

Information and Data Protection Commissioner

CDP/COMP/608/2025

vs

COMPLAINT

1. On the 12th November 2025, [REDACTED] through his legal counsel (the “**complainant**”), lodged a complaint with the Information and Data Protection Commissioner (the “**Commissioner**”) pursuant to article 77(1) of the General Data Protection Regulation¹ (the “**Regulation**”), alleging that [REDACTED], operating the online news portal [REDACTED] (the “**controller**”), unlawfully continued to process and make available personal data relating to the complainant through online news articles, despite a request for erasure submitted under article 17 of the Regulation having been refused.

FACTS OF THE CASE

2. For the purpose of this complaint, the Commissioner assessed the relevant facts as follows:
 - i. that in October 2023, the complainant filed a judicial protest before the competent Court alleging a breach of his fundamental human rights. According to the complainant, the judicial protest concerned matters of a personal nature and contained information which was of no concern to the public interest;

¹ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC.

² [REDACTED] having its registered address at [REDACTED] (according to the Malta Business Registry records accessed on the 22nd June 2026).

- ii. that subsequently, the controller published online press articles reporting on the judicial protest, including articles entitled [REDACTED]
[REDACTED]³ and [REDACTED]
[REDACTED]⁴, both published on 27th October 2023;
- iii. that the complainant alleged that the publication of the aforementioned articles occurred without his express or tacit consent and that the articles remained publicly accessible online at the time the complaint was lodged;
- iv. that the complainant maintained that the continued availability of the articles caused and continued to cause disproportionate prejudice to his private and professional life, including reputational harm, employment-related difficulties and personal hardship;
- v. that the complainant argued that the information contained in the articles had become outdated, irrelevant and no longer necessary for the purposes for which it was published, and that the continued processing of such information was not in the legitimate interest of the public;
- vi. that the complainant further contended that the articles misrepresented the contents of the judicial protest and contained inaccurate information, including references to a banking institution, notwithstanding that, according to the complainant, no reference to that financial institution had been made in the judicial protest filed before the Court;
- vii. that on the 16th September 2025, the complainant exercised his right to erasure directly with the controller pursuant to article 17 of the Regulation, requesting the removal of personal data concerning him from the aforementioned online press articles;

³ [REDACTED] published on the 27th October 2023 and available at: [REDACTED]
[unauthorised-phone-tapping/](#)

⁴ [REDACTED] published on the 27th October 2023 and available at [REDACTED]

- viii. that by means of an email dated the 23rd September 2025, the controller rejected the complainant's request for erasure, stating that it had faithfully reported the contents of the judicial protest, that a judicial protest constitutes a public judicial act forming part of the public record, and that the assessment of whether a matter is of public interest is an editorial decision falling within the remit of the media organisation;
- ix. that the controller further informed the complainant that he could seek the de-indexing of his name from search engine results by approaching search engine providers directly; and
- x. that, being dissatisfied with the controller's reply, the complainant subsequently lodged the present complaint before the Commissioner requesting the erasure of personal data relating to him from the online press articles published by the controller.

INVESTIGATION

Request for Submissions

3. Pursuant to the internal investigative procedure of this Office, the Commissioner provided the controller with a copy of the complaint, including the supporting documentation, and provided the controller with the opportunity to make any submissions which it deemed relevant and necessary to defend itself against the allegation raised by the complainant.

Submissions made by the controller

4. On the 25th November 2025, the controller submitted the following salient arguments for the Commissioner to consider during the legal analysis of this case:
 - i. that the complaint concerns two (2) articles published on the controller's online news portal, namely the English and Maltese versions of a news report published on the 27th October 2023, and that the complainant had previously requested the removal of those articles directly from the controller, which request had been refused;
 - ii. that the controller's activities as a news portal fall within the scope of article 85(1) and article 85(2) of the Regulation, as well as article 9 of the Data Protection Act

- (Chapter 586 of the Laws of Malta) (the “Act”), which provide for the processing of personal data for journalistic purposes, subject to the conditions established therein;
- iii. that the determination of whether a matter constitutes newsworthy content is primarily an editorial decision which falls within the discretion of the media organisation concerned;
 - iv. that the judgment of the Court of Justice of the European Union (the “CJEU”) in ‘*Google Spain SL and Google Inc. vs Agencia Española de Protección de Datos (AEPD) and Mario Costeja González*’ is inapplicable to the present case, as that judgment concerns requests for de-listing from internet search engines and not the removal of journalistic content published by media organisations;
 - v. that the Regulation provides a fairly wide basis of protection to the institution of journalism in its broadest sense. As explained in recital 153 of the Regulation, “[i]n order to take account of the importance of the right to freedom of expression in every democratic society, it is necessary to interpret notions relating to that freedom, such as journalism, broadly”;
 - vi. that “the press must be recognised as that fundamental element par excellence in a democratic society, without which the public at large cannot otherwise be informed of those events, stories and investigations that are crucial in order for each individual to make an informed choice about the people and services they may choose to engage, or the politicians they may choose to elect”;
 - vii. that by its nature, the press cannot be favourable to everyone at all times and must necessarily report matters which one or more individuals may find unsavoury, offensive or annoying;
 - viii. that as recognised by the European Court of Human Rights (the “ECHR”) in ‘*Handyside vs United Kingdom*’, “Freedom of expression ... is applicable not only to ‘information’ or ‘ideas’ that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb the State or any sector of the population”;

- ix. that protection must therefore extend not only to speech that is favourable and popular but also to speech which may irritate, annoy or induce displeasure in one or more individuals.
- x. that that the decision whether to publish or not rests with the journalist, editor or news organisation concerned;
- xi. that the Regulation and the Act allow the processing of personal data for journalistic purposes provided and the Act sets a two-tier test in the proviso to article 9(1) as follows: “[p]rovided that when reconciling the right to the protection of personal data with the right to freedom of expression and information, the controller shall ensure that the processing is proportionate, necessary and justified for reasons of substantial public interest”;
- xii. that the controller maintains that its publications of the 27th October 2023 scrupulously followed the aforementioned two-tier test. The controller reported the facts accurately and correctly and that those facts were reported ethically, without any attempt to smear the complainant or damage his reputation;
- xiii. that the complainant has never sought to challenge the publications by means of an action in libel within the period established by law;
- xiv. that the publications in both Maltese and English limited themselves to the bare facts of the case and did not include additional personal information, side details or unrelated information concerning the complainant. The articles merely reported that the complainant had filed a judicial protest, that he occupied a high-ranking official within a well-known bank in Malta and that the subject matter of the judicial protest was, *inter alia*, that of having been phone-tapped;
- xv. that the publications therefore adopted a conservative balance between the value of the news story and the complainant’s right to privacy;
- xvi. that the fact that phone-tapping has occurred is a matter of substantial public interest, in and of itself, due to the assumption that this only happens on an exceptional basis, and then again only in the course of investigation of crimes that carry sufficient severity in the eyes of the law;

- xvii. that monitoring of telephone communications is an extraordinary measure taken by investigators, and the mere fact that anyone is phone-tapped and complains of it by judicial means holds obvious and substantial public interest, more so when the complainant is a high-ranking officer with a financial institution such as a bank;
- xviii. that the controller therefore maintains that the conditions established by article 9 of the Act were fully satisfied and that the publications benefit from the protection afforded by that article, including the derogation from article 17 of the Regulation contemplated by article 9(2)(b)(iv) of the Act;
- xix. that the decision to publish a given piece of news is one that rests, ultimately, with the editor of any news publication. That it does not, unfortunately, rest with the individual forming the subject matter of the news in question.
- xx. that in taking the decision to proceed with publication, journalists are bound by the limitations set out by the Media and Defamation Act (Chapter 579 of the Laws of Malta) and the Criminal Code (Chapter 9 of the Laws of Malta), amongst other laws, which ensure that reporting is at all times correct, factual, accurate and respectful to the reputation of the individual (or group of individuals) identified in that reporting;
- xxi. that libel and slander carry hefty penalties, both financial and reputational, for the journalist found to have committed either. Similarly, reporting which resorts to forms of hate speech to smear, denigrate, or otherwise threaten one or more individuals is also prohibited and may lead to criminal penalties as well as civil actions for damages;
- xxii. that in making this (or indeed, any) choice to publish a news article, the controller is obliged to ensure that the story has sufficient and substantial value so as to make it relevant to the general public, or to sectors thereof, that the reporting is factual, correct and accurate, and that the personal data published strikes a balance between the right of the public to be informed and the data subject's own privacy;
- xxiii. that without repeating what has already been submitted in the previous section of this reply, the editorial discretion enjoyed by the controller may only be overturned or replaced where it falls foul of the principles set out above;

xxiv. that there is no legal basis to interfere, limit or replace that editorial discretion;

xxv. that the controller has already pointed out that '*Google Spain SL, Google Inc. v Agencia Española de Protección de Datos (AEPD) and Mario Costeja González*' is inapplicable to the complaint in hand, for the following reasons:

a. that "*Google, in its capacity as a search engine, does not fall within the definition of journalism – and consequently does not enjoy the protection afforded to the press in terms of Art. 85(GDPR). In providing search engine services, Google is merely indexing material that already exists on the internet, and makes finding it easier for an individual user. Search engine results do not represent original content by Google, but point towards original content published by third parties such as [the controller]. Google's basis for the processing of personal data is, therefore, substantially different from that of the original content provider. To apply this to the case in hand, while [the controller's] basis for processing personal data rests on a legitimate interest to inform the general public of matters of news interest, Google's legal basis is (presumably) the legitimate interest of making internet content searchable for the average web user, while profiling users on the basis of their searches in order to provide content and adverts that its algorithms deem appropriate. It is more than evident that the two bases cited here are substantially different, and as the Google Spain case confirmed, Google cannot presume to 'piggy-back' on the legal basis for processing adopted by the original content provider as its own. Google's legal basis must be sufficient of passing legal muster on its own merits, and not by virtue of a legal basis that has been chosen or adopted by a completely distinct data controller";* and

b. that "[g]iven, therefore, that the law and the Courts of Justice of the EU treat search engines and news portals on a completely different basis, the complainant is – with respect – misdirecting his request to my clients when requesting deletion of his information on the basis of the Google Spain case. The complainant retains all or any rights to

request de-indexing of his name, or of any content that relates to his personal data, and remains entirely at liberty to exercise those rights or not at his discretion. With that being said, insofar as my clients are acting, in good faith, on the basis of the exemptions and derogations explained above and provided by the GDPR and the Data Protection Act, the basis for their processing remains protected by the law, and not subject to the deletion requested by the complainant”.

Complainant’s Opportunity to Rebut

5. On the 1st December 2025, the Commissioner afforded the complainant the opportunity to rebut the arguments raised by the controller. On the 23rd January 2026, the complainant informed the Commissioner that no further submissions would be submitted.

LEGAL ANALYSIS AND DECISION

General Considerations

6. As a preliminary point, the Commissioner establishes that the publication of the article on the controller’s news portal contains ‘*personal data*’ within the meaning of article 4(1) of the Regulation, as the information relates directly to the complainant, identifies him by name and makes reference to matters concerning him. The Commissioner notes that the information is made available to indefinite number of people, and thus, this amounts to a processing activity in terms of article 4(2) of the Regulation.
7. The Commissioner further notes that the complaint concerns the continued online availability of two (2) articles published by the controller on the 27th October 2023 reporting on a judicial protest filed by the complainant. The complainant subsequently exercised his right to erasure pursuant to article 17 of the Regulation and requested the removal of such articles. The controller refused the request, relying principally on the journalistic exemption established under article 85 of the Regulation and article 9 of the Act
8. Consequently, the Commissioner considers that the central issue to be determined in this complaint is whether the continued processing of the complainant’s personal data through the online availability of the articles remains proportionate, necessary and justified for reasons of

substantial public interest, after reconciling the complainant's right to the protection of personal data with the controller's right to freedom of expression and information.

9. The Commissioner observes that the present complaint does not concern the right of the controller to have initially reported on the judicial protest filed by the complainant in October 2023. The Commissioner acknowledges that judicial protests are public judicial acts and that their filing may, at the time of filing, legitimately attract journalistic attention. In this respect, the Commissioner recognises that the controller exercised its right to freedom of expression and information when it published the articles on the 27th October 2023.

Article 17 of the Regulation

10. Article 17(1) of the Regulation provides that the *"data subject shall have the right to obtain from the controller the erasure of personal data concerning him or her without undue delay and the controller shall have the obligation to erase personal data without undue delay..."*. In this regard, the data subject has the right to demand from the controller the erasure of personal data and in certain instances, the controller has the obligation to erase personal data.
11. The judgment '*GC and Others v Commission nationale de l'informatique et des libertés*'⁵ delivered by the CJEU examined the grounds listed in article 17(1) of the Regulation. In this regard, the Court explained that *"[i]n accordance with Article 17(1) of the regulation, the data subject has the right to obtain from the controller the erasure of personal data concerning him or her without undue delay and the controller has the obligation to erase those data without undue delay where one of the grounds set out in that provision applies. As grounds, the provision mentions the cases in which the personal data are no longer necessary in relation to the purposes for which they were processed; the data subject withdraws consent on which the processing is based and there is no other legal ground for the processing; the data subject objects to the processing pursuant to Article 21(1) or (2) of the regulation, which replaces Article 14 of Directive 95/46; the data have been unlawfully processed; the data have to be erased for compliance with a legal obligation; or the data have been collected in relation to the offer of information society services to children."*
12. In this regard, the Commissioner notes that article 17(1)(a) of the Regulation establishes that the right to erasure arises where the personal data is no longer necessary in relation to the

⁵ Case C-136/17, '*GC and Others v Commission nationale de l'informatique et des libertés (CNIL)*', decided on the 24th September 2019.

purposes for which they were collected or otherwise processed. Furthermore, article 17(1)(c) of the Regulation provides that the right to erasure applies where the data subject objects to the processing pursuant to article 21(1) of the Regulation and there are no overriding legitimate grounds for the processing.

13. Therefore, the Commissioner emphasises that the issue under examination is not limited to the lawfulness of the initial publication. Rather, the present complaint concerns the continued processing of the complainant's personal data through the continued online availability of the articles, following the passage of time and following the complainant's request for erasure. The Commissioner therefore considers that the balancing exercise must be carried out in light of the circumstances existing at the time of the request and at the time of this decision.

The Reconciliation of the Right to Protection of Personal Data with the Right to Freedom of Expression and Information

14. The Commissioner recognises that the right to data protection and the right to freedom of expression are both fundamental rights⁶, and further acknowledges that the rules governing the right to the protection of personal data should be reconciled with the freedom of expression and information. Notwithstanding this, these two rights are not absolute, and do not prevail over one another, as they are of equal importance.
15. Privacy and freedom of expression have equal weight in the case law of the ECHR, and hence, "[i]n cases which require the right to respect for private life to be balanced against the right to freedom of expression, [...] these rights deserve equal respect"⁷. Therefore, a fair balance needs to be found between the two rights, which has also been recognised by the European legislator. Indeed article 85 of the Regulation⁸ contemplates for exemptions or derogations when personal data are processed in the context of the right to the freedom of expression. The reconciliation of the right to freedom of expression with the right to the protection of personal data is a matter which has been left to be regulated by the respective Member State.

⁶ Article 8(1) of the Charter of Fundamental Rights of the European Union states that "Everyone has the right to the protection of personal data concerning him or her.", and Article 11 of the Charter provides that "Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers."

⁷ Application no. 40454/07, 'Couderc and Hachette Filipacchi Associés vs France', decided on the 10th November 2015.

⁸ Article 85(1) of the Regulation reads as follow: "Member States shall by law reconcile the right to the protection of personal data pursuant to this Regulation with the right to freedom of expression and information, including processing for journalistic purposes and the purpose of academic, artistic or literary expression."

16. In this context, article 9 of the Act lays down an exhaustive list of exemptions or derogations, which enable processing of personal data for the purpose of exercising the right to freedom of expression and information, specifically where such processing **is proportionate, necessary and justified for reasons of substantial public interest** [emphasis has been added].
17. The Commissioner emphasises that this provision does not give an automatic blanket exemption in favour of media houses. Rather, the legislator expressly requires controllers to demonstrate that the continued processing satisfies the cumulative requirements of proportionality, necessity and substantial public interest. Consequently, journalistic processing cannot remain exempt indefinitely merely because the information was lawfully published at a particular point in time.
18. The Commissioner fully acknowledges the important role performed by journalists and media organisations in a democratic society. The publication of information concerning judicial proceedings and matters of public concern constitutes an essential manifestation of freedom of expression and information. However, the Commissioner equally recognises that the right to freedom of expression is not unlimited and must be reconciled with the fundamental rights of the individuals concerned.
19. The Commissioner considers that the right to freedom of expression and information relied upon by the controller was effectively exercised when the articles were initially published in October 2023. The public was informed of the existence of the judicial protest, the allegations contained therein and the circumstances which the controller considered newsworthy at that time. Therefore, the journalistic purpose underlying the publication was achieved through the dissemination of the information to the public. While the Commissioner accepts that the initial publication of the articles may have been justified by reasons of public interest, the decisive question in the present proceedings is whether the continued online availability of the articles, approximately two (2) years after publication, remains necessary and justified for reasons of substantial public interest.
20. The Commissioner notes that a judicial protest is a procedural instrument which is often filed before the competent courts with the intention of formally asserting a legal position and, in certain circumstances, attracting attention to an alleged grievance. However, the mere fact that a judicial protest is filed before a court and constitutes a public judicial act does not

automatically mean that the continued online dissemination of personal data contained in reports relating thereto remains necessary indefinitely.

21. The Commissioner further observes that the articles concern allegations raised by the complainant in a judicial protest filed in 2023. The articles do not relate to criminal convictions, findings of wrongdoing, ongoing public office, political activity or any continuing matter of public administration. Moreover, the controller has failed to demonstrate that the continued processing of the complainant's personal data remains proportionate, necessary and justified for reasons of substantial public interest as required by article 9 of the Act.
22. The Commissioner further notes that the complainant does not occupy a public office and is not a political figure. While the controller emphasised the complainant's previous position within a banking institution, the Commissioner does not consider that this factor alone is sufficient to justify the indefinite online availability of personal data relating to the complainant. The Commissioner recalls that, as a general principle, the rights to the protection of personal data outweigh the general curiosity of the public, unless there exists a genuine and continuing public interest which justifies the interference with those rights.
23. The Commissioner further considers that the continued availability of the articles results in the complainant's personal data remaining readily accessible through internet searches long after the information ceased to possess meaningful news value. In these circumstances, the continued processing has become excessive in relation to the original journalistic purpose for which the information was published.

On the basis of the foregoing considerations, the Commissioner therefore finds that the personal data contained in the articles are no longer necessary for the purposes for which they were originally processed within the meaning of article 17(1)(a) of the Regulation. Furthermore, the complainant has objected to the continued processing and the Commissioner is not satisfied that overriding legitimate grounds exist which justify the continued availability of the articles within the meaning of article 17(1)(c) of the Regulation. Accordingly, the Commissioner is hereby deciding that the controller has infringed article 17(1) of the Regulation.

In accordance with his corrective powers pursuant to article 58(2)(c) of the Regulation, the controller is hereby being ordered to erase the complainant's personal data from the online

articles identified in this complaint and to take the necessary measures to ensure that the complainant can no longer be identified through those publications.

The controller shall comply with this order without undue delay and by no later than twenty (20) days from the date of service of this legally binding decision and shall inform the Commissioner of the action taken immediately thereafter.

Failure by the controller to comply with the order of the Commissioner shall result in the imposition of an administrative fine pursuant to article 83(6) of the Regulation.



Dr Reno Borg

Information and Data Protection Commissioner

Today, the 22nd of June 2026.

Right of Appeal

In terms of article 26(1) of the Data Protection Act (Cap 586 of the Laws of Malta), “*any person to whom a legally binding decision of the Commissioner is addressed, shall have the right to appeal in writing to the Tribunal within twenty days from the service of the said decision as provided in article 23*”.

An appeal to the Information and Data Protection Appeals Tribunal shall be made in writing and addressed to:

The Secretary

Information and Data Protection Appeal Tribunal

158, Merchants Street

Valletta.

