

Information and Data Protection Commissioner

FOI/18/2025

Caroline Muscat

vs

Office of the Prime Minister

FREEDOM OF INFORMATION REQUEST

1. On the 25th 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 Office of the Prime Minister (the “**Public Authority**”) to make available the “[c]opy of all declarations of assets submitted as per Ministerial code of ethics for 2023” in electronic format.
2. On the 25th February 2025, the Public Authority refused the request of the applicant on the basis that:

“Is-sottomissjonijiet tad-dikjarazzjonijiet tal-assi tal-Ministri u s-Segretarji Parlamentari ssir għal fini tal-iskrutinju tal-Prim Ministru. Barra minn hekk, il-proċedura tal-gbir tad-dikjarazzjonijiet u l-pubblikazzjoni tagħhom hija rregolata mill-Manwal tal-Proċeduri tal-Kabinett. Dan huwa rifless ukoll f’deċiżjoni riċenti tal-iSpeaker tal-Kamra tar-Rappreżentanti (S.302) datata 22 ta’ Jannar 2025”.
3. On the 26th February 2025, the applicant exercised her right to request the Public Authority to revise its decision pursuant to its internal complaints procedure. The applicant argued that “[t]he same manual you are quoting and the Speaker’s ruling make it clear that these declarations are accessible to the public upon request to the Cabinet Secretary. This apart from the PM’s obligation to be accountable and transparent”.
4. On the 14th March 2025, the Public Authority reiterated its refusal and stated that “[l]-Awtorita’ Pubblika zzomm mal-pozizzjoni originali tagħha u tirreferi lill-applikant għall-proċedura tal-gbir tad-dikjarazzjonijiet u pubblikazzjoni fakoltattiva tagħhom fid-dawl li l-applikant qed tikkwota l-Manwal ta’ Proċeduri tal-Kabinett skorrettament b’mod intenzjonat”.

ENFORCEMENT NOTICE

5. On the 17th March 2025, the applicant submitted a freedom of information application with the Information and Data Protection Commissioner (the “**Commissioner**”) pursuant to article 23(1)(a) of the Act. The applicant requested the Commissioner to determine whether the Public Authority has handled her request for information in accordance with the requirements of the Act.
6. On the 18th March 2025, the Commissioner proceeded with the issuance of an enforcement notice in terms of article 25(1) of the Act and ordered the Public Authority to inform the applicant of the reason(s) for the refusal, as set forth in article 14 of the Act.
7. By means of an email dated the 17th April 2025, the Public Authority complied with the enforcement notice and informed the applicant that:

“the public authority reiterates its refusal for the publication of the requested information, as by virtue of Part V or Part VI of the Freedom of Information Act (Cap. 496), there is good reason for withholding the requested document. The public authority brings to the attention of the applicant the fact that the requested declarations of assets are submitted and collected in line with the Manual of Cabinet Procedures. Considering the above, by virtue of Article 29(2) of the Freedom of Information Act the said documents are exempt”.

FREEDOM OF INFORMATION APPLICATION OF THE 23RD APRIL 2025

8. On the 23rd April 2025, the applicant submitted another freedom of information application in relation to the reply provided by the Public Authority on the 17th April 2025, and requested the Commissioner to investigate whether the Public Authority was justified to refuse the requested documents on the basis of article 29(2) of the Act.

INVESTIGATION

Admissibility of the Freedom of Information Application

9. 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 an Information Notice

10. As part of the investigation procedure, by means of an information notice dated the 24th April 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:

- a. to identify and cite the specific sub-article under article 29(2) of the Act upon which the Public Authority is relying as the ground for refusing access to the requested documentation;
- b. to provide a clear explanation as to how the requested documentation qualifies as a “*cabinet document*” for the purposes of the Act and to support this position with the appropriate evidence; and
- c. to clarify, by providing the relevant argumentation, why there was this change in the long-standing practice of tabling the declaration of assets in Parliament, after these declarations would have been submitted to the Cabinet Secretary.

Submissions of the Public Authority

11. By means of a letter dated the 26th May 2025, the Public Authority submitted the following arguments for the Commissioner to consider during the legal analysis of the case:

- a. that the refusal is based on the exemption provided under article 29(2)(a) of the Act and the requested documents are prepared and submitted strictly according to the procedures set out in the Manual of Cabinet Procedures;
- b. that these documents exist solely for the Prime Minister’s scrutiny in his role as the Chair of the Cabinet, and therefore, such declarations submitted by the Ministers and Parliamentary Secretaries fall within the scope of this provision;
- c. that these declarations are not created for public circulation, instead, they are internal documents that help the Prime Minister carry out ethical oversight within the Executive;

- d. that while the requested documents are formally received by the Cabinet Secretary, this is part of a process that remains fully within the Government and is intended to support internal accountability;
- e. that whilst it is true that the declarations have been laid before the Parliament, such practice does not arise from any legal obligation and the Public Authority referred to the Ruling of the Speaker of the House of Representatives delivered on the 22nd January 2025 during sitting 302 of the fourteenth legislature; and
- f. that, for the reasons outlined above, the Public Authority reiterated its position that the requested documents are exempt from disclosure pursuant to article 29(2)(a) of the Act.

Submissions of the Applicant

12. Pursuant to the internal investigative procedure of this Office, the Commissioner provided the applicant with a copy of the submissions presented by the Public Authority, including the supporting documentation, in order to enable the applicant to rebut the arguments raised by the Public Authority. By means of an email dated the 27th May 2025, the applicant submitted the following arguments:

- a. that, in every democracy in Europe and in the European Parliament, the declarations are made available for public scrutiny, transparency and accountability purposes and are made available to the public;
- b. that there is no provision in the Act that permits the Prime Minister to be less transparent or to consider such documents as private;
- c. that the same Prime Minister had previously published the declarations, leaving the applicant unable to understand what has now changed;
- d. that the Prime Minister himself stated in parliament in PQ 24591 that the declarations were submitted and were available to the public, and this is also quoted in the ruling of the speaker, and this results in being false;
- e. that the Speaker is not a FOI authority, and his ruling refers only to the happiness in the House of Representatives;

- f. that the same manual cited by the Public Authority, which is public, also states that declarations must be public once a request is made to the cabinet secretary and this is also reiterated in the same Speaker's ruling which the Public Authority is conveniently quoting; and
- g. that the Parliamentary Standards Commissioner has already declared that the Public Authority is wrong in not making these declarations public.

Final Submissions of the Public Authority

13. The Public Authority was provided with the final opportunity to provide any further arguments and by means of a letter dated the 10th June 2025, the Public Authority submitted the following:

- a. that the Ministers and Parliamentary Secretaries submit two declarations of assets: (i) a declaration of assets as members of the Executive; and (ii) a declaration of assets as members of Parliament;
- b. that the declaration of assets as members of the Executive are filed for the Prime Minister's scrutiny in his role as Chair of the Cabinet;
- c. that different jurisdictions have different laws and procedures governing the declarations of assets, including their publication, and the Prime Minister has commented publicly on this matter and expressed the intention of the Government to reform the system in order to have a single more transparent declaration for all Members of Parliament and eliminate the discrepancies which exist between members of Cabinet themselves;
- d. that the ruling of the Speaker of the House of Representatives delivered on the 22nd January 2025 (sitting 302) confirmed that declarations of assets are filled by Ministers and Parliamentary Secretaries in order to be scrutinised by the Prime Minister;
- e. that the Speaker held as follows: "*Mill-qari ta' din ir-regola johroġ ċar illi din id-dikjarazzjoni tal-assi li temerġi mill-Manwal ta' Proċedura tal-Kabinett issir għall-fini ta' skrutinju mill-Prim Ministru, bħala l-Kap tal-Kabinett, dwar l-assi tal-Ministri u Segretarji Parlamentari*";

- f. that, in addition, the Public Authority is compelled to reiterate that while it is true that such declarations have been laid before Parliament in the past, such practice does not arise from any legal obligations and the fact that such declarations have been published in the past does not add additional obligations for the Secretary to the Cabinet beyond what is required by the Manual of Cabinet Procedures;
- g. that this is not the first time that such declarations were not made public as declarations of assets for 2001, 2005 and 2007 were never laid before the Parliament;
- h. that nowhere in the decision of the Commissioner for Standards in Public Life cited by the applicant is the Secretary to the Cabinet or anybody else blamed for non-adherence to the law or the Code of Ethics for Ministers and Parliamentary Secretaries (Cap. 520 of the Laws of Malta);
- i. that the declarations of assets for 2023 have been submitted to the Commissioner for Standards in Public Life;
- j. that contrary to the allegations of the applicant, the Public Authority does not consider such documents as private and in actual fact, the position of the Public Authority is based upon the provision of the Manual of Cabinet Procedures which states that: “*Is-Segretarju tal-Kabinett jagħti aċċess għal kopji ta’ kull dikjarazzjoni kif ikun awtorizzat mill-Prim Ministru*”;
- k. that the ruling of the Speaker of the House of Representatives adopted the same reasoning of the Public Authority and stated as follows:

*“Min-naħa l-oħra, l-Ispeaker la għandu pussess u wisq inqas kontroll fuq id-dikjarazzjonijiet li jiġu sottomessi minn Ministri u Segretarji Parlamentari, **li dwarhom il-liġi tghid biss li għandhom ikunu sottomessi lis-Segretarju tal-Kabinett**”* (page 6 – 7); u

*“Għalhekk ma jemergix l-obbligu li dawn id-dikjarazzjonijiet jitqieghdu fuq il-Mejda tal-Kamra, **li l-kweżit ta’ aċċessibilità tal-pubbliku għall-istess hu sodisfatt b’talba li ssir lis-Segretarju tal-Kabinett**”*. (page 7) [emphasis added by the Public Authority];

- l. that it is as also imperative to point out that the Ministers and Parliamentary Secretaries have already submitted their declarations of assets for 2023 to the Speaker of the House of Representatives and the said declarations are available to the public and the media;
- m. that the Public Authority's commitment to public scrutiny, transparency and accountability is manifested in its commitment to reform the system of asset and interest declarations of both members of the Executive and members of Parliament;
- n. that the changes will take into account the recommendations of the Organisation for Economic Co-operation and Development (OECD) as well as the Commissioner for Standards in Public Life on the matter; and
- o. that, ultimately, this will result in additional reporting obligations and increased scrutiny which are commensurate with the present-day realities of governance and public administration.

LEGAL ANALYSIS AND DECISION

14. For the purpose of this legal analysis, the Commissioner sought to assess whether the documents requested by the applicant, namely the “[c]opy of all declarations of assets submitted as per Ministerial code of ethics for 2023” are classified as cabinet documents and are therefore exempt from disclosure in terms of article 29(2)(a) of the Act.

15. The Commissioner proceeded to assess the exemption cited by the Public Authority in terms of article 29(2)(a) of the Act, which provides 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”.*

16. 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 show 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.

17. In its submissions dated the 10th June 2025, the Public Authority explained that Ministers and Parliamentary Secretaries submit two (2) declarations of assets, however, for the purpose of this freedom of information application, the Commissioner sought to examine how the declaration of assets are submitted by members of the Executive and whether they are classified as cabinet documents.
18. To this end, the Commissioner examined the Second Schedule to the Standards in Public Life Act (Cap. 570 of the Laws of Malta), namely the Code of Ethics for Ministers and Parliamentary Secretaries, which states that:

“7.3 When a Minister is appointed to office, he shall immediately provide a statement of his assets and interests to the Cabinet Secretary on the relative form. Any interest that may otherwise give rise to a perception of conflict of interest and any actual conflict of interest shall also be indicted to the Cabinet Secretary. This statement shall be provided every year in the manner indicated from time to time” [emphasis has been added].

19. Therefore, in line with the Code of Ethics for Ministers and Parliamentary Secretaries, the declaration of assets of the members of the Executive are submitted directly to the Cabinet Secretary, who, in accordance with article 94(2) of the Constitution, *“shall be responsible, in accordance with such instructions as may be given to him by the Prime Minister, for arranging the business for, and keeping the minutes of, the meetings of the Cabinet and for conveying the decisions of the Cabinet to the appropriate person or authority, and shall have such other functions as the Prime Minister may from time to time direct”*.
20. The Commissioner examined section 6.1 of the Manual of Cabinet Procedures (March 2022), which reads as follows:

“6.1 Dikjarazzjoni tal-Assi

Fi żmien xahrejn mill-hatra, u mhux aktar tard mix-xahar ta' Marzu ta' kull sena, kull Ministru u Segretarju Parlamentari għandu jibgħat lis-Segretarju tal-Kabinett dikjarazzjoni tal-assi li kopja tagħha hija meħmuża bhala ANNESS V u li telenka dan li ġej:

- (a) il-proprjetà immobbli li hi proprjetà tal-Ministru jew li fuqha l-Ministru għandu xi forma ta' titlu;*
- (b) ishma, bonds jew azzjonijiet f'investimenti oħra, li jista' jkollu f'kumpanji kummerċjali jew partnerships pubbliċi jew privati;*
- (c) is-somma totali ta' flus li għandu depożitati f'banek u kull xorta ta' interess finanzjarju;*
- (d) karigi ta' direttur u daww oħra f'kumpanji kummerċjali, assoċjazzjonijiet, bordijiet, soċjetajiet koperattivi pubbliċi jew privati;*
- (e) id-dhul tiegħu fis-sena ta' qabel; u*
- (f) is-somma totali ta' self li jista' jkun rċieva u li tkun għadha ma thallsitx lura.*

Din id-dikjarazzjoni għandha tirrifletti l-pożizzjoni fil-31 ta' Diċembru tas-sena ta' qabel u fil-lista (a), (b) u (c) msemmija hawn fuq, għandha tinkludi l-proprjetà tar-raġel jew mart il-Ministru jekk din tkun parti mill-komunjoni tal-akkwisti, kif ukoll tat-tfal minuri tal-Ministru kemm-il darba għandu l-kustodja tagħhom.

Jekk Ministru jew Segretarju Parlamentari jkun ġie elett għall-ewwel darba fil-Parlament meta jingħata l-ħatra ta' Ministru jew Segretarju Parlamentari, ma jkunx meħtieġ li jagħti rendikont tal-perjodu ta' qabel ġie elett fil-Parlament iżda biss l-assi li jippossedi fil-hin li ngħata l-ħatra.

Is-Segretarju tal-Kabinett, taht id-direzzjoni tal-Prim Ministru, għandu d-dover li jipprepara l-formola neċessarja għal din id-dikjarazzjoni. Is-Segretarju tal-Kabinett jagħti aċċess għal kopji ta' kull dikjarazzjoni kif ikun awtorizzat mill-Prim Ministru.” [emphasis has been added].

21. Therefore, after taking into account section 7.3 of the Code of Ethics for Ministers and Parliamentary Secretaries and section 6.1 of the Manual of Cabinet Procedures, the Commissioner determines that the declarations of assets of the members of the Executive are submitted directly to the Cabinet Secretary, and therefore, these documents are qualified as “*a document that has been submitted to Cabinet for its consideration*” as set forth in article 29(2)(a) of the Act. The declaration of assets may only be released by the Cabinet Secretary with the authorisation of the Prime Minister. The Prime Minister retains sole and absolute discretion over the release of such documents, a system that is viewed as incompatible with the principles of transparency and accountability, which are fundamental to good governance.

22. While the documents in question are legally classified as “*cabinet document*” pursuant to its formal submission to the Cabinet Secretary, thus bringing them within the exemption of the Act, the Commissioner firmly maintains that, in a democratic society grounded in the principles of transparency, accountability, and good governance, public access to such documents is of fundamental importance, particularly where they pertain to matters of integrity in public life. Notwithstanding the strong public interest in disclosure, the Commissioner is legally bound to strictly decide within the parameters of the Act, even if the outcome does not align with the broader principles of transparency and accountability that this Office actively seeks to uphold.
23. The Commissioner emphasises that access to these documents is essential to facilitate effective public scrutiny of the assets of Ministers and Parliamentary Secretaries who hold crucial responsibilities within the Executive branch of Government. Such transparency is fundamental to safeguarding the integrity of democratic governance, maintaining public trust, and ensuring that elected members of Parliament are held accountable for their conduct in public office.
24. Accordingly, while the Commissioner recognises the commitments made by the Public Authority to reform the entire system of assets and interests declarations of both members of the Executive and members of Parliament, the Commissioner respectfully submits that there is a compelling and strong public interest in the disclosure of these documents and urges the Public Authority to give due and proper consideration to the public interest element when the Prime Minister exercises his discretion in accordance with section 6.1 of the Manual of Cabinet Procedures.
25. Additionally, the consistent practice in previous years of tabling the declarations of assets sets a precedent that further supports the case for making the documents available. According to the submissions of the Public Authority dated the 10th June 2025, the “*declarations were not made public as declarations of assets for 2001, 2005 and 2007 were never laid before Parliament*”. However, this overlooks the fact that, for sixteen (16) consecutive years, such declarations were in fact tabled before the House of Representatives. This reinforces a legitimate public expectation of continued access to these declarations, particularly in the interest of transparency and accountability. Notably, the Public Authority has provided no substantive justification for departing from this long-standing practice, other than stating that “*such practice does not arise from any legal obligation*”. While there is no legal obligation to table the declarations of assets or to make them publicly available in terms of the Act, the absence of a legal requirement does not preclude the continuation of a well-established practice that has served a vital public interest for years.

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 documents requested by the applicant are “*document that has been submitted to the Cabinet for its consideration*”, and therefore, the documents are exempt from disclosure in terms of article 29(2)(a) of the Act.

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, Merchants Street, Valletta’¹.

¹ Further information on the appeals procedure is available at: <https://idpc.org.mt/appeals-tribunal/>