

## COMPLAINT

1. On the 31<sup>st</sup> January 2025, [REDACTED] (the “**complainant**”) lodged a complaint with the Information and Data Protection Commissioner (the “**Commissioner**”) pursuant to article 77(1) of the General Data Protection Regulation<sup>1</sup> (the “**Regulation**”), alleging that [REDACTED] (the “**controller**”) failed to comply with his request to access his personal data.
2. As supporting documentation, the complainant provided a copy of the subject access request dated the 6<sup>th</sup> December 2024. Additionally, the complainant submitted a copy of the reply provided by the controller on the 3<sup>rd</sup> January 2025. In this reply, the controller informed the complainant that *“we are currently unable to provide the requested personal data due to a legal exemption under EU GDPR 2016/679, as well as applicable domestic laws, where such measure is necessary for the establishment exercise or defence of a legal claim and for proceedings which may be instituted under any law”*.

## INVESTIGATION

3. On the 30<sup>th</sup> April 2025, pursuant to the internal investigative procedure of this Office, the Commissioner requested the controller to put forward any information which is deemed relevant and necessary, for the Commissioner to consider in the legal analysis of the case. In particular, the Commissioner noted that the controller decided to partially restrict the

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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> [REDACTED] having its registered address at [REDACTED] (according to the Malta Business Registry records accessed on the 14<sup>th</sup> October 2025).

information provided on the basis of regulation 4(e) of the Restriction of the Data Protection (Obligations and Rights) Regulations, Subsidiary Legislation 586.09 (the “**Subsidiary Legislation 586.09**”). The Commissioner emphasised that the restriction can only be justified if the controller concretely demonstrates that the restriction is indeed necessary to defend a legal claim and legal proceedings which may be instituted by the complainant under any law. In this regard, by virtue of article 58(1)(a) of the Regulation, the Commissioner requested the controller to indicate whether there is a legal claim and any legal proceedings, and to provide the necessary evidence.

4. In its reply dated the 19<sup>th</sup> May 2025, the controller submitted the following principal arguments for the Commissioner to consider in the legal analysis of the case:
  - i. that the controller *“is fully committed to comply with GDPR and takes all subject access requests seriously, recognising the importance of the access right”*;
  - ii. that *“[n]evertheless, on 18/12/2024, the Company's management took a decision to apply a temporary restriction to the right of access under article 15 of the GDPR, based primarily on the legal exemption provided under Article 4(e) of the Maltese S.L. 586.09 (as well as Article 23, GDPR and Article 15(4) GDPR), in cases where there is a reasonable basis to believe that the subject access request (“SAR”) is linked to ongoing or potential legal claims or litigation and where there is a reasonable expectation to consider that the SAR is requested not for the purpose contemplated by the GDPR, but for reasons intended to impinge or influence [the controller’s] right to raise or defend a legal claim/defence and which thus would impinge on the right to a fair hearing in litigation procedures”*;
  - iii. that *“[t]he application of this restriction implies that, by way of exception, [the controller] ceased providing certain personal data in response to certain SARs received from a subset of customers (or their legal representatives or litigation funders) as further explained in the N&P Test. This decision was taken following a thorough N&P Test carried out by the data privacy team, which is subject to periodic review and reassessment. The test ensures that the decision is based on a balance of several factors, which on the one hand confirm the strict necessity of the restriction, and on the other ensure proportionality, coupled with measures aimed to ensure that the personal data remains protected by the appropriate safeguards”*;

- iv. that “[w]e would like to highlight that whilst the N&P Test provides a general framework for restricting SARs, each request is assessed individually to ensure compliance with GDPR principles, particularly the requirement that any restriction be necessary and proportionate in the specific circumstances of the request”;
- v. that “the SAR made by the complainant was reviewed in line with the N&P Test. Given the nature and background of this SAR, [the controller] found that the conditions for the application of the restriction were met. Although there is no ongoing litigation lodged by the complainant against [the controller] to this date, the circumstances are such which anticipate litigation. Accordingly, [the controller] replied to the complainant’s SAR with a detailed response informing the complainant of the restriction applied by [the controller], in a clear and transparent manner”;
- vi. that “[a]s you will note from the correspondence provided by the complainant, the SAR was responded to within a reasonable period of time, with intermittent exchanges keeping him informed of progress. The complainant is informed of the reasons, and has to date, not denied her intention to pursue litigation. In fact, in response to [the controller’s] first response to his SAR issued on 3 January 2025, the customer replied via email on 14 January 2025, explicitly expressing a willingness to consider out of court settlement in lieu of pursuing future legal action. The customer cited the alleged lack of a German licence as the basis for potential claims. This communication clearly indicates an intention to initiate legal proceedings or, at minimum, to use the subject access request process as a pre-litigation tool. Such conduct reinforces our assessment that certain SARs are being submitted in anticipation of legal action, thereby supporting the application of a temporary restriction on access to specific data categories under the relevant legal exemptions. Following a review conducted in line with the ‘review mechanism’ outlined in the N&P Test, [the controller] has refined the scope of the temporary restriction, such that the restriction is limited to transaction history only, as this is the primary data category under contention in the anticipated legal claims in this case, which data requires careful assessment and explanation to the courts, to be interpreted alongside other evidence which is relevant to the dispute”;
- vii. that “the complainant was provided a copy of all his other personal data in response to their SAR on 24/03/2025, ensuring a proportionate response while maintaining the integrity of our legal position”; and

viii. that “[t]he restriction is temporary, and we continue to monitor developments which may entail the withdrawal of the said restriction. The complainant is also well informed of the temporary nature of the restriction, and as the N&P test concludes, the restriction imposes no disproportionate impact on the complainant’s privacy or personal data. If the complainant confirms in writing that they have no legal claim(s) and will not make any claim(s) against [the controller] for a refund of losses on the basis of activity on the Malta based license, the assessment will be revised in accordance with the N&P Test”.

5. The controller also submitted a copy of the necessity and proportionality test, which was conducted by the controller prior to deciding on invoking the restriction. The Commissioner noted that the necessity and proportionality test is an internal document of the controller and therefore, the document was solely used by the Commissioner for the purpose of investigating this complaint.

## LEGAL ANALYSIS AND DECISION

6. During the course of the investigation, the Commissioner established that the complainant had exercised his right to access his personal data in terms of article 15 of the Regulation, by means of a request dated the 6<sup>th</sup> December 2024. In the reply dated the 3<sup>rd</sup> January 2025, the controller partially restricted the right of the complainant to access his personal data on the assumption that the request is predominantly aimed to facilitate litigation. In this regard, the Commissioner sought to establish whether the restriction invoked by the controller pursuant to regulation 4(e) of the Restriction of the Subsidiary Legislation 586.09 applies to the present case, particularly, by considering the assessment conducted by the controller to partially restrict the right of the complainant.

### Subject Access Request: Article 15 of the Regulation

7. Article 15 of the Regulation grants data subjects far-reaching rights of access in relation to the processing of their personal data. Its predominance is derived from article 8(2) of the Charter of Fundamental Rights of the European Union (the “**Charter**”), which explicitly refers to the right of access, by stating that “[e]veryone has the right of access to data which has been collected concerning him or her...”. This corresponds to the objective of the Regulation which is clearly outlined in recital 10 of the Regulation, that is, to ensure a consistent and high level of protection of natural persons within the European Union.

8. It has been repeatedly stated by the Court of Justice of the European Union (the “CJEU”) that this right is instrumental to the exercise of the other data subjects’ rights as set forth in the Regulation<sup>3</sup>, mainly articles 16 to 19, 21, 22 and 82. Notwithstanding this, the exercise of the right of access is an individual’s right and is certainly not conditional upon the exercise of other rights<sup>4</sup>.
9. Article 15(1) and (3) of the Regulation gives the fundamental right to data subjects to obtain from the controllers: (i) confirmation as to whether or not personal data concerning them are being processed and, if so, to receive information about the processing activity, and (ii) to receive a copy of the personal data being processed.
10. The CJEU’s Advocate General Pitruzzella in his Opinion explained that article 15(1) of the Regulation “*gives specific expression to the right of access to personal data and related information, defining the precise subject matter of the right of access and the scope of application*”, whereas article 15(3) of the Regulation “*provides more details as to how that right is to be exercised, specifying in particular the form in which the controller must provide the data subject with personal data, that is to say, in the form of a copy and, therefore, a faithful reproduction of the data*”<sup>5</sup>.
11. Given that the right of access is an expression of article 8(2) of the Charter, it is formulated in very broad terms and, as a result, the CJEU adopted a wide interpretation of this article, with specific reference to the recent judgments delivered in 2023<sup>6</sup>. This is naturally due to the fact that the right of access is the basis for guaranteeing the effective protection of the data subjects’ right to the protection of their data. To this end, the controller should seek to handle the request in such a manner to give the broadest effect to the right of access.

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<sup>3</sup> Case C-487/21, ‘FF vs Österreichische Datenschutz-behörde’, decided on the 4<sup>th</sup> May 2023: “*In particular, that right of access is necessary to enable the data subject to exercise, depending on the circumstances, his or her right to rectification, right to erasure (‘right to be forgotten’) or right to restriction of processing, conferred, respectively, by Articles 16, 17 and 18 of the GDPR, as well as the data subject’s right to object to his or her personal data being processed, laid down in Article 21 of the GDPR, and right of action where he or she suffers damage, laid down in Articles 79 and 82 of the GDPR.*” (para. 35).

<sup>4</sup> European Data Protection Board, ‘Guidelines 01/2022 on data subject rights - Right of access’ (Version 2.0), adopted on the 28<sup>th</sup> March 2023 (para. 12).

<sup>5</sup> Case C-487/21, Opinion of Advocate General Pitruzzella, delivered on the 15<sup>th</sup> December 2022, (para. 48 and 49).

<sup>6</sup> Case C-487/21, ‘FF vs Österreichische Datenschutz-behörde’, decided on the 4<sup>th</sup> May 2023, & and Case C-154/21, ‘RW v Österreichische Post AG’, decided on the 12<sup>th</sup> January 2023.

12. It is evident from the wording of article 15 of the Regulation, that the law does not require the data subject to justify or give any reasons for a request under the Regulation, and any presumptions, suspicious or hypothetical conclusions which the controller may consider or reach as to what the data subject's reasons are or might be, should not affect the handling of that request as otherwise this would render the right of access futile and ineffective.
13. This is further supported by the interpretation provided by the European Data Protection Board (the “EDPB”) in its Guidelines 01/2022 published in March 2023, which reads as follows: “[c]ontrollers should not assess “why” the data subject is requesting access, but only “what” the data subject is requesting ... and whether they hold personal data relating to that individual... [F]or 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**”<sup>7</sup> [emphasis has been added].

#### Restriction in terms of Subsidiary Legislation 586.09

14. 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. This has been reaffirmed by the CJEU in the judgment of Facebook Ireland and Schrems<sup>8</sup>.
15. The fundamental right to the protection of personal data may be subject to some limitations pursuant to article 52(1)<sup>9</sup> of the Charter. 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.
16. Whereas the Regulation does not define the term ‘restrictions’, the EDPB defines it “as any limitation of scope of the obligations and rights provided for in Articles 12 to 22 and 34 GDPR

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<sup>7</sup> Ibid 4 (para. 13).

<sup>8</sup> Case C-311/18, ‘Data Protection Commissioner vs Facebook Ireland and Maximillian Schrems’, decided on the 16<sup>th</sup> July 2020 (para. 172).

<sup>9</sup> 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.”



as well as corresponding provisions of Article 5 in accordance with Article 23 GDPR". The EDPB further provides that a "restriction to an individual right has to safeguard important objectives, for instance, the protection of rights and freedoms of others or important objectives of general public interest of the Union or of a Member State which are listed in Article 23(1) GDPR. Therefore, restrictions of data subjects' **rights can only occur when the listed interests are at stake and these restrictions aim at safeguarding such interests**"<sup>10</sup> [emphasis has been added].

17. The scope of the obligation and right provided for in article 15 of the Regulation may be restricted by national legislation. To this effect, regulation 4(e) of Subsidiary Legislation 586.09 provides that "[a]ny 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: (e) **for the establishment, exercise or defence of a legal claim and for legal proceedings which may be instituted under any law**" [emphasis has been added].
18. Regulation 7 of Subsidiary Legislation 586.09 makes it abundantly clear that any restriction must be a "necessary and proportionate measure", which effectively means that an assessment needs to be undertaken by the controller on a case-by-case basis to determine whether such measure is indeed "a necessary and proportionate measure", rather than merely refusing to comply with a request.
19. Pursuant to article 5(2) of the Regulation, the controller must be able to concretely demonstrate how the restriction is indeed necessary, and if this part of the test is passed, the controller must proceed to show the element of proportionality. The case law of the CJEU emphasises that any limitation to the rights of the data subjects must pass a strict necessity test. In C-73/07, the CJEU held that "derogations and limitations in relation to the protection of personal data ... must apply only insofar **as is strictly necessary**"<sup>11</sup> [emphasis has been added].
20. Thus, in his assessment, the Commissioner analysed the replies provided by the controller to the complainant, including the necessity and proportionality test conducted by the controller, wherein the right of the data subject was partially restricted pursuant to regulation 4(e) of Subsidiary Legislation 586.09.

<sup>10</sup> European Data Protection Board, 'Guidelines 10/2020 on restrictions under Article 23 GDPR' (Version 2.0), adopted on the 13<sup>th</sup> October 2021 (para. 8).

<sup>11</sup> Case C-73/07, 'Tietosuojavaltuutettu v Satakunnan Markkinapörssi Oy and Satamedia Oy', decided on the 16<sup>th</sup> December 2008, (para. 56).

21. The context within which the controller invoked the restriction could only be justified if the controller concretely demonstrates that **the restriction is indeed necessary to defend a legal claim and legal proceedings which may be instituted by the complainant under any law.** During the course of the investigation, the controller reiterated “[a]lthough **there is no ongoing litigation** lodged by the complainant against [the controller] to this date, the circumstances are such which anticipate litigation” and therefore the right of the data subject was being restricted as “there is a reasonable basis to believe that the subject access request (“SAR”) is linked to ongoing or potential legal claims or litigation and where there is a reasonable expectation to consider that the SAR is requested not for the purpose contemplated by the GDPR, but for reasons intended to impinge or influence [the controller’s] right to raise or defend a legal claim/defence and which thus would impinge on the right to a fair hearing in litigation procedures” [emphasis has been added].
22. The Commissioner does not consider this reasoning to be compliant with the objective of the restriction as set forth in regulation 4(e) of Subsidiary Legislation 586.09. The said regulation provides that the fundamental right of the data subject may only be restricted “for ... **defence of a legal claim** and for legal proceedings which may be instituted” [emphasis has been added]. This provision establishes a narrow scope for restricting a fundamental right, which may only occur when such restriction is demonstrable necessary for the purpose of achieving the intended objective.
23. The wording of regulation 4(e) is interpreted as covering the following scenarios in which the controller may be required to defend itself: (i) defence of a legal claim; and (ii) defence of legal proceedings which may be instituted under any law. The Commissioner’s interpretation is that, although the two elements of the restriction, namely the defence of a legal claim and legal proceedings are related, they are not strictly cumulative. The first element, the defence of a legal claim, stands independently and does not necessarily depend on the existence of legal proceedings. This distinction is highlighted by the legislator’s deliberate choice of the verb “may” in the phrase “legal proceedings which may be instituted”. Accordingly, regulation 4(e) of S.L. 586.09 is interpreted to also apply in those scenarios where the restriction is necessary to enable the controller to defend an actual legal claim brought against it by the data subject, even if legal proceedings have not yet been initiated.
24. The Commissioner therefore concludes that the controller failed to provide any evidence during the investigation to demonstrate that the restriction is necessary to defend a legal claim and, or legal proceedings, particularly when neither one of them had been instituted by the complainant.



A restriction cannot be invoked based solely on the assumption that the complainant may, following the provision of the information, initiate any form of legal action against the controller. Consequently, the controller has not managed to effectively demonstrate that the restriction of a fundamental right is indeed a necessary measure.

25. Without prejudice to the above, it must be emphasised that even in the eventuality that there is an actual legal claim and ensuing legal proceedings, for the restriction to apply, the controller shall demonstrate that the application of the restriction is indeed a necessary and a proportionate measure.

**On the basis of the foregoing considerations, the Commissioner is hereby deciding that the controller has failed to demonstrate how restricting the right of the complainant, at the time of receipt of the request, was indeed a necessary measure in terms of regulation 4(e) of Subsidiary Legislation 586.09. This therefore led to an infringement of article 15 of the Regulation.**

**In terms of article 58(2)(c) of the Regulation, the controller is hereby being ordered to comply with the request and provide the complainant with the information prescribed under article 15(1)(a) to (h) of the Regulation, and also with a “*copy of the personal data undergoing processing*” pursuant to article 15(3) thereof at the time of receipt of the request.**

**The controller shall comply with this order without undue delay and by no later than twenty (20) days from the date of service of this legally binding decision and inform the Commissioner of the action taken immediately thereafter.**

**Non-compliance with this order shall lead to an administrative fine in terms of article 83(6) of the Regulation.**

**After considering the nature of the infringement, the controller is hereby being served with a reprimand pursuant to article 58(2)(b) of the Regulation and warned that, in the event of a further similar infringement, the appropriate corrective action shall be taken accordingly.**

Ian  
DEGUARA  
(Signature)

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by Ian DEGUARA  
(Signature)  
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**Ian Deguara  
Information and Data Protection Commissioner**

### Right of Appeal

In terms of article 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’*<sup>12</sup>.

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<sup>12</sup> More information on the appeals procedure is available [here](#).