

CDP/FOI/7/2025

Michael Sciortino

vs

Culture Directorate

FREEDOM OF INFORMATION REQUEST

1. On the 30th December 2024, Mr Michael Sciortino (the “**applicant**”) made a freedom of information request pursuant to the requirements of article 6(1) of the Freedom of Information Act (the “**Act**”), Chapter 496 of the Laws of Malta, requesting the Culture Directorate (the “**Public Authority**”) to make available the following documentation in electronic format:

“Kopja tal-Viewshed Nalysis [sic] ikkommissjonata mill-Gvern Malta b’risposta ghal-talba mill-UNESCO bl-ittra ref: CLT/WHC/EUR/23/14263. Din l-analizi hi msemmija fl-State of Conservation Report sottomess mill-Gvern Malta lill-Unesco u datat March 2023. I am sending you the exact quote on page 12 of the above mentioned State of Conservation Report.

b) Establish a declared zone in accordance with Paragraph 103 of the Operational Guidelines, with height controls around the property as a means of protecting the skyline configuration of the city and prepare a “Views and Vistas Analysis” from strategic points within and outside the property, [The Maltese Government has commissioned a Viewshed Analysis which will enable the definition of a buffer zone for Valletta. This will be presented for approval by Cabinet of Ministers and submitted to the World Heritage Centre by June 2023.]”.

2. On the 29th January 2025, the Public Authority informed the applicant that the time-limit set forth in article 10 of the Act was being extended by twenty (20) working days due to the fact that the “*Public Authority needs to consult third parties before it can decide on your request, and more time is needed to obtain the necessary feedback*”.

3. On the 4th February 2025, the Public Authority refused the request of the applicant on the basis that “[s]tante l-fatt li l-iskambji u l-komunikazzjonijiet mal-UNESCO ghadhom ghadejjin, ikun intempestiv li tali rapport jigi ppubblikat f’dan l-istadju”. On the same day, the applicant submitted an internal complaint through the internal complaints procedure of the Public Authority and requested the Public Authority to revise its decision concerning the refusal of the requested document.
4. On the 7th March 2025, the Public Authority reiterated its refusal and provided the following reply:

“Kindly be informed that as discussions are still underway between Government and UNESCO concerning clarifications of the State of Conservation Report, the outcome of which shall be presented to Cabinet for their approval or otherwise, the Viewshed Report falls under the relevant sections of the FOI legislation, namely article 29(2). Consequently, it is advised that the answer to the Internal Complaint is that this is refused. Thus the Culture Directorate stands by the answer given in the first instance.”.

FREEDOM OF INFORMATION APPLICATION

5. On the 7th March 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 request for information made by the applicant to the Public Authority had been dealt with pursuant to the requirements of the Act. The applicant argued that the document requested is not a cabinet document as claimed by the Public Authority:

“This is not a cabinet paper as the report requested by us was a preparatory document for the preparation of a report Views and vistas report which in turn formed part of a state of Conservation Report which has been published on the UNESCO website with permission to be disclosed to whomsoever wants to see it. The directorate had already refused to give us the views and vistas and the matter had been handled by the data commissioner. This same views and vistas report is now available on the Unesco website.

It does not make sense to claim cabinet privilege on a small part of a report which has now been made public.

If the matter was so sensitive the cabinet would not have been approved the publication and disclosure of the State of conservation report.”.

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 11th 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 freedom of information application made by the applicant. In particular, the Commissioner requested the Public Authority to clearly substantiate the reason of refusal and clearly specify the sub-provision cited in terms of article 29(2) of the Act on the basis of which the Public Authority is refusing access to the requested document.

Submissions of the Public Authority

8. By means of a letter dated the 28th March 2025, the Public Authority provided the Commissioner with the correspondence exchanged between the Government of Malta and UNESCO, including the relevant documentation in connection with such correspondence. The Public Authority requested the Commissioner to retain such documentation internally and solely use the information for the purpose of conducting the legal analysis of the present case.
9. In response to the information notice, the Public Authority submitted the following arguments for the Commissioner to consider during the legal analysis of the case:

- a. that the State of Conservation Report (October 2024) was submitted together with its annexes to UNESCO by the Maltese Government on the 21st November 2024, and the said report will be examined by the World Heritage Committee at its 47th session of 2025;
- b. that the Government of Malta has commissioned the Viewshed Analysis Report (subject to this FOI request) so as to “*enable the definition of a buffer zone for Valletta*” “*and used to inform the Views and Vistas Analysis*”, and such report has been presented to the Cabinet of Ministers for its approval and was subsequently submitted to the World Heritage Centre as one of the ICOMOS three (3) Technical Reviews of the Viewshed and Vistas Analysis;
- c. that the Technical Reviews were submitted to the Cabinet and the Cabinet is requesting that the World Heritage Centre and the Advisory Bodies take into account the information at hand of these Technical Reviews in the joint analyses that will inform the State of Conservation Report;
- d. that the Viewshed Analysis Report has never been released for publishing by the Government, in spite of it being referenced in the State of Conservation Report, and this is corroborated by the applicant himself who in his email dated the 7th March 2025 sent to the Public Authority and the Commissioner, he stated that “[a] *complete understanding of the Views and Vistas requires understanding of the Viewshed Report*”;
- e. that the Views and Vistas Analysis was subject to a previous freedom of information request of the applicant, which was refused by the Public Authority on the basis that the document was exempt pursuant to article 29(2)(a) of the Act and the Commissioner found that the document was indeed exempt in terms of article 29(2)(a) of the Act; and
- f. that the Maltese Government has on the 27th February 2025, submitted in confidence to UNESCO, replies to clarifications requested by UNESCO that shall be reviewed at the next World Heritage Committee meeting in 2025 and the decisions of the Committee shall eventually be presented to the Cabinet for its approval or otherwise, and this corroborates the Public Authority’s stance that discussions and negotiations are still ongoing between the Government of Malta and UNESCO that will inform the State of Conservation Report as finally agreed between the negotiating parties.

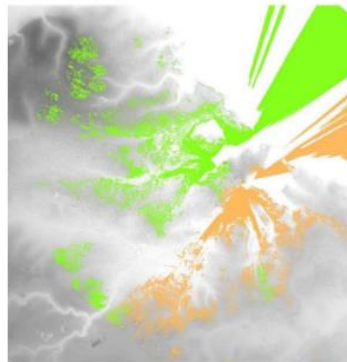
Submissions of the Applicant

10. The Commissioner provided the applicant with the opportunity to rebut the arguments raised by the Public Authority. On the 9th April 2025, the applicant submitted the following counterarguments:

- a. that the refusal of the Public Authority is rather absurd as this is a technical report used as the basis for another report called the ‘Views and Vistas Report’, and which subsequently formed part of the State of Conservation Report for the City of Valletta;
- b. that the issue came up in 2024 when the request of the applicant for the ‘Views and Vistas Report’ was denied as at the time it was still a cabinet document, however, this document which forms part of the State of Conservation Report for the City of Valletta was made public when the latter report was submitted to UNESCO with the Government’s permission to be made public, and in fact, the report may be accessed online at <https://whc.unesco.org/en/list/131/documents/>;
- c. that despite having submitted a previous FOI request for the Views and Vistas Report, the Public Authority failed to provide the applicant with a copy of such document once it had been made publicly available;
- d. that it appears that the Government of Malta may have reasons to conceal information regarding our heritage, as evidenced by its failure to inform citizens about this important issue, which is of great significant to the applicant;
- e. that as stated above, the Viewshed Analysis Report requested by the applicant is a technical report which is referenced within the Views and Vistas Report, and, accordingly, the applicant reproduced the following images taken from the Views and Vistas Report:



Above: Aggregated image of 2km viewsheds to and from Valletta, excluding takeoff points from the Upper Barrakka Garden and Hastings Garden



Above: Aggregated image of 5km viewsheds from the Upper Barrakka Garden and Hastings Garden

Figure 6 Composite viewsheds to and from Valletta

Source: S. Formosa, 'Viewshed Mapping pertaining to the City of Valletta - Spatial Information, Viewshed & Visualisation Analysis', 2023.

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- f. that the requested document is also referenced in the Views and Vistas Report as item 24 on page 72, as reproduced hereunder:

- [15] Government of Malta, 'Grand Harbour Local Plan', 2002. Accessed: May 26, 2023. [Online]. Available: <https://www.pa.org.mt/en/local-plan-details/grand-harbour-local-plan>
- [16] Government of Malta, 'North Harbour Local Plan', 2006. Accessed: May 26, 2023. [Online]. Available: <https://www.pa.org.mt/en/local-plan-details/north-harbour-local-plan>
- [17] Malta Environment and Planning Authority, 'Development Control Design Policy, Guidance and Standards, 2015', 2015. [Online]. Available: <https://ias.com.mt/wp-content/uploads/2018/04/dc2015-reduced-in-size.pdf>
- [18] Planning Authority, 'Planning Authority Circular 3/20 - Assessing and Determining development Applications in the Setting of Scheduled Buildings and Monuments', 2020.
- [19] Malta Environment and Planning Authority, 'Planning Policy Guide on the Use and Applicability of the Floor Area Ratio, 2014', 2014. [Online]. Available: <https://www.pa.org.mt/en/supplementary-guidance-details/a-planning-policy-guide-on-the-use-and-applicability-of-the-floor-area-ratio-for>
- [20] Malta Environment and Planning Authority, 'Height Limitation Adjustment Policy for Hotels', 2014. [Online]. Available: <https://www.pa.org.mt/en/supplementary-guidance-details/height-limitation-adjustment-policy-for-hotels>
- [21] Planning Authority, 'Height Limitation Adjustment Policy for Retirement Homes', 2017. [Online]. Available: <https://www.pa.org.mt/en/supplementary-guidance-details/height-limitation-adjustment-policy-for-retirement-homes>
- [22] S. C. Spiteri, 'The art of fortress building in Hospitaller Malta', 2007. Accessed: May 26, 2023. [Online]. Available: <https://www.um.edu.mt/library/oar/handle/123456789/40214>
- [23] T. Freller, *Malta and the Grand Tour*. Midsea Books, 2009.
- [24] S. Formosa, 'Viewshed Mapping pertaining to the City of Valletta - Spatial Information, Viewshed & Visualisation Analysis', 2023.

- g. that the Viewshed Analysis Report is one of the twenty-four references cited in the Views and Vistas Report, and therefore, the inclusion of such document in the

references section implies that it must be publicly available; otherwise how could anyone consult the references used to prepare the Views and Vistas Report if the documents are kept secret?;

- h. that the Cabinet released the State of Conservation Report to UNESCO and granted permission for public access, and therefore, the applicant contended that once the Cabinet made the entire State of Conservation Report available, including the Views and Vistas Report, it implies that all the constituent documents of the main report should also be disclosed;
- i. that the State of Conservation Report includes highly technical reports, such as, the Hydrographic and Geophysical Survey and Mathematical Wave impact studies but not the Viewshed Analysis Report, and this led the applicant to question “*Why should the latter be kept a secret while the former studies were published?*”;
- j. that the applicant referred to the submissions of the Public Authority, namely, that “*the decisions of the [World Heritage] Committee shall eventually be presented to Cabinet for their approval or otherwise. This corroborates the Public Authority’s stance that discussions and negotiations between the Government of Malta and UNESCO that will inform the State of Conservation Report as finally agreed between the negotiating parties. The foregoing provides the reasons why Mr Sciortino’s request for a copy of the Viewshed Analysis cannot presently be satisfied*” and the applicant argued that it is illogical since the State of Conservation Report is in the public domain with the Government’s and Cabinet’s blessing;
- k. that the only reason that the Public Authority is resisting the freedom of information request of the applicant is because the NGO ‘*Flimkien għal Ambjent Aħjar*’ criticised the extent of the proposed buffer zone for Valletta in its response to the public consultation held in March 2024;
- l. that the NGO ‘*Flimkien għal Ambjent Aħjar*’ argued that one cannot protect the views of Valletta without including the coastal perimeter of Marsamxett Harbour from where people can observe and enjoy the views of Valletta; and
- m. that the proposed buffer zone ends in the sea which means that the viewpoints with the views of Valletta are not protected and from the diagrams reproduced in the Views

and Vistas Report and as shown above, it is clear that the Viewshed Analysis Report supports the argument of the NGO ‘Flimkien ghal Ambjent Ahjar’.

Submissions of the Public Authority

11. Pursuant to the internal investigative procedure of this Office, the Commissioner provided the Public Authority with a copy of the submissions presented by the applicant and enabled the Public Authority to submit its final remarks. By means of a letter dated the 2nd May 2025, the Public Authority submitted the following:

- a. that the case revolves around the question of whether the Viewshed Analysis Report is an exempt document under article 29(2) of the Act and it is unequivocal that the Viewshed Analysis Report was requested by and for Cabinet, “... *being a document that was brought into existence for the purpose of submission to the Cabinet*”;
- b. that, consequently, the Viewshed Analysis Report is one of the three technical documents, that together with the State of Conservation Report, are due to be reviewed by the next World Heritage Committee meeting of July 2025; also, being reviewed are the replies to clarifications (sent in confidence to UNESCO) requested by UNESCO, previously sent to the Government; and
- c. that the outcome of this review shall be presented to the Cabinet for its consideration, and it is also unequivocal that the Viewshed Analysis Report document has to date not been published by the Cabinet and the Public Authority, and therefore, reiterates that it had complied with the requirements of the Act.

Clarifications sought from the Public Authority

12. On the 2nd May 2025, the Commissioner informed the Public Authority that its submissions and supporting documentation were not sufficient to enable him to reach a decision about the exemption cited in its response. Accordingly, the Commissioner granted the Public Authority a final opportunity to submit concrete evidence demonstrating that the document requested by the applicant qualifies as a “*cabinet document*”.

13. By means of an email dated the 14th May 2025, the Public Authority submitted a declaration of the Minister for the National Heritage, the Arts and Local Government dated the 13th May 2025, confirming that the document requested by the applicant is indeed a “*cabinet document*”.

LEGAL ANALYSIS AND DECISION NOTICE

The Handling of the Freedom of Information Request

14. Before delving into the merits of the exemption cited by the Public Authority in terms of article 29(2)(a) of the Act, the Commissioner noted that the applicant submitted his freedom of information request on the 30th December 2024. On the 29th January 2025, the Public Authority informed the applicant that the time limit set out in article 10 of the Act was being extended on the basis that the Public Authority needed to consult third parties. The Commissioner noted that article 11(1)(b) of the Act reads as follows:

“(1) Where a request in accordance with article 6 is made or transferred to a public authority, the authority may extend the time limit set out in article 10 by up to forty working days in respect of the request if –
...
(b) consultations necessary to make a decision on the request are such that a proper response to the request cannot reasonably be made within the original time limit”.

15. During the course of the investigation, the Public Authority argued that its refusal to disclose the document was based on its classification as a “*cabinet document*” pursuant to article 29(2)(a) of the Act. The Commissioner considers that once a document is classified as a “*cabinet document*” by the Public Authority, this classification constitutes an objective fact, and it serves as a conclusive basis for non-disclosure. Therefore, there does not appear to be a justified reason in terms of article 11(1)(b) of the Act for extending the time-limit set out in article 10 of the Act for the purpose of consulting third parties. Such unjustified extension of the time limit serves only to unnecessarily prolong an already protracted process for the applicant.
16. This was further exacerbated by another failure of the Public Authority to respond within the time limit prescribed by its own internal complaints procedure. The Commissioner examined the internal complaints procedure of the Public Authority, which reads as follows: “*The officer responsible shall reply to the applicant **within 10 working days from the receipt of the complaint***” [emphasis has been added].

17. The applicant submitted the internal complaint on the 4th February 2025, however, the Public Authority failed to provide a response to the complaint within ten (10) working days, only doing so on the 7th March 2025, and after the intervention of the Commissioner. This delay, particularly following an earlier extension of the initial response period, reflects a disregard for the Public Authority's obligation to provide a timely response.
18. In addition, the Commissioner noted that the first reply cited by the Public Authority failed to include the reason of refusal, namely that the document requested by the applicant is a "*cabinet document*". This reason of refusal was only mentioned in the final response dated the 7th March 2025, which was subsequently cited during the course of the investigation. The objective of the freedom of information legislation is to promote transparency and accountability among the public authorities. This must be reflected in the replies provided by the Public Authority when refusing a request for access to information. Article 15(1)(a) of the Act imposes an obligation on the Public Authority that where a request is made in accordance with the Act, the Public Authority shall "*give the applicant the reasons for the refusal*" pursuant to any of the reasons set forth in article 14 of the Act. Where an exemption under Part V or Part VI of the Act is cited, the Public Authority must clearly identify the specific exemption and provide an adequate justification for its application. This ensures that the applicant is in a position to meaningfully challenge the refusal of the Public Authority.
19. This led the Commissioner to conclude that: (i) the Public Authority extended the time limit of twenty (20) working days set out in article 10 of the Act without having a proper justification pursuant to the requirement set forth in article 11(1) of the Act; (ii) the Public Authority failed to provide a response to the applicant after he submitted a complaint pursuant to its internal complaints procedure within ten (10) working days from the date of receipt of the complaint; and (iii) the first response of the Public Authority dated the 4th February 2025 failed to specify the reason of refusal, namely, that the refusal is based on article 29(2)(a) of the Act.

Article 29(2)(a) of the Act

20. The Commissioner proceeded to assess the reason of refusal cited by the Public Authority in its response, namely, that the document requested by the applicant is a "*cabinet document*", and therefore, the document was withheld on the basis of article 29(2)(a) of the Act. The exemption cited by the Public Authority reads as follows:

"Subject to article (3), a document is an exempt document if it is:

(a) a document that has been submitted to the Cabinet for its consideration or is proposed by the Minister to be so submitted, being a document that was brought into existence for the purpose of submission to the Cabinet”.

21. Therefore, a document is deemed to be exempt in terms of article 29(2)(a) of the Act if the Public Authority can effectively demonstrate that the document has already been submitted to the Cabinet for its consideration. In cases where it has not yet been submitted, the Public Authority must demonstrate that the document was created for the purpose of enabling the Minister to submit the document to the Cabinet. Any document containing information that would reveal a Cabinet deliberation or decision is exempt from disclosure, unless the document contains factual information relating to a decision of the Cabinet that has been published.
22. The rationale behind this exemption is intended to protect the confidentiality of the proceedings held within the Cabinet, in particular, the deliberative process. Similar to the other exemptions cited in Part V of the Act, this exemption is not subject to the public interest test. The public interest is implicit in the purpose of the exemption itself.
23. During the course of the investigation, the Commissioner emphasised that the onus rests upon the Public Authority to submit evidence to effectively demonstrate that the document requested by the applicant is indeed exempt in terms of article 29(2)(a) of the Act. Accordingly, the Public Authority submitted a declaration of the Minister for the National Heritage, the Arts and Local Government dated the 13th May 2025, confirming that the document requested by the applicant is indeed a “*cabinet document*”.

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:

- a. the Public Authority extended the time limit of twenty (20) working days set out in article 10 of the Act without having a proper justification pursuant to the requirement set forth in article 11(1) of the Act;**
- b. the Public Authority failed to provide a response to the applicant after he submitted a complaint pursuant to its internal complaints procedure within ten (10) working days from the date of receipt of the complaint;**

- c. the first response of the Public Authority provided on the 4th February 2025 failed to specify the reason of refusal pursuant to any of the reasons set forth in article 14 of the Act; and
- d. that the reason of refusal cited by the Public Authority in its final response dated the 7th March 2025, namely, that the document is exempt in terms of article 29(2)(a) of the Act, is justified.

Ian
DEGUARA
(Signature)

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by Ian DEGUARA
(Signature)
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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/>