

vs

COMPLAINT

1. On the 8th October 2024, [REDACTED] (the "**complainant**") lodged a data protection complaint with the Information and Data Protection Commissioner (the "**Commissioner**") in terms of article 77(1) of the General Data Protection Regulation¹ (the "**Regulation**"), alleging that [REDACTED] (the "**controller**") unlawfully disclosed her personal data to the [REDACTED] (the "**[REDACTED]**"), and consequently, infringed the provisions of the Regulation. The complainant submitted that "[REDACTED] *wrote to my working place (that I never provided) and shared my private info, that was provided as to a lawyer...*". According to the complainant, the complainant believed that the controller "*found my current employment through my LinkedIn profile*".
2. As supporting documentation, the complainant forwarded a statement that she had previously submitted to the [REDACTED] on the 2nd September 2024. In this statement, the complainant explained that she was the former client of the controller, a financial lawyer. The complainant further explained that she had contacted the controller to inform him that he had allegedly made several legal errors and incorrect calculations in the services he provided, and accordingly, the complainant requested a refund for the fees she had paid. The matter remained unresolved, and the complainant escalated the case by submitting "*my case to the Malta Competition and Consumer Affairs Authority (MCCAA) and shared all correspondence, contracts, related documentation, and [REDACTED] calculations with ACCA and MIA, who are able to confirm or reject my submission. This is a straightforward individual case between a financial lawyer and his client*".

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 (General Data Protection Regulation).

3. Since no supporting evidence was provided to show that the controller allegedly disclosed her personal data to the ██████ the Commissioner requested the complainant to substantiate the allegation by submitting additional evidence of the alleged unauthorised disclosure of her personal data.
4. On the 25th October 2024, the complainant informed the Commissioner that the “█████ wrote to [her] that they are able to provide all the information to the commissioner”. Accordingly, on the 28th October 2024, the ██████, upon the request of the complainant, submitted the following information to the Commissioner:
 - a. that “I [the DPO of ██████ examined emails sent by a ██████ ██████ that were parts of an email exchange sent to him by ██████, his client. By forwarding her emails, he revealed her personal email address”;
 - b. that “█████ did this out of fear that ██████ was accessing TPS systems, in order to access his personal data”; and
 - c. that “[s]ubsequent audits ... revealed that ██████ had not accessed the TPS and therefore had not accessed ██████’s personal data”.
5. The ██████ provided the Commissioner with a copy of the email it received from the controller on the 25th August 2024. In this email, the controller requested the ██████ to investigate whether the complainant has accessed or compromised his personal data. In his correspondence, he stated that “[a]s her linkedin profile she is working in the ██████ and I am extremely worried about access to my personal data. I do not know what data she might possess about me but I would like to be reassured that no public official can use his position in office to threaten me”. This was followed by an email dated the 1st September 2024, in which the controller submitted to the ██████ correspondence exchanged between himself and the complainant concerning the dispute.

INVESTIGATION

Request for submissions

6. By means of an email dated the 11th November 2024, and pursuant to the internal investigative procedure of this Office, the Commissioner provided the controller with a copy of the complaint, including the supporting documentation, and enabled the controller to submit any information which he deemed necessary and relevant to defend himself against the allegation

raised by the complainant. In terms of article 58(1)(e) of the Regulation, the Commissioner requested the controller to specify the legal basis upon which he relied to process the personal data of the complainant.

Submissions of the controller

7. On the 11th November 2024, the controller provided the following submissions for the Commissioner to consider during the legal analysis of this case:
 - a. that the complainant had disclosed to the controller that she works at the [REDACTED] [REDACTED] – that the “[REDACTED] *is the same place that houses [the] [REDACTED] (her workplace)*”;
 - b. that the complainant informed the controller that “*she sees [him] there*” when he visits the premises of [REDACTED];
 - c. that her LinkedIn page, which is a publicly accessible online page, demonstrates that she works at the [REDACTED];
 - d. that the complainant has been sending him “*threats all the time, and is a very dangerous person... and to protect my reputation and integrity, I [the controller] felt that I had to report her to her workplace for her misconduct as it is not ethical threatening a vat and tax investigation - since I felt she was abusing of her ‘authority’ of her workplace (at least that is how I perceived her messages)*”;
 - e. that the complainant is trying to find all authorities to report him to, and that as per supporting documentation provided, the complainant “*consistently tells [him] that if [he doesn’t] give her the refund she will report [him] to all authorities*”; and
 - f. that this complaint should be dismissed as it is frivolous, vexatious and has no legal basis.
8. The controller submitted the following supporting documentation together with his submissions:
 - a. an extract of a WhatsApp conversation between himself and the complainant, dated the 21st -25th August 2024;
 - b. a copy of an email thread between himself and the complainant, dated the 25th - 26th August 2024;

- c. a copy of an email thread between himself and other third-parties as part of a prior unrelated legal claim as legal representative on behalf of the complainant, dated the 21st August 2022 - 4th September 2022; and
 - d. a copy of an email received from the complainant, referred to by the controller as the ‘*latest threat*’ from the complainant, dated the 30th August 2024.
9. In view of the mention of “*threats*” referred to by the controller, the Commissioner noted the following pertinent excerpts from the thread between the complainant and the controller:
- a. Email from the complainant to the controller dated the 25th August 2024 at 14:22 stating *inter alia*:
 - that “[a]ll payments were made either in cash or via your wife’s Revolut account”;
 - that “*I regret having to complain, but I found the service provided to be highly unprofessional. I kindly request a refund for the service, as I am dissatisfied with your handling of the matter. If we cannot reach an agreement on the refund, I will be compelled to report the case to the MIA, the Chamber of Advocates, the Commission for the Administration of Justice, and Maltese Customer Care [sic] (I have the receipt from Revolut). Furthermore, as you mentioned, the payment via Revolut was made to avoid VAT charges*”; and
 - to “[p]lease let me know your decision within the next three days. I have all our WhatsApp chats, which I can use as evidence if necessary”.
 - b. Email from the controller to the complainant dated the 25th August 2024 at 15:45 stating *inter alia*:
 - that “[c]an you confirm if you are actually threatening to report me if I don’t return your fees. As you know there are serious legal implications about your allegations that are criminal in nature. I need to receive a retraction of that statement so that this matter is not escalated further”.
 - c. Email from the complainant to the controller dated the 25th August 2024 at 17:39 stating *inter alia*:
 - that “[t]here was no threat involved. I have payment confirmations and our WhatsApp chat, including audio, as evidence”;
 - that “my current concern is only with the payment I made”;

- that “*I discovered several mistakes even after the payment was completed*”;
 - that “*I kindly ask for a refund of the fee I paid. After considering the situation, I believe this request is fair. I am not threatening you; this is a formal letter to notify you that I would like to discuss the possibility of resolving this matter before escalating it to the relevant authorities*”; and
 - that “[*i*]f we are unable to reach an agreement, I will have no choice but to report the case to the appropriate bodies (as i wrote in my previous email). I believe a three-day period is reasonable for us to find a resolution, which is why I asked whether you prefer to review the case or set up an appointment to discuss it. If you choose not to arrange a resolution, I will proceed with reporting the case, including all relevant chats and correspondence.”.
- d. Email from the controller to the complainant dated the 25th August 2024 at 17:55 stating *inter alia*:
- that “*I will check for what you paid me and the service that was provided. To my knowledge when you came to me you had already gone to dier yourself. So long time passed*”; and
 - that “[*y*]es I am being threatened - if you report me to the authorities that is tantamount to threat and I need to protect myself against your frivolous allegations.”
- e. Email from the complainant to the controller dated the 25th August 2024 at 18:02 stating *inter alia*:
- to “[*k*]indly check how to solve the situation”;
 - that “*I claim the refund for unprofessional service provided*”;
 - that “[*f*]rom my end I am able to provide all the facts. This case is still has a place and all relevant charts [*sic*], correspondence I have”;
 - that “[*i*]f you need longer time than 3 days, kindly let me know.”
- f. Email from the controller to the complainant dated the 25th August 2024 at 21:17 stating *inter alia*:
- that “[*i*]t is absurd that you are trying to claim back whatever you paid me. I share community of acquest with my wife who is able to receive money on my behalf”;

- that *“I do not understand why a professional is trying to bully me and requesting money back after 2 years and abusing her position of work to threaten to report me to:*

“If we cannot reach an agreement on the refund, I will be compelled to report the case to the MIA, the Chamber of Advocates, the Commission for the Administration of Justice, and Maltese Customer Care (I have the receipt from Revolut). Furthermore, as you mentioned, the payment via Revolut was made to avoid VAT charges.”

This is extortion and I have no option but to safeguard my position. Particularly that you are a public official working with the tax department makes me more worried now that you are threatening me”;

- that *“[t]he way you are writing these intimidating emails make you in breach of article 112 and 113 of the Criminal Code”* and
- that *“[w]hat I would suggest is to seek legal counsel and retract these statements.”*

g. Email from the complainant to the controller dated the 25th August 2024 at 21:26 stating *inter alia:*

- that *“[m]y concern is about unprofessional service that i received, and I have reached out to you as a private person not as a public servant”;* and
- that *“[i]f we don't agree the refund i prefer to submit the information to the relevant departments, as I mentioned before.”*

h. Email from the complainant to the controller dated the 26th August 2024 at 10:41 stating *inter alia:*

- that *“I just received a phone call from the [REDACTED] Police Station. Upon reviewing the proof of the second payment yesterday, I realized that the payment was for €50 + €100 (not €50 + €150, as I mentioned in my previous email)”;*
- that *“I will attend the appointment and provide all related information. Additionally, I intend to file a formal complaint against you and submit it to all relevant departments that protect my rights as your former client”;*
- that *“[y]ou also refused to provide an invoice when I requested it, and you neglected correspondence with the advocate from a different party, which,*

according to our agreement, should have been included in the charges”;

- that *“I contacted you as your former client, not as an employee of any department. I never hid the fact that I used to work in the [REDACTED] system”;*
- that *“I contacted you before submitting an official complaint to the relevant authorities to find an agreement, to notify you, and to point out your mistakes, in case you hadn't noticed them”;* and
- to *“[p]lease let me know if you agree to refund the €150, or I will proceed with filing complaints through legal channels.”*

i. WhatsApp exchange between the complainant and the controller dated the 25th August 2024:

- [REDACTED] *“Hello, kindly let me know have you checked? I have a possibility to apply for a guarantee funds, but do i able if the company will be struck off? Etc”;*
- [REDACTED] *“A long time passed. You can't open case like that after 2 years - our correspondence is dated October 2022 - furthermore I don't know why you say my calculations were wrong - you went to dier yourself if I remember well and then I asked you for the case fees and you stopped communicating - I can't help you I'm sorry”;*
- [REDACTED] *“Your calculation was wrong in reality and you never contacted dr [REDACTED] back.”;*
- [REDACTED] *“Yes, i have few questions”;*
- [REDACTED] *“For quarantine funds 2 years are ok”;*
- [REDACTED] *“Yes cause you didn't pay”;*
- [REDACTED] *“I paid”;*
- [REDACTED] *“As we agreed”;*
- [REDACTED] *“It's best you find other lawyer for this case sorry”;*
- [REDACTED] *“Can't help you sorry”;*
- [REDACTED] *“I wanted to discuss with you since this time the fact of the wrong calculation and the fact that we lost the contract with [REDACTED]”;*
- [REDACTED] *“I have an other lawyer”;*
- [REDACTED] *“And i see you often in the court and [REDACTED]”;*
- [REDACTED] *“Who is [REDACTED]”;*
- [REDACTED] *“Kindly check a possibility to provide the refund to me”;*

- [REDACTED] “I don’t go a lot to [REDACTED]”;
- [REDACTED] “Where do you work?”;
- [REDACTED] “Because since the beginning we provided the wrong calculation”;
- [REDACTED] “I go to cash office sometimes”;
- [REDACTED] “Please check a possibility to provide the refund”;
- [REDACTED] “Too long time passed now”;
- [REDACTED] “Doesn't matter”;
- [REDACTED] “The case is still has a place at the court”;
- [REDACTED] “The calculation was wrong and all communication spoiled”;
- [REDACTED] “Please, you received 200 from me, kindly provide it back”;
- [REDACTED] “Incredible”;
- [REDACTED] “All the evidence in the emails”; and
- [REDACTED] “Please stop you are insulting me.”

Further remarks by the controller in his submissions

10. On the 11th November 2024, by means of a separate email, the controller further submitted, in reference to the email thread between himself and the complainant, that “*she has anticipated many times that she will be reporting [the controller] to the competent authorities the first time being 25th August 2024. See attached highlighted parts.*”.
11. With this further email, the controller submitted once again the thread between himself and the complainant dated the 25th - 26th August 2024, this version with specific parts highlighted in yellow, for emphasis.

Clarification sought by the Commissioner on the legal basis

12. By means of a further email sent by this Office, the Commissioner followed up to obtain clarification from the controller as to the legal basis relied upon under article 6(1) of the Regulation, for the disclosure of the complainant’s personal data to the [REDACTED].
13. On the 12th November 2024, the controller submitted the following submissions:
 - a. that the controller’s legal basis for contacting the [REDACTED], given his concern that the complainant may have accessed and misused his personal data through her employment, was the protection of his legal interest, and therefore, this constitutes a legitimate interest in terms of article 6(1)(f) of the Regulation;

- b. that the legitimate interest arises from the need to protect his proprietary information and ensure that it is not misused, particularly by individuals who have accessed it through their professional role. In this context, the public authority involved has an essential role in addressing and preventing any misuse of information by its employees, thereby mitigating any harm caused to the controller; and
- c. that, given that the controller himself is a lawyer, he opted to handle this matter directly, rather than engaging external legal representation, which would have been another viable option. That he ensured that no unnecessary details were divulged during his communication with the [REDACTED], restricting his message strictly to the relevant facts that were essential for addressing the suspected confidentiality breach. This approach was taken with careful consideration of data protection principles, ensuring proportionality and respect for the rights of all parties involved.

Submissions of the complainant

14. As part of this Office's investigation procedure, the Commissioner provided the complainant with the opportunity to rebut the controller's submissions, and by means of an email dated the 23rd December 2024, the complainant raised the following notable points:
 - a. that her conversations(s) with the controller were from the point of view of a client dissatisfied with the controller's service, and that she had the right to raise the issue with the relevant authorities; and
 - b. that the complainant never disclosed to the controller where she was employed.
15. On the 16th January 2025, the complainant additionally provided the below salient submissions concerning this complaint:
 - a. that the controller wrote that the complainant threatened him *"but to submit the case to ACCA (which I did), to MIA, to MCCA, and even to the VAT department is my right as his former client"*;
 - b. that *"I work in the legal department, and my position is Analyst. I don't have access to any database and never checked any information about [REDACTED] or his company. I checked only the ACCA registry in September 2024, which is public information...."*;
 - c. that *"I never provided an agreement to [REDACTED] to share my private information, which*

he obtained as a lawyer during private consultation...”;

- d. that one of the controller’s queries to the [REDACTED] department was assigned to her during such time, and the complainant informed her CEO that the query is from the controller who had lodged a complaint against her to the [REDACTED], following which the management removed the query from her, and that she never checked any information from the working resource to which she has no access; and
- e. that the controller threatened the complainant that he would open a criminal case against her, alleging that she “*used [her] employment*”.

16. The complainant submitted the following supporting documentation together with her submissions:

- a. a copy of an email thread between the controller and other third-parties as part of a prior unrelated legal claim, whereby the controller was legal representative acting on behalf of the complainant, dated the 21st - 26th August 2022;
- b. extracts of WhatsApp conversations between herself and the controller, dated the 22nd August – 11th October 2022, 10th April – 5th October 2023, 1st March – 18th June 2024;
- c. extracts of WhatsApp conversations between herself and the controller, dated the 16th December 2023 – 25th August 2024;
- d. a copy of an email thread between the complainant and the controller, dated the 21st - 26th August 2024;
- e. a copy of a Malta Institute of Accounts (MIA) complaint form, in the name of the complainant against the controller, dated the 27th August 2024; and
- f. recordings of audio messages from both the complainant and the controller.

Controller’s final submissions and legitimate interest assessment

17. Pursuant to the internal investigative procedure of this Office, the Commissioner forwarded the complainant’s submissions to the controller for his final submissions in connection with the case.

18. On the 6th February 2025, the controller, through his legal representative, brought the following salient counter-arguments to the complainant’s submissions:
- a. that there is an ongoing dispute between the complainant and the controller, which extends beyond data protection matters;
 - b. that the complainant has lodged complaints with various entities in relation to the subject matter of this dispute; and
 - c. that *“it is evident that [the complainant] is attempting to misuse the regulatory framework of data protection to advance a private dispute”*.
19. The Commissioner subsequently requested the controller to provide him with a copy of the legitimate interest assessment (“LIA”). On the 26th March 2025, the controller, through his legal representative, submitted the LIA in connection with the disclosure of the complainant’s personal data to the [REDACTED] with the final determination that:

“The legitimate interest of the controller outweighs any minimal risks to former client. The processing is proportionate, justified, and necessary.”

LEGAL ANALYSIS AND DECISION

20. For the purpose of this legal analysis, the Commissioner proceeded to examine the subject-matter of the complaint, in which the complainant alleged that the controller had unlawfully disclosed her personal data to the [REDACTED], without a valid legal basis in terms of article 6(1) of the Regulation.
21. In terms of article 58(1)(e) of the Regulation, the Commissioner requested the controller to indicate the legal basis upon which he relied to disclose the complainant’s personal data to the [REDACTED]. The controller submitted that the data were processed on the basis of a legitimate interest pursuant to article 6(1)(f) of the Regulation, which provides that the processing of personal data is lawful if it is *“necessary for the purposes of the legitimate interests pursued by the controller or by a third party, except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data”*.
22. The Commissioner therefore proceeded to consider the applicability of article 6(1)(f) of the Regulation, specifically how the legal assessment was conducted by the controller based on

the criteria in conformity with recital 47 of the Regulation. The Court of Justice of the European Union² (the “CJEU”) case law states that for article 6(1)(f) of the Regulation to apply, there should be “*three cumulative conditions*” so that the processing of personal data would be legal.

23. The case-law of the CJEU reiterated on a number of occasions that a controller may rely on article 6(1)(f) of the Regulation if it satisfies this three-part test.³ In particular, the CJEU in the landmark ruling of Rigas stated that:

*“In that regard, article 7(f) of Directive 95/46 lays down three cumulative conditions so that the processing of personal data is lawful, namely, first, the pursuit of a legitimate interest by the data controller or by the third party or parties to whom the data are disclosed; second, the need to process personal data for the purposes of the legitimate interests pursued; and third, that the fundamental rights and freedoms of the person concerned by the data protection do not take precedence”.*⁴

24. According to the accountability principle as established in article 5(2) of the Regulation, the controller should be able to demonstrate that the three (3) cumulative conditions apply; that is, to demonstrate the existence of a legitimate interest, and that the processing is truly needed for legitimate reasons pursued by the controller, except when such interests are overridden by the interests or fundamental rights and freedoms of the data subjects.

The first limb of the test

25. In order for the first limb of the test to be satisfied, there must be a specific legitimate interest pursued either by the controller or by a third party that justifies the processing of personal data. The Regulation does not define “*legitimate interest*”, nor does it provide an exhaustive list of interests that are considered as being legitimate. The CJEU however has explicitly recognised in its rulings that a wide range of interests is, in principle, capable of being regarded as legitimate.⁵ This position is also reiterated in the EDPB Guidelines 1/2024 on processing of

² Case C-13/16, Valsts policijas Rīgas reģiona pārvaldes Kārtības policijas pārvalde v Rīgas pašvaldības SIA ‘Rīgas satiksme’, dated 4 May 2017, paragraph 28.

³ C-13/16, Rīgas satiksme, paragraph 28, and C-708/18 TK v Asociația de Proprietari bloc M5A-ScaraA, paragraph 40.

⁴ C-13/16, paragraph 28.

⁵ Joined Cases C-26/22 and C-64/22. ‘SCHUFA Holding and Others (Libération de reliquat de dette)’ judgment of the 7th of December 2023, paragraph 76.

personal data based on article 6(1)(f) of the Regulation,⁶ which further explain that the legitimate interest must be lawful, clearly identified, and already present at the time of the processing – that it cannot be merely speculative or hypothetical.⁷

26. The Commissioner interprets “interest” to be the broader stake that a controller may have in the processing, or the benefit that the controller or third parties may derive from such processing. This interpretation is substantiated by the recitals of the Regulation, which provide some non-exhaustive examples of situations in which legitimate interest could exist, and this could include, processing for the purpose of preventing fraud.
27. The Commissioner examined the controller’s LIA, whereby the controller held that he “... *has grounds to believe that the [complainant] improperly accessed confidential data in the context of her employment at the the [sic] [third-party].*” The controller highlighted, in the LIA that, “[t]he legitimate interest exists, as it concerns data protection compliance, prevention of misuse of personal data, and accountability”. The Commissioner also noted that, the controller in his email to the ██████ dated the 25th August 2024, wrote “*I am extremely worried about access to my personal data*” and therefore, requested the ██████ “*to investigate this matter and reassure me that my personal data has not been accessed or compromised*”. This led the Commissioner to establish that the legitimate interest pursued by the controller at the time of the processing of the complainant’s personal data was to safeguard his right to the protection of personal data.
28. The Commissioner further examined the exchanges between the parties, which clearly demonstrate that the complainant had, on several occasions, requested the return of fees and expressed her intent that in the absence of this, the complainant will pursue complaints with multiple relevant bodies in the context of this dispute. Without entering into the merits of the underlying dispute, the Commissioner observes that the controller expressed serious concern that, in the context of the dispute, the complainant could potentially, or may have already, used her position at ██████, which information pertaining to her employment is publicly available on her LinkedIn profile, to unlawfully access his personal data for purposes unrelated to her employment.
29. The Commissioner is of the view that, while the complainant has every right to exercise all the remedies provided by law in relation to the dispute against the controller, the controller

⁶ EDPB Guidelines 1/2024 (n **Error! Bookmark not defined.**), paragraph 16.

⁷ EDPB Guidelines 1/2024 (n **Error! Bookmark not defined.**), paragraph 17.

equally has the right to safeguard his personal data and request a verification from the [REDACTED] as to whether his personal data were unlawfully accessed by the complainant for her own personal reasons. In these circumstances, the controller's actions to safeguard his legal interests, in particular, his fundamental right to the protection of his personal data, and to prevent any potential unlawful processing of his personal data, constitute a legitimate interest.

The second limb of the test

30. Accordingly, in order for the second limb of the test to be satisfied, the processing activity must genuinely be necessary for the realisation of the identified legitimate interest. In this regard, the CJEU has consistently reiterated in its judgements⁸ that such processing should be carried out only “*in so far as is **strictly** necessary for the purposes of that legitimate interest*” [emphasis has been added].
31. The Commissioner examined the recent judgement of *Meta v. Bundeskartellamt*,⁹ where the CJEU held that the assessment of what is actually ‘necessary’ requires ascertaining whether the legitimate interest pursued could be achieved just as effectively by alternative means that are less restrictive of the data subject’s fundamental rights and freedoms. In relation to the second condition of the legitimate interest test, the Commissioner proceeded to determine whether the processing of personal data pertaining to the complainant was indeed necessary for the purpose of the attainment of the legitimate interest at issue. In the same judgement, the CJEU further explained that this assessment must be conducted bearing in mind the principle of data minimisation under article 5(1)(c) of the GDPR, which requires that personal data be “*adequate, relevant and limited to what is necessary in relation to the purposes for which they are processed*” [emphasis has been added]. It therefore follows that it is not enough that the processing may be useful in the particular circumstances. Rather, the processing must be limited to what is objectively necessary to achieve the legitimate interest identified in the first limb of the test, and therefore, there should be a nexus between the processing and the interest pursued.
32. The Commissioner considered, from the controller’s LIA, the consideration of whether the “*scope of processing*” ought to be considered as “*limited*”, which the controller documented

⁸ Joined Cases C-26/22 and C-64/22, SCHUFA Holding and Others (Libération de reliquat de dette) judgment of the 7th of December 2023 (paragraph 88), Case C-252/21, Meta Platforms Inc and Others v. Bundeskartellamt, judgement of the 4th of July 2023 (paragraph 126).

⁹ Case C-252/21, Meta Platforms Inc and Others v. Bundeskartellamt, judgement of the 4th of July 2023 (paragraphs 108-109)

as follows: “...*proposed* [disclosure] *is targeted and factual, avoiding unnecessary disclosure of personal details.*”

33. The CJEU in the *TK vs Asociația de Proprietari bloc M5A-ScaraA* held that the necessity test must consist, in essence, in ensuring that the legitimate interest “*cannot reasonably be as effectively achieved by other means less restrictive of the fundamental rights and freedoms of the data subjects, in particular the rights to respect for private life and to the protection of personal data guaranteed by Article 7 and 8 of the Charter*”¹⁰ [emphasis has been added].
34. Consequently, the Commissioner proceeded to examine in this context, the specific personal data disclosed by the controller to the [REDACTED]. The Commissioner agrees that the disclosure of the complainant’s name and surname, and her employment, were necessary in the pursuit of ascertaining that the controller’s personal data were not unlawfully accessed by the complainant.
35. In relation to the disclosure of the complainant’s identity card number, the Commissioner notes that the [REDACTED] would already be in possession of such personal data on account of the employment obligations vis-à-vis the complainant. Although the risk arising from the disclosure of the identity card number is minimal, the complainant does not have a common name, making it highly unlikely that any other employee shares the same exact name. In this context, the Commissioner considers that the disclosure of the identity card number was not necessary.
36. Additionally, the Commissioner notes that the controller sent a further email to the [REDACTED] on the 1st September 2024, enclosing private email correspondence exchanged between the complainant and the controller in the context of their dispute. This email contained not only the complainant’s private email address, but the content also divulged the exchange of correspondence relating to her. This information constitutes personal data pertaining to the complainant within the meaning of article 4(1) of the Regulation. During the course of the investigation, the controller did not effectively demonstrate how the disclosure of this private correspondence was necessary for the limited purpose of enabling the [REDACTED] to investigate the matter concerning the possible misuse of his personal data. In addition, when the Commissioner examined the correspondence submitted by the controller to the [REDACTED] on the 1st September 2024, none of the information contained therein indicates that the complainant may have possibly accessed the personal data of the controller. Consequently, the disclosure

¹⁰ C-708/18, paragraph 47.

of this correspondence cannot reasonably be regarded as supporting evidence for his request addressed to the [REDACTED], namely, “*to investigate this matter and reassure me that my personal data has not been accessed or compromised*”.

37. In view of this, the controller failed to concretely demonstrate the necessity of disclosing the parties’ private correspondence to the [REDACTED] for the purposes of enabling the [REDACTED] to internally investigate the matter raised by the controller in his correspondence dated the 25th August 2024.

The third limb of the test

38. The Commissioner proceeded to assess the third part of the test only to the limited extent that it concerned the disclosure of the complainant’s name, surname, and employment-related information to the [REDACTED].

39. In order for the third limb of the test to be satisfied, recital 47 of the Regulation states, *inter alia*, that the pursuit of a legitimate interest may constitute a legal basis for processing, provided that “*...the interests or fundamental rights and freedoms of the data subject are not overriding*.” The EDPB Guidelines 1/2024 state that, provided the interest pursued is legitimate, and the processing is necessary for this purpose, the last condition for a controller to rely on the ground of article 6(1)(f) of the Regulation is that the legitimate interest in question must not be overridden by the interests or fundamental rights and freedoms of the data subject.¹¹ This condition therefore entails “*a balancing of the opposing rights and interests at issue which depends in principle on the specific circumstances of the particular case*”.¹² This third and final test is consequently referred to as the ‘balancing test’ or ‘balancing exercise’.

40. In balancing the controller’s legitimate interest against the rights and interests of the complainant, the Commissioner noted that the disclosure of the complainant’s name, surname, and employment information to the [REDACTED] are sufficient to enable the [REDACTED] to conduct its own verifications in relation to the suspicion raised by the controller in his email dated the 25th August 2024. At the same time, the potential impact on the complainant’s rights is minimal. Accordingly, the Commissioner finds that, in this instance, the controller’s legitimate interest is not overridden by the rights and interests of the complainant, and the

¹¹ EDPB Guidelines 1/2024 (n **Error! Bookmark not defined.**), paragraph 31.

¹² EDPB Guidelines 1/2024 (n 5), paragraph 32.

disclosure of the complainant's name, surname, and employment information to the [REDACTED] was indeed proportionate and justified.

On the basis of the foregoing considerations, the Commissioner is hereby deciding that disclosure of the complainant's name, surname, and employment-related information to the [REDACTED] was necessary for the purpose of enabling the controller to pursue his legitimate interest, namely, safeguarding his right to the protection of his personal data.

However, the controller failed to effectively demonstrate the necessity of disclosing the additional personal data relating to the complainant, and consequently, the controller infringed article 6(1) of the Regulation.

In terms of article 58(2)(b) of the Regulation, the Commissioner is hereby serving the controller with a reprimand and warned that in the event of another infringement concerning unlawful disclosure of personal data without a lawful basis, the Commissioner shall take the appropriate corrective action.

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

The parties are hereby being informed that 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 to the Information and Data Protection Appeals Tribunal within twenty (20) days from the service of the said decision as provided in article 23 thereof¹³.

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*".

¹³ Further information on the appeals procedure is available on <https://idpc.org.mt/appeals-tribunal/>.