

vs

COMPLAINT

1. On the 26th February 2025, [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 the [REDACTED] (the “**controller**”) failed to provide him with a copy of all personal data undergoing processing after exercising his right of access in terms of article 15 of the Regulation.
2. The complainant held that he had filed a request to access his personal data on the 21st January 2025. The complainant requested the controller to provide the following information:

“I wish to make an access request under Article 15 of the General Data Protection Regulation (GDPR) for a copy of any information you keep about me, on computer or in manual form in relation to myself as per Malta ID card number, email address and mobile number mentioned above. May I please be precise that the request for access to personal data includes internal emails/correspondence/data/calls exchanged among employees and any other documents/data/notes or briefs written about me or that mention me. This also includes communications log and information shared with third parties.”.

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.

3. The complainant held that he received an email from the controller on the 21st February 2025, which contained a downloadable zip file. According to the complainant, the file contained the following information:
 - a. recording of phone calls which the complainant made to the controller;
 - b. recording of a phone call which the complainant received from the controller;
 - c. the curriculum vitae of the complainant and a covering letter for a job vacancy, acknowledgment email, letter and emails concerning the refusal of a job interview.
4. The complainant alleged that the file in question contained missing information. He explained that he had conducted a meeting with the officials from the controller's office and claimed that minutes were taken during the meeting. However, the meeting minutes or briefs were not made available to him. Additionally, the complainant mentioned that [REDACTED] had held a meeting at his office with a [REDACTED] where the complainant was the focal point of the discussion. The complainant reiterated that minutes were taken during this meeting as well, but once again, these records were not made available to him.
5. The complainant explained that he holds no legal claims or proceedings against the controller in his personal capacity. The complainant further explained that he serves as a director of a company currently engaged in legal proceedings against the controller. The controller affirmed that he has never been investigated, interrogated, charged or found guilty of any criminal offence.
6. The complainant provided the following supporting documentation:

Date of Email	Contents of Email
3 rd February 2025	The controller confirmed receipt of the subject access request and requested the complainant to provide a copy of the identity card document or passport to confirm the identity of the complainant.
3 rd February 2025	The complainant provided a copy of the identity card and informed the controller that his request for access to personal data " <i>includes internal emails/correspondence/data/calls exchanged among employees and any other documents/data/notes or briefs written about me or that mention me. This also includes communications logs and information shared with third parties.</i> ".

21 st February 2025	<p>The controller provided its response to the request and the most relevant parts are being reproduced hereunder:</p> <p><i>"In this regard, we would like to highlight that national legislation pertaining to Anti-Money Laundering and Countering the Financing of Terrorism (AML/CFT), in particular, Chapter 373 of the Laws of Malta, the 'Prevention of Money Laundering Act' (PMLA), which establishes the [REDACTED] and lays down its powers, responsibilities and functions at law, may impact the level of disclosure of information and data that the [REDACTED] is permitted to make. Most notably, Article 34 of the PMLA restricts the [REDACTED] and its employees from divulging certain data and information to third parties.</i></p> <p><i>The above is also taken within the context of national legislation complementing the GDPR, and in particular Subsidiary Legislation 586.09 issued under the Maltese Data Protection Act (Chapter 586 of the Laws of Malta). Indeed the 'Restriction of the Data Protection (Obligations and Rights) Regulations' also provides specific restrictions to a data subject's rights which may be applicable to your DSAR and complement what has been stated in the preceding paragraph in relation to the PMLA.</i></p> <p>...</p> <p><i>With regards to personal data we may hold in your regard due to your involvement/s with [REDACTED] and which we may have acquired in the carrying out of our functions under the PMLA and/or subsidiary legislation issued thereunder, please note that the restrictions under the PMLA (Article 34 PMLA) oblige us to treat such information as confidential and prevent disclosure of the same, save for the exceptions emanating from the PMLA itself. This is in line with paragraph (b) of Regulation 4 of S.L. 586.09 which provides for a specific restriction to the rights of the data subject in the context of combating money laundering, which exception reflects the core functions of the [REDACTED]. Data that may fall under this exemption may therefore be excluded from replies provided in response to a DSAR.</i></p>
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	<i>Furthermore, we also consider that paragraph (e) under Regulation 4 of S.L. 586.09 to be applicable to your DSAR due to the on-going litigation between [REDACTED] and the [REDACTED] in which you are involved and the outcome of which will also impact you in view of your interest in and positions with the said company. Related data has been omitted from this DSAR.” [emphasis has been added by the controller].</i>
21 st February 2025	The complainant expressed his disagreement in relation to the information provided by the controller: “It lacks data which I requested. Such data is not part of the “exemptions” which you claimed in your email.”.

INVESTIGATION

Request for Submissions

7. Pursuant to the internal investigative procedure of this Office, the controller was provided with a copy of the complaint, including the supporting documentation, and the Commissioner provided the controller with the opportunity to make any submissions which it deemed relevant and necessary to defend itself against the allegation raised by the complainant. Additionally, pursuant to article 58(1)(e) of the Regulation, the Commissioner ordered the controller to provide the following information:
 - a. to specify which personal data pertaining to the complainant were restricted;
 - b. to provide a copy of the data which were restricted;
 - c. to indicate if the controller conducted a necessity and proportionality assessment before restricting the data of the complainant, and if in the affirmative, to provide a copy of such assessment;
 - d. to provide evidence of the ongoing litigation between the involved parties and to clearly specify how the disclosure of the information would, or could reasonably be expected to prejudice the position of the controller; and

- e. to clearly state how the restrictions invoked by the controller in terms of regulations 4(b) and 4(e) of the Restriction of the Data Protection (Obligations and Rights) Regulations, Subsidiary Legislation 586.09 (the “S.L. 586.09”) are justified.

Submissions made by the controller

- 8. On the 26th March 2025, the controller submitted the following salient arguments for the Commissioner to consider during the legal analysis of this case:
 - a. that the controller conducted a necessity and proportionality assessment prior to replying to the complainant as per S.L. 586.09 and a copy of such assessment was provided to the Commissioner for his own legal assessment of the case;

The personal data pertaining to the complainant which were restricted

- b. that the controller stressed three (3) main points which were relevant to its assessment but are also relevant within the context of any request for data, information and documentation made to the controller, and these are as follows:
 - i. that as highlighted in the assessment, there is at present an appeal pending in front of the Court of Appeal (Inferior Jurisdiction) against the controller filed by [REDACTED] in connection with an administrative penalty imposed on the said company by the controller, and therefore, in line with article 13C of the Prevention of Money Laundering Act (the “PMLA”), any such proceedings are held *in camera* and any documentation relative to the appeal are unavailable to third parties. This led the controller to conclude that it is unable to provide any records that may contain personal data pertaining to the complainant without being in violation of the law;
 - ii. that article 34(1) of the PMLA imposes quite an onerous obligation of confidentiality and non-disclosure on the part of the controller as it impedes the disclosure of any data, information or documentation which it may have acquired in the course of carrying out its functions other than in very specific situations set out in the same provision, and this particularly, wide and all-encompassing non-disclosure obligation finds its roots in the intelligence work carried out by the controller but extends also to the other functions of the controller;

- iii. that, in addition, article 33 of the PMLA impedes officers or employees of the controller from divulging information or data to a third party that would reveal or give a suspicion of an ongoing analysis, or that an analysis had happened in the past and/or could happen in the future;
- c. that the controller also noted that the complainant referred to several meetings that had taken place and the controller would like to confirm that during the said meetings no formal minutes were taken by the members of the controller that were present, and no memo or brief had been produced;
- d. that, in addition, the controller would also like to acknowledge that no personal notes, both written and electronic, had been kept by the individuals who attended the said meetings and the controller further confirmed that during the meeting that was mentioned by the complainant between [REDACTED] and the [REDACTED] [REDACTED] no reference was made to the individual and/or his company;

Ongoing litigation

- e. that the controller wishes to be as transparent as possible on the matter by highlighting that there is no pending litigation with the complainant himself, however, the controller is a party to two (2) on-going cases with [REDACTED] of which the complainant is a controlling director, shareholder, and legal representative, including constitutional proceedings of which he has included a demand for damages that he has personally suffered;
- f. that, in the course of the constitutional proceedings, the complainant claims that he has been severely prejudiced by the actions taken by the controller and is unable to find gainful employment due to the said actions and this claim can be seen in the cross-examination involving the complainant and which the controller has included with its submissions;
- g. that based on the foregoing, the controller is of the view that it is very likely that any data provided by the controller in response to the request of the complainant in connection with his applications for employment with the controller would be used in the course of the said proceedings to sustain the said point;

- h. that this aspect is also considered in the assessment carried out by the controller and paragraph 3 of the assessment provides high-level details of the cases, and the controller further highlighted that the complainant is the director, shareholder, and legal representative of the company in question, and therefore, the complainant plays an indispensable and focal role in this litigation;

Justification of the Restrictions invoked in terms of regulation 4(b) and regulation 4(e) of S.L. 586.09

- i. that the controller referred to sections D and E of the necessity and proportionality assessment, which specifically weigh the proportionality and necessity of utilising regulations 4(b) and 4(e) of S.L. 586.09 in the context of the complainant's subject access request, and these sections showcase the necessity and proportionality of utilising such restrictions vis-à-vis the legal obligations under AML/CFT law, such as the PMLA, and also the potential implications on the ongoing court judgments.

As supporting documentation, the controller submitted a copy of the sworn application of [REDACTED] filed before the Constitutional Court ([REDACTED]), a copy of the Administrative Penalty - Publication Notice, [REDACTED] and a transcript of the cross-examination of the complainant ([REDACTED]), dated the 6th May 2021.

Submissions of the complainant

- 9. Pursuant to the internal investigative procedure of this Office, the Commissioner provided the complainant with access to the submissions provided by the controller, excluding the controller's internal necessity and proportionality assessment, for the purpose of enabling the complainant to rebut the arguments raised by the controller. By means of a letter dated the 4th April 2025, the complainant held:
 - a. that the request for access to the controller has been made in the complainant's personal name and not in the name of any company in which he may or may not have any interest and the controller is clearly attributing its decision not to provide the complainant with his data by mentioning his role within a company which is allowed by law;
 - b. that the complainant does not have a legal claim against the controller, and this is crystal clear from the submissions provided by the controller;

- c. that there have not been and there are no legal proceedings in the complainant's personal name against the controller, and in its submissions, the controller argues of any possible future legal proceedings, which is purely hypothetical;
- d. that this should not affect the handling of the request, as clearly ruled by the Commissioner several times and the complainant cited a decision issued by the Commissioner bearing the reference number CDP/COMP/179/2024 to substantiate his point;
- e. that the complainant cited the Guidelines of the European Data Protection Board which state that: *"Thus, controller should not assess "why" the data subject is requesting access, but only "what" the data subject is requesting (see section 3 on the analysis of the request) and whether they hold personal data relating to that individual (see section 4). Therefore, for example, the controller should not deny access on the grounds or the suspicion that the requested data could be used by the data subject to defend themselves in court in the event of a dismissal or a commercial dispute with the controller"*;
- f. that four (4) years ago, back in 2021, the complainant was summoned by the controller to testify in a court case of which he is not a party in his personal capacity and during such testimony, the complainant testified about the pain he has been through due to the actions of the controller, and this should not preclude the complainant from having access to his personal data;
- g. that with reference to the meetings with the officials of the controller at its offices, the complainant referred to the meeting held between himself and [REDACTED] and [REDACTED] and during such meeting, the complainant provided information about a media leak, and the complainant argued that minutes were taken during that meeting by [REDACTED] on a tablet and a notepad, and, therefore, the controller is incorrect when it says that *"no formal minutes were taken"*; and
- h. that with respect to the meeting held between [REDACTED] and a [REDACTED] [REDACTED], the response of the controller is indeed a confirmation that a meeting took place, and the complainant questioned: *"How can one know to which meeting I was referring to and at the same time deny it? I was specifically mentioned at a meeting between [REDACTED] and a [REDACTED] [REDACTED] can deny it but the truth is otherwise. I re-iterate that I was*

mentioned during the said meeting. There is no signed statement by [REDACTED] denying what I stated in my complaint".

Final Submissions of the controller

10. The controller was provided with a copy of the submissions of the complainant and was granted with the final opportunity to submit its final remarks. By means of a letter dated the 24th April 2025, the controller submitted the following arguments:

- a. that, at the onset, the controller would like to reiterate the legality and applicability of its reliance on regulation 4(b) and regulation 4(e) of S.L. 586.09 to partially restrict the right of access of the complainant on the basis of the controller's own necessity and proportionality assessment and the controller noted that the complainant did not put forward any arguments to rebut the application of regulation 4(b) of S.L. 586.09;

The relevance and importance of the complainant's past and present role(s) with [REDACTED]

- b. that the complainant has put into question the relevance of his role and function with [REDACTED] vis-à-vis the subject access request and further claimed that the only reason for the controller to restrict his right was on the basis of the same, however, the controller argued that the situation surrounding the complainant is not as one-dimensional as is being put forward by the complainant;
- c. that the controller would like to reiterate that there are the following pending court cases which were instituted by [REDACTED] (i) Case [REDACTED] [REDACTED] filed before the Civil Court, First Hall in its constitutional capacity; and (ii) Case [REDACTED] [REDACTED] filed before the Court of Appeal (Inferior Jurisdiction);
- d. that the complainant holds the positions of director and company secretary within [REDACTED] [REDACTED] as well as being vested with the legal representation of the said company, and moreover, through his holding company, [REDACTED] [REDACTED] (C [REDACTED]), he is a majority shareholder and beneficial owner of the said company;

- e. that given his role, involvement, and influence over [REDACTED] the arguments of the complainant surrounding the fact that the case is not in his name is irrelevant and his significant positions and beneficial ownership illustrate the direct involvement and influence that he has on the ongoing legal claim and proceedings;
- f. that, more importantly, the controller would also like to make it explicitly clear that providing the requested data to the complainant will prejudice the current and ongoing court cases mentioned above, and this conclusion is neither hypothetical in nature nor merely an assumption, as is being claimed by the complainant, but an objective and tangible assertion as showcased by the points that were put forward by the complainant in his cross-examination;
- g. that the above is showcased within the sworn application pertaining to the ongoing constitutional case and which puts forward a general argument that the approach of the controller was discriminatory towards [REDACTED] as compared to other companies, and this can be seen in the following points that were made in [REDACTED] s sworn application pertaining to the constitutional case:
 - i. *“bla pregudizzju għall-premess, it-trattament mogħti lis-socjeta rikorrentu [sic.] kien leziv tad-drittijiet fundamentali tas-socjeta’ rikorrenti kemm a bazi tad-dritt għal smigh xieraq kif ukoll ta’ protezzjoni minn diskriminazzjoni”;*
 - ii. *“Illi meta wiehed iqabbel it-trattament da parti tal-Korp appellat fil-confront [sic.] ta’ soggetti guridici ohra, fir-rigward ta’ fatti u allegati vjolazzjonijiet simili u identici għal dawk allegatament mwettaq mis-socjeta’ rikorrenti, johrog bic-car illi s-socjeta’ rikorrenti kienet tratta [sic.] b’mod diskriminatorju, fin-nuqqas ta’ ezistenza ta’ fatturi li jiggustifikaw tali differenza fit-trattament”;*
- h. that, furthermore, as was highlighted in both the first set of submissions provided by the controller to the Commissioner and also in the necessity and proportionality assessment, the controller reiterated that this line of argumentation that has been put forward by the complainant himself during his cross-examination highlights the personal aspects and arguments that are being utilised in support of the alleged disproportionate actions of the controller in relation to [REDACTED]
[REDACTED]

- i. that the controller referred to the following accusations that were put forward by the complainant in his cross-examination that he could not find employment:

"... wassluna biex qegħdin hawnhekk u ili mirn dakinhar taht xokk kbir, hadd ma jrid jaf hijja, xogħol mgħndix [sic.], nirregistra mal-jobsplus. Tal-jobsplus stess ukoll ma' sabulix job. L-ironija taf xinhi Sur Imħallef. Bgħatuli l'jobsplus biex napplika għal job. Taf ma' min bgħatuli biex napplika għal job. Mal- [REDACTED] u mal- [REDACTED] Bgħatuli biex napplika biex napplika magħhom, biex nidhol naħdem magħhom. Bis-serjeta kolla ta u applikajt Sur Imħallef jien. Bgħatuli lura fl'inqas grad possibbli applikajt. Bgħatuli lura, bis-serjeta ta. Qaluli minthix aċċettat. Ghidtilhom mela jien ma' nistgħax naħdem fil-privat, ma' nitgħax [sic.] naħdem mal-Gvern, jiena x' nista naħdem? Għad għandi erbgħin sena, bl'esperjenza li jien għandi job sempliċi, bl'esperjenza li għandi jiena tiegħi hamsin elf euro fis-sena";

- j. that the complainant has also stated in his cross-examination how the situation had affected his personal and family life:

"L'istorja waqqaftha jien Sur Imħallef. U ma' hargitx l'istorja għax kienet tkun ingustizzja kbira. Li kissret familja, kissret lili kissret lill hija. Dawn in-nies dak li għamluli lili";

- k. that it is also important to emphasise that the above ongoing court cases fulfill the requisites for the legitimate application of regulation 4(e) of S.L. 586.09, which corresponds to paragraph 21 of the Commissioner's decision, which was referenced by the complainant in CDP/COMP/179/2024: *"Thus, the restriction shall only apply if it is necessary for the controller to defend an actual legal claim and legal proceedings which may subsequently be instituted under any law";*

- l. that, in summary, the controller is of the view that providing certain data which was requested by the complainant would directly prejudice the controller's defence in the present ongoing legal proceedings, which satisfies the requirement that there must be a legal claim and legal proceedings;

- m. that although the case(s) are not in the name of the complainant, one cannot ignore or reduce the influence and role of the complainant with [REDACTED] and the ongoing legal proceedings;

The data pertaining to the meetings highlighted by the complainant

- n. that the controller would like to highlight from the outset that it has never denied that either meeting took place, as claimed by the complainant, and the controller wanted to make it clear that both meetings were *ad hoc* in nature and that it was not obliged to take any minutes or notes, formal or otherwise, nor produce any summaries or documents to which the complainant alludes;
- o. that the controller also confirmed that the individuals present do not recall taking notes, structured or otherwise, and even if any notes were taken, any written records pertaining to the said meetings, were not kept or were otherwise destroyed due to the length of time that has passed since the meetings took place;
- p. that with regards to the actual nature of the meetings, the controller would like to clarify the following: (i) that the meeting with [REDACTED] and [REDACTED] was not intended to discuss any matter related to the complainant himself but was in relation to a matter concerning [REDACTED] and (ii) with regards to the meeting between [REDACTED] the then Director of the [REDACTED] and the [REDACTED] [REDACTED] as far as it is recalled, this meeting did not relate to the complainant or [REDACTED] but rather the matters discussed were of a more general nature, and to this end, the controller held that any informal or *ad-hoc* minutes or notes that were taken, if any, would have eventually been destroyed and since the matters discussed did not relate to the complainant, would in fact have contained no reference whatsoever to the complainant; and
- q. that the controller proceeded to summarise its arguments as follows:
 - i. that the complainant does not rebut nor argue against the applicability of the restrictions within article 33 and article 34 of the PMLA, and subsequently, does not contest the applicability of regulation 4(b) of S.L. 586.09 to most of his data;
 - ii. that due to the importance and significance of the role(s) occupied by the complainant in [REDACTED] one cannot exclude the ongoing court cases or data pertaining to his role from consideration of what personal data can be disclosed in response to the subject access request of the complainant;

- iii. that due to the arguments put forward in the sworn application and also in the cross-examination, providing a full copy of the data to the complainant would directly and objectively prejudice the position of the controller in the legal proceedings instituted against it by [REDACTED]
- iv. that the court cases between the controller and [REDACTED] are presently ongoing and therefore fulfill the requirement that there must be “a legal claim and legal proceedings” as established in the Commissioner’s decision CDP/COMP/179/2024, and which, therefore, rebuts the complainant’s argument that regulation 4(e) of S.L. 586.09 was merely utilised for a future hypothetical scenario; and
- v. that the meetings that are being referred to by the complainant were *ad hoc* in nature and it was not obligatory to take notes, minutes or produce any form of documentation whatsoever, and the controller can confirm that there is no data whatsoever pertaining to the said meeting.

Further submissions of the controller

- 11. Pursuant to article 58(1)(e) of the Regulation, the Commissioner requested the controller to submit an affidavit confirming that, at the time of receipt of the subject access request, the controller did not hold any personal data pertaining to the complainant in connection with the two meetings specified by the complainant in his complaint.
- 12. The controller complied with the request of the Commissioner and submitted an affidavit of the Director of the [REDACTED] dated the 8th May 2025, confirming on oath that:

“Illi f’Awwissu 2020 kienet saret laqgħa ad hoc fejn kien hemm preżenti is-[REDACTED] in rappreżentanza tas-soċjeta’ kummerċjali [REDACTED] l-Avv. [REDACTED] u jiena stess. Kienet ukoll saret laqgħa oħra ad hoc bejn is-Sur [REDACTED] dak iż-żmien Direttur tal-[REDACTED] u Membru Anzjan [REDACTED]

Illi qed jiġi allegat illi l-Korp u/jew l-uffiċjali li attendew għal dawn iż-żewġ laqgħat ħadu xi noti jew minuti ta’ dak li ġie diskuss u li tali noti u minuti jaf jinkludu data personali tas-[REDACTED] liema data personali tkun

għalhekk sugġetta għad-Data Subject Access Request magħmula taħt l-Artikolu 15 tar-Regolament (EU) 2016/679 mis- [REDACTED]

Illi wara li saret din it-talba mis- [REDACTED] saru dawk il-verifiki kollha meħtieġa u raġonevolment neċessarji biex il-Korp jew uffiċjali tiegħu kellhomx fil-pussess tagħhom, fost data oħrajn, xi noti jew minuti tal-imsemmija laqgħat u, jekk iva, jekk tali noti kienu fihom xi data personali tas- [REDACTED] jew li jidentifika lis- [REDACTED]

Illi r-riżultat ta' tali sħarriġ kien li ma nstabu ebda noti jew minuti ta' dawn iż-żewġ laqgħat. Dan jikkorrobora dak li niftakar jiena stess dwar il-laqgħa li kelli jien, flimkien mal-Avv [REDACTED] mas-Sur [REDACTED] fejn ma niftakarx li kienu ttiehdu xi noti jew minuti. Dan ukoll gie kkorroborat mis-Sur [REDACTED] li sqarr, li filwaqt li ma jiftakarx li ttiehdux l-ebda minuti u noti, il-materja tal-laqgħa ma kinitx tikkonċerna lis-Sur [REDACTED].

Onsite Inspection

13. The Commissioner requested the controller to schedule a meeting for the purpose of inspecting the documents containing the personal data pertaining to the complainant and which were restricted in terms of regulations 4(b) and 4(e) of S.L. 586.09. The meeting took place on the 2nd June 2025, during which, the controller granted the Commissioner with access to these documents.

LEGAL ANALYSIS AND DECISION

Allegation made by the complainant that the controller failed to provide him with access to any “minutes or any subsequent memo or brief” arising from two (2) meetings referenced in the complaint

14. Before assessing whether the restrictions invoked by the controller were applicable at the time of receipt of the request, the Commissioner proceeded to determine the allegation made by the complainant in relation to meeting minutes or notes which were taken by the officials of the controller in connection with the complainant. For this reason, the Commissioner examined the complaint dated the 26th February 2025, in which, the complainant made the following allegations:

"I also held a meeting with [REDACTED] officials [REDACTED] and [REDACTED] [REDACTED] and provided information about a media leak from their end. Minutes were taken during that meeting. The meeting took place at their offices. These minutes or any subsequent memo or brief were not given to me.

Upon his request, the [REDACTED] Chairperson [REDACTED] held a meeting at his office with a [REDACTED] whereby I was the subject of the meeting. Minutes were taken during the meeting. I was not provided with a copy of such minutes and other data in this regard. This was confirmed under oath".

15. During the course of the investigation, by means of a letter dated the 26th March 2025, the controller denied the allegation made by the complainant and submitted as follows:

"The [REDACTED] also notes that in his complaint to the IDPC, the complainant referred to several meetings that had taken place. The [REDACTED] would like to confirm that during the said meetings no formal minutes were taken by the [REDACTED] members that were present, and no memo or brief had been produced. Furthermore, the [REDACTED] also would like to acknowledge that no personal notes, both written and electronic, had been kept by the individuals who attended the said meetings. We can also confirm that during the meeting that was mentioned by the complainant between Mr [REDACTED] and the [REDACTED] no reference was made to the individual and/or his company, [REDACTED]."

16. As part of the internal investigative procedure of this Office, the complainant was provided with the opportunity to rebut the arguments raised by the controller. By means of a letter dated the 4th April 2025, the complainant submitted as follows:

"Meeting with [REDACTED] officials at [REDACTED] offices

I refer to the meeting between myself and [REDACTED] and [REDACTED] at [REDACTED]'s offices whereby I did sit down at one end of the table and they next to each other in front of me. In their letter, the [REDACTED] confirmed that the meeting took place. During that meeting I provided information about a media leak from their end. Minutes were taken during

that meeting by [REDACTED] himself on a tablet and a notepad. In their letter [REDACTED] state "no formal minutes were taken. They do not say that no notes were taken, because I have seen that with my own eyes. I am asking for a copy of those notes, if they opt to call them so rather than calling them "minutes".

Meeting between [REDACTED] and a [REDACTED]
[REDACTED]

The response of the [REDACTED] on this matter is indeed a confirmation that a meeting took place. How can one know to which meeting I was referring to and at the same time deny it? I was specifically mentioned at a meeting between [REDACTED] Chairman and [REDACTED] [REDACTED] can deny it but the truth is otherwise. I re-iterate that I was mentioned during the said meeting. There is no signed statement by [REDACTED] denying what I stated in my complaint."

17. By means of a letter dated the 24th April 2025, the controller rebutted the arguments of the complainant as follows:

"The [REDACTED] would like to highlight from the outset that it has never denied that either meeting took place, as claimed by the Complainant. The [REDACTED] wants to make it clear that both meetings were ad hoc in nature, and that it was not obliged to take any minutes or notes, formal or otherwise, nor produce any summaries or documents to which the Complainant alludes. We can also confirm that the individuals present do not recall taking notes, structured or otherwise. Even if any notes were taken, any written records pertaining to the said meetings was not kept or was otherwise destroyed due to the length of time that has passed since the meetings took place.

With regards to the actual nature of these meetings, the [REDACTED] would like to clarify the following:

- i. The meeting with [REDACTED] and [REDACTED] was not intended to discuss any matter related to the complainant himself but was in relation to a matter related solely to [REDACTED]

ii. With regards to the meeting between [REDACTED] the then Director of the [REDACTED] and the [REDACTED] as far as it is recalled, this meeting did not relate to [REDACTED] or to [REDACTED] but rather the matters discussed were of a more general nature. Furthermore, we would like to make it clear that Mr [REDACTED] was not present for this meeting. Any informal or ad-hoc minutes or notes that were taken, if any, would have eventually been destroyed and since the matters discussed did not relate to [REDACTED] would in fact have contained no reference whatsoever to the Complainant.”.

18. After assessing the submissions of both parties, pursuant to article 58(1)(e) of the Regulation, the Commissioner requested the controller to submit an affidavit, sworn under oath, confirming that at the time the subject access request was received, the controller was not processing any minutes, notes, or other records in any form relating to the two (2) meetings mentioned in the complaint, that contained the personal data of the complainant, as alleged by the complainant.

19. To this end, the controller submitted an affidavit of the Director of the [REDACTED] dated the 8th May 2025, confirming the following:

“Illi r-riżultat ta' tali stħarrig kien li ma nstabu ebda noti jew minuti ta' dawn iż-żewġ laqgħat. Dan jikkorrobora dak li niftakar jiena stess dwar il-laqgħa li kelli jien, flimkien mal-Avv [REDACTED] mas-Sur [REDACTED] fejn ma niftakarx li kienu ttiehdu xi noti jew minuti. Dan ukoll gie kkorroborat mis-Sur [REDACTED] li stqarr, li filwaqt li ma jiftakarx li ttiehdux l-ebda minuti u noti, il-materja tal-laqgħa ma kinitx tikkonċerna lis-Sur [REDACTED].”

20. The Commissioner clarifies that the assertion made by the complainant that meeting minutes were taken by [REDACTED] during the meeting he personally held with [REDACTED] officials, is not sufficient to establish that, at the time the subject access request was received, the controller was processing the complainant's personal data in the form of meeting minutes, notes, or any other documents in whatsoever format, in relation to such meeting.

21. In addition, the complainant referred to a meeting held between Mr [REDACTED] and a [REDACTED], which the complainant did not attend. However, the complainant reiterated that *“I was mentioned during the said meeting. There is no signed statement by Mr [REDACTED] denying what I stated in my complaint”*. The Commissioner emphasises that,

for the purposes of the complaint, his investigative powers are limited to examining whether the controller handled the subject access request in accordance with the requirements of the Regulation. This is without prejudice to the fact that the Commissioner does not have the power to compel a private individual to provide statements in the context of his investigations. Furthermore, even if such a statement was provided which confirms that the complainant was mentioned during such meeting, this alone would not constitute sufficient evidence to establish that the controller was, in fact, processing meeting minutes or notes that contained the personal data of the complainant, at the time of receipt of the subject access request.

22. For the purpose of handling the subject access request, the Commissioner holds that the relevant consideration is whether, at the time the request was received, the controller was processing personal data pertaining to the complainant in connection with the meetings specified in the complaint. The European Data Protection Board (the “EDPB”) in its “Guidelines 01/2022 on data subject rights – Right of access”, confirms that the assessment of the request should be based on the circumstances at the time the request was received by the controller:

“The assessment of the request should reflect the situation at the moment when the request was received by the controller. Even data that may be incorrect or unlawfully processed will have to be provided. Data that has already been deleted, for example in accordance with a retention policy, and therefore is no longer available to the controller cannot be provided.”².

23. To this end, the Commissioner concluded that the complainant failed to substantiate his allegation that the controller was processing his personal data in the form of meeting minutes or notes, related to the two meetings referenced in the complaint. The Commissioner also considered the affidavit of the Director of the [REDACTED] dated the 8th May 2025. For the reasons outlined above, the Commissioner is dismissing the allegation made by the complainant.

Restrictions in terms of Subsidiary Legislation 586.09

24. Recital 4 of the Regulation provides that the right to the protection of personal data is not an absolute right, and it must be considered in relation to its function in society and be balanced against other fundamental rights, in accordance with the principle of proportionality.

² Page 5 of the EDPB Guidelines.

25. The fundamental right to the protection of personal data may be subject to some limitations pursuant to article 52(1)³ of the Charter of Fundamental Rights of the European Union. This therefore means that the limitations should be provided by law, respect the essence of the rights and freedoms, and be necessary and proportionate to genuinely meet objectives of general interest or the need to protect the rights and freedoms of others. Therefore, a restriction should not be extensive and intrusive in such a manner that it would void a fundamental right of its basic content. This has been affirmed by the Court of Justice of the European Union (the “CJEU”) in the judgment of Facebook Ireland and Schrems:

“Furthermore, in accordance with the first sentence of Article 52(1) of the Charter, any limitation on the exercise of the rights and freedoms recognised by the Charter must be provided for by law and respect the essence of those rights and freedoms. Under the second sentence of Article 52(1) of the Charter, subject to the principle of proportionality, limitations may be made to those rights and freedoms only if they are necessary and genuinely meet objectives of general interest recognised by the Union or the need to protect the rights and freedoms of others.”⁴

26. The complainant submitted the subject access request on the 21st January 2025, wherein, he requested the controller to provide him with access to his personal data in terms of article 15 of the Regulation. The Commissioner examined the response provided by the controller on the 21st February 2025, in which the controller provided the complainant with the following information: (i) correspondences with the complainant in relation to the vacancies that were applied for; (ii) data that the complainant provided to the controller’s HR team for the purposes of recruitment; and (iii) telephone recordings involving the complainant. In relation to the remaining personal data of the complainant, the controller restricted access in terms of regulations 4(b) and 4(e) of S.L. 586.09, and referred to articles 33 and 34 of the PMLA:

“With regards to personal data we may hold in your regard due to your involvement with [REDACTED] and which we may have acquired in the carrying out of our functions under the PMLA and/or subsidiary legislation issued thereunder, please note that the

³ Article 52(1) of the Charter provides that: “1. Any limitation on the exercise of the rights and freedoms recognised by this Charter must be provided for by law and respect the essence of those rights and freedoms. Subject to the principle of proportionality, limitations may be made only if they are necessary and genuinely meet objectives of general interest recognised by the Union or the need to protect the rights and freedoms of others.”

⁴ Case C-311/18, ‘Data Protection Commissioner vs Facebook Ireland and Maximillian Schrems’, decided on the 16th July 2020 (para. 174).

restrictions under the PMLA (Article 34 PMLA) oblige us to treat such information as confidential and prevent disclosure of the same, save for the exceptions emanating from the PMLA itself. This is in line with paragraph (b) of Regulation 4 of S.L. 586.09 which provides for a specific restriction to the rights of the data subject in the context of combating money laundering, which exception reflects the core functions of the [REDACTED] Data that may fall under this exemption may therefore be excluded from replies provided in response to a DSAR.

Furthermore, we also consider that paragraph (e) under Regulation 4 of S.L. 586.09 to be applicable to your DSAR due to the on-going litigation between [REDACTED] and the [REDACTED] in which you are involved and the outcome of which will also impact you in view of your interest in and positions with the said company. Related data has been omitted from this DSAR.”
[emphasis has been added by the controller].

27. To this end, the Commissioner proceeded to investigate whether the restrictions cited by the controller in its response dated the 21st February 2025 respect the essence of the fundamental rights and freedoms of the complainant and constitute a necessary and proportionate measure as required by regulation 7 of S.L. 586.09. As a preliminary step of the investigation, the Commissioner proceeded to examine the categories of data which were restricted by the controller, including the grounds for restricting certain categories of data. The following table outlines the data categories which were restricted and the relevant restriction(s):

Data Category	Relevant Restriction
HR Internal Correspondences	Articles 33 and 34 of the PMLA and regulations 4(b) and (e) of S.L. 586.09
Internal Correspondences of the [REDACTED] and technical teams	Articles 33 and 34 of the PMLA and regulation 4(b) of S.L. 586.09
Data/data source utilised by the [REDACTED] and technical teams in line with the [REDACTED] functions under AML/CFT law	Articles 33 and 34 of the PMLA and regulation 4(b) of S.L. 586.09
CBAR	Articles 33 and 34 of the PMLA, regulation 4(5) of the CBAR Regulations and regulation 4(b) of S.L. 586.09

28. As a preliminary consideration, the Commissioner considered recital 19 of the Regulation, which explicitly acknowledges that the right to the protection of personal data is not an absolute right, and it may be balanced against other rights and objectives of general public interest, such as, preventing, detecting, investigating, and prosecuting criminal offences, including measures to combat any money laundering activity. Recital 19 of the Regulation specifically recognises the anti-money laundering framework as one of the legitimate grounds that may justify the restriction of the data subject's rights under the Regulation:

*"... this Regulation should provide for the possibility for Member States under specific conditions to restrict by law certain obligations and rights when such a restriction constitutes a necessary and proportionate measure in a democratic society to safeguard specific important interests including public security and the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, including the safeguarding against and the prevention of threats to public security. **This is relevant for instance in the framework of anti-money laundering ...** "*
[emphasis has been added].

29. Measures to combat money laundering often involve the processing of personal data without the consent of the individuals and potentially without full transparency. Thus, article 23 of the Regulation allows Member States to introduce legislative measures that restrict certain rights of the data subjects to safeguard important objectives of general public interest. Accordingly, the Commissioner examined the national legislation, namely S.L. 586.09, which enables controllers to restrict certain data protection rights. Regulations 4(b) and 4(e) of S.L. 586.09 provide that any restriction to the rights of the data subject referred to in article 23 of the Regulation shall only apply where such restrictions are a necessary measure required:

"(b) for the prevention, detection, investigation and prosecution of criminal offences, including measures to combat any money laundering activity, and the execution of criminal penalties;

...

(e) for the establishment, exercise or defence of a legal claim and for legal proceedings which may be instituted under any law;"

30. The controller maintained that regulation 4(b) of S.L. 586.09 should also be read in light of articles 33 and 34 of the PMLA (Cap. 373 of the Laws of Malta), which provisions are pertinent for applying the restriction provided under regulation 4(b) of S.L. 586.09. Consequently, the

Commissioner considered article 33 of the PMLA which impedes officers or employees of the controller from divulging information or data to a third party that would reveal or give a suspicion of an ongoing analysis, or that an analysis had happened in the past and, or could happen in the future. Doing otherwise, would expose the individuals concerned to criminal sanctioning. Article 33 of the PMLA reads as follows:

“33. Any official or employee of the Unit who, in any circumstances other than those provided for in the proviso to article 24(2), discloses to the person concerned or to a third party that an analysis is being carried out by the Unit, or that information has been transmitted to the Unit by a subject person, or that the Unit has transmitted information to the police for investigation, shall be guilty of an offence and liable on conviction to a fine (multa) not exceeding one hundred and sixteen thousand and four hundred and sixty-eight euro and sixty-seven cents (116,468.67) or to imprisonment for a term not exceeding five years or to both such fine and imprisonment.”.

31. The Commissioner examined article 34(1) of the PMLA, which imposes an onerous obligation of confidentiality and non-disclosure on the part of the controller and it impedes the disclosure of any data, information, or documentation that it may have acquired in the course of carrying out its functions other than in very specific situations set out in the same provision.

“34. (1) The Unit, and its officers, employees and agents, whether still in service of the Unit or not, shall treat any information and documents acquired in the performance of their duties or the exercise of their functions under this Act as confidential, and shall not disclose any information or document relating to the affairs of the Unit or of any person, which they have acquired in the performance of their duties or the exercise of their functions under this Act ...”.

In addition, the Commissioner examined the exceptions to this rule and noted that none of the exceptions set forth in the same article permits the disclosure of information in response to a subject access request.

32. The Commissioner also took into account regulation 4(5) of the Centralised Bank Account Register Regulations, Subsidiary Legislation 373.03 in view of the fact that the controller

restricted the data that were collected, used, and made available via the CBAR system, which is administered by the controller. Regulation 4(5) of the CBAR Regulations reads as follows:

“(5) The rights of the data subject referred to in regulation 4 of the Restriction of the Data Protection (Obligations and Rights) Regulations, in particular the right of access, shall be restricted, partially or completely, where such a restriction is necessary and proportionate for the Unit to ensure the proper functioning of the register and avoid causing prejudice to any action being undertaken by any of the authorities that are to be allowed access thereof in terms of regulation 6 in the course of its functions at law.”.

33. In the present case, the Commissioner noted that the complainant was, at the time of receipt of the subject access request, the director, majority shareholder, and legal representative of the entity and subject person, [REDACTED]. After the controller conducted an on-site compliance review of the company in question to determine the level of compliance with its AML/CFT obligations, the controller imposed an administrative fine of EUR 1,183, 887 against the said company. As part of its submissions, the controller submitted a copy of the publication notice of the administrative penalty imposed on [REDACTED]. [REDACTED] The decision of the controller was subsequently appealed by the company on the 28th September 2020. In addition, the company has also instituted constitutional proceedings challenging the legality of the administrative enforcement powers entrusted to the controller in terms of the PMLA and the PMLFTR. The company, [REDACTED] and the controller, at the time of receipt of request, were involved in the below two (2) court cases:

- [REDACTED]
[REDACTED] – Case [REDACTED] (Constitutional Court); and
- [REDACTED]
[REDACTED] – Case [REDACTED] (Of Appeal (Civil, Inferior – Administrative)).

34. In addition, at the time of receipt of the subject access request, the complainant had applied to a total of eight (8) different vacancies which the controller had opened to the public. The controller had subsequently rejected each application that was made by the complainant.

35. To this end, the controller deemed it necessary to restrict both the scope of information provided under article 15(1) of the Regulation and the volume of the data disclosed to the complainant

under article 15(3) of the Regulation. The controller emphasised that the restrictions were invoked in line with the obligations established within the national and EU AML/CFT framework in conjunction with the provisions outlined in S.L. 586.09.

36. Restrictions under S.L. 586.09 must respect the essence of the fundamental rights and freedoms and must be a necessary and proportionate measure in a democratic society to safeguard any of the objectives of general public interest as held in regulation 4 of S.L. 586.09. In order to demonstrate compliance with the principle of accountability as set forth in article 5(2) of the Regulation, the controller must be able to effectively demonstrate that the restrictions are necessary and proportionate in the specific case at hand. Accordingly, the Commissioner proceeded to assess the detailed internal necessity and proportionality assessment conducted by the controller at the time of receipt of the request. This document was provided during the course of the investigation solely to assist the Commissioner in determining whether the restrictions invoked by the controller were applicable, taking into account the specific circumstances of the case and the objectives pursued.
37. The Commissioner took note of: (a) the functions of the controller and the laws it administers which transpose and implement into national law the requirements of Directive (EU) 2015/849⁵, which Directive is intended to implement measures for the prevention of the use of the financial system for the purposes of money laundering or terrorist financing; and (b) its overarching function as set out in article 16(1) of the PMLA, which provides that the controller is to be responsible for the collection, collation, processing, analysis and dissemination of information with a view to preventing, detecting and effectively combating money laundering and funding of terrorism.
38. The Commissioner also noted that the majority of the information which the controller is processing in relation to the complainant is obtained in the course of the supervisory and enforcement activities of the controller in relation to the company, [REDACTED]. As highlighted in paragraph 33 of this decision, the company is contesting both the ability of the controller to impose any such administrative penalty as well as the circumstances and determinations leading to the imposition of said administrative penalty. Therefore, according to the controller, disclosing such data can be prejudicial to the on-going litigation as well as present a violation of article 13A(6) of the PMLA which provides for proceedings to be held *in camera*, and therefore, any information, data and documentation that would have been

⁵ Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC.

available to the said functions and presented in the course of the appeal proceedings cannot be disclosed to third parties.

39. The Commissioner further noted that the controller invoked the restrictions in relation to the internal email and correspondences of the [REDACTED] technical teams which involved the complainant. According to the controller, these internal emails and correspondence could reveal information which was processed by the controller as part of its performance of its tasks and functions as set forth by law.
40. After assessing the circumstances of the case, the Commissioner concluded that the restriction applied by the controller concerning the complainant's personal data, which are processed in the context of the controller's task to combat money laundering as set forth in the PMLA, including the regulations made thereunder, applies in this instance. Therefore, regulation 4(b) of S.L. 586.09, read in conjunction with articles 13A(6), 33 and 34 of the PMLA, as well as regulation 4(5) of S.L. 373.03, justifies the action of the controller to restrict the personal data of the complainant.
41. With regard to internal correspondence relating specifically to human resources matters and the vacancies for which the complainant had applied, the controller, in addition to relying on regulation 4(b) of S.L. 586.09, also cited regulation 4(e) of S.L. 586.09. During the on-site inspection held by the Commissioner on the 2nd June 2025, pursuant to article 58(1)(e) of the Regulation, the controller was ordered to provide access to the internal HR emails and correspondence which contain the personal data of the complainant. Upon review, the Commissioner observed that the contents of these communications were interwoven, making it particularly challenging to isolate specific information relevant to only one ground for restriction. Therefore, it is not feasible to clearly separate the information under a single restriction.
42. The Commissioner proceeded to examine regulation 4(e) of S.L. 586.09, which was invoked by the controller in relation to a limited portion of personal data found within internal HR correspondence vis-à-vis the vacancies for which the complainant applied for.
43. Based on the submissions provided by the complainant on the 4th April 2025, the Commissioner notes that the complainant is primarily challenging the applicability of regulation 4(e) of S.L. 586.09. Notably, the complainant does not dispute, nor present any arguments against, the applicability of the restriction under regulation 4(b) of S.L. 586.09. The complainant limits his argument to asserting that regulation 4(e) of S.L. 586.09 should not apply in this case, on the

basis that he is not a party to the proceedings instituted against the controller. In support of this position, the complainant stated in his submissions dated the 4th April 2025 that “I do not have a legal claim against [REDACTED]” [underlined by the complainant].

44. While it is correct that the complainant, in his personal capacity, is not formally a party to the proceedings mentioned in paragraph 33 of this decision, the Commissioner is of the view that the complainant, as the shareholder, director and legal representative, forms an integral part of [REDACTED]. Therefore, given the role of the complainant, his involvement and influence over [REDACTED] together with the fact that the proceedings are not brought in his personal name, is not determinative. This is because the significant positions and beneficial ownership effectively demonstrate the direct involvement and influence that the complainant has on the ongoing legal claim and proceedings instituted by the company against the controller.

45. Furthermore, the Commissioner examined the sworn application of [REDACTED] [REDACTED] pertaining the ongoing constitutional case and which puts forward a general argument that the approach of the controller was discriminatory towards [REDACTED] [REDACTED] as compared to other companies. Paragraph 20 of the sworn application of the [REDACTED] filed on the 25th September 2020 reads as follows:

“20. Illi meta wiehed iqabbel it-trattament da parti tal-Korp appellat fil-konfront tas-socjeta rikorrenti mat-trattament tal-istess Korp appellat fil-konfront ta' soggetti guridici ohra, fir-rigward ta' fatti u allegati vjolazzjonijiet simili u identici ghal dawk allegatament mwettqa mis-socjeta rikorrenti, johrog bic-car illi s-socjeta rikorrenti kienet trattata b'mod diskriminatorju, fin-nuqqas ta' ezistenza ta' fatturi li jiggustifikaw tali differenza fit-trattament”.

46. The Commissioner also assessed the transcript of the cross-examination of the complainant, dated the 6th May 2021 in relation to Case [REDACTED] which reveals that the complainant mentioned personal aspects in support of the claim put forward by [REDACTED]. Personal assertions made by the complainant, such as, “... wasshuna biex qegħdin hawnhekk u ili min dakinhar taht xokk kbir, hadd ma' jrid jaf bijja, xogħol mgħndix [sic.], nirreġistra mal-jobsplus”, further reinforce the view that the complainant maintains a direct and influential role in the proceedings brought against the controller. In addition, the complainant argued that the administrative fine imposed by the controller had negatively impacted his professional opportunities, stating that he had been unable to secure employment

as a result. He also referred to the fact that his applications for eight (8) vacancies with the controller had consistently been unsuccessful. In this context, the controller highlighted that the disclosure of internal HR correspondence exchanged between the employees of the controller could potentially be used by the complainant in legal proceedings.

47. To this end, the controller effectively demonstrated that, given the importance and significance of the complainant's roles within [REDACTED] as controlling director, shareholder, and legal representative, providing the complainant with the HR correspondence and emails exchanged internally among the employees of the controller would directly and objectively prejudice the position of the controller in the ongoing legal proceedings initiated against it by [REDACTED]. This therefore led the Commissioner to conclude that, at the time of receipt of the request, there were pending and ongoing judicial proceedings, and therefore, the restriction cited by the controller in terms of regulation 4(e) of S.L. 586.09, was not invoked on a hypothetical basis.

48. Additionally, the Commissioner ascertained that the necessity and proportionality assessment conducted by the controller clearly identifies, in sufficient detail, the objectives to be safeguarded, effectively demonstrates that the restrictions are proportionate and not excessive, and demonstrates that the right of the complainant is not curtailed beyond what is strictly necessary.

On the basis of the foregoing considerations, the Commissioner is deciding that the restrictions applied by the controller in response to the complainant's subject access request dated the 21st January 2025 constitute a necessary and proportionate measure. Accordingly, the restrictions applied by the controller comply with the requirements set out in regulation 7 of S.L. 586.09. As a result, the Commissioner hereby dismisses the complaint in its entirety.

Ian
DEGUARA
(Signature) Digitally signed
by Ian DEGUARA
(Signature)
Date: 2025.08.19
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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.⁶

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*”.

⁶ Further information on the appeals procedure is available on this Office’s portal at the following hyperlink:
<https://idpc.org.mt/appeals-tribunal/>