

FREEDOM OF INFORMATION REQUEST

1. On the 3rd June 2025, Mr Ivan Camilleri (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:

“List and copies of invoices paid for the use of a private jet in 2024 and 2025 until the date of reply to this FOI. The list should include date of flight, itinerary, cost, list of passengers”.

2. On the 5th July 2025, the Public Authority accepted the request and released a list of private jet usage in 2024 and 2025, detailing the purpose, destination and duration of each trip. The Public Authority also noted that:

“The applicant may wish to note that when it comes to official travel, commercial flights are always given first preference. However, there are instances where due to time constraints, lack of flexibility, and very tight schedules, a private jet is used. Between 2024 and 2025, there were 18 trips in total which were carried out by private jet for the above-mentioned reasons.

Travel expenses in relation to European Union Council meeting, including the use of a private jet, are paid by the European Union”.

3. On the 6th July 2025, the applicant submitted a complaint via the internal complaints procedure of the Public Authority and requested it to “*revise your decision as the information is*

incomplete. We requested: copies of invoices, costs, and a list of passengers. These were not supplied". On the 21st July 2025, the Public Authority informed the applicant that: "The complainant has already been provided with a list of travel by means of private jet".

FREEDOM OF INFORMATION APPLICATION

4. On the 26th July 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 12th September 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 12th November 2025, the Public Authority submitted the following arguments for the Commissioner to consider during the legal analysis of the case:
 - a. that the applicant requested a list and copies of invoices paid for the use of a private jet in 2024 and 2025 up to the date of reply, including details such as the date of flight, itinerary, cost and the list of passengers;

- b. that the Public Authority provided the applicant with a list detailing the travel undertaken by the Prime Minister via private jet during the period in question, including the dates of flights and itineraries;
- c. that with respect to the disclosure of copies of invoices for such travel, the Public Authority submits that these documents cannot be disclosed pursuant to article 38(d) of the Act, which permits withholding information where disclosure would likely prejudice the commercial interests of the public authority or a third party;
- d. that in the circumstances at hand, the commercial interests at stake prevail and disclosure of the invoices would cause unwarranted prejudice;
- e. that the Public Authority further draws attention to regulation 43(5) of the Public Procurement Regulations (Subsidiary Legislation 601.03), which provides that certain information on contract awards or framework agreements may be withheld where its release would impede law enforcement, harm legitimate commercial interests or prejudice fair competition between economic operators;
- f. that in addition, section 7 of the Public Procurement Regulations, specifically section 7(z), exempts public contracts accompanied by special security measures from disclosure requirements, provided that essential interests cannot be safeguarded through less intrusive means; and
- g. that in strict adherence to the principles established under the Act, the Public Authority submits that the refusal to disclose the requested invoices is lawful, proportionate and justified in the circumstances.

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 14th November 2025, the applicant submitted the following arguments:
 - a. that no reason exists for the Public Authority to conceal this information from the public;

- b. that the justification of protecting commercial interests is inapplicable, as such considerations do not fall within the Public Authority's remit, particularly when public funds are being expended;
- c. that it is noted that the Public Authority's reference to public procurement rules is misplaced, as the types of procurement in question are carried out through direct orders; and
- d. that the Public Authority has failed to provide an explanation for withholding other information sought, including lists of individuals who accompanied the Prime Minister on private jet trips funded by public resources.

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 28th November 2025, the Public Authority submitted the following:
 - a. that *“the Public Authority deems it necessary to firmly clarify and reiterate its position in light of the applicant's assertions, which respectfully are both misconceived in fact and erroneous in law”*;
 - b. that *“the allegation that the OPM is seeking to “conceal” information is unfounded. The Public Authority has already disclosed to the applicant information by providing a comprehensive list of all travel undertaken by the Prime Minister by means of a private jet during the requested period, including both the dates and itinerary of such flights”*;
 - c. that *“with respect to the applicant's argument that “commercial interests do not hold water”, the Public Authority respectfully rejects this claim. Article 38(d) of the Freedom of Information Act, Chapter 496 of the Laws of Malta, is clear; a document is exempted from disclosure where it would likely prejudice the commercial interests of the authority itself or of a third party”*;
 - d. that *“the copies of invoices requested by the applicant fall within the scope of Article 38(d). Disclosure of such documents would clearly prejudice the legitimate commercial interests at stake. Furthermore, the Public Authority draws attention to Regulation 43(5) of the Public Procurement Regulations (S.L. 601.03), which expressly allows nondisclosure of certain information where publication would harm*

the legitimate commercial interests of a public or private economic operator. This regulation applies irrespective of whether a contract was awarded through a competitive procedure or a direct order”;

- e. that *“the Public Authority once again refers your Office to Section 7(z) of the Public Procurement Regulations. The applicability of this clause, given the nature of the services in question and the security considerations involved, is both clear and justified”;* and
- f. that *“the Public Authority submits that its refusal to disclose the requested invoices and ancillary information is lawful, proportionate, and firmly grounded in the statutory exemptions provided under the Freedom of Information Act and the Public Procurement Regulations. Any contrary assertion disregards the legal parameters governing disclosure and risks undermining the very safeguards designed to protect the public interest”.*

LEGAL ANALYSIS AND DECISION

Article 38(d) of the Act

10. The Commissioner examined the freedom of information request submitted by the applicant on the 3rd June 2025 pursuant to the requirements set forth in article 6(1) of the Act, whereby the applicant requested a list and copies of invoices relating to private jet travel in 2024 and 2025, including the date of flight, itinerary, cost and list of passengers. In this regard, the Public Authority accepted the request and provided a list of private jet usage during the relevant period, indicating the purpose, destination and duration of each trip.
11. Following the issuance of the information notice pursuant to article 24(1)(a) of the Act, the Public Authority refused full access to the requested documentation on the basis of article 38(d) of the Act, which reads as follows:

“38. Subject to article 35, a document is an exempt document if its disclosure under this Act would, or could reasonably be expected to:

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(d) have a substantial adverse effect on the conduct of negotiations (including commercial and industrial negotiations) by or on behalf of the Government or another public authority”.

12. Before delving into the assessment of the arguments raised by the Public Authority, the Commissioner noted that this is an exemption set forth in part VI of the Act. Unlike the exemptions held in part V of the Act, article 38 is a qualified exemption, which means it is subject to the public interest test pursuant to article 35(2) of the Act. Article 35(2) of the Act reads as follows:

“(2) A document may be withheld in accordance with the provisions of this Part only if it contains matter in relation to which the public interest that is served by non-disclosure outweighs the public interest in disclosure.”

13. Therefore, the exemption cited by the Public Authority pursuant to Part VI of the Act must pass a more stringent assessment to apply. Accordingly, the Public Authority must conduct a public interest test by weighing the public interest in maintaining the exemption against the public interest in disclosure. In such case, article 38(d) of the Act speaks of “*substantial adverse effect*”, and therefore, given that the exemption relates to a prejudice which may be suffered by the Government or a public authority, the Public Authority should be in a position to effectively demonstrate that there is an inherent public interest in avoiding that prejudice.

14. The Commissioner further observes that article 38(d) is primarily concerned with the protection of the conduct of negotiations, including ongoing or future contractual engagements. In this context, the Commissioner has had regard to the settled jurisprudence of the Court of Justice of the European Union (the “CJEU”), which, in interpreting transparency exceptions under Regulation (EC) No 1049/2001¹, has held that the institutions enjoy a wide margin of appreciation in determining whether disclosure of documents could undermine the public interest as regards ongoing negotiations². In the judgment *Sophie in ’t Veld vs European Commission*³, it was held that “*it is possible that the disclosure of European Union positions in international negotiations could damage the protection of the public interest as regards international relations’ and ‘have a negative effect on the negotiating position of the European Union’ as well as ‘reveal, indirectly, those of other parties to the negotiations’*”. Moreover, “*the positions taken by the Union are, by definition, subject to change depending on the course of those negotiations and on concessions and compromises made in that context by the various stakeholders. The formulation of negotiating positions may involve a number of tactical considerations on the part of the negotiators, including the Union itself. In that context, it cannot be precluded that disclosure by the Union, to the public, of its own negotiating*

¹ Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 27 May 2001 regarding public access to European Parliament, Council and Commission documents.

² Case C-266/05 P, *Sison vs Council*, decided on the 1st February 2007.

³ Case T-301/10, *Sophie in ’t Veld v the Commission*, decided on the 19th March 2013.

positions, when the negotiating positions of the other parties remain secret, could, in practice, have a negative effect on the negotiating position of the European Union” [emphasis has been added].

15. The Commissioner noted that EU case-law and the Act itself require that the harm anticipated must be **real and foreseeable**, not merely theoretical. As the CJEU has emphasised, the decision to refuse disclosure on the basis of such exceptions “*calls for the exercise of particular care*”⁴ and must rest on a substantiated assessment of the actual risk to the interests in question [emphasis has been added].

Public Procurement Regulations (Subsidiary Legislation 601.03)

16. The Commissioner also took into consideration the two provisions of the Public Procurement Regulations (S.L. 601.03) that the Public Authority referred to in support of its refusal to disclose the requested documents. Regulation 43(5) of the Public Procurement Regulations provides that:

“Certain information on the contract award or the conclusion of the framework agreement may be withheld from publication where its release would impede law enforcement or otherwise be contrary to the public interest, would harm the legitimate commercial interests of a particular economic operator, public or private, or might prejudice fair competition between economic operators.”

Section 7(z) of the Public Procurement Regulations provides that the Regulations do not apply to: “*the procurement and performance of a public contract or design contest that are declared to be secret or are accompanied by special security measures in accordance with the laws, regulations or administrative provisions in force in Malta, as long as the essential interests concerned cannot be guaranteed by less intrusive measures, such as those referred to in paragraphs (x) and (y)*”.

Categories of Information Requested

17. The Commissioner considers it necessary to distinguish between the different categories of information requested, namely: (i) copies of invoices, (ii) the cost of the flights and (iii) the list of passengers.

⁴ Case C-266/05 P, *Sison vs Council*, decided on the 1st February 2007.

(i) Copies of invoices

17. The Commissioner has carefully considered the submissions of the Public Authority dated the 12th November 2025 and the 28th November 2025, wherein it was argued that the disclosure of the requested invoices would prejudice both the commercial interests of the supplier and the Public Authority's position in future procurement processes.
18. The Commissioner notes that invoices, by their nature as contractual financial documentation, form part of the commercial relationship between the Public Authority and the economic operator providing the service. The Commissioner further considers that the disclosure of such contractual financial documentation may weaken the Public Authority's bargaining position in future procurement exercises, in that, it may reveal financial arrangements which could be relied upon by economic operators in subsequent negotiations and may also prejudice the legitimate commercial interests of the third-party supplier operating within a specialised market.
19. Having conducted the public interest test under article 35(2) of the Act, the Commissioner concludes that the public interest served by non-disclosure of the copies of invoices outweighs the public interest in disclosure. The commercial and contractual information contained in the invoices is of a nature that would, or could reasonably be expected to have a substantial adverse effect on both the Public Authority's future negotiating capacity and the commercial position of the supplier concerned.

(ii) Cost of the flights

20. The Commissioner distinguishes between the disclosure of full invoice documentation and the disclosure of the cost associated with each individual flight. The cost incurred on a specific date for a specific journey, does not divulge the underlying pricing structure or commercially sensitive details of the supplier's operations. Therefore, the Commissioner is not satisfied that the disclosure of the cost of each trip would, or could reasonably be expected to, have a substantial adverse effect on the conduct of negotiations within the meaning of article 38(d) of the Act.
21. The Commissioner emphasises that information relating to the cost of official travel directly concerns the use of public funds, in relation to which there exists a strong public interest in transparency and accountability. The Commissioner acknowledges that the spirit and scope of the freedom of information legislation is to establish a right to information in order to promote added transparency and accountability in public authorities. The legislation reflects the

fundamental premise that all information held by public authorities is in principle public, save for those documents that specifically fall within the exemptions provided for by law.

22. This has been supported by the jurisprudence of the Court of Appeal in the judgment *'Din l-Art Helwa vs l-Awtorita' tal-Ippjanar*⁵, which held that “[l]-Att dwar il-Liberta' tal-*Informazzjoni hi liġi intiża biex ttiprovdi b'mod ampju iżda b'restrizzjonijiet ċari fl-istess liġi, sens ta' trasparenza u kontabilita fid-deċiżjonijiet, ordnijiet jew direttivi fl-amministrazzjoni pubblika li wara kollox qiegħda hemm ghas-servizz tas-soċjeta.*” Similarly, the Court of Appeal in the judgment *'Allied Newspapers Limited vs Foundation for Medical Services'*⁶ highlighted that the “*leġiżlatur permezz tal-Kap. 496 jagħti tifsira legali u jipprovdi ċerti garanziji għat-twettiq fil-prattika tal-libertà tal-informazzjoni bhala s-sisien tal-libertà fundamentali tal-espressjoni*”.
23. Given that the scope of the legislation is to promote transparency and accountability, it remains the responsibility of the Public Authority to demonstrate how the disclosure of the information requested by the applicant to the public could indeed cause harm to the conduct of negotiations that are specifically protected by the exemptions contained within the Act. Furthermore, as repeatedly stated by the Court of Appeal, access to documents held by public authorities should be regarded as the general rule, and therefore, the public authorities should give a narrow interpretation of the exemptions contained in Part V and Part VI of the Act, such that the exemptions are applied only in those limited circumstances where their application is clearly and unambiguously justified.
24. This view is supported in *'Caroline Muscat vs Malta Film Commission'*⁷, wherein the Court of Appeal emphasised that the public has a reasonable expectation to know how and why public funds are being spent:

“Beda billi qies li l-Kummissjoni appellanta bhala awtorità pubblika skont id-definizzjoni mogħtija fil-Kap. 496, kif sewwa jirrileva l-Kummissarju, tithallas minn fondi pubbliċi u għalhekk tirriżulta l-aspettattiva li l-pubbliku għandu jkun jaf fejn marru l-flus u ghaliex” [emphasis has been added].

⁵ Appeal Number 7/2019, *'Din l-Art Helwa vs l-Awtorita' tal-Ippjanar*, decided on the 16th May 2019.

⁶ Appeal Number 11/2020LM, *'Allied Newspapers Limited vs Foundation for Medical Services'*, decided on the 18th November 2020.

⁷ Appeal Number 72/22/LM, *'Caroline Muscat vs Malta Film Commission'*, decided on the 22nd February 2023.

(iii) List of passengers

25. The applicant also requested the list of passengers who accompanied the Prime Minister on each private jet trip. The Public Authority did not provide a specific justification for withholding this information, beyond a general reliance on article 38(d) of the Act. In *‘Rebecca Bonello Ghio vs Malta Film Commission’*⁸, the Court of Appeal clarified that the onus rests upon the public authorities to effectively demonstrate how the disclosure of the information would, or could reasonably lead to an adverse effect:

“Il-Qorti hija tal-fehma li l-appellanta kellha l-oneru li tipprova b’liema mod hija ser tiġi affettwata negattivament jew b’liema mod hija raġonevolment mistennija li tiġi affettwata negattivament f’każ li l-informazzjoni mitluba minnha tiġi żvelata, imma hija naqset milli tagħmel dan” [emphasis has been added].

26. In assessing whether the disclosure of such information would give rise to any interference with the rights and interests of the individuals concerned, the Commissioner considers that the individual’s reasonable expectation would certainly depend on how senior is the role of the individual within the public authority or if that individual is performing a public and official task or role in their professional capacity. Thus, in such instances, there is a reasonable expectation that the personal data pertaining to individuals occupying top management positions of public authorities and other individuals acting in their professional capacity would be subject to greater scrutiny than would be the case in respect of their private lives.

27. In such circumstances, there is a reasonable expectation that the data pertaining to such individuals would be disclosed on the basis that the public should be provided with the opportunity to scrutinise the public expenditure. The Commissioner highlights that the disclosure of information concerning expenditure by public authorities leads to increasing accountability and transparency in the spending of public funds, which is ultimately the main objective of the freedom of information legislation, and thus, there exists substantial public interest in favour of disclosure.

28. In such circumstances, there exists a reasonable expectation that information relating to the involvement of such individuals in the use of public funds for official purposes may be disclosed to the public, in order to enable scrutiny of public expenditure. The Commissioner emphasises that transparency in relation to the use of public funds is a core objective of

⁸ Appeal Number 83/2023 LM, *‘Rebecca Bonello Ghio vs Malta Film Commission’*, decided on the 31st January 2024.

freedom of information legislation, as it promotes accountability in public administration and public resources. Thus, the disclosure of the names and surnames of individuals occupying a top management position at public authorities and other individuals acting in their professional capacity would not cause any unreasonable and unwarranted level of interference with the individuals' fundamental rights and freedoms.

On the basis of the foregoing considerations, 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 justified in refusing access to copies of invoices relating to private jet travel under article 38(d) of the Act. However, it was not justified in withholding access to the individual cost of each private jet trip and the list of passengers.

Pursuant to article 23(4)(a) of the Act, the Public Authority is hereby being ordered to provide the applicant with a list of the costs attached to each private jet trip and the list of passengers who accompanied the Prime Minister during the trip, after redacting, *inter alia*, the identity card numbers, as well as any other personal identifiers not necessary for compliance with this decision. The disclosure of the list of passengers is to be limited to the names and surnames of individuals occupying a top management position within public authorities.

The Public Authority shall comply with this order within twenty (20) working days from the date of service of this decision notice, and confirmation of the action taken shall be notified to the Commissioner immediately thereafter.

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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 writing and addressed to ‘The Secretary, Information and Data Protection Appeals Tribunal, 158, Merchants Street, Valletta’⁹.

⁹ More details on the procedure of appeal are available here: <https://idpc.org.mt/appeals-tribunal/>