

Information and Data Protection Commissioner

CDP/FOI/19/2025

Ivan Camilleri

vs

Heritage Malta

FREEDOM OF INFORMATION REQUEST

1. On the 9th April 2025, Mr Ivan Camilleri (the “**applicant**”) made a freedom of information request pursuant to the requirements set forth in article 6(1) of the Freedom of Information Act (the “**Act**”), Chapter 496 of the Laws of Malta, requesting Heritage Malta (the “**Public Authority**”) to provide the following information in electronic format:

- “Copy of engagement contract related to the appointment of Rosa Martinez”
[Request I]; and

- “Copy of ALL contracts related to the engagement of consultants/advisors by HM in 2023, 2024 and 2025 until date of reply to this request” [Request II].

2. On the 2nd May 2025, the Public Authority informed the applicant that his request could not be met on the basis that:

“The request cannot be acceded to in terms of Article 32(1)(b) & (c) of the Chapter 496 of the Laws of Malta in that the information requested contains sensitive business information concerning a person in respect of his business or professional affairs and the disclosure of which would, or could reasonably be expected to, unreasonably affect that person adversely in respect of his lawful business or professional affairs”.

3. On the 4th May 2025, the applicant requested the Public Authority to revise its decision under its internal complaints procedure, asserting that “[p]ublic interest prevails as has been already set in previous decisions”. On the 16th May 2025, the Public Authority reiterated its refusal.

FREEDOM OF INFORMATION APPLICATION

4. On the 20th May 2025, the applicant applied for a decision notice pursuant to article 23(1)(a) of the Act, requesting the Commissioner to decide whether the Public Authority had handled the freedom of information request of the applicant pursuant to the requirements of the Act.
5. After having considered that the applicant is an eligible person in terms of article 2 of the Act and the nature and background of the freedom of information application, together with the procedural steps involved between the applicant and the Public Authority in the request for documents, the Commissioner deemed the freedom of information application made by the applicant as admissible for the purpose of article 23(2) of the Act.

INVESTIGATION

The Issuance of the Information Notice

6. As part of the investigation procedure, by means of an information notice dated the 10th June 2025, issued in terms of article 24(1)(a) of the Act, the Commissioner requested the Public Authority to furnish information in relation to the application made by the applicant. In particular, the Commissioner requested the Public Authority:
 - a. to provide any information that it deemed relevant and necessary to support its decision and rebut the arguments made by the applicant;
 - b. to clearly explain the prejudice which would, or could be suffered if the information were to be disclosed to the applicant; and
 - c. to provide a true copy of the documentation requested by the applicant, either enclosed with the Public Authority’s reply or delivered by hand under confidential cover, for the purpose of investigating the freedom of information application.

Inspection of Documentation

7. As part of the ongoing assessment of this freedom of information application, the Commissioner held a meeting with the Public Authority on the 20th August 2025 to conduct an on-site inspection for the purpose of reviewing a copy of the engagement contract related to the appointment of Ms Rosa Martinez.

Submissions of the Public Authority

8. In response to the information notice, the Public Authority submitted the following salient arguments for the Commissioner to consider during the legal analysis of the case:
 - a. that the Public Authority maintained its position that the documentation requested by the applicant on the 9th April 2025 cannot be publicly disclosed, as it contains commercially sensitive information;
 - b. that, with specific reference to the request for a copy of the engagement contract pertaining to the appointment of Ms Rosa Martinez, the Public Authority is constrained from providing such documentation in view of the prohibitions set out in article 32(1)(b) and 32(1)(c) of the Act. These provisions expressly exempt from disclosure any information relating to the business or professional affairs of a third party, where such disclosure would, or could reasonably be expected to, cause undue prejudice or adverse effects to that person in the conduct of their lawful business or professional interests;
 - c. that it is further noted that Ms Rosa Martinez is a distinguished international curator, writer and collector whose professional reputation and career enjoy significant standing within the global artistic community;
 - d. that the contract in question was concluded following direct negotiations with Ms Rosa Martinez and contains sensitive provisions concerning her professional obligations, duties and responsibilities in connection with the Malta Biennale 2026. The disclosure of such information would, in the circumstances, constitute an unwarranted intrusion into her professional affairs and may reasonably be expected to adversely affect her international career;

- e. that the artistic sector is inherently sensitive, and consequently, the disclosure of such details could negatively impact the creative work and professional reputation of the artists involved. Should such information be disclosed, it would not only generate far-reaching consequences for the individuals concerned but would also place at risk the international reputation carefully established through the efforts of the Malta Biennale and the Public Authority. Accordingly, the Public Authority considers the engagement contract to fall squarely within the statutory exemptions to disclosure;
- f. that, with respect to the second request for copies of all contracts entered into by the Public Authority for the engagement of consultants and, or advisors during 2023, 2024 and 2025, the Public Agency confirms that no such contracts exist in relation to the Malta Biennale 2026; and
- g. that the Public Authority reiterated and upheld its decision not to disclose the engagement contract in question, given the sensitive and confidential nature of the business and professional information contained therein.

Submissions of the Applicant

- 9. Pursuant to the internal investigative procedure of the Office, the Commissioner provided the applicant with a copy of the submissions of the Public Authority and enabled the applicant to produce its counterarguments. By means of an email dated the 14th September 2025, the applicant submitted that:

“As a response: We believe, as already decided by your esteemed office numerous times, that the public interests supersede wherever public funds are used, particularly in direct orders”.

Final Submissions of the Public Authority

- 10. The Public Authority was provided with the final opportunity to provide its submissions in relation to the arguments raised by the applicant. In addition, during the Commissioner’s investigation, attention was drawn to the Government Gazette of the 19th August 2025¹, which

¹ The Malta Government Gazette (Number 21,490) dated the 19th August 2025 (page 90), available at: <https://www.gov.mt/en/Government/DOI/Government%20Gazette/Documents/2025/08/Government%20Gazette%20-%2019th%20August.pdf> [last accessed on the 17th October 2025].

expressly states that a direct service order was issued to Ms Rosa Martinez for the provision of Artistic Director services for the Malta Biennale Art 2026, with a declared value of €82,593.40. In this regard, the Public Authority was requested to clarify the basis on which the exemption still applies to the value of her services, given that such information had already been made publicly available.

11. On the 30th September 2025, the Public Authority submitted the following principal arguments:

- a. that the Public Authority *“fully concurs with and upholds its position under Article 32(1)(b) and (c) of the Freedom of Information Act. The Agency maintains that the information requested contains sensitive business details relating to a person’s business or professional affairs, the disclosure of which would, or could reasonably be expected to, cause undue adverse effects on that person in relation to their lawful business or professional activities”*;
- b. that *“[i]t is important to clarify that the information in question was NOT published by Heritage Malta, but in our opinion was erroneously published by the Ministry. The Agency is required to submit to the Ministry, on a biannual basis, a list of direct orders exceeding €10,000. The Agency complied with this procedure; however, it was the Ministry’s responsibility to ensure that direct orders awarded to individuals—containing sensitive business information—were not disclosed publicly. Moreover, the figures that have been published do not correspond to those stated in the contract. Consequently, disclosing such a contract would convey conflicting messages and risk undermining our credibility on a broader scale”*; and
- c. that *“[t]he foregoing is respectfully submitted in order to provide clarification and to reaffirm the Agency’s reliance upon the statutory exemptions afforded under Article 32(1)(b) and (c) of the Freedom of Information Act”*.

LEGAL ANALYSIS AND DECISION

Request I

12. The Commissioner proceeded to assess the first part of the request, wherein the applicant requested the Public Authority to provide a copy of the engagement contract related to the appointment of Ms Martinez. By means of the reply dated the 2nd May 2025, the Public

Authority refused this part of the request on the basis of article 32(1)(b) and 32(1)(c)(i) of the Act. This refusal was reconfirmed on the 4th May 2025 after the applicant lodged an internal complaint pursuant to the internal procedure of the Public Authority. The reasons for refusal provided by the Public Authority are being reproduced hereunder:

“The request cannot be acceded to in terms of Article 32(1)(b) & (c) of the Chapter 496 of the Laws of Malta in that the information requested contains sensitive business information concerning a person in respect of his business or professional affairs and the disclosure of which would, or could reasonably be expected to, unreasonably affect that person adversely in respect of his lawful business or professional affairs”.

13. As a preliminary observation, the Commissioner notes that the Public Authority in its response has invoked two exemptions, namely article 32(1)(b) and 32(1)(c)(i) of the Act. In the absence of any concrete justification or explanation supporting the reasons for refusal, the Commissioner served the Public Authority with an information notice pursuant to article 24(1)(a) of the Act and specifically requested the Public Authority to provide a detailed justification for the exemptions relied upon to refuse disclosure of the requested information. For the purpose of this legal analysis, the Commissioner will examine this part of the request in two distinct parts, corresponding to the two exemptions cited by the Public Authority in its response. The assessment will consider each exemption individually, in light of the reasoning provided by the Public Authority and the requirements of the Act.

Article 32(1)(b) of the Act

14. The Commissioner assesses article 32(1)(b) of the Act, which enables a Public Authority to refuse disclosing a copy of the information if its disclosure would disclose:

“any other information having a commercial value that would be, or could reasonably be expected to be, destroyed or diminished if the information were disclosed”.

15. This exemption is intended to protect information on the basis that it holds commercial value, and that disclosure of such information is likely to be destroyed or diminished. It is not sufficient that the information merely has commercial value. For the exemption to apply, the Public Authority must be in a position to demonstrate that the disclosure must likely destroy

or reduce the commercial value of that information. Therefore, the onus rests on the Public Authority to demonstrate that there is a casual link between disclosure and the likelihood of the prejudice occurring.

16. The Act does not define what information is deemed to have commercial value for the purpose of article 32(1)(b) of the Act. For this reason, the Commissioner proceeded to examine the relevant national case-law concerning the interpretation of this exemption. The Court of Appeal in *‘Roberto Ragonesi vs Il-Kummissarju għall-Informazzjoni u l-Protezzjoni tad-Data’* held that information has commercial value if its disclosure to the public may affect the successful bidder’s ability to participate competitively in a commercial activity. The Court of Appeal ruled that:

“Anki f’dan il-kaz din il-Qorti ma tqisx li kemm it-Tribunal kif ukoll il-Kummissarju taw x’interpretazzjoni wiesgha u legalment mhux accettabbli l-artikolu 32 tal-Kap 496 izda huwa evidenti li dak mitlub, sabiex jinghata, bilfors iwassal għad-divulgar t’informazzjoni dwar l-operat tal-offerent anki ma’ terzi liema nformazzjoni għandha valur kummercjali li jekk mogħti lil terzi jista’ jnaqqas il-kompetittività tal-offerent. Għaldaqstant din il-Qorti ser tghaddi wkoll sabiex tichad dan l-aggravju dwar dan il-punt.” [emphasis has been added].

17. Due to the limited national case-law on the interpretation of this exemption, the Commissioner examined the UK law upon which our national law is largely modelled. Section 43(2) of the UK Freedom of Information Act provides that information is exempt if its disclosure would, or would be likely to, prejudice the commercial interests of a legal person, including the Public Authority. The UK Information Commissioner has provided a definition of “*commercial interest*” that closely aligns with the interpretation adopted by our national courts in relation to article 32(1)(b) of the Act. The UK Commissioner held that:

“The term ‘commercial interests’ is not defined in the FOIA. However the Commissioner has considered his awareness guidance on the application of section 43. This comments that;

“... a commercial interest relates to a person’s ability to participate competitively in a commercial activity, i.e. the purchase and sale of goods or services.”².

² Court of Appeal, *Roberto Ragonesi vs Il-Kummissarju għall-Informazzjoni u l-Protezzjoni tad-Data*, decided on the 9th December 2014.

18. The Commissioner also examined the case-law of the Court of Justice of the European Union (the “CJEU”) in relation to the interpretation of “*commercial interests*” as set forth in article 4(2) of Regulation No. 1049/2001³. The CJEU has clarified the types of information that may fall within the scope of this exception, and that include, *inter alia*, documents revealing commercial strategies, customer relationships and sales figures. The CJEU held that:

“It must be pointed out that although the concept of commercial interests has not been defined in the case-law, the Court has specified that it is not possible to regard all information concerning a company and its business relations as requiring the protection which must be guaranteed to commercial interests under the first indent of Article 4(2) of Regulation No 1049/2001 without frustrating application of the general principle of giving the public the widest possible access to documents held by the institutions.”⁴.

The CJEU went on to explain that:

“... the institution must show that the documents requested contain elements which may, as a result of the disclosure, seriously undermine the commercial interests of a legal person.

That is the case ... when the requested documents contain commercially sensitive information relating to the commercial strategies of the undertakings ... their sales figures, market shares or customer relations”⁵.

19. The Commissioner examined the submissions of the Public Authority provided in response to the information notice dated the 10th June 2025, wherein the Public Authority merely provided that the information is commercially sensitive without explaining how the disclosure of the information is likely to diminish the commercial value of that information. For example, by providing competitors with advance knowledge that could undermine the competitive position of any party.

³ Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 27 May 2001 regarding public access to European Parliament, Council and Commission documents.

⁴ Court of Justice of the European Union (Case T-516/11), *MasterCard vs European Commission*, decided on the 9th September 2014, paragraph 81.

⁵ *Ibid*, paragraphs 82 and 83.

20. The Commissioner notes that the request relates to an engagement contract funded by public funds through which Ms Martinez was engaged to provide her professional services, after both parties had agreed to the terms and conditions. The Commissioner considers that the concept of commercial interests is generally intended to protect market position, profitability, and competitive advantage. Accordingly, the Commissioner does not consider that this publicly funded contract can fall within the parameters of the exemption, as the services are paid by the Public Authority following a direct order and were not generated within a competitive commercial market. This leads the Commissioner to conclude that the exemption cited by the Public Authority in terms of article 32(1)(b) of the Act does not apply.

Article 32(1)(c)(i) of the Act

21. The second exemption relied upon by the Public Authority is article 32(1)(c)(i) of the Act, which provides that a document is exempt if its disclosure under the Act would disclose:

“(c) information (other than trade secrets or information to which paragraph (b) applies) concerning a person in respect of his business or professional affairs or concerning the business, commercial or financial affairs of an organisation or an undertaking, being information:

(i) the disclosure of which would, or could reasonably be expected to, unreasonably affect that person adversely in respect of his lawful business or professional affairs or that organisation or undertaking in respect of its lawful business, commercial or financial affairs”.

22. The Commissioner recalls that the first step in applying this exemption is to determine whether the requested information truly concerns the ‘business or professional affairs’ of a person or the ‘business, commercial or financial affairs of an organisation or undertaking’. Therefore, this exemption intends to protect the harm that a person, an organisation or an undertaking, would or could reasonably be expected to, unreasonably suffer, because of the disclosure of the requested documents. In ‘*Rebecca Bonello Ghio vs Malta Film Commission*’⁶, the Court of Appeal clarified that the onus rests upon the public authorities to effectively demonstrate how the disclosure of the information would, or could reasonably lead to prejudice:

⁶ Appell Inferjuri Numru 83/2023 LM, ‘*Rebecca Bonello Ghio vs Malta Film Commission*’, decided on the 31st January 2024.

“Il-Qorti hija tal-fehma li l-appellanta kellha l-oneru li ttipprova b’liema mod hija ser tiġi affettwata negattivament jew b’liema mod hija raġonevolment mistennija li tiġi affettwata negattivament f’każ li l-informazzjoni mitluba minnha tiġi żvelata, imma hija naqset milli tagħmel dan. Quddiem sitwazzjoni fejn iż-żamma tal-informazzjoni mill-pubbliku għandha tkun l-eċċezzjoni u mhux ir-regola, kien jinkombi fuq il-Kummissjoni appellanta li tispjega b’mod ċar għafejn hija raġonevolment mistennija li tintlaqat hażin b’mod mhux raġonevoli, fejn jidhlu l-interessi professjonali u kummerċjali tagħha. Imma dan m’għamlitux, u minflok qalet li ladarba ma giet żvelata l-ebda informazzjoni sa issa, ma tistax tgħid b’liema mod l-iżvelar ta’ din l-informazzjoni kif sejra tolqot negattivament lill-benefiċjarju. Il-Qorti għalhekk tqis li dan l-aggravju mhuwiex misthoqq, u tiċhdu.” [emphasis has been added].

23. In this case, the Public Authority submitted that Ms Martinez is a distinguished international curator whose career enjoys significant global recognition and that the disclosure of her engagement contract would intrude upon her professional affairs and could adversely affect her international standing. It further argued that the artistic sector is inherently sensitive and that releasing contractual details could damage the reputation of both the artist and the Malta Biennale.
24. The Commissioner limitedly accepts that certain elements of an artist’s professional agreement may warrant protection, however, such protection cannot extend to all contractual clauses. The Commissioner must therefore balance Ms Martinez’s interest in maintaining the confidentiality over certain aspects of her engagement contract against the public interest in transparency and accountability in relation to the expenditure of public funds, particularly where the engagement was awarded directly.

Examination of the Contents of the Engagement Contract

25. During the course of the investigation, the Commissioner conducted a thorough examination of the contents of the engagement contract pertaining to the appointment of Ms Rosa Martinez as Artistic Director for the Malta Biennale 2026, which was made available for inspection during the on-site meeting held with the Public Authority on the 20th August 2025. The Commissioner established that the contract consists of two (2) parts: (i) the general provisions setting out the duration, terms and conditions of engagement and the financial remuneration, amongst other

generic clauses; and (ii) the annexes outlining the detailed duties, responsibilities and performance obligations of the Artistic Director.

26. The first part of the engagement contract contains the standard administrative and financial clauses typical of such professional service agreements, including the remuneration to be paid for services rendered. The Commissioner notes that the total value of this engagement, including allowances, has already been made publicly available through publication in the Government Gazette of the 19th August 2025⁷, wherein it was expressly stated that a direct service order was issued to Ms Martinez for the provision of Artistic Director services for the Malta Biennale Art 2026, with a declared value of €82,593.40:

10,940			Gazzetta tal-Gvern ta' Malta 21,490		
Entità	Numru ta Referenza tad-Direct Contract	Isem tad-Direct Contract/Suġġett tad-Direct Contract	Data tal-Ghotja	Isem tal-Kuntrattur	Valur tal-Kuntratt Eskluża l-VAT (€)
Entity	Direct Contract Reference Number	Direct Contract Title/ Subject of Direct Contract	Award Date	Contractor's Name	Contract Value Excl. VAT (€)
Heritage Malta (HM)	HM24/255/2024	Service Direct Order with Ms. Rosa Martínez for the provision of Artistic Director Services for the maltabiennale art 2026	03/12/2024	Ms. Rosa Martinez	€82,593.40

27. Consequently, the Commissioner requested the Public Authority to clarify how the information regarding the value of the contract could be withheld in the light of the fact that it had been published in the Government Gazette. Accordingly, in response to a clarification requested by the Commissioner, the Public Authority held that:

“[i]t is important to clarify that the information in question was NOT published by Heritage Malta, but in our opinion was erroneously published by the Ministry. The Agency is required to submit to the Ministry, on a biannual basis, a list of direct orders exceeding €10,000. The Agency complied with this procedure; however, it was the Ministry’s responsibility to ensure that direct orders awarded to individuals—containing sensitive business information—were not disclosed publicly”.

⁷ Ibid 1.

28. The Commissioner emphasises that, since the information pertaining to the value of the contract is already in the public domain, the disclosure of the general contractual clauses, including remuneration, duration, and other clauses of an administrative nature, cannot reasonably be expected to cause any form of harm under article 32(1)(c)(i) of the Act.
29. The Commissioner proceeded to examine the second part of the engagement contract and noted that the annexes contain information of a different nature from the general contractual provisions, as these set out in detail the professional duties, responsibilities and deliverables agreed upon between the Public Authority and Ms Martinez in connection with her role as Artistic Director for the Malta Biennale 2026.
30. As a matter of principle, the Commissioner is of the view that engagement contracts funded by public money should be disclosed in their entirety, and that non-disclosure should be limited to very exceptional circumstances. In this specific case, given the niche nature of the cultural and artistic sector, and the fact that Ms Martinez is widely regarded as one of the leading professionals in her field, the duties and obligations set out in the contract are specifically tailored to her role as an Artistic Director, including deliverables and responsibilities unique to Malta Biennale 2026. Therefore, the Commissioner is of the view that disclosure of this information could prejudice Ms Martinez's professional affairs, as it would reveal the specific terms, conditions, and performance standards to which she is bound. Such disclosure could reasonably be expected to negatively impact her future professional opportunities, both in Malta and internationally, and undermine her negotiating position, given the limited number of professionals of her calibre in this highly specialised field.
31. Consequently, the Commissioner concludes that the second part of the contract, namely the annexes, falls within the exemptions provided under article 32(1)(c)(i) of the Act, as their disclosure could reasonably be expected to harm the professional interests of Ms Martinez.

Request II

32. By means of the second part of the freedom of information request, the applicant sought copies of all contracts related to the engagement of consultants or advisors by the Public Authority during 2023, 2024 and 2025 until the date of reply. On the 2nd May 2025, the Public Authority informed the applicant that the “*request cannot be acceded to in terms of Article 32(1)(b) & (c) of the Chapter 496 of the Laws of Malta*”.

33. During the course of the investigation, the Public Authority confirmed, both in writing and during the on-site meeting of the 20th August 2025, that no such contracts exist. Article 15(1)(a) of the Act provides that where a request is made by an applicant, the Public Authority is required to give the applicant the reason(s) for the refusal. Article 15(1)(a) of the Act reads as follows:

“Where a request made in accordance with this Act is refused, the public authority shall – (a) subject to article 34, give the applicant the reasons for the refusal”.

34. To this end, article 14 of the Act sets forth an exhaustive list of reasons for refusal which may be cited by the Public Authority when refusing a freedom of information request. This is intended to ensure that public authorities are transparent and held accountable when refusing a request for information.
35. Upon examining the replies of the Public Authority dated the 2nd May 2025 and the 16th May 2025, the Commissioner observed that the Public Authority failed to inform the applicant, as required under article 15(1)(a) of the Act, that it did not hold the contracts, in accordance with the reason held in article 14(g). Instead, the reason for refusal provided was limited solely to article 14(b) of the Act. It was only during the course of the investigation that the Commissioner was informed that the Public Authority does not hold a copy of all the information requested by the applicant. Pursuant to article 14(g) of the Act, where a public authority does not hold the requested information, it is required to inform the applicant accordingly and to state that it has no grounds to believe that the information is held by another public authority.

On the basis of the foregoing considerations, pursuant to article 23(3)(b) of the Act, the Commissioner is hereby serving the Public Authority with a decision notice and concluding that:

- a. the exemption cited by the Public Authority in terms of article 32(1)(b) of the Act does not apply;**
- b. the exemption cited by the Public Authority in terms of article 32(1)(c)(i) of the Act only applies to the Annexes of the engagement contract pertaining to Ms Rosa Martinez; and**
- c. the Public Authority failed to inform the applicant, as required under article 15(1)(a) of the Act, that it does not hold the information requested in relation to Request II for the reason set forth in article 14(g) of the Act.**

By virtue of article 23(4)(a) of the Act, the Public Authority is hereby being ordered to provide the applicant with an electronic copy of the first part of the engagement contract related to Ms Rosa Martinez, excluding the Annexes of the contract in question, and after redacting certain personal data, more specifically, any identification document numbers, address details and, or signatures. This information shall be provided within twenty (20) working days from the date of service of this decision notice and the Commissioner shall be informed of the action taken immediately thereafter.

Ian
DEGUARA
(Signature)

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by Ian DEGUARA
(Signature)
Date: 2025.11.17
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Ian Deguara
Information and Data Protection Commissioner

Right of Appeal

In terms of article 39(1) of the Act, “[w]here a decision notice has been served, the applicant or the public authority may appeal to the Tribunal against the notice within twenty working days”.

An appeal to the Information and Data Protection Appeals Tribunal shall be made in writing and addressed to “The Secretary, Information and Data Protection Appeals Tribunal, 158, Merchants Street, Valletta”⁸.

⁸ Further information on the procedure of the appeal is available at: <https://idpc.org.mt/appeals-tribunal/>