

Information and Data Protection Commissioner

CDP/COMP/738/2024

vs

COMPLAINT

1. On the 15th November 2024, [REDACTED] on behalf of [REDACTED] (the “**complainant**”) lodged a data protection complaint with the Information and Data Protection Commissioner (the “**Commissioner**”) pursuant to article 77(1) of the General Data Protection Regulation¹ (the “**Regulation**”), alleging that [REDACTED] (the “**controller**”) failed to provide a response to his request to access his personal data in terms of article 15 of the Regulation.
2. The complainant submitted the request to access his personal data on the 25th July 2024 through a third party, namely, [REDACTED] and requested access to the following information:

“a. Please provide any and all copies of the viva voce transcription before the Commission of Inquiry at the December 20th, 2019 hearing before the late Honorable Minister Justice Emeritus [REDACTED]

b. Please provide a copy of any document, including the final decree or order or opinion or recommendation issued by late Honorable Mister Justice Emeritus [REDACTED] arising from the Appeal filed before the Commission of Inquiry arising from factors or [REDACTED] appeal or redress.

¹ 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.

c. Please provide copies and any written or otherwise document between any member, employee, lawyer, and/or representatives of [REDACTED] with late Honorable Mister Justice Emeritus [REDACTED] and vis-à-vis arising from factors of Mr. [REDACTED] appeal or redress.

d. Please provide copies and any written or otherwise document between any member, employee, lawyer, and/or representative of the [REDACTED] previous cabinet of the day with later Honorable Mister Justice Emeritus [REDACTED] and vis-à-vis arising from factors of [REDACTED] appeal or redress.

e. Please provide copies and any written or otherwise document between previous Consul [REDACTED] for Malta in [REDACTED] and the then Junior Minister [REDACTED] or any member of the then [REDACTED] or [REDACTED] and vis-à-vis arising from factors of [REDACTED] citizenship.

f. Please provide copies and any written or otherwise document between previous Consul [REDACTED] for Malta in [REDACTED] and the then Junior Minister [REDACTED] or any member of the then [REDACTED] or [REDACTED] and vis-à-vis arising from factors of [REDACTED] citizenship.

g. Please provide copies and any written or otherwise document between previous Ambassador [REDACTED] for Malta in [REDACTED] and the then Junior Minister [REDACTED] or any member of the then [REDACTED] or [REDACTED] and vis-à-vis arising from factors of Mr. [REDACTED] citizenship.

h. Please provide copies and any written or otherwise ex-parte communication and/or document between any and all members of the State and late Honorable Mister Justice Emeritus [REDACTED] and vis-à-vis the arising from factors of Mr. [REDACTED] citizenship".

3. The controller informed Mr [REDACTED] that it will provide a response to the subject access request if the controller receives a "notarized affidavit for the release of documents and information".

4. By means of an order dated the 22nd November 2024 and pursuant to article 58(2)(c) of the Regulation, the Commissioner ordered the controller to provide a response directly to Mr [REDACTED] as the requesting data subject.
5. By means of an email dated the 19th December 2024, the controller informed the Commissioner that “[REDACTED] was given the opportunity to review the documentation. They visited the office accompanied by [REDACTED] and the documents were presented for their review”. However, on the 26th December 2024, [REDACTED] complained that “[a]lthough we have partially reviewed the file, we have not been granted full access. In matter of fact the controller has not identities [sic.] each and every document which were withheld and not identified. So, we still would like a formal decision on our complaint”. Therefore, the Commissioner proceeded to investigate the complaint, specifically, to determine whether the complainant had the right to access all his personal data processed by the controller.

INVESTIGATION

Request for submissions

6. Pursuant to the internal investigative procedure of this Office, the Commissioner provided the controller with the opportunity to submit any information that it deemed relevant and necessary to defend itself against the allegation raised by the complainant. Pursuant to article 58(1)(e) of the Regulation, the Commissioner ordered the controller to indicate whether there is any information pertaining to the complainant that is being restricted and, or limited, and if so, to specify the exact information being restricted and, or limited, and to also cite the applicable legislation on the basis of which the controller is restricting and, or limiting the right of the complainant.

Submissions of the controller

7. The controller provided the following submissions:

“... please note that the restriction invoked in terms of regulation 4(e) of S.L. 586.09 applies to all the personal data processed by the controller in relation to the complainant provided that the complainant's request concerns access to data consisting of privileged and information documents subject to legal privilege on account of being related to legal

advice including memo and minute/s to the Minister, the recommendation of the Committee of Inquiry to the Minister, the minute to the Minister following an inquiry regarding deprivation of Maltese citizenship and the decision of the Minister which is regulated by Article 19 of the Maltese Citizenship Act.”

Submissions of the complainant

8. Pursuant to the internal investigative procedure of this Office, the Commissioner provided the complainant with the opportunity to rebut the arguments of the controller. The complainant submitted the following arguments for the Commissioner to take into account during the legal analysis of the case:
- a. that it is misleading and quite deceitful for the controller to rely on regulation 4(e) of S.L. 586.09 which is not applicable to the case in question;
 - b. that the complainant is seeking a copy of the decree issued by the Honorable Mister Justice Emeritus [REDACTED] issued on the 20th December 2020, which according to the complainant, is a public document;
 - c. that the complainant referred to article 14(4) of the Maltese Citizenship Act (Cap. 188 of the Laws of Malta), which relates to the deprivation of citizenship of citizens by registration or naturalisation, which reads as follows: “[b]efore making an order under this article, the Minister shall give the person against whom the order is proposed to be made notice in writing informing him of the ground on which it is proposed to be made and of his right to an inquiry under this article; and if that person applies in the prescribed manner for an inquiry, the Minister shall refer the case to a committee of inquiry consisting of a chairman, being a person possessing judicial experience, appointed by the Minister and of such other members appointed by the Minister as he thinks proper”;
 - d. that the Maltese Citizenship Act does not authorise the Minister to withhold the decree issued by the quasi-judicial Committee of Inquiry;
 - e. that article 19 of the Maltese Citizenship Act states that the Minister shall not be required to assign any reason for the grant or refusal of any application under the

Maltese Citizenship Act, however, this does not apply to those individuals who had already acquired their citizenship and not pending the approval of their application;

- f. that nothing in article 14 of the Maltese Citizenship Act, whether expressed or implied, authorises the Minister to withhold the decree issued by the quasi-judicial Committee of Inquiry;
- g. that the quasi-judicial Committee of Inquiry is bound to conduct its inquiry in accordance with any applicable powers, rights or privileges conferred on courts by law; and
- h. that it is contrary to public policy, the rule of law, and the State's mandatory ethical obligation of transparency to conceive of an administrative board, committee, or court issuing a decree or final adjudication in this case, only for the State to then interfere with the independent judicial or quasi-judicial process.

Final Submissions of the controller

9. Pursuant to the internal investigative procedure of this Office, the controller was provided with the final opportunity to rebut the arguments of the complainant. The controller submitted the following final remarks: *"please note that the said recommendation of the Committee of Inquiry into the deprivation of Maltese citizenship is prepared solely for the Minister responsible in order for him to take the final decision in accordance with Article 19 of Cap 188 of the Laws of Malta. The Committee does not provide this recommendation to either the complainant or to [REDACTED] but exclusively to the Minister"*.

Onsite inspection

10. An onsite inspection was conducted on the 6th May 2025 at the premises of the controller, during which the Commissioner reviewed the file of the complainant, which contains all the personal data processed by the controller in relation to the complainant. During this meeting, the Commissioner confirmed that the file of the complainant contains the following information which were not disclosed to the complainant: *"legal advice including memo and minute/s to the Minister; the recommendation of the Committee of Inquiry to the Minister; the minute to the Minister following an inquiry regarding deprivation of Maltese citizenship and the decision of the Minister which is regulated by Article 19 of the Maltese Citizenship Act"*.

LEGAL ANALYSIS AND DECISION

11. In the present case, the Minister responsible for matters relating to Maltese citizenship has, by means of an order issued in terms of article 14(1) of the Maltese Citizenship Act, deprived the complainant of his Maltese citizenship. By means of a subject access request dated the 25th July 2024, the complainant requested the controller to provide him with access to all his personal data. In particular, the complainant requested access to information pertaining to the deprivation of his citizenship and “a copy of the Decree issued by the Honorable Mister Justice Emeritus [REDACTED] issued on December 20th, 2020”, which was prepared by the committee of inquiry in terms of article 14(4) of the Maltese Citizenship Act. This provision provides as follows:

“Before making an order under this article, the Minister shall give the person against whom the order is proposed to be made notice in writing informing him of the ground on which it is proposed to be made and of his right to an inquiry under this article; and if that person applies in the prescribed manner for an inquiry, the Minister shall refer the case to a committee of inquiry consisting of a chairman, being a person possessing judicial experience, appointed by the Minister and of such other members appointed by the Minister as he thinks proper.”.

12. The complainant availed of his right to an inquiry, following which the Minister referred the case to a Committee of Inquiry pursuant to article 14(4) of the Maltese Citizenship Act. The Committee of Inquiry issued a recommendation to the Minister regarding the proposed order. The subject-matter of the complaint pertains to the alleged failure of the controller to provide the complainant with access to the recommendation made by the Committee of Inquiry in relation to the complainant and other documents relating to the deprivation of the citizenship.
13. The Commissioner proceeded to assess the submissions of the controller, in which the controller stated that the “complainant’s request concerns access to data consisting of privileged and information documents subject to legal privilege on account of being related to legal advice including memo and minute/s to the Minister, the recommendation of the Committee of Inquiry to the Minister, the minute to the Minister following an inquiry regarding deprivation of Maltese citizenship and the decision of the Minister which is regulated by Article 19 of the Maltese Citizenship Act”.

14. The complainant rebutted this by referring to article 19 of the Maltese Citizenship Act (Cap. 188 of the Laws of Malta), which provides that the “[t]he Minister shall not be required to assign any reason for the grant or refusal of any application under this Act and the decision of the Minister on any such application shall not be subject to appeal to or review in any court”. The complainant argued that this provision applies solely to applications for citizenship and not to the revocation of citizenship. On this basis, the complainant argued that article 19 of the Maltese Citizenship Act does not preclude his right of access to the recommendation made by the Committee of Inquiry, and that such access should be granted under article 15 of the Regulation.
15. The Commissioner referred to the judgment ‘*Louay Ramadan Wahba Mabrouk vs l-Onorevoli Vici Prim Ministru et*², in which the Constitutional Court confirmed that the decision of the Minister concerning the revocation of a citizenship is not subject to appeal or review in any court. The Constitutional Court held as follows:

“F’kaz bhal dak tal-lum, diga` rajna liema huma l-kazi fejn il-Ministru jista` jnehhi c-cittadinanza Maltija lil persuna li jkun kiseb ic-cittadinanza bir-registrazzjoni. Rajna wkoll x`hinuma r-rimedji li l-ligi taghti lil dik il-persuna meta tkun sejra titnehhelha c-cittadinanza Maltija u cioe` li tirrikorri ghall-Kumitat ta` Inkjesta li huwa mwaqqaf bis-sahha tal-Kap.188. Rajna wkoll li wara l-Kumitat jistharreg il-kaz, jaghti parir lill-Ministru u l-ahhar kelma tkun tal-Ministru. Dik id-decizjoni la hija soggetta ghal appell u lanqas ghal revizjoni minn xi qorti. Hekk tghid il-ligi taghna.” [emphasis has been added].

16. The complainant further argued that there is “[n]othing under Chapter 188, Article 14 is there an implied, expressed or contended Legislative language which authorizes the Minister to withhold the Decree issued by the quasi-judicial Committee of Inquiry [sic.]. Rather Chapter 188, Article 14(5) the quasi-judicial Committee of Inquiry is bound to observe and conduct such inquiry in accordance with any such powers, rights or privileges of any court”.
17. The Commissioner referred to the judgment ‘*Tarek Mohammed Ibrahim v. Vici Prim Ministru et*³, which clarifies that contrary to the complainant’s submissions, the committee of inquiry is not a tribunal, court, or authority established by law. In fact, the Constitutional Court held

² Appell Ċivili Numru 49/2007/1, delivered on the 25th May 2012.

³ Appell Ċivili Numru: 33/2006/1, delivered on the 28th May 2012.

that the non-disclosure of the report prepared by the Committee of Inquiry does not infringe article 6 of the European Convention on Human Rights. The Commissioner specifically referred to the following relevant parts of the judgment:

“13. Il-Kumitat ta’ Inkjesta la huwa ‘Tribunal’, la huwa ‘Qorti’ u lanqas ‘awtorita’ mwaqqfa b’ligi’ ai fini tal-Artikolu 6 tal-Konvenzjoni u l-Artikolu 39 tal-Kostituzzjoni. Din il-Qorti fil-kaz Josric Mifsud v. Prim Ministru et deciza fl-14 ta’ Dicembru 2009 li kien jitratta dwar l-applikabilita’ tal-Artikolu 6 tal-Konvenzjoni fir-rigward ta’ Bord ta’ Dixxiplina fil-Korp tal-Pulizija, ghamlet konsiderazzjonijiet li jistghu jigu applikati anke f’dan il-kaz.

14. Fil-kaz in ezami l-Kumitat ta’ Inkjesta ma jiddecidix finalment kwistjonijiet dwar jeddijiet u obbligi civili fir-rigward tat-tnehhija tac-cittadinanza izda jaghmel biss rakkomandazzjoni lill-Ministru ghall-Gustizzja u l-Intern li jista’ jaghzel li jaccetta jew jirrifjuta r-rakkomandazzjoni tal-Kumitat. Huwa biss il-Ministru li jaghti d-decizjoni finali dwar it-tnehhija tac-cittadinanza. Ghalhekk l-fatt li l-appellant ma ngħatax kopja tar-rakkomandazzjoni tal-Kumitat jew tax-xhieda mogħtija quddiem l-istess Kumitat ma jiksirx l-Artikolu 6 tal-Konvenzjoni.” [emphasis has been added].

18. The Commissioner emphasises that matters pertaining to citizenship fall within the exclusive prerogative of the State, in particularly because decisions taken by the Minister are expressly stated to be final and not subject to appeal or review. Accordingly, the Commissioner does not have the competence to order the disclosure of documents pertaining to the revocation of a citizenship, which is a matter exclusively regulated by the Maltese Citizenship Act.
19. The Commissioner also observed that the controller had not provided the complainant with access to personal data related to legal advice obtained from its lawyers concerning the case of the complainant. Upon reviewing the file of the complainant during the onsite inspection held at the premises of the controller on the 6th May 2025, the Commissioner confirmed that legal advice had indeed been sought by the controller and copies of such correspondence exchanged between the controller and their lawyers are contained in the file of the complainant. The Commissioner clarifies that legal advice is protected by legal professional privilege in accordance with article 588(1) of the Code of Organisation and Civil Procedure. Consequently,

the personal data of the complainant contained with such legal advice is not subject to disclosure.

On the basis of the foregoing considerations, the Commissioner is hereby deciding that the controller complied with the subject access request by providing the complainant with access to all his personal data that are permitted by law, and therefore, the complaint is being rejected.

Ian
DEGUARA
(Signature)

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by Ian DEGUARA
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Ian Deguara
Information and Data Protection Commissioner

Right of Appeal

The parties are hereby being informed that in terms of article 26(1) of the Data Protection Act (Chapter 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 to the Information and Data Protection Appeals Tribunal within twenty (20) days from the service of the said decision as provided in article 23 thereof.⁴

An appeal to the Tribunal shall be made in writing and addressed to “*The Secretary, Information and Data Protection Appeals Tribunal, 158, Merchants Street, Valletta*”.

⁴ Further information is available on the IDPC’s portal at the following hyperlink: <https://idpc.org.mt/appeals-tribunal/>