

CDP/FOI/16/2025

Caroline Muscat

vs

Office of the Prime Minister

FREEDOM OF INFORMATION REQUEST

1. On the 9th February 2025, Ms Caroline Muscat (the “**applicant**”) made a 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 the Office of the Prime Minister (OPM) (the “**Public Authority**”) to provide the following information in electronic format:

“ - Copy of Framework of Categorisation, Classification and Remuneration of Government-appointed Boards and Committees”.

2. On the 12th March 2025, the Public Authority informed the applicant that her request could not be met on the basis that:

“The information being requested is a Cabinet document and is exempt by virtue of Article 29(2) of the Freedom of Information Act. The conditions and circumstances where and when Cabinet documents can be disclosed are clearly defined in the said legislation.

The same request was submitted by the same media house and was turned down for the same reason on 11th August 2023”.

3. On the 18th March 2025, the applicant submitted a complaint via the internal complaints procedure of the Public Authority and argued that “[y]our interpretation of a cabinet document

is wrong and the document is in the public interest”. On the 4th April 2025, the Public Authority reiterated its refusal and stated that “[t]he public authority reiterates that the requested information is a Cabinet document and is exempt by virtue of Article 29(2) of the Freedom of Information Act (Cap. 496). The definition of a Cabinet document is officially established in sub-regulation (2) of regulation 29 of the Act and the document being requested clearly matches the said definition. Moreover, the fact that the contents of a document could be in the public interest does not alter the applicability of article 29 of the Act for such documents”.

FREEDOM OF INFORMATION APPLICATION

4. On the 5th April 2025, the applicant applied for a decision notice pursuant to article 23(1)(a) of the Act and requested the Information and Data Protection Commissioner (the “**Commissioner**”) to decide whether the request for information made by the applicant to the Public Authority was handled pursuant to the requirements of the Act.

INVESTIGATION

Admissibility of the Freedom of Information Application

5. After having considered that the applicant is an eligible person in terms of article 2 of the Act and that the application was lodged by the applicant within the time-limit established within the Timeframes for lodging complaints and requests for investigation and review regulations, Subsidiary Legislation 496.02, and the nature and background of the application, the Commissioner deemed the application as admissible for the purpose of article 23(2) of the Act.

The Issuance of an Information Notice

6. As part of the investigation procedure, by means of an information notice dated the 28th April 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 freedom of information application made by the applicant. In particular, the Public Authority was requested to make submissions in relation to the decision taken to refuse access to the requested documentation on the basis that article 29 of the Act.

Submissions of the Public Authority

7. By means of a letter dated the 26th May 2025, the Public Authority submitted the following arguments for the Commissioner to consider during the legal analysis of the case:
 - a. that the Public Authority reaffirms its position regarding its decision to refuse access to the document entitled *'Framework of Categorisation, Classification and Remuneration of Government-appointed Boards and Committees'*, on the basis that the requested document constitutes a cabinet document within the meaning of article 29(2)(b) of the Act;
 - b. that the Public Authority reiterates that the refusal to grant access is based on the fact that the document in question was formally submitted to the cabinet and subsequently discussed during cabinet meetings;
 - c. that the decision, including the Manual itself, was not published in accordance with the provisions of the applicable law;
 - d. that it is further noted that an identical request had previously been submitted by the same media house and was refused on the 11th August 2023 on the same grounds; and
 - e. that the reasoning underpinning that earlier decision remains relevant and fully applicable to the present request.

Submissions of the Applicant

8. Pursuant to the internal investigative procedure of this Office, the Commissioner provided the applicant with a copy of the submissions presented by the Public Authority, including the supporting documentation, in order to enable the applicant to rebut the arguments raised by the Public Authority. By means of an email dated the 6th June 2025, the applicant submitted the following arguments:
 - a. that the position is maintained that the document in question constitutes a public document and should therefore be made available.

- b. that reference is made to various replies to parliamentary questions in which information relating to the remuneration of public boards, funded through public funds, has been requested, and wherein Members of Parliament were referred to the same document which the Government is currently refusing to publish;
- c. that “[t]he same government is also using this hidden document not to reply to FOIs! Again, it refers to the document it is refusing to publish”; and
- d. that “the document should be made public as is in the public interest and surely not some secret cabinet document protected by law!”.

Final Submissions of the Public Authority

- 9. The Public Authority was provided with the final opportunity to provide any further arguments and by means of a letter dated the 24th June 2025, the Public Authority submitted the following:
 - e. that “the requested document is a Cabinet document in accordance with article 29(2)(b) of the Freedom of Information Act (Chapter 496 of the Laws of Malta). The disclosure of any document considered a record of the Cabinet is specifically prohibited by this clause as well as other legislation referred to below”;
 - f. that “[t]he undersigned reiterates that the document in question has not been officially published, nor has it been made available to the public in any form. Accordingly, it remains protected by law and cannot be disclosed under the Freedom of Information Act. This position is firmly grounded in law and consistent with the principle of Cabinet confidentiality. Moreover, the disclosure of Cabinet documents is punishable by means of articles 133 and 275 of the Criminal Code (Cap. 9)”;
 - g. that “on 11 August 2023, the Public Authority denied the same media outlet’s similar request for this document on the same legal grounds. Since then, neither the facts nor the law have changed. No decision has been made to publish the said document and therefore it is still not subject to disclosure”;
 - h. that “[w]ith regard to the applicant’s claim that the Government’s position is contradicted by answers to Parliamentary Questions — specifically PQ2084-6 cited

by the applicant — this assertion is factually incorrect. The Minister did not publish the document, nor did he commit to making it publicly available. The rules on the disclosure of Cabinet documents apply to ministers too. In this case, the Minister simply referred to the existence of the Manual upon which remuneration decisions are based”;

- i. that “[s]uch reference does not constitute publication and does not amount to a waiver of the exemption afforded under Article 29(2)(b). Accordingly, there is no contradiction in invoking this exemption in the present context”;
- j. that “[t]he applicant further argues that the document is in the public interest and should therefore be disclosed. It goes without saying that all decisions by the Cabinet are deemed to be relevant to the public interest. However, the argument on public interest does not override the absolute exemption provided under Article 29(2)(b). This is a non-discretionary exemption, and therefore, once a document falls within its scope, the Public Authority is prohibited from disclosing it, regardless of the perceived public interest”;
- k. that “[t]he claim by the applicant concerning ‘many identical replies’ also lacks sound reasoning as the Government has refused claims based on the exemption afforded to Cabinet documents on a very low number of instances and strictly when such documents were classified as such”; and
- l. that “[w]hile the Government remains committed to fulfil its obligations under the Freedom of Information Act and continue to provide its utmost cooperation with the Office of the Information and Data Protection Commissioner, the Office of the Prime Minister cannot ignore, sideline or breach its legal obligations with respect to the handling of exempt documents as defined in the same Act”.

Further Clarification sought by the Commissioner

10. Following an email sent by the Commissioner to the Public Authority requesting clarification as to when the document was submitted to the Cabinet, the Public Authority stated that “*the requested document was formally submitted to the Cabinet and discussed during a meeting of the Cabinet in 2016*”. Subsequently, on the 7th January 2026, the Public Authority declared

that “[t]he Manual for Setting the Categorisation, Classification and Remuneration of Government Appointed Boards and Committees was discussed and approved by the Cabinet on the 10th January 2017”.

LEGAL ANALYSIS AND DECISION

11. The Commissioner proceeded to examine the freedom of information request submitted by the applicant on the 9th February 2025 pursuant to the requirements set forth in article 6(1) of the Act, wherein she requested the Public Authority to provide “[c]opy of Framework of Categorisation, Classification and Remuneration of Government-appointed Boards and Committees”. This request was refused by the Public Authority on the 12th March 2025 and 4th April 2025 on the basis that “the requested information is a Cabinet document and is exempt by virtue of Article 29(2) of the Freedom of Information Act (Cap. 496)”.
12. Following the issuance of the information notice pursuant to article 24(1)(a) of the Act, the Public Authority submitted that the request of the applicant was refused in terms of article 29(2)(b) of the Act. To this end, the Commissioner examined the exemption cited by the Public Authority, which provides that subject to sub article (3) of article 29 of the Act, a document is deemed exempt if it is “an official record of the Cabinet”.
13. The Commissioner notes that the purpose of article 29 of the Act is to safeguard the principle of Cabinet confidentiality, which enables members of Cabinet to deliberate on matters of policy in a manner that preserves the confidentiality of the decision-making process. Consequently, documents that qualify as Cabinet documents are subject to an absolute exemption from disclosure and therefore the Act does not require the Public Authority to undertake a balancing exercise between the public interest in disclosure and the interest in maintaining confidentiality.
14. During the course of the investigation, the Commissioner emphasised that the onus rests upon the Public Authority to submit evidence to effectively demonstrate that the document requested by the applicant is indeed exempt in terms of article 29(2)(b) of the Act. Accordingly, the Public Authority maintained that the requested document was formally submitted to Cabinet and discussed during a Cabinet meeting in 2016. Subsequently, by means of further clarification provided to the Commissioner, the Public Authority declared that “[t]he Manual for Setting the Categorisation, Classification and Remuneration of Government Appointed Boards and Committees was discussed and approved by the Cabinet on the 10th January 2017”.

On the basis of the foregoing considerations, pursuant to article 23(3)(b) of the Act, the Commissioner is hereby serving a decision notice and deciding that the refusal of the Public Authority to provide a copy of the requested document is indeed justified in terms of article 29(2)(a) of the Act.

Ian
DEGUARA
(Signature)



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by Ian DEGUARA
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Ian Deguara
Information and Data Protection Commissioner

Right of Appeal

In terms of article 39(1) of the Act where a “[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 writing¹ and addressed to ‘The Secretary, Information and Data Protection Appeals Tribunal, 158, Merchants Street, Valletta’.

¹ More information about the process of appeal is available [here](#).