the Public Authority in terms of article 32(1)(c)(i) of the Act is justified.

Article 36(1) of the Act

36. Without prejudice to the foregoing considerations, the Commissioner proceeded to assess the final exemption cited by the Public Authority in relation to points 4(a), 4(d) and (f) of the freedom of information request. Article 36(1) of the Act provides that a *“document is an exempt document if its disclosure under this Act would disclose matter in the nature of, or relating to, opinions, advice or recommendations obtained, prepared or recorded, or consultation or deliberation that has taken place, in the course of, or for the purposes of the deliberative processes involved in the functions of the Government or another public authority”*.
37. In the submissions of the Public Authority dated the 31st October 2024, the Public Authority held that *“article 36(1) of the Act was cited as it prohibits the disclosure of internal memos, opinions, advice, recommendations, and so on, prepared in the course of deliberative processes, which is precisely the process which the request is asking about”*.
38. The Commissioner noted that any documentation in relation to the fit and proper assessment is indeed documentation that had been prepared in the course of the deliberative process of the Public Authority as outlined in S.L. 188.05, and therefore, the documentation requested by the applicant is indeed considered to be internal documentation held by the Public Authority.

39. Given that this exemption falls part under Part VI of the Act, the Commissioner proceeded to assess section 14.4 of the Code of Practice for Public Authorities, which provides that there may be an overriding public interest in favour of disclosure of an internal document if there is a “widespread public concern”:

“14.4 It is possible that the public interest in disclosure may outweigh these considerations, particularly with regard to matters which are of widespread public concern, but it may be assumed that this will happen in unusual situations and under normal circumstances documents need not be disclosed where the above consideration apply” [emphasis has been added].

40. Based on the foregoing considerations, the Commissioner does not consider that the internal documentation held by the Public Authority in relation to its deliberative process vis-à-vis the suspension of licences in terms of S.L. 188.05 is a matter of a widespread public concern. This led the Commissioner to conclude that the reason of refusal cited by the Public Authority in relation to the documents specified in points 4(a), 4(d) and 4(f) of the request is justified in terms of article 36(1) of the Act.

Third Ground: Failure to Address Public Interest in Procedural Transparency (Article 14(g))

41. The applicant requested internal guidelines and training materials, however, this request was refused by the Public Authority on the basis of article 14(g) of the Act. The applicant argued that if the requested documents are not held by the Public Authority, the lack of internal guidelines and training materials indicates a deficiency in the Public Authority’s transparency and governance practices. The applicant further held that rather than a simple rejection, a more detailed justification or confirmation of this gap should have been provided by the Public Authority, including an explanation as to how the Public Authority operated in the absence of guidelines and training.
42. The Commissioner examined the reply provided by the Public Authority on the 28th August 2024 where the Public Authority informed the applicant that “[t]he remaining requests relating to fit and proper guidelines/criteria/training etc of the Agency are being rejected on the basis of Article 14(g) of the Act”. This was once again confirmed in the final reply provided on the 11th September 2024, where the Public Authority stated that “Article 14(g) clearly provides that such document is not held by the Agency”.

43. The Act sets forth an exhaustive list of reasons that enable public authorities to refuse access to the requested information. Article 14(g) of the Act states that a request may be refused if “*the document requested is not held by the public authority and the person dealing with the request has no grounds for believing that the document is held by, or connected more closely with the function of, another public authority*”. The reason is self-explanatory, as the Public Authority cannot provide a document that it does not hold. This can also be inferred from the definition of a ‘document’ as held in article 2 of the Act, which states that a ‘document’ for the purposes of the Act is “*any article that is held by a public authority and on which information has been recorded*” [emphasis has been added].
44. In the present case, the Public Authority has consistently cited article 14(g) of the Act, stating that it does not hold a copy of the documents requested by the applicant, namely, the fit and proper guidelines and criteria, and training materials. The applicant was not satisfied with this reply and demanded a more detailed justification, including an explanation as to how the Public Authority operated in the absence of guidelines and training. However, the Commissioner noted that article 15(1)(a) of the Act imposes an obligation on the Public Authority to give the applicant a reason for the refusal of the documents as listed in article 14 thereof. Thus, the Public Authority must provide the applicant with a reason for not providing the document requested by the applicant, rather than a reason as to why it does not hold a copy of requested document. The interpretation of the applicant that a refusal must include an explanation regarding the operations of the Public Authority in the absence of the requested documents is not a requirement of the Act. Article 3 of the Act clearly establishes the right of access to documents held by public authorities, and it does not impose an obligation on the public authorities to provide explanations for not holding a specific document. Consequently, the Commissioner established that the Public Authority met its obligation by providing a valid reason in terms of article 14 for refusing to grant access to the requested documents.

Fourth Ground: Failure to consider partial disclosure or redaction

45. In his freedom of information application, the applicant argued that the Public Authority had failed to consider partial disclosure or redaction as alternatives to a full refusal. However, this ground has already been thoroughly addressed in the preceding paragraphs.

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 that the reasons of refusal cited by the Public Authority in the replies dated the 28th August 2024 and the 11th September 2024 are

justified. Consequently, the Commissioner is rejecting all the grounds raised by the applicant in his freedom of information application.

Ian
DEGUARA
(Signature)

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by Ian DEGUARA
(Signature)
Date: 2025.04.08
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Ian Deguara
Information and Data Protection Commissioner

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 Tribunal shall be made in writing and addressed to ‘The Secretary, Information and Data Protection Appeals Tribunal, 158, Merchant Street, Valletta’. Further information on the appeals procedure is available at: <https://idpc.org.mt/appeals-tribunal/>