

## FREEDOM OF INFORMATION REQUEST

1. On the 10<sup>th</sup> December 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 Malita Investments p.l.c. (the “**Public Authority**” or “**Malita**”) to provide the following information:

*“Please supply a list of ALL payments made until the date of reply to this FOI to XYZ architects or members of the firm in connection with the Bormla social housing project since its inception. The list should include the date of payment, the name of the recipient and the value.”.*

2. On the 5<sup>th</sup> January 2026, the Public Authority refused the request of the applicant on the basis of article 5(1)(f), article 5(3)(a), article 30(2)(a), article 31(2), article 32(1)(b), article 32(1)(c)(i) and article 38(a) and (b) of the Act. On the same day, the applicant requested the Public Authority to revise its decision pursuant to its internal complaints procedure. On the 12<sup>th</sup> January 2026, the Public Authority reiterated its reasons of refusal.

## FREEDOM OF INFORMATION APPLICATION

3. On the 12<sup>th</sup> January 2026, the applicant applied for a decision notice pursuant to article 23(1)(a) of the Act, requesting the Information and Data Protection Commissioner (the “**Commissioner**”) to decide whether the Public Authority has handled the freedom of information request pursuant to the requirements of the Act.

## INVESTIGATION

### Admissibility of the Freedom of Information Application

4. 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

5. As part of the investigation procedure, by means of an information notice dated the 13<sup>th</sup> January 2026, 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 Commissioner requested the Public Authority to provide the following information:
  - a. to specify whether the payments were made to XYZ Limited and, or to individual members in their professional capacity;
  - b. with reference to the exemption cited in terms of article 30(2)(a) of the Act, the Public Authority was requested to specify the procedures to which it refers and to provide supporting documentation;
  - c. to clarify whether a contract exists in relation to the services provided by XYZ Limited and, or any of its members, and whether such contract contains a confidentiality clause, and if in the affirmative, to provide the exact wording of the confidentiality clause;
  - d. to clearly explain how the disclosure of information would disclose any information having a commercial value that would be, or could reasonably be expected to be, destroyed or diminished if the information were disclosed;
  - e. to explain how disclosure of the information would, or could reasonably be expected to, unreasonably affect an individual adversely in respect of his or her lawful business or professional affairs, and to specify which individuals may be affected and the nature of the adverse impact on such individuals resulting from such disclosure; and

- f. to justify the relevance and applicability of article 38(a) and (b) of the Act in relation to the refusal of the FOI request.

### **Submissions of the Public Authority**

6. On the 18<sup>th</sup> February 2026, the Public Authority submitted the following information for the Commissioner to consider during the legal analysis of the case:

Article 5(1)(f) of the Act

- a. that Malita Investments p.l.c. is a listed public company on the Malta Stock Exchange, and despite that the Government of Malta holds a controlling interest in Malita, private shareholders have invested capital in the company, and therefore, as a listed company, Malita owes fiduciary and confidentiality obligations to such investors as well;
- b. that Malita operates entirely as a private commercial entity, with operational and functional independence and it deals primarily with the acquisition, development and management of immovable property, the leveraging of revenue streams arising therefrom and the reinvestment of undistributed profits in national and, or strategic real estate projects as well as in commercial property opportunities;
- c. that within the context of the Bormla social housing project mentioned in the freedom of information request, whilst the Bormla project serves a public purpose, this does not transform commercial procurement into public functions;
- d. that many listed companies serve public purposes (utilities, pharmaceuticals, infrastructure) without losing commercial character and the public interest in social housing delivery can be satisfied through outcome transparency without disclosing detailed commercial fee arrangements;
- e. that, as a commercial entity effectively operating within a competitive market, Malita's revenues are derived from its very commercial operations and not directly from the State and it is not State funded, and the information relating to architects and architect payments is private and confidential and should not be made public;
- f. that the information relating to architect information and payments is inextricably linked to the commercial activities of Malita Investments p.l.c. on the basis of the following: (i) a disclosure of this information would reveal the internal workings and conduct of business

of Malita, the information is related to Malita's procurement approach, fee assessment, payment structures, and commercial strategy; (ii) the architectural services were procured through commercial negotiations and fee structures reflect commercial judgment about market rates and value; (iii) Malita's activities are commercial, generating revenue through property operations, paying dividends to shareholders based on commercial performance, competing in markets for projects and service providers, and making decisions to protect shareholder value; and (iv) private investors purchased shares expecting normal commercial confidentiality;

Article 32(1)(b) of the Act

- g. that Malita engages in commercial activities with the purpose and intention of generating income, as opposed to performing a public function. Information relating to these activities is not only confidential, but the disclosure thereof is likely to confer a competitive advantage to other companies that operate in the market;
- h. that information about project costs and fee arrangements (including those to architects) could affect investor's perception of Malita's profitability and cost management;
- i. that disclosure outside regulated channels provides some market participants with information advantages, prejudicing other shareholders (and breaching the requirements of Market Abuse Regulation);
- j. that Malita operates with functional independence, generating revenue through commercial property operations (not State funding) and payments to architects were made from such commercial revenues, not public appropriations;
- k. that Malita as a listed company competing with private sector entities not subject to the FOI Act, disclosure would create competitive disadvantage harming other's commercial position and shareholder value;
- l. that, based on the above, Malita has a critical commercial interest in withholding such information, which once disclosed, could significantly reduce its ability to compete in a commercial environment effectively;

Article 31(2) of the Act

- m. that whilst there is no confidentiality clause provided in the XYZ Limited's agreement, the documents in the request are bound by confidentiality for these reasons:

- i. that the commercial entity engaged by Malita, and any agreements in respect of these services were negotiated with Malita in circumstances that gave rise to an obligation of confidence between the service provider and Malita, and for this reason, both parties have a legitimate expectation that the terms negotiated between them would remain private;
- ii. that any access to this information could result in a situation where a breach of the confidentiality commitments could found an action against Malita, if it were to disclose such information;
- iii. that the directors of Malita are bound to keep commercial sensitive information protected as this pertains to the operations of the company, and Malita's directors owe duties to all shareholders, including private investors, to protect commercial interests and competitive positions;
- iv. that, as a listed company, Malita is subject to the Market Abuse Regulation (EU) No 596/2014, which prohibits selective disclosure of price-sensitive information and the Regulation defines "*inside information*" as unpublished information that, if disclosed, would likely affect share price. It also requires inside information to be disclosed to the entire market simultaneously through regulated channels, otherwise selective disclosure would be outside normal regulatory processes;

Article 5(3)(a) of the Act

- n. that with respect to Malita's refusal based on article 5(3)(a) of the Act, following further internal consideration in relation to the architects' payments specifically on the Bormla project, Malita confirmed that such payments were directed to XYZ Limited and not to individual members, and as a result, Malita would not insist on this ground of refusal;

Article 30(2)(a) of the Act

- o. that with respect to article 30(2)(a) of the Act, the information requested in the FOI relating to architects engaged by Malita, is sensitive and constitutes confidential commercial information. A freedom of information request should not require disclosure conflicting with capital markets obligations designed to protect investors and market integrity. Malita

cannot exclude that if this information is publicised, this may affect its rights to a fair and impartial adjudication;

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

- p. that with regards to article 32(1)(c)(i) of the Act, the information requested in this case relates to the service providers' professional and financial affairs, and disclosure of payments made to XYZ Limited is commercially sensitive information which ought to remain confidential;
- q. that such disclosure, especially when requested by a media house, would likely be intended for publication to the general public and could be interpreted out of context, giving rise to speculation and criticism directed towards Malita and XYZ Limited, which may be adversely affected in respect of their lawful business, commercial or financial affairs; and

Article 38(a) and (b) of the Act

- r. that with respect to the refusal on the basis of article 38(a) and (b) of the Act, the Public Authority submitted that it is subject to regular audits, governance reviews, compliance examinations and performance assessments;
  - s. that, in fact, it has a number of such audits on-going that might potentially be prejudiced by disclosure, and the effectiveness of these audit procedures depends in part upon the ability of auditors to examine Malita's information/documents independently and without prior public disclosure, which may undermine the ability of auditors to reach impartial conclusions free from external influence.
7. The applicant was provided with a copy of the submissions of the Public Authority and provided with the opportunity to submit its rebuttal. The applicant subsequently informed the Commissioner that no further submissions would be made and requested that a decision notice be issued.

**LEGAL ANALYSIS AND DECISION**

- 8. For the purpose of this legal analysis, the Commissioner will determine the applicability of the exemptions in the same sequence as presented in the submissions of the Public Authority.

**Article 5(1)(f) of the Act**

9. The Public Authority in its responses to the applicant dated the 5<sup>th</sup> and the 12<sup>th</sup> January 2026 reiterated that the provisions of the Act should not apply to documents held by the Public Authority on the basis of article 5(1)(f) of the Act. In the present case, the Public Authority submitted that Malita Investments p.l.c. is a listed public company on the Malta Stock Exchange. It further argued that, although the Government of Malta retains a controlling interest in the company, Malita has private shareholders who have invested capital therein. Consequently, the Public Authority contended that Malita operates as a private commercial entity.

10. The Commissioner refers to the definition of “*public authority*” as held in article 2 of the Act, which reads as follows:

““*public authority*” means:

- (a) *the Government, including any ministry or department thereof;*
- (b) *a Government agency established in terms of the Public Administration Act or any other law; and*
- (c) *any body established under any law, or **any partnership or other body in which the Government of Malta, a Government agency or any such body as aforesaid has a controlling interest** or over which it has effective control”*  
[emphasis has been added].

11. In view of the above and having regard to the Public Authority’s own submission that the Government of Malta holds a controlling interest in Malita Investments p.l.c., it follows that the commercial entity falls squarely within the scope of sub-paragraph (c) of the definition of “*public authority*”.

12. Accordingly, the Commissioner proceeded to assess article 5(1)(f) of the Act, which the Public Authority invoked in its responses to the applicant. This sub-provision sets out the non-applicability of the Act where the following requirements are fulfilled:

“5. (1) *Subject to sub-article (2), this Act shall not apply to documents that –*

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*(f) are held by a commercial partnership in which the Government or another public authority has a controlling interest, in so far as the documents in question relate to the commercial activities of the commercial partnership” [emphasis has been added].*

13. Article 5(1)(f) of the Act is triggered where the documents requested are (a) held by a commercial partnership in which the Government has a controlling interest, and (b) relate to the commercial activities of that partnership. Where these two (2) cumulative requirements are satisfied, the Act does not apply to such documents. With regard to the first requirement, the Public Authority itself has confirmed that the Government holds a controlling interest in Malita Investments p.l.c.. Therefore, this requirement is not in dispute. As to the second requirement, namely whether the documents in question relate to the commercial activities of Malita Investments p.l.c., the Commissioner proceeded to examine the submissions presented by the Public Authority in order to determine whether this criterion is met.
  
14. In its submissions, the Public Authority is described as operating as a fully commercial entity with operational and functional autonomy and conducting its activities in a competitive market on the same basis as private sector operators. In relation to the Bormla social housing project referred to in the freedom of information request, the Public Authority argued that although the project serves a public purpose, this does not convert Malita’s commercial activities into public functions. In addition, the Public Authority held that it derives its revenues from its commercial operations, is not funded by the State, and operates within a competitive market environment. For this reason, the Public Authority considered the disclosure of information inextricably linked to the commercial activities of Malita on the basis of the following: (a) the information would reveal internal workings and would benefit Malita’s competitors and place Malita in a disadvantage in comparison with other entities which are not subject to such FOI requests; (b) the architectural services were procured through commercial negotiations and the fees reflect market rates and value; and (c) private investors purchased shares expecting normal commercial confidentiality, and therefore, disclosure could prejudice the competitive position and harm their investment.
  
15. The Commissioner notes that although Malita Investments p.l.c. operates as a commercial entity, the Bormla social housing project serves a distinct public purpose. The payments to architects in connection with this project are directly linked to the planning, design, and delivery of a social housing project, and thus intrinsically connected to the exercise of a public function in the State’s provision of social housing.

16. In his considerations, the Commissioner notes the submissions of the Public Authority, wherein it explained how the information requested by the applicant is inextricably linked to the commercial activities on the basis that the *“disclosure of this information would reveal the internal workings and conduct of business of Malita; the information is related to Malita’s procurement approach, fee assessment, payment structures, and commercial strategy. This information would benefit Malita’s competitors, and place Malita in a disadvantage in comparison with other entities which are not subject to such FOI requests”*.
17. In addressing the submissions, the Commissioner remarks that the Public Authority has presented arguments of commercial sensitivity without demonstrating, in a concrete and specific manner, how disclosure of the requested information would give rise to a real and substantial risk of prejudice to Malita’s commercial interests. The mere reference that the disclosure of information would lead to potential competitive disadvantage via-a-vis its competitors does not, in itself, suffice to justify refusal under the Act. Were this argument to be accepted, it would effectively undermine the purpose of the Act by allowing public authorities to evade transparency on the basis that private companies are not subject to equivalent disclosure requirements. In addition, the Commissioner does not accept that the term *“internal workings”* extends to the payments made to architects. Payments to professionals represent a routine financial administrative task and does not include, or otherwise reveal, the entity’s internal decision-making processes, strategies, or business methodologies.
18. In its submissions, the Public Authority raised its second argument in favour of non-disclosure, which states that *“the architectural services were procured through commercial negotiation. Fee structures reflect commercial judgement about market rates and value. Payments were made from Malita’s commercial revenues, not governmental appropriations”*.
19. The Commissioner notes that the architectural services which were procured through commercial negotiation does not render the resulting information exempt from disclosure. The relevant consideration is not the method of procurement, but whether the Public Authority could effectively demonstrate specific harm which could arise from disclosure. As regards the source of funds, the assertion that payments were made from Malita’s commercial revenue rather than governmental appropriations is not relevant. The Commissioner clarifies, that where an entity falls within the material scope of the Act, its obligations do not necessarily arise upon whether a particular payment derives directly from the State’s budgetary allocations. The applicability of the Act may still arise from other relevant factors, including the State’s majority shareholding, as is the case here.

20. The Public Authority presented its third argument that “*private investors purchased shares expecting normal commercial confidentiality. Disclosure prejudicing competitive position would harm their investment. Article 5(1)(f) must be interpreted to protect these legitimate interests otherwise it would deter private investment in companies with governmental participation*”. The Commissioner does not accept this argument. Where a commercial entity falls within the scope of the Act by virtue of the Government of Malta holding a controlling interest, the application of the Act arises *ex lege*. Any private investor who elects to acquire shares in such a similar entity does so fully cognisant that such entity is indeed subject to the legal framework stipulated by the FOI Act. The Commissioner is of the view that commercial participation in an entity subject to governmental control carries with it the foreseeable possibility of the disclosure of certain documents. Therefore, the expectations of private investors cannot be regarded as a decisive or relevant consideration in assessing whether disclosure would cause prejudice to the Public Authority.
21. Therefore, based on the foregoing considerations, the Commissioner considers that the document requested by the applicant falls within the material scope of the Act. For this reason, the Commissioner proceeded to examine the other exemptions cited by the Public Authority in its responses to the applicant.

**Article 32(1)(b) of the Act**

22. The Public Authority cited article 32(1)(b) of the Act as one of the reasons of refusal, which reads as follows: “*A document is an exempt document if its disclosure under this Act would disclose: - (b) 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*”.
23. In its submissions, the Public Authority held that the disclosure of information pertaining to payments made to architects: (a) would likely confer a competitive advantage to other companies that operate in the market; (b) could affect investor perception of Malita’s profitability and cost management; and (c) would prejudice other shareholders and breach the Market Abuse Regulation requirements.
24. The Commissioner notes that this exemption under article 32(1)(b) of the Act is intended to safeguard the commercial interests of a public authority, enabling it to participate competitively in commercial activity. However, in assessing the submissions of the Public Authority, and as outlined in the preceding section of this decision, it is evident that no explanation has been provided as to how competitors could use the disclosed information to obtain a tangible market

advantage. In particular, the Public Authority has failed to demonstrate how such information could be operationalised by competitors to replicate pricing strategies or otherwise distort competitive conditions. Any alleged competitive advantage remains speculative, remote and not supported by evidence.

25. Additionally, the contention that disclosure could affect investors' perception is also speculative. The exemption under article 32(1)(b) of the Act is not intended to protect against potential shifts in the market sentiment arising from lawful transparency, especially when the information concerns payments made to architects associated with a public social housing project.
26. Finally, as regards the Public Authority's submission that disclosure of the requested information would infringe the requirements of Regulation (EU) 596/2014<sup>1</sup>, the Commissioner notes that no adequate information has been provided to demonstrate how the information in question constitutes "*inside information*" within the meaning of article 7 of Regulation (EU) 596/2014. The Commissioner considers that disclosure of information effected pursuant to a legal obligation under the Act does not amount to the type of disclosure prohibited by Regulation (EU) 596/2014. Accordingly, in the absence of any substantiated evidence that the information requested by the applicant qualifies as "*inside information*", or that its disclosure would give rise to a risk of market abuse, reliance on Regulation (EU) 596/2014 is not justified.
27. In light of the above, the Commissioner concludes that the information requested concerns payments made in the context of a specific service requested by the Public Authority and is limited to the financial terms of engagement with a Public Authority. Therefore, the information in relation to payments made to XYZ Limited lacks the necessary commercial sensitivity to engage the exemption under article 32(1)(b) of the Act.

### **Article 31(2) of the Act**

28. The Public Authority cited article 31(2) of the Act as one of the reasons for refusing to disclose a copy of the requested information. This provision reads as follows: "*A document is an exempt document if its disclosure under this Act would found an action by a person (other than a public authority) for breach of confidence*".

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<sup>1</sup> Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (market abuse regulation) and repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC.

29. In its submissions, the Public Authority stated that there are no confidentiality clauses provided in the XYZ Architects' agreements, however, the document requested by the applicant is bound by confidentiality for the following reasons: (a) that the circumstances of the case gave Malita and its service provider the legitimate expectation that the terms negotiated between them would remain private; (b) any access could result in a situation where breach of the confidentiality commitments could found an action against Malita; (c) Malita directors are bound to keep commercial sensitive information protected as this pertains to the operations of the company and Malita's directors owe duties to all shareholders, including private investors, to protect commercial interests and competitive position; and (d) the Market Abuse Regulation (EU) No 596/2014 prohibits selective disclosure of price-sensitive information.
30. The Commissioner refers to one of the most recent judgments delivered by the Court of Appeal, wherein the Court provided its interpretation of article 31(2) of the Act. In the judgment *Rebecca Bonello Ghio vs Malta Film Commission*<sup>2</sup>, the Court held that:

*“15. It-Tribunal spjega wkoll li sabiex japplika l-artikolu 31(2) tal-Kap. 496 tal-Liġijiet ta' Malta, iridu jiġu osservati diversi kriterji, **fosthom li l-awtorità pubblika tkun kisbet din l-informazzjoni minghand persuna oħra, li l-iżvelar jammontaw għal ksur tal-kunfidenzjalità; li l-persuna affettwata tkun tista' tibda proċeduri ġudizzjarji minhabba f'tali ksur tal-kunfidenzjalità; u li din il-persuna jkollha ċans tajjeb li tinghata raġun mill-Qorti.***

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*16. Il-Qorti tqis li fil-każ odjern għandhom japplikaw l-istess prinċipji. L-appellanta ma tistax targumenta li l-informazzjoni li qiegħda tintalab tiżvela giet miksuba minghand xi hadd b'mod kunfidenzjali, imma dan huwa każ fejn l-appellanta qiegħda tintalab tiżvela informazzjoni li toħroġ minn kuntratt li hija dahlet għalih minn jeddha, fejn qablet li fih għandha tiddaħhal klawsola ta' kunfidenzjalità. **L-artikolu 31(2) tal-Kap. 496, jispeċifika b'mod ċar li dokument huwa dokument eżentat meta jkun fih materjal li jiġi miksub b'mod kunfidenzjali, u u mhux meta l-awtorità pubblika tidhol hija stess f'kuntratt u tkopri ruħha bi klawsola ta' kunfidenzjalità, jew meta tirredigi dokument u tikklassifikah hija stess bħala kunfidenzjali.**” [emphasis has been added].*

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<sup>2</sup> Case Reference Number: 83/2023, delivered by the Court of Appeal and presided by Judge Lawrence Mintoff on the 31<sup>st</sup> January 2024.

31. Therefore, according to the Court of Appeal, the exemption under article 31(2) of the Act is only engaged if these factors are cumulatively satisfied; (a) the public authority has received confidential information from another person; (b) the said person which is affected as a result of the disclosure of information has the ability to initiate judicial proceedings for a breach of confidentiality; and (c) the said person has a reasonable prospect of success in court.
32. In such case, the information requested by the applicant relates to payments which the Public Authority paid to architects in connection with a social housing project. According to the submissions of the Public Authority, “*the architectural services were procured through commercial negotiation. Fees structures reflect commercial judgement about market rates and value*”. It is therefore clear that the payments made to architects do not constitute information that the Public Authority has received in confidence from the architects. The payments represent fees that the Public Authority has itself agreed to pay based on markets rates and assessed value. Consequently, the Commissioner is of the view that the first requirement outlined by the Court of Appeal, namely that the public authority must have received confidential information from another person, is not satisfied in the present case. This led the Commissioner to decide that the exemption cited by the Public Authority under article 31(2) of the Act does not apply to the present case.

#### **Article 5(3)(a) of the Act**

33. In its response to the applicant, the Public Authority also invoked the non-applicability of the Act on the basis that the documents requested contain personal data within the meaning of article 4(1) of Regulation (EU) 2016/679<sup>3</sup>. However, during the course of the investigation, the Public Authority informed the Commissioner that the non-applicability of the Act had been wrongly invoked, as the payments in question were made to XYZ Limited and not to a natural person.

#### **Article 30(2)(a) of the Act**

34. In its response to the applicant, the Public Authority cited article 30(2)(a) of the Act, which reads as follows:

*“A document is an exempt document if its disclosure under this Act would, or could reasonably be expected to:*

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<sup>3</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 (General Data Protection Regulation).

*(a) prejudice the fair trial of a person or the impartial adjudication of a particular case by any court, tribunal, disciplinary board, arbitration panel or similar body, or prejudice any inquiry conducted under the Inquiries Act”.*

35. As part of the investigation of this FOI application, the Commissioner requested the Public Authority to clarify whether any proceedings or inquiries were pending at the time of receipt of the FOI request. In its submissions dated the 17<sup>th</sup> February 2026, the Public Authority contended that disclosure pursuant to the FOI request could conflict with capital market obligations aimed at safeguarding investor protection and market integrity. It further submitted that the publication of such information could potentially prejudice its right to a fair and impartial adjudication.
36. From the submissions provided, the Commissioner notes that the Public Authority has invoked the exemption notwithstanding the absence of any pending proceedings or inquiries. In the circumstances, the reliance on such exemption is premised on a purely hypothetical or speculative scenario. The Commissioner emphasises that the exemption must be justified on the basis of actual and reasonably foreseeable prejudice, and not on abstract possibilities.
37. In addition, the Commissioner refers to the decision ‘*Rebecca Bonello Ghio vs Malta Enterprise*’ of the Information and Data Protection Appeals Tribunal decided on the 3<sup>rd</sup> October 2024, wherein it was held that the exemption under article 30(2)(a) of the Act is justified where the requested documents form part of an ongoing inquiry. This effectively demonstrates that the application of the exemption requires the existence of an ongoing inquiry and cannot be premised on mere possibility or speculative future scenarios.

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

38. The Public Authority invoked article 32(1)(c)(i) of the Act, which provides that a document is exempt if the:

*“(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 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”.*

39. The Commissioner sought to determine whether the Public Authority has managed to concretely demonstrate that the disclosure of payments made to XYZ Limited would give rise to any prejudice capable of justifying refusal under article 32(1)(c)(i) of the Act.
40. In its submissions dated the 17<sup>th</sup> February 2026, the Public Authority contended that disclosure “*would likely be intended for publication*” and “*could be interpreted out of context*”, potentially giving rise “*speculation and criticism*” affecting XYZ Limited in its commercial or financial affairs.
41. The Commissioner notes that the alleged harm is once again framed in speculative and hypothetical terms. The Public Authority does not specify how the disclosure would result in concrete damage. Instead, the concern of the Public Authority is limited to the possibility of public misunderstanding or criticism. On the contrary, public scrutiny, including the possibility of public debate, is an intended and essential consequence of the Act that is integral to achieving its core objectives of transparency and accountability.
42. Furthermore, the architectural firm provided services to a company in which the government holds a controlling interest. In doing so, it ought reasonably to have been aware that such a company is subject to the obligations of the Act. Any exception that the agreed financial rates would remain confidential is therefore diminished. Service providers who elect to contract with public authorities must accept the possibility of disclosure in accordance with the Act.

#### **Article 38(a) and (b) of the Act**

43. In its response to the applicant, the Public Authority cited article 38(a) and (b) of the Act, claiming that the Public Authority is subject to regular audits by various regulatory and oversight bodies. Article 38(a) and (b) of the Act provides as follows:

*“Subject to article 35, a document is an exempt document if its disclosure under this Act would, or could reasonably be expected to:*  
*(a) prejudice the effectiveness of procedures or methods for the conduct of tests, examinations or audits by a public authority;*  
*(b) prejudice the attainment of the objects of particular tests, examinations or audits conducted or to be conducted by a public authority”.*

44. A document is deemed to be exempt under article 38(a) and (b) of the Act where its disclosure would, or could reasonably be expected to cause harm, therefore introducing a requirement for a real and substantiated risk rather than mere speculation. This exemption protects two distinct but related interests. Under sub-paragraph (a), the law intends to safeguard the effectiveness of procedures or methods used in tests, examination or audits. This may include, for example, audit techniques, evaluation criteria, marking schemes and testing protocols. Whilst under sub-paragraph (b), the law seeks to protect the attainment of the objectives of such processes, namely what they are designed to achieve. The use of the term “*prejudice*” in both sub-paragraphs indicates that there must be an identifiable adverse impact, and the burden lies on the Public Authority to demonstrate a clear casual link between disclosure and the envisaged harm. Therefore, this provision is directed at preventing the manipulation, circumvention, or distortion of audit methods and, or outcomes.
45. The Public Authority submitted that it has a number of audits ongoing that might potentially be prejudiced by disclosure of the requested information. It argued that disclosing the requested information may undermine the effectiveness of these audit procedures by compromising the ability of auditors to examine the Public Authority’s documentation independently and without prior public exposure. According to the Public Authority, such disclosure could interfere with the ability of the auditor to reach impartial conclusions free from external influence.
46. The Commissioner observes that public authorities are, by their nature, subject to periodic internal and external audits as part of established governance and accountability frameworks. The Public Authority’s position rests on a general assertion that public exposure and criticism may influence the audit process and put external pressure on the auditors. However, the Public Authority fails to distinguish between genuine prejudice to audit methodology or outcomes and mere exposure to public scrutiny and criticism. Auditors operate under recognised international standards and exercise their duties in professional objectivity, and no substantiated basis has been provided to suggest that the public disclosure of the requested information would impair their ability to assess evidence and reach impartial and objective conclusions. As noted in previous sections of this decision, public scrutiny is an inherent result of the FOI legislative framework. Accepting the Public Authority’s argument would effectively amount to recognising a blanket exemption for any information liable to attract criticism, which would go against the principles of transparency and accountability underlying the Act.
47. Furthermore, the exemption invoked by the Public Authority falls within Part VI of the Act and is therefore expressly subject to the public interest test in accordance with article 35(2) of

the Act. This requires the Public Authority to demonstrate through an assessment that the public interest in maintaining the exemption outweighs the public interest in disclosure. However, the Public Authority failed to demonstrate which elements were taken into consideration when conducting the public interest assessment.

48. As a final observation, the Commissioner refers to the jurisprudence of the Court of Appeal concerning requests of a similar nature to the present case. In ‘*Caroline Muscat vs Awtorita tad-Djar*’<sup>4</sup>, which involved a freedom of information request for a list of payments made to a company and an individual, the Court of Appeal ruled in favour of the appellante, Ms Muscat. The Court of Appeal affirmed that, as a general principle, actions of public authorities relating to payments are subject to transparency and public scrutiny.

49. In the present case, Malita Investments p.l.c. is a public authority in which the Government holds a controlling interest. Accordingly, a heightened level of transparency is to be expected, particularly in relation to payments made in connection with a project which concerns social housing, which falls within the core functions of the State.

**On the basis of the foregoing considerations, and in terms of article 23(3)(b) of the Act, the Commissioner is hereby serving a decision notice and deciding that the Public Authority was not justified in refusing access to the information requested by the applicant pursuant to the freedom of information request.**

**In terms of article 23(4)(a) of the Act, the Public Authority is hereby being ordered to provide the applicant with a copy of “a list of ALL payments made until the date of reply to this FOI to XYZ architects or members of the firm in connection with the Bormla social housing project since its inception. The list should include the date of payment, the name of the recipient and the value” in electronic format within twenty (20) working days from the date of service of this decision notice. The Public Authority shall notify the Commissioner of the steps taken to ensure compliance with this order.**

Ian  
DEGUARA  
(Signature)

Digitally signed  
by Ian DEGUARA  
(Signature)  
Date: 2026.04.09  
11:56:23 +02'00'

**Ian Deguara  
Information and Data Protection Commissioner**

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<sup>4</sup> Case Reference Number: 71/2022, delivered by the Court of Appeal and presided by Judge Lawrence Mintoff on the 15<sup>th</sup> March 2023.

**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<sup>5</sup> and addressed to ‘The Secretary, Information and Data Protection Appeals Tribunal, 158, Merchants Street, Valletta’.

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<sup>5</sup> Further information on the procedure of the appeal is available at <https://idpc.org.mt/appeals-tribunal/>