

CDP/COMP/199/2026

vs

COMPLAINT

1. On the 14th April 2026, [REDACTED] the “**complainant**”) lodged a data protection complaint with the Information and Data Protection Commissioner (the “**Commissioner**”) in terms of Article 77(1) of the General Data Protection Regulation¹ (the “**Regulation**”), alleging that [REDACTED] (the “**controller**”):
 - a. unlawfully restricted her right of access in terms of regulation 4(e) of the Restriction of the Data Protection (Obligations and Rights) Regulations, Subsidiary Legislation 586.09 (the “**Subsidiary Legislation 586.09**”); and
 - b. continues to combine Human Resources functions with those of the Data Protection Officer (the “**DPO**”), and therefore, giving rise to concerns in relation to the independence and the absence of an adequate separation of tasks, contrary to the requirements of the Regulation.

INVESTIGATION

Request for submissions

2. Pursuant to the internal investigative procedure of this Office, the Commissioner provided the controller with a copy of the complaint, including all the supporting documents, and enabled the controller to provide any information that it considered necessary and relevant in response to the allegations raised.

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.

Submissions of the controller

3. On the 1st June 2026, the controller submitted the following documentation to substantiate its submissions: (a) a copy of the application filed by the complainant against the controller before the Industrial Tribunal; (b) a copy of the controller's reply to the application; (c) the relevant minutes of the Industrial Tribunal; (d) the most recent decree issued by the Industrial Tribunal in relation to the claim; (e) a copy of the necessity and proportionality assessment; and (f) copies of the requests of the complainant (the "SARs"), along with the responses to the complainant. In addition, the controller provided the following salient arguments for the Commissioner to consider during the legal analysis of the case:

Facts of the case

- a. that the controller received two (2) SARs from the complainant on the 28th March 2026, where the complainant requested copies of all communications in which the complainant is the subject, including but not limited to emails, text messages, and internal communication between the individuals listed therein and within specific time periods: the first SAR relates to the period of the 1st – 31st March 2025 (both inclusive) and the second SAR relates to the period of the 15th January – 28th February 2026 (both inclusive);
- b. that the complainant was previously employed by the controller and occupied the position of DPO until March 2025, when her employment was terminated, and upon termination, the complainant informed the controller that she intended to bring a claim against the controller before the Industrial Tribunal and that certain correspondence exchanged between certain employees of the controller should be preserved as she intended to use such correspondence as part of the evidence before the Industrial Tribunal;
- c. that within a few days following the termination of employment, the complainant filed a claim for unfair dismissal before the Industrial Tribunal on the 28th March 2025, with notice of such claim being received by the controller on the 11th April 2025;
- d. that the proceedings are currently pending before the Tribunal and given that the complainant does not reside in Malta, the Industrial Tribunal informed her that she

would be required to appoint a mandator who is present in Malta in order to comply with the rules of procedure;

- e. that in the meantime, the controller became aware that the complainant had filed a claim before the Administrative Review Tribunal on the 11th May 2026 against the Industrial Tribunal, with the first sitting due to be held on the 19th June 2026, and while the controller is not currently a party to these proceedings, the controller nonetheless submitted that these proceedings are directly connected to the Industrial Tribunal claim;

The Restriction applied by the controller

- f. that the controller is relying on regulation 4(e) of Subsidiary Legislation 586.09 and the complainant was informed of that restriction and its lawful basis on the 14th April 2026;
- g. that the controller submitted that the complainant is using the Regulation as a mechanism to circumvent the procedure that should be taking place before the Industrial Tribunal and is seeking to misuse her SARs as a discovery tool in the proceedings that she herself instituted against the controller before the Industrial Tribunal;
- h. that the correct and proper forum to request that information is through the evidence process before the Industrial Tribunal, and not via the Regulation or before the Commissioner;
- i. that the controller's position is reinforced by the fact that both SARs request information to be disclosed in relation to two periods that are directly tied to the Industrial Tribunal claim: (i) 1st – 31st March 2025 is the period during which her employment was terminated and the Industrial Tribunal claim was instituted; and (ii) 15th January – 28th February 2026 begins on the exact date of a sitting before the Industrial Tribunal;
- j. that regulation 4(e) of Subsidiary Legislation 586.09 permits restrictions on data subject rights where necessary for the defence of a legal claim and legal proceedings, and, in the present case, the factual basis is clearly established: the complainant filed an unfair dismissal claim against the controller before the Industrial Tribunal of Malta, and the proceedings remain ongoing;

- k. that although the restriction applies to all responsive data, this is justified because the SARs are themselves narrowly framed by reference to the subject matter of the claim and every responsive communication would in all likelihood necessarily relate to the complainant's employment, termination or the conduct of the proceedings, making a category-by-category distinction impracticable. It is also noted that certain individuals named in the SARs are listed as witnesses in the Tribunal proceedings, further reinforcing the connection between the requested data and the litigation;

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- l. that the controller has not appointed a DPO since the dismissal of the complainant and the controller is not required to appoint a DPO in terms of the Regulation and any previous appointment was made solely on a voluntary basis and not because the processing of personal data by the controller falls within the scope of Article 37 of the Regulation.

Submissions of the complainant

4. The Commissioner provided the complainant with the opportunity to rebut the submissions of the controller. On the 23rd June 2026, the complainant submitted the following salient arguments for the Commissioner to consider during the legal analysis of the case:
 - a. that the refusal of the controller to comply with the request of the complainant on the basis that the complainant may use such data in connection with legal proceedings is an incorrect interpretation of the law;
 - b. that, in fact, Article 18(2) of the Regulation itself expressly contemplates circumstances in which personal data must be retained by a controller for the purpose of legal claims against the controller, and therefore, the line of reasoning of the controller is illogical and legally unsupported;
 - c. that the proceedings in question arise in the field of administrative law, not civil or criminal law, where a party's state of mind or subjective intentions may occasionally be relevant and the exercise of the right of access under data protection law is not contingent upon the motives of the requester;

- d. that the Maltese provision relied upon by the controller merely states that restrictions of a data subject right under Article 23 of the Regulation may apply where such restrictions are necessary for the establishment, exercise or defence of legal claims, or for legal proceedings that may be instituted under any law, and this provision does not, however, provide that the mere existence of actual or contemplated litigation automatically extinguishes the right of access under Article 15 of the Regulation;
- e. that more importantly, Article 23(2) of the Regulation requires any legislative measure imposing such restrictions to contain specific safeguards and limitations, and in the present case, the controller has failed to explain how these requirements have been satisfied in the present case;
- f. that even where a controller considers that certain information may be legitimately withheld on the basis of a valid restriction, exemption, privilege, or competing right, it remains under an obligation to assess the requested information on a category-by-category and document-by document (or in this case email by email) basis;
- g. that a complete refusal of access, unsupported by any individualised assessment of the data requested or any explanation as to why partial disclosure would be insufficient, fails to satisfy these requirements, and the controller has therefore not discharged its burden of demonstrating that the restriction relied upon is lawful, necessary, proportionate and compliant with Article 23 of the Regulation;
- h. that, therefore, the relevant question is not whether litigation exists, but whether the disclosure of the particular personal data requested would genuinely and specifically undermine the establishment, exercise or defence of legal claims, and the controller has made no attempt to demonstrate such prejudice;
- i. that the controller has not demonstrated that every item of personal data falling within the scope of the request is protected by the relevant exemption and instead, it appears to have adopted the position that any access request connected with litigation may be refused in its entirety and such a categorical approach is incompatible with the Regulation;
- j. that the second category of data requested has no connection to the sitting of the 15th January 2026 and this part of the request concerns separate communications and conduct by the controller which, in the complainant's view, are unrelated to the issues

before the Tribunal, and the requested information is sought for the purpose of understanding the processing of her personal data and the controller's actions concerning her;

- k. that the controller has nevertheless attempted to characterise the entirety of the request as being intrinsically linked to the ongoing proceedings and that characterisation is inaccurate and at least part of the requested information concerns matters that are distinct from the litigation and whose disclosure could not reasonably be said to prejudice the establishment, exercise, or defence of legal claims; and
- l. that a blanket refusal based solely on the existence of ongoing proceedings fails to distinguish between information that may arguably engage litigation-related concerns and information that plainly does not and if the controller seeks to rely on the protection of legal proceedings, it must demonstrate, with specificity, how disclosure of each category of requested document would give rise to a genuine risk of prejudice.

Final submissions of the controller

- 5. On the 15th July 2026, the controller provided its final submissions pursuant to the internal investigative procedure of this Office. The following salient arguments are being reproduced hereunder:

The complainant mischaracterises the applicable legal standard

- a. that the complainant contended that the controller's position is premised on a "fundamental misunderstanding" of the right of access and that the mere intended use of data in litigation cannot justify restricting access;
- b. that the controller's reliance on regulation 4(e) of Subsidiary Legislation 586.09 is grounded not in the complainant's motives but in the objective fact that actual legal proceedings have been instituted by the complainant against the controller before the Industrial Tribunal of Malta (Case No. [REDACTED]), that those proceedings remain pending, and that the restricted data is intrinsically connected to the very subject matter of those proceedings;
- c. that the complainant's invocation of Article 18(2) of the Regulation, which contemplates the retention of data for the purpose of legal claims is misplaced. Article

18(2) of the Regulation addresses the separate right to restriction of processing, and it does not speak about the right of access under Article 15 of the Regulation;

The controller has conducted a proper individualised assessment

- d. that the complainant asserts repeatedly that the controller has applied a “*blanket refusal*” without any individualised assessment and has failed to review the requested data on an item-by-item or category-or-category basis, and this contention is factually incorrect;
- e. that the controller conducted a thorough and documented necessity and proportionality assessment in accordance with Subsidiary Legislation 586.09 and this assessment shows that the restriction does not amount to an automatic or blanket restriction;
- f. that the controller specifically assessed the nature and scope of each of the two SARs and determined that the entirety of the responsive data falls within the scope of the restriction under regulation 4(e) of Subsidiary Legislation 586.09, not because a blanket refusal was applied, but because the SARs are themselves narrowly framed by reference to periods, individuals, and subject matter that are directly and exclusively connected to the subject matter of the pending Industrial Tribunal proceedings;
- g. that, in addition, the controller considered whether partial disclosure was possible and concluded, with reasons, that it was not and this is because the SARs do not request the complainant’s personal data at large and they are confined communications between named employees of the controller in which the complainant is discussed, covering periods that directly coincide with the circumstances giving rise to the claim;

The complainant’s argument regarding prejudice is speculative and undermined by her own submissions

- h. that the complainant submits that the controller has “*made no attempt to demonstrate*” the prejudice that disclosure would cause to the ongoing proceedings and that the controller relies on a “*speculative and categorical assertion*” that litigation., by itself, justifies refusal;
- i. that the data consists of internal communications between senior management and HR personnel concerning the complainant during the period of her dismissal and the

conduct of the pending proceedings, and disclosure would give the complainant advance and unilateral sight of the controller's internal deliberations, reasoning, and assessments on the very matters in dispute before the SARs at a stage when the proceedings remain at an early phase; and

- j. that disclosure of the data at this stage would hand the complainant unilateral and premature sight of the controller's internal thinking, including, how the situation was assessed, how the termination decision was reached, and how the defence is being approached.

Inspection of the documents

- 6. On the 29th July 2026, the Office held a meeting with the controller and requested access, pursuant to Article 58(1)(e) of the Regulation, to inspect all personal data processed by the controller that fell within the scope of the SARs. The controller fully cooperated with this Office and provided the Commissioner with the opportunity to review the personal data pertaining the complainant, which have been restricted by the controller. During the said meeting, the controller also explained the searches carried out to identify the personal data falling within the scope of the SARs and provided an itemised list of the search results, together with an explanation of the contents identified through those searches.

LEGAL ANALYSIS AND DECISION

- 7. For the purpose of this legal analysis, the Commissioner examined the complaint, which raised two (2) allegations against the controller: (a) that the controller unlawfully restricted the complainant's right of access pursuant to regulation 4(e) of Subsidiary Legislation 586.09; and (b) that the controller continues to combine Human Resources functions with those of the DPO, therefore giving rise to concerns regarding the independence of the DPO and the lack of an adequate separation of tasks, contrary to the requirements of the Regulation.

First Allegation: The Alleged Unlawful Restriction of the Complainant's Right of Access

- 8. The Commissioner proceeded to assess the two SARs lodged by the complainant on the 28th March 2026. By means of these requests, the complainant sought copies of all communications in which she was the subject, including, but not limited to, emails, text messages, and communications exchanged through internal communication platforms between the individuals listed therein, within the specific time periods. The first SARs relate to the period from the 1st

March 2025 to the 31st March 2025 (both inclusive), whilst the second SAR relates to the period from the 15th January 2026 to the 28th February 2026 (both dates inclusive).

9. The Commissioner examined the controller's response dated the 14th April 2026, in which the controller restricted the right of the complainant on the basis of regulation 4(e) of Subsidiary Legislation 586.09. In its response, the controller informed the complainant that it had been notified of a claim before the Industrial Tribunal of Malta on the 11th April 2025. Accordingly, in light of the existence of these pending proceedings, and having regard to the timing and nature of the SARs, the controller considered that providing access to the complainant's personal data at that stage would be prejudicial to its ability to defend its legal position in connection with ongoing judicial proceedings before the Industrial Tribunal.
10. During the course of the investigation, the controller further informed the Commissioner that it had become aware that the complainant had instituted proceedings before the Administrative Review Tribunal on the 11th May 2026, with the first sitting held on the 19th June 2026. The controller submitted that, although it was not a party to those proceedings, they were directly connected to the proceedings pending before the Industrial Tribunal.
11. Accordingly, for the purpose of this legal analysis, the Commissioner sought to establish whether the controller lawfully restricted the right of the complainant in terms of regulation 4(e) of Subsidiary Legislation 586.09.
12. Recital 4 of the Regulation provides that the right to the protection of personal data is not an absolute right, and it must be considered in relation to its function in society and be balanced against other fundamental rights, in accordance with the principle of proportionality.
13. The fundamental right to the protection of personal data may be subject to some limitations pursuant to Article 52(1)² of the Charter of Fundamental Rights of the European Union. This therefore means that the limitations should be provided by law, respect the essence of the rights and freedoms, and be necessary and proportionate to genuinely meet objectives of general interest or the need to protect the rights and freedoms of others. Accordingly, a restriction should not be extensive and intrusive in such a manner that it would void a fundamental right of its basic content.

² Article 52(1) of the Charter provides that: "1. Any limitation on the exercise of the rights and freedoms recognised by this Charter must be provided for by law and respect the essence of those rights and freedoms. Subject to the principle of proportionality, limitations may be made only if they are necessary and genuinely meet objectives of general interest recognised by the Union or the need to protect the rights and freedoms of others."

14. To this end, Article 23(1) of the Regulation enables Member States to introduce legislative measures restricting the scope of the obligations and rights provided for in Articles 12 to 22 and Article 34 of the Regulation, as well as the corresponding obligations set forth in Article 5. Any such restriction must safeguard an important objective of general public interest or the rights and freedoms of others. By way of example, Article 23(1)(f) recognises the protection of judicial proceedings as a legitimate ground for restricting certain data protection rights. Similarly, Article 23(1)(j) of the Regulation recognises the enforcement of civil law claims as a ground on which Member State law may provide for such restrictions to such rights. The European Data Protection Board (the “EDPB”) in its Guidelines 10/2020 provides as follows:

“While Article 23(1)(j) GDPR allows limitations to protect the individual interests of a (potential) litigant, Article 23(1)(f) GDPR allows limitations to protect the court proceedings themselves as well as the applicable procedural rules”.

15. In this regard, the national law provides for circumstances in which a controller may restrict the exercise of a data subject’s rights. Such restrictions may arise under sector-specific legislation, which provides for particular instances in which a right may be limited, as well as under the provisions of Subsidiary Legislation 586.09, which establishes a general framework for the restriction of the data protection rights under the Regulation.
16. In the present case, by means of the response dated the 14th April 2026, the controller restricted the right of access pursuant to regulation 4(e) of Subsidiary Legislation 586.09. Such provision provides that the controller shall restrict a right of the data subject where such restriction is a necessary measure required *“for the establishment, exercise or defence of a legal claim and for legal proceedings which may be instituted under any law”*.
17. Accordingly, the Commissioner proceeded to assess the detailed internal necessity and proportionality assessment conducted by the controller at the time of receipt of the request. This document was provided during the course of the investigation solely to assist the Commissioner in determining whether the restriction invoked by the controller was applicable, taking into account the specific circumstances of the case and the objective pursued by the controller.
18. In his assessment, the Commissioner notes that the complainant was previously employed by the controller and held the position of a DPO until March 2025, when her employment was terminated. Following the termination of her employment, the complainant instituted proceedings before the Industrial Tribunal alleging unfair dismissal. In the course of the

investigation, the Commissioner examined the copy of the complainant's appeal, filed before the Industrial Tribunal under reference number [REDACTED], together with the controller's reply.

19. For the purpose of investigating this complaint, the Commissioner inspected the complainant's personal data in order to determine which categories of personal data fell within the scope of the SARs, to assess the nature and context of such data, and to determine whether its disclosure could reasonably prejudice the controller's defence in the ongoing proceedings before the Industrial Tribunal. Accordingly, upon inspecting the documents that contain the complainant's personal data, the Commissioner noted that the restricted personal data comprised two distinct types of correspondence: (i) correspondence of which the complainant was either the sender or the recipient; and (ii) correspondence concerning the complainant, to which the complainant was not a party.
20. In relation to the first type of correspondence, the Commissioner is of the view that there is no justification for restricting access to such communications. The fact that the complainant may already have access to that personal data does not exclude it from the scope of the SAR. According to Article 15(3) of the Regulation, the controller is required to provide the data subject with a copy of the personal data undergoing processing, which shall be a complete copy of the personal data being processed by the controller at the time of the request including data which may already be held by the data subject. In such case, the controller failed to demonstrate how the disclosure of this correspondence to which the complainant was either the sender or the recipient would prejudice the ongoing proceedings before the Industrial Tribunal, particular given that the complainant was a party to such correspondence.
21. In relation to the second type of correspondence, the Commissioner notes that the restriction was applied on the basis of the ongoing proceedings before the Industrial Tribunal concerning the complainant's allegation of unfair dismissal. As a preliminary assessment, the Commissioner observes that the SARs are narrowly framed, being confined to correspondence exchanged between specifically identified individuals, some of whom are listed as witnesses in the proceedings before the Industrial Tribunal. Moreover, the SARs are not limited to correspondence involving specific individuals but are also confined to particular periods of time which are extremely relevant to the matters forming the subject of those proceedings. The Commissioner further notes that the periods covered by the SARs closely coincide with significant events relating to the termination of the complainant's employment and the ensuing proceedings before the Industrial Tribunal. In particular, the first period, from the 1st to the 31st March 2025, covers the period during which the complainant's employment was terminated

and proceedings before the Industrial Tribunal were instituted. The second period, from the 15th January to the 28th February 2026, covers the period where the proceedings were ongoing.

22. Upon examining the documents containing the personal data of the complainant, the Commissioner ascertained that all the personal data which were restricted relate to matters pertaining to the complainant's employment, the termination of her employment, and the ensuing proceedings before the Industrial Tribunal. Having regard to the content and context of the restricted personal data, as well as its close connection with the matters forming the subject-matter of the ongoing proceedings before the Industrial Tribunal, the Commissioner considers that the disclosure of the personal data, while those proceedings are still pending, could reasonably be expected to prejudice the controller's defence.
23. In addition, in the course of the examination of the documents, the Commissioner also observed that certain communications that fall within the scope of the SARs concerned legal advice sought by the controller in connection with the complainant. In this respect, the Commissioner clarifies that legal advice is protected by legal professional privilege in accordance with Article 588(1) of the Code of Organisation and Civil Procedure (Cap. 12 of the Laws of Malta). Accordingly, the controller has a basis for restricting access to such personal data from disclosure in response to the SARs

Second Allegation: The Alleged Lack of Independence of the DPO due to the Combination of Human Resources and DPO functions

24. The complainant further alleged that the controller continues to combine human resources functions with those of the DPO, giving rise to ongoing concerns regarding the independence of the DPO and the separation of tasks required under the Regulation. In particular, the complainant submitted that the Head of Human Resources, [REDACTED], continues to perform functions that are incompatible with the independence requirements applicable to the role of the DPO. The complainant also referred to the LinkedIn profile of [REDACTED] which according to the complainant, continues to identify her as a DPO. In this regard, the complainant requested the Commissioner to verify whether a formal and valid appointment of a DPO, or in the absence of an appointment, to determine who, in practice, performs the tasks of the DPO within the organisation.
25. In response, the controller rejected the allegation and stated that no DPO has been appointed since the dismissal of the complainant. The controller further argued that it is not under an obligation to designate a DPO pursuant to the Regulation and that any previous appointment

was made on a voluntary basis, as the controller's processing activities do not fall within the circumstances requiring the designation of a DPO under article 37 of the Regulation.

26. Having regard to the context, nature, scope and purposes of the controller's processing activities, the Commissioner notes that the controller is not a public authority or body within the meaning of Article 37(1)(a) of the Regulation. Furthermore, the controller's core activities do not consist of processing operations that require regular and systematic monitoring of data subjects on a large scale, nor do they involve the large-scale processing of special categories of personal data or personal data relating to criminal convictions.
27. Consequently, none of the circumstances set forth in Article 37(1) of the Regulation, which would give rise to a mandatory obligation to designate a DPO, are present in this case. Accordingly, the previous designation of a DPO by the controller was made on a voluntarily basis pursuant to Article 37(4) of the Regulation, which permits the controller to designate a DPO even where it is not under a legal obligation to do so. Accordingly, the Commissioner rejects the complainant's allegation that [REDACTED] performed a dual role giving rise to a conflict of interest, as no DPO had been designated by the controller following the termination of the complainant's employment.
28. Finally, with regard to the complainant's request that the Commissioner should determine who, in practice, performs the functions ordinarily assigned to a DPO where no DPO has been designated, the Commissioner notes that there is no provision in the Regulation that requires a controller to explain to the data subject who, within the organisation, is responsible for handling data protection matters or how such matters are managed internally. The controller's internal governance arrangements, allocation of responsibilities, and any assistance received in relation to data protection compliance are matters that fall exclusively within the controller's organisational discretion.
29. Although the controller provided the Commissioner with information concerning the arrangements in place for the handling of data protection matters, such information was provided voluntarily and does not create any right of access on the part of the complainant in terms of Article 15(1) of the Regulation. The complainant has no legal grounds to request disclosure of, or to be informed about, the controller's internal compliance structures, or allocation of responsibilities relating to the handling of data protection matters. These matters are entirely irrelevant to the determination of the complainant's right of access and fall outside the scope of any information that the controller is required by the Regulation to disclose to data subjects.

On the basis of the foregoing considerations, the Commissioner is hereby deciding that:

- a. the controller was justified in restricting the complainant's right of access pursuant to regulation 4(e) of Subsidiary Legislation 586.09 on the basis that the restriction complies with the requirements of regulation 7 of Subsidiary Legislation 586.09, with the exception of the correspondence in respect of which the complainant was either the sender or the recipient; and
- b. the controller had not designated a DPO following the termination of the complainant's employment and, consequently, the allegation concerning a conflict of interest in the performance of the tasks of the DPO is dismissed.

Pursuant to Article 58(2)(c) of the Regulation, the Commissioner is hereby ordering the controller to provide the complainant with a copy of all correspondence falling within the scope of the SARs in respect of which the complainant was either the sender or the recipient, within twenty (20) days from the date of service of the decision. The controller shall inform the Commissioner of the action taken to comply with the order.



Dr Reno Borg

Information and Data Protection Commissioner

Decided today, the 24th August 2026

The parties are hereby being informed that 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 to the Information and Data Protection Appeals Tribunal within twenty (20) days from the service of the said decision as provided in article 23 thereof³.

An appeal to the Tribunal shall be made in writing and addressed to *"The Secretary, Information and Data Protection Appeals Tribunal, 158, Merchants Street, Valletta"*.

³ Further information on the appeals procedure is available on this Office's website at the following hyperlink: <https://idpc.org.mt/appeals-tribunal/>.