

FREEDOM OF INFORMATION REQUEST

1. On the 30th November 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:

“1. Last contract of CEO Jennifer Falzon; 2. Last contract of current CEO Amanda Desira; 3. Last contract of Executive Chairman Johan Farrugia; 4. List of payment to all members of the Board of Directors every month in 2024 and 2025 until the reply to this FOI request. The list should include the member’s name, date of payment and value”.

2. On the 1st January 2026, the Public Authority refused the request of the applicant on the basis of article 5(1)(f), article 14(d), article 5(3)(a), article 30(2)(a), article 31(2), article 32(1)(b), article 32(1)(c)(i), article 38(a) and article 38(b) of the Act. On the 4th January 2026, the applicant requested the Public Authority to revise its decision pursuant to its internal complaints procedure. On the 12th January 2026, the Public Authority reiterated its refusal.

FREEDOM OF INFORMATION APPLICATION

3. On the 12th 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 request of 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 13th 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 indicate which information is made publicly available and how it can be accessed by the public (article 14(d) of the Act);
 - b. to specify whether the names of the members of the Board of Directors are publicly available;
 - c. 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 was referring to, and to provide supporting documentation;
 - 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 the disclosure of the information would, or could reasonably be expected to, unreasonably affect that person adversely in respect of his or her lawful business or professional affairs, and to specify 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 18th 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 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 private 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, in this context, whereas the disclosure of certain contracts of employment relating to certain public entities may be in the public interest because they are either unrelated to that entity's commercial activity, or they are intrinsic to public interest in the expenditure of direct public funds, the matter is different in Malita's case and in the context of the information requested by the applicant;
- d. 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;
- e. Malita is a company registered under the Companies Act (Cap. 356 of the Laws of Malta) with governmental controlling interest, satisfying the definitional requirements, however, the information requested by the applicant relating to the management contracts of the CEO and the Executive Chairperson, as well as information relating to the Board of Directors, is inextricably linked to the commercial activities of Malita on the basis of the following grounds:

- i. the CEO and the Executive Chairperson are amongst the most senior executives within Malita, charged with day-to-day management decisions and for implementing the company's plans and if the terms of employment of top management employees were to be publicly available, this will inherently reveal information relating to the internal workings of Malita, which information would benefit its competitors, who are not subject to FOIs, to Malita's disadvantage;
- ii. the role of the Board of Directors is a fundamental aspect of corporate governance and commercial decision-making, with board members appointed to oversee and direct the company's commercial strategy, business operations, and commercial objectives. Information which relates to individuals who oversee the commercial affairs of the company can also be deemed as that linked to its commercial activities and the information sought goes beyond determining the names of the individuals on the Board but is aimed at the Directors' remuneration as well, reflecting the type of skill sought by the company and demonstrating that these individuals have a substantial bearing on Malita's commercial activities;
- iii. the information requested shows internal strategy which is therefore closely linked to Malita's commercial activities, as board governance including the determination of who serves on the Board and how they are compensated represents core internal commercial decision-making processes that are not matters relating to public functions, but rather to Malita's operation as a commercial entity in the marketplace; and
- iv. private investors purchased shares expecting normal commercial confidentiality and disclosure prejudicing competitive position would harm their investment. Article 5(1)(f) must be interpreted to protect these legitimate interest otherwise it would deter private investments in companies with governmental participation.

Article 14(d) of the Act

- f. that without prejudice to the preceding arguments, the requested "*list of payments made to all members of the Board of Directors every month in 2024 and 2025 until the reply to this FOI request, including their name, date of payment and value*" (as well as payments to senior management) can be determined from the 2024 the Annual Report and Financial Statements of the Public Authority, dated the 31st December 2024, and which are publicly available on the website of the Registry of Companies;

- g. that the copy of the information which was provided to the Commissioner indicates the names and surnames of all members of the Board of Directors and the Chief Executive Officer, and the remuneration paid to each one of them during the 2024 financial year;
- h. that the same information for financial year 2025, shall be made available to the public and provided in the 2025 Annual Report and Financial Statements which are due to be published in April 2026, as mandated by the Malta Financial Services Authority's Capital Market Rules, specifically clause 5.56 which provides that: *“An Issuer must ensure that its Annual Financial Report is made available to the public as soon as it has been approved by the Directors. The Annual Financial Report shall be approved, lodged with the MFSA for Validation in terms of Capital Markets Rule 5.56A, and made available to the public by no later than four (4) months after the end of each financial year, and shall remain publicly available for a period of at least ten (10) years”*;
- i. that there is no legitimate reason for this information to be disclosed outside the regulated framework and Malita must ensure that information is released in accordance with the regulatory requirements and is made available to all stakeholders simultaneously, and this principle applies equally to the remuneration of both directors and chief officers;

Article 5(3)(a) of the Act

- j. that the Commissioner has in the past provided that engagement contracts pertaining to individuals occupying the highest level of management within public authorities should be made available to the public and in past decisions, the Commissioner has deemed it justifiable for the public to know about the responsibilities, conditions, allowances, benefits and remuneration of employees who are paid by public funds to make decisions in relation to the management of public authorities;
- k. that it is indisputable that exposing the job description, responsibilities and other available data, such as salary, of an identifiable individual, falls within the scope of Regulation (EU) 2016/679;
- l. that a crucial difference in this case is that Malita adopts functional and operational independence from the Government of Malta and it is answerable to its private investors as a listed company. It is expected to compete on the market and generate revenue and business as any other commercial entity. The employment of the individuals in question (CEO and Executive Chairperson) does not relate to a public office, nor is it paid through public funds but through funds generated by Malita in its business/commercial activities;

Article 32(1)(b) of the Act

- m. that the commercial value could be lost in the information requested on the following grounds:
- i. that Malita engages in commercial activities with the purpose and intention of generating income, as opposed to performing a public function and 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;
 - ii. that information of the nature requested which shows employment terms of employees in executive management positions, requires added protection to preserve its value and to ensure that Malita is not placed in a competitive disadvantage with respect to the conduct of its business, including by possibly a derived advantage through knowledge of employment conditions;
 - iii. that Malita directors are bound to keep commercial sensitive information protected as this pertains to the operations of the company and the directors owe duties to all shareholders, including private investors, to protect commercial interests and competitive position;
 - 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 and it also requires insider information to be disclosed to the entire market simultaneously through regulated channels, otherwise selective disclosure would be outside normal regulatory processed. FOI disclosure to a media organisation could breach the requirements of the Regulation for fair market-wide disclosure;

Article 31(2) of the Act

- n. that a document is exempt if its disclosure would found an action by a person (other than the public authority) for breach of confidence. The documents requested by the applicant are bound by confidentiality for the following reasons:

- i. the employment contracts with Ms Jennifer Falzon, Ms Amanda Desira and Mr Johan Farrugia were negotiated with Malita in circumstances that gave rise to an obligation of confidence between employer and employee;
- ii. the natural persons involved have not consented to the disclosure of their employment contracts, and any access to this information could result in a situation where breach of confidentiality commitments as undertaken pursuant to the contract of employment, could found an action against Malita, if it were to disclose it;
- iii. that Malita directors are bound to keep commercial sensitive information protected as this pertains to the operations of the company; and
- iv. as a listed company, Malita is subject to the Market Abuse Regulation and disclosure to the media could infringe the requirements of the Market Abuse Regulation.

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

- o. that the requested information in this case relates to individuals' professional and financial affairs, and in fact, the disclosure of the employment contracts of the CEO and the Chairperson, would lead to the disclosure of employment conditions including also their remuneration packages, including any bonuses and benefits that they are (or were) entitled to;
- p. that it is pertinent to keep in mind that such disclosure, especially when requested by a media house, would likely be intended for disclosure to the general public;
- q. that salaries and employment conditions of employees are generally negotiated to reflect their professional capacity, and therefore, disclosing the remuneration package and other employment conditions not in line with the Market Abuse Regulation could, apart from giving rise to selective disclosure, give rise to speculation, which would not be based on full knowledge of the relevant facts, and therefore, it is likely to be incorrectly reported or misleading;

Article 30(2)(a) of the Act

- r. that with respect to article 30(2)(a) of the Act, the information requested is sensitive and constitutes confidential commercial information. An FOI request should not require disclosure conflicting with the capital market obligations designed to protect investors and market integrity. Malita cannot exclude that if this information is publicised, this may affect their rights to a fair and impartial adjudication;

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

- s. that with respect to the refusal on the basis of article 38(a) and (b) of the Act, Malita is subject to regular audits, examinations, and tests by various regulatory and oversight bodies, including financial audits, governance reviews, compliance examinations and performance assessments. In fact, it has a number of such audits ongoing, that could be prejudiced by disclosure, and the effectiveness of these audit procedures depends in part upon the ability of auditors to examine Malita's information independently and without prior public disclosure, which may undermine the ability of auditors to reach impartial conclusions free from external influence. In these current circumstances, the public interest served by non-disclosure outweighs the public interest sought.
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 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 –*

...

*(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 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: (i) the CEO and the Executive Chairperson are amongst the most senior executives within Malita and if the terms of the employment were to be disclosed, this would inherently reveal information relating to the internal workings of Malita, which information would benefit its competitors who are not subject to the FOIs, to Malita's disadvantage; (ii) the information sought in relation to the Directors goes beyond determining the names of the individuals on the Board, but is aimed at the Directors' remuneration as well, which reflects the type of skill sought by the company and demonstrating that these individuals have a substantial bearing on Malita's commercial activities; (c) that the information requested shows internal strategy which is therefore closely linked to Malita's commercial activities, as board governance including the determination of who serves on the Board and how they are compensated represents core internal commercial decision-making processes as a commercial entity in the marketplace; and (d) private investors purchased shares expecting normal commercial confidentiality and disclosure prejudicing competitive position would harm their investment.

15. In relation to the first argument, the Public Authority submitted that the disclosure of the engagement contracts of the CEO and the Executive Chairperson would inherently reveal information relating to the internal workings of Malita, which information would benefit its competitors. The Commissioner does not accept that the term "*internal workings*" extends to the employment contracts of the CEO and the Executive Chairperson, in particular, where the remuneration in relation the Chief Executive Office is made publicly available every financial year. In addition, the Public Authority has not demonstrated, in a concrete and specific manner, how the disclosure of the requested contracts of Ms Jennifer Falzon, Ms Amanda Desira and Mr Johan Farrugia 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.

16. The second and the third arguments concerning the “[l]ist of payments to all members of the Board of Directors every month in 2024 and 2025 until the reply of this FOI request” relate to information that is already publicly available in respect of the financial year 2024, while the corresponding information for the financial year 2025 is due to be published in April 2026. In these circumstances, the reliance on commercial sensitivity lacks relevance and cannot be justified.
17. The fourth and final argument relates to the expectations of investors that the information would remain subject to commercial confidentiality. On that basis, the Public Authority claimed that disclosure would prejudice the Public Authority’s competitive position and deter or adversely impact investment. 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 company does so subject to the existing legal framework of the Act. The Commissioner is of the view that commercial participation in an entity subject to governmental control carries with it the foreseeable incidence of the disclosure of 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.
18. Therefore, based on the foregoing considerations, the Commissioner is of the view that the documents requested by the applicant fall 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 14(d) of the Act

19. In its reasons for refusal, the Public Authority cited article 14(d) of the Act which provides that a request may be refused if “*the document requested is publicly available or will be published within three months*”. In its submissions dated the 17th February 2026, the Public Authority submitted that the “*list of payments made to all members of the Board of Directors every month in 2024 and 2025 until the reply to this FOI request, including their name, date of payment and value*” can be determined from the Annual Report and Financial Statements of the Public Authority, dated the 31st December 2024, and which are publicly available on the website of the Registry of Companies. This is in accordance with the Malta Financial Services Authority’s Capital Rules, which require the publication of such information.

20. During the course of the investigation, the Public Authority submitted an extract from its Annual Report and Financial Statements of 2024. This extract was likewise disclosed to the applicant within the framework of the internal investigative procedure of the Commissioner, so as to afford the applicant the opportunity to rebut the submissions made. The extract includes the names and surnames of the directors and their remuneration.
21. In light of the above, the Public Authority was justified in invoking article 14(d) of the Act insofar as the information in relation to the financial year 2024 is already in the public domain. However, this position does not extend to the list of payments made to all members of the Board of Directors in 2025, as such information was neither publicly available nor scheduled to be published within three months at the time of the request.
22. Without prejudice to the foregoing, the Commissioner notes that, in accordance with clause 5.56 of the Malta Financial Services Authority's Capital Market Rules, the information in relation to the financial year of 2025 is required to be published in April 2026 and is therefore expected to be publicly available, or imminently so, at the time of the issuance of the decision.

Article 5(3)(a) of the Act

23. The Public Authority cited the non-applicability of the Act on the basis of article 5(3)(a) of the Act, arguing that "*the Act shall not apply to documents in so far as such documents contain ... personal data subject to the Data Protection Act*".
24. In its submissions, the Public Authority acknowledged the Commissioner's position that the engagement contracts of individuals occupying the most senior posts within public authorities are generally subject to disclosure. However, it argued that the present case is distinguishable on the basis that the contracts are not financed through public funds. The Public Authority submitted that Malita operates with functional and operational independence from the Government of Malta, and that the employment in question neither constitutes a public office nor is remunerated from public funds, but rather from revenues derived from Malita's commercial activities.
25. As a preliminary point, the Commissioner notes that his position, that the employment contracts of individuals occupying the most senior posts within public authorities should be made

publicly available, has been consistently affirmed by both the Information and Data Protection Appeals Tribunal¹ and the Court of Appeal².

26. The Commissioner considers that the mere fact that the engagement contracts are not directly funded through public funds does not, in itself, remove the documents from the material scope of the Act. In the present case, the determining factor is the nature of the entity. The Commissioner considers that the public interest in disclosure is inherent in the company's status as a public authority under the control of the Government of Malta. Entities operating in such a capacity, regardless of their corporate structure or funding sources, remain subject to the requirements of transparency and accountability in terms of the provisions of the Act.
27. In addition, the Commissioner notes that, while remuneration is generally regarded as the most sensitive aspect of employment contracts, this is not the case in the present circumstances. The Public Authority has confirmed that the remuneration of the Chief Executive Officer is information which is disclosed annually in its Annual Report and Financial Statements, pursuant to applicable requirements. For reference, the Commissioner is producing information which is published in the Annual Report and Financial Statement of the Public Authority for the financial year 2024.

Remuneration Statement - continued

Remuneration Report - Senior Management – continued

	Financial Year			
	2024 €	2023 €	2022 €	2021 €
CEO				
Fixed Salary	93,249*	89,980	86,380	80,880
Other Fringe Benefits	12,590	9,969	9,969	9,969
Total Fixed Remuneration	105,839	99,949	96,349	90,849
Variable Remuneration	nil	2,748	10,000	10,000
Total Remuneration	105,839	102,697	106,349	100,849
Fixed to Variable Proportion	100% - 0%	97% - 3%	91% - 9%	90% - 10%

* Until 19 December 2024, as CEO, Jennifer Falzon received a fixed remuneration of €89,783. Till the end of the financial year, as interim CEO, Amanda Desira received a fixed remuneration of €3,466.

28. In these circumstances, any reasonable expectation of privacy in respect of such information, on the part of an individual who occupies or has occupied the role of Chief Executive Officer, is significantly reduced.

¹ Appeal Number 16/2015, Public Broadcasting Services Limited vs Information and Data Protection Commissioner, delivered on the 2nd July 2015 and Appeal Number CDP/FOI/92/2021, Caroline Muscat vs Public Broadcasting Services Limited, delivered on the 2nd March 2023.

² Appeal Number 11/2020 LM, Allied Newspapers Limited vs Foundation for Medical Services, presided by Judge Lawrence Mintoff and delivered on the 18th November 2020.

Article 31(2) of the Act

29. 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*”.
30. In its submissions, the Public Authority held that the disclosure of information pertaining to the employment contracts of Ms Jennifer Falzon, Ms Amanda Desira, and Mr Johan Farrugia: (a) is likely to confer a competitive advantage to other private companies that operate in the market and are not subject to the requirements of the Act; and (b) would provide information to market participants with information, prejudicing some shareholders and infringing the provisions of the Market Abuse Regulation.
31. 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, 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 employment contracts could be operationalised by competitors to distort competitive conditions.
32. As regards the Public Authority’s submission that disclosure of the requested information would infringe the requirements of Regulation (EU) 596/2014³, 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.
33. Finally, the Commissioner notes that the information relating to the remuneration of the Chief Executive Office is published annually in the Public Authority’s Annual Report and Financial

³ 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.

Statements. In these circumstances, the Public Authority has failed to demonstrate how the disclosure of the engagement contracts would give rise to loss of commercial value.

Article 31(2) of the Act

34. 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*”.
35. In its submissions, the Public Authority submitted that the exemption under article 31(2) of the Act applies for the following reasons: (a) the employment contracts were negotiated with Malita in circumstances that gave rise to an obligation of confidence between employer and employee; (b) the employees have not consented to the disclosure of their employment contracts and any access to this information could result in a situation where breach of the confidentiality commitments could found an action against Malita, if it were to disclose it; (c) Malita’s 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 sensitive information.
36. 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*⁴, 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 çans tajjeb li tinghata raġun mill-Qorti.

...

⁴ Case Reference Number: 83/2023, delivered by the Court of Appeal and presided by Judge Lawrence Mintoff on the 31st January 2024.

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 mingħand 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 tiddaħħal 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].*

37. Therefore, according to the Court of Appeal, the exemption under article 31(2) of the Act is engaged only 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.
38. In such case, the information requested by the applicant relates to the engagement contracts of Ms Jennifer Falzon, Ms Amanda Desira and Mr Johan Farrugia, which according to the submissions of the Public Authority, the contracts "*were negotiated with Malita in circumstances that gave rise to an obligation of confidence between employer and employee*". It is therefore clear that the employment contracts do not constitute information that the Public Authority has received in confidence from another person. These are contracts entered into by the Public Authority itself, reflecting terms, including remuneration, that the Public Authority has agreed to offer and pay. Accordingly, the Commissioner considers that the information in question cannot be considered as information received in confidence within the meaning of article 31(2) of the Act. The first requirement identified by the Court of Appeal, namely that the public authority must have received information in confidence from another person, is therefore not satisfied in the present case.

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

39. 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”.

40. The Commissioner sought to determine whether the Public Authority has managed to concretely demonstrate that the disclosure of employment contracts would give rise to any prejudice capable of justifying refusal under article 32(1)(c)(i) of the Act.

41. In its submissions dated the 17th February 2026, the Public Authority contended that disclosure *“would likely be intended for disclosure to the general public”* and *“could, apart from giving rise to selective disclosure, give rise to speculation, which would not be based on full knowledge of the relevant facts and therefore likely to be incorrectly reported or misleading”*. This would therefore affect the professional affairs of the individuals concerned.

42. The Commissioner notes that the alleged harm is framed in speculative and hypothetical terms. The Public Authority does not specify how the disclosure would result in concrete damage in relation to the professional affairs of the individuals concerned. 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.

Article 30(2)(a) of the Act

43. 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:

(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”.

44. 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 17th 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.
45. 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.
46. 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 3rd 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 inquiry and cannot be premised on mere possibility or speculative future scenarios.

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

47. 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”.

48. 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.
49. 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.
50. 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 standards of independence and 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 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.
51. 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.

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:

- a. **justified for refusing access to the “*[l]ist of payment to all members of the Board of Directors every month in 2024 and 2025 until the reply to this FOI request. The list should include the member’s name, date of payment and value*” in terms of article 14(d) of the Act insofar as it relates to the financial year 2024; and**
- b. **not justified in refusing access to the remaining 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 the following documents: “*1. Last contract of CEO Jennifer Falzon; 2. Last contract of current CEO Amanda Desira; 3. Last contract of Executive Chairman Johan Farrugia*” in electronic format. The Public Authority shall redact any identity card numbers, residential addresses, signatures and any other direct identifiers pertaining to natural persons prior to disclosure.

In relation to the request for the “*[l]ist of payment to all members of the Board of Directors every month in 2024 and 2025 until the reply to this FOI request. The list should include the member’s name, date of payment and value*” insofar as it concerns the financial year 2025, the Public Authority is ordered to provide the requested information or clearly indicate the publicly available sources from which such information may be obtained.

The Public Authority shall comply with these orders 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
12:13:43 +02'00'

**Ian Deguara
Information and Data Protection Commissioner**

Right of Appeal

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

An appeal to the Information and Data Protection Appeals Tribunal shall be made in writing⁵ and addressed to ‘The Secretary, Information and Data Protection Appeals Tribunal, 158, Merchants Street, Valletta’.

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