

**Information and Data Protection Commissioner**

**CDP/FOI/3/2025**

**Caroline Muscat**

**VS**

**Public Broadcasting Services Ltd.**

**FREEDOM OF INFORMATION REQUEST**

1. On the 9<sup>th</sup> November 2024, Ms Caroline Muscat (the “**applicant**”) made a freedom of information request pursuant to the requirements set forth in article 6(1) of the Freedom of Information Act (the “**Act**”), Chapter 496 of the Laws of Malta, requesting the Planning Authority (the “**Public Authority**”) to provide the following information in electronic format:

*“- Copy of resignation letter by Mr Mark Sammut  
- Copy of PBS termination letter  
- List and value of any termination payments made to Mr Sammut including any letter and proof of payment”.*

2. On the 4<sup>th</sup> December 2024, the Public Authority extended the time limit set out in article 10 of the Act 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 8<sup>th</sup> January 2025, the Public Authority provided the following response to the applicant:

*“It-talba qed tigi michuda stante li l-informazzjoni mitluba hija ezenti skont l-Art 5(3) tal-Att principali”.*

4. On the same day, the applicant submitted a complaint through the internal complaints procedure and requested the Public Authority to reconsider its decision. On the 16<sup>th</sup> January 2025, the Public Authority informed the applicant that “[w]e have nothing further to add to our previous response”.

## **FREEDOM OF INFORMATION APPLICATION**

5. On the 17<sup>th</sup> January 2025, the applicant applied for a decision notice pursuant to article 23(1)(a) of the Act, requesting the Information and Data Protection Commissioner (the “Commissioner”) to decide whether the Public Authority had handled the freedom of information request of the applicant pursuant to the requirements of the Act.

## **INVESTIGATION**

### **Admissibility of the Freedom of Information Application**

6. After having considered that the applicant is an eligible person in terms of article 2 of the Act and the nature and background of the freedom of information application, the Commissioner deemed the application made by the applicant as admissible for the purpose of article 23(2) of the Act.

### **The Issuance of the Information Notice**

7. As part of the investigation procedure, by means of an information notice dated the 3<sup>rd</sup> February 2025, issued in terms of article 24(1)(a) of the Act, the Commissioner requested the Public Authority to furnish information in relation to the application made by the applicant. In particular, the Commissioner requested the Public Authority to specify which sub-article of article 5(3) of the Act was relied upon to refuse the applicant’s request. The Commissioner also requested that a true copy of the documentations ought by the applicant be submitted, either enclosed with the Public Authority’s reply or delivered by hand under confidential cover, for the purpose of investigating the freedom of information request.
8. In this regard, the Commissioner issued several reminders to the Public Authority, requesting that it submit its arguments in relation to the information notice dated the 3<sup>rd</sup> February 2025. These reminders were sent on the 21<sup>st</sup> March 2025 and again on the 28<sup>th</sup> April 2025. However, in its reply dated the 2<sup>nd</sup> May 2025, the Public Authority merely stated, “[f]urther to your notice re CDP/FOI/3/2025 please refer to our previous reply”, without providing any additional information, addressing the notice’s content and requirements or submitting the requested documentation.

## LEGAL ANALYSIS AND DECISION

9. In view of the Public Authority's failure to provide any submissions in support of its decision to withhold the requested information, as well as its failure to provide the requested clarifications in relation to article 5(3) of the Act, the Commissioner will proceed to assess the applicability of the exemptions cited in the Public Authority's reply dated the 8<sup>th</sup> January 2025, by analysing both article 5(3)(a) and article 5(3)(b) of the Act.

### Article 5(3)(a) of the Act

10. The Commissioner analysed article 5(3)(a) of the Act, which provides that the Act shall not apply to documents insofar as such documents contain personal data subject to the Data Protection Act (Cap. 586 of the Laws of Malta), however **this does not mean that all personal data is exempt from disclosure, particularly when there is substantial public interest, which merits the disclosure of the information** [emphasis has been added].
11. In this regard, the Commissioner analysed the definition of '*personal data*' as contained in article 4(1) of the General Data Protection Regulation<sup>1</sup> (the "**Regulation 2016/679**"), which provides that "*'personal data' means **any information relating to an identified or identifiable natural person** ('data subject'); an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person;*" [emphasis has been added].
12. The Commissioner noted that the definition of '*personal data*' is intended to be applied in such a broad manner considering that the protection of natural persons in relation to the processing of personal data is a fundamental right as enshrined in article 8(1)<sup>2</sup> of the Charter of Fundamental Rights of the European Union. Therefore, the Commissioner establishes that the information contained in the appointment letter, relating to an identified natural person, constitutes personal data within the meaning of article 4(1) of the Regulation 2016/679, and generally, triggers the non-applicability of the Act.

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<sup>1</sup> Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC.

<sup>2</sup> Article 8(1) of the Charter of Fundamental Rights of the European Union: "*Everyone has the right to the protection of personal data concerning him or her.*"

13. Whereas the Act is designed to ensure the greatest possible transparency of the documents held by the public authorities by enabling the applicants to exercise the right of access to documents, however, this right is not absolute and is subject to certain limitations which are clearly articulated in the Act. In this regard, when the requested documents contain personal data, a reconciling exercise shall be carried out in order to determine whether the right to have access to the documents pertaining to the public authorities prevails over the right to the protection of personal data pursuant to the provisions of the Regulation 2016/679. Indeed, the Court of Justice of the European Union (CJEU) held in several rulings that, *“in general, no automatic priority can be conferred on the objective of transparency over the right to protection of personal data”*<sup>3</sup>.
14. In a similar vein, the Court of Appeal in the judgment *‘Allied Newspapers Limited vs Projects Malta Ltd’*<sup>4</sup> highlighted the relationship between the two opposing rights, “[g]ħalkemm huwa veru li d-dritt għall-informazzjoni mhuwiex wiehed assolut, speċjalment fejn id-dritt għall-privatezza u l-kunfidenzjalità tabilhaqq ikun mhedded, min-naħa l-oħra din il-Qorti tqis **li l-ewwel presuppost għandu dejjem jkun favur l-‘interess pubbliku sostanzjali’ li jiġu mharsa d-dritt għall-informazzjoni u l-libertà tal-espressjoni**. Biex ma tingħatax l-informazzjoni rikjesta, irid jiġi żgurat illi l-pubblikazzjoni tal-informazzjoni tkun tikkostitwixxi ksur ta’ xi prinċipju tal-protezzjoni tad-data, kif salvagwardjati mill-GDPR u l-liġijiet nazzjonali, fil-każ ta’ Malta, il-Kap. 586. Barra minn hekk ma jistgħux jiġu rikonċiljati d-drittijiet tal-libertà tal-espressjoni u dak tal-privatezza jekk ma ssirx evalwazzjoni dwar jekk l-iżvelar tal-informazzjoni mitluba, tirriżulta fi ksur irragonevoli u ingustifikat tad-drittijiet tal-privatezza tal-individwu konċernat. Il-privatezza tad-data u l-kunfidenzjalità huma eċċezzjonijiet għad-dritt għall-informazzjoni, u mhux bil-maqlub.” [emphasis has been added].
15. The Commissioner noted that the European Data Protection Supervisor’s (“EDPS”) paper concerning the relationship between public access to documents and privacy, integrity and data protection<sup>5</sup>, whereby it is held that employees in a public administration should be aware that for several reasons, their personal data may be disclosed for reasons of public interest. Furthermore, it was held that for accountability and transparency purposes, *“certain personal data (such as the name and function of an official) can, in general, be disclosed without consent, provided that it is appropriate and motivated by the activities of the institution”*. It was further noted that *“[t]he general rule of thumb is that the mere act of disclosing the name of a person*

<sup>3</sup> Case C-615/13 P ClientEarth and PAN Europe vs European Food Safety Authority, decided on the 16<sup>th</sup> July 2015 and Volker und Markus Schecke and Eifert, C-92/09 and C-93/09, decided on the 9<sup>th</sup> November 2010.

<sup>4</sup> Inferior Appeal No. 33/2019 LM, *Allied Newspapers Limited vs Projects Malta Ltd*, dated 2<sup>nd</sup> September 2020.

<sup>5</sup> European Data Protection Supervisor (2005), *Public access to documents and data protection*.

*does not affect his or her privacy, especially not if it concerns officials of a public body acting in a public capacity”.*

16. The Commissioner took into consideration the settled case-law of the CJEU, in particular the restrictive interpretation of the applicability of personal data protection<sup>6</sup> as a justification for refusing access to documents held by the European institutions, the Court has not treated this exemption as an outright denial to the right of access to documents, but applied a necessity and proportionality test to assess if the public interest outweighs the data protection rights of the individual(s) in question. In *Volker und Markus Schecke and Eifert vs Hessen*<sup>7</sup>, the Court noted that *“the right to the protection of personal data is not, however, an absolute right, but must be considered in relation to its function in society”*.
17. Article 86 of the Regulation 2016/679 states that *“[p]ersonal data in official documents held by a public authority or a public body or a private body for the performance of a task carried out in the public interest may be disclosed by the authority or body in accordance with Union or Member State law to which the public authority or body is subject in order to reconcile public access to official documents with the right to the protection of personal data pursuant to this Regulation.”* This provision shall be read in conjunction with recital 154 of the Regulation 2016/679 which includes the following: *“[t]his Regulation allows the principle of public access to official documents to be taken into account when applying this Regulation. Public access to official documents may be considered to be in the public interest. Personal data in documents held by a public authority or a public body should be able to be publicly disclosed by that authority or body if the disclosure is provided for by Union or Member State law to which the public authority or public body is subject”*.
18. In this regard, the Commissioner established that the requested documentation contains personal data within the meaning of article 4(1) of Regulation (EU) 2016/679 and in his analysis, the Commissioner considered whether the disclosure of personal data pertaining to individuals, should be exempted from disclosure on the basis of article 5(3)(a) of the Act. As a first step, the Commissioner assessed whether the disclosure of these personal data would infringe the data protection provisions held in Regulation (EU) 2016/679. One of the major factors that was taken into account is the nature of the personal data contained in the requested documentation. Accordingly, the Commissioner ascertained that the disclosure of the requested

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<sup>6</sup> Article 4(1)(b) of the Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents, which reads as follows: *“The institutions shall refuse access to a document where disclosure would undermine the protection of privacy and the integrity of the individual, in particular in accordance with Community legislation regarding the protection of personal data”*.

<sup>7</sup> Joined Cases C-92/09, C-93-09, *Volker und Markus Schecke and Eifert vs Hessen*, judgement of the Court (Grand Chamber) of 9 November 2010.

documentation would not reveal any special categories of personal data as set forth in article 9(1) of Regulation (EU) 2016/679 or information which is deemed to be of a sensitive nature, and therefore ought to have higher protection due to the inherent risks attributed to such processing of personal data. Additionally, the Public Authority failed to indicate which potential harm or distress may be caused to the individuals concerned as a result of the disclosure of their names and surnames.

19. Furthermore, the Commissioner considered whether the disclosure of the requested documentation would exceed the expectation of the affected data subject. The expectations of an individual would depend on whether the disclosure of personal data would specifically affect the private life of that individual or not. The Commissioner is of the view that that the individual's reasonable expectation would certainly depend on how senior is the role of the individual within the public authority or if that individual is rendering a service or performing a task or role in his or her professional capacity. Thus, in such instances, there is a reasonable expectation that the personal data pertaining to individuals occupying top management positions of public authorities and other individuals acting in their professional capacity would be subject to greater scrutiny than would be the case in respect of their private lives. In fact, there is a reasonable expectation that the data pertaining to such individuals would be disclosed to the public on the basis that the public should be provided with the opportunity to scrutinise the public expenditure. The Commissioner highlights that the disclosure of information concerning public expenditure leads to increasing accountability and transparency in the spending of public funds, which is ultimately the main objective of the freedom of information legislation, and thus, there exists substantial public interest in favour of disclosure. Thus, the disclosure of the names and surnames of individuals occupying a top management position at public authorities and other individuals acting in their professional capacity would not cause any unreasonable and unwarranted level of interference with the individuals' fundamental rights and freedoms.

#### Article 5(3)(b) of the Act

20. The Commissioner proceeded to analyse article 5(3)(b) of the Act, which states that the Act shall not apply to documents in so far as such documents contain "*information the disclosure of which is prohibited by another law*".
21. The Public Authority has failed to provide any clear reasons to support its use of this exemption. Specifically, it neither identified the law allegedly prohibiting disclosure nor explained how such a law applies to the documentation in question. As exemptions under the Act must be

interpreted restrictively and justified with precision, it is incumbent upon the Public Authority to demonstrate that the conditions of article 5(3)(b) of the Act are satisfied. In the absence of this, the refusal to disclose the requested documents under article 5(3)(b) of the Act cannot be upheld.

**On the basis of the foregoing considerations, pursuant to article 23(3)(b) of the Act, the Commissioner is hereby serving a decision notice, determining that the Public Authority's outright refusal to provide the applicant with a copy of the requested documentation on the basis of article 5(3)(a) and article 5(3)(b) of the Act is not justified.**

The Commissioner acknowledges the importance of protecting personal data that identifies natural persons. However, such protection does not extend to certain personal data where there is a substantial public interest in disclosure. In this context, the refusal to grant access under article 5(3)(a) of the Act is only justified in relation to the names and surnames of individuals not occupying a top management position within public authorities.

In this regard, by virtue of article 23(4)(a) of the Act, the Public Authority is hereby being ordered to provide the applicant with an electronic copy of the requested documentation, after redacting, *inter alia*, the identity card numbers, the residential addresses and the signatures.

The Public Authority shall comply with this order within twenty (20) working days from the date of service of this decision notice, and confirmation of the action taken shall be notified to the Commissioner immediately thereafter.

Pursuant to article 23(4)(b) of the Act, the Public Authority failed to comply with the requirements of Part II, in particular, with article 15(1)(a) thereof, as it did not provide the applicant with the appropriate and suitable reasons to enable the applicant to understand the refusal of parts of his request in terms of article 14(a) to (h). The Commissioner rebukes the Public Authority on the manner how the applicant's request was handled and emphasises on the requirements incumbent of public authorities to provide applicants with clear and correct reasons when refusing requests for information.

Ian  
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(Signature)

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**Ian Deguara**  
**Information and Data Protection Commissioner**



**Right of Appeal**

In terms of article 26 (1) of the Data Protection Act (Cap 586 of the Laws of Malta), “*any person to whom a legally binding decision of the Commissioner is addressed, shall have the right to appeal in writing to the Tribunal within twenty days from the service of the said decision as provided in article 23*”.

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.