Information and Data Protection Commissioner

FOI/2/2021

Caroline Muscat

vs

Malta Financial Services Authority

FREEDOM OF INFORMATION REQUEST

1. On 27th November 2020, Ms Caroline Muscat (the "**applicant**") submitted a request to the Malta Financial Services Authority (the "**Public Authority**") in terms of article 6 of the Freedom of Information Act, Chapter 496 of the Laws of Malta (the "**Act**"), requesting *"[a] copy of report of Board of Review presented to the MFSA board according to public statement dated 25 November 2020".*

2. By means of a communication dated 21st December 2020, the Public Authority refused the request submitted by the applicant on the basis of article 5(3)(a) and (b) and article 36(1) of the Act. In relation to article 5(3)(b) of the Act, the Public Authority referred to article 14(2) and article 17 of the Malta Financial Services Authority Act (Cap. 330 of the Laws of Malta (the "**MFSA Act"**) as the legislation which prohibits the disclosure of the requested document.

3. , The applicant was not satisfied with the decision of the Public Authority and on 22nd December 2020 submitted a complaint through the Internal Complaints Procedure of the Public Authority. The applicant argued that the "*document requested is of major public interest and concerns the functioning of apublic authority funded from taxpayers' funds. The authority is obliged to be transparent, accountable and should apply good governance rules*". On 8th January 2021, the Public Authority reiterated its refusal and confirmed its decision.

FREEDOM OF INFORMATION APPLICATION

4. On the 8th January 2021, the applicant applied to the Information and Data Protection Commissioner (the **"Commissioner"**) for a decision in terms of article 23(1)(a) of the Act and requested the Commissioner to determine whether the request for information made by the applicant to the Public Authority has been dealt in accordance with the requirements of the Act. The applicant argued that "*[d]espite that the MFSA has taken action on this report, the issue has been publicly reported and it involved the conduct of public officials in a public authority financed by taxpayers, the MFSA is refusing the make the findings of the board public. We deem that the contents of this report … should be made available*."

INVESTIGATION

Admissibility of the FOI application

5. After having considered the nature and background of the application, together with the procedural steps involved between the applicant and the Public Authority in the request for information, the Commissioner considered the application made by the applicant as admissible for the purpose of article 23(2) of the Act.

Submissions received from the Public Authority

6. As part of the investigation procedure, by means of an information notice dated 12th March 2021 issued by the Commissioner pursuant to article 24(1)(a) of the Act, the Public Authority was requested to provide information in relation to the FOI application for the purposes of enabling him to exercise his functions under the Act and to determine whether the Public Authority has complied or is complying with the requirements of the Act.

7. The Public Authority replied to the information notice and elaborated further on the grounds that were raised in their replies by producing the following salient arguments for the Commissioner to consider in the legal analysis of the present case:

Article 36(1) of the Act

a. that the Report of the Board of Review qualifies as an exempt document because its disclosure would disclose matters in the nature of, or relating to, opinions, advice, advice or recommendations obtained, prepared or recorded, or consultation or deliberation that has taken place;

b. that the exceptions listed under sub-articles (2) and (3) of article 36 of the Act are not applicable to the subject-matter of the request, and therefore article 36(1) undoubtedly exempts disclosure of the requested document;

Non-Applicability of the Act - Article 5(3)(a) of the Act

a. that with reference to article 5(3)(a) of the Act, the request to disclose the report is considered 'processing' in terms of article 4(2) of the General Data Protection Regulation[1] (the **"Regulation"**) which includes, *inter alia*, "*disclosure by transmission, dissemination or otherwise making available …*";

b. that article 6(1) of the Regulation provides that the processing is lawful if at least one of the legal bases is satisfied, which include *inter alia* consent of the data subject, processing which is necessary to ensure compliance with a legal obligation and processing which is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller;

c. that the requested document falls outside the parameters of article 86 of the Regulation since it cannot be considered as an official document being held by the Public Authority "*for the performance of a task carried out in the public interest*" and it does not relate to activities carried out by the Public Authority as part of its official authority;

[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.

d. that the public interest element underlined in article 86 of the Regulation is deemed to be satisfied when the Public Authority published two (2) public statements on the 3rd November 2020 and the 26th November 2020, and in the latter case, the statement provided the conclusion of the Report of the Board and Review; and

e. that the justifications for allowing the '*processing'* of personal data would not be satisfied, and hence, the Public Authority is legally precluded from disclosing any personal data because the disclosure would clearly be in breach of the Data Protection Act and the Regulation, and hence falls under the exclusion provided for in article 5(3)(a) of the Act;

Article 5(3)(b) of the Act

f. that article 14(1) of the MFSA Act provides that the Public Authority shall "… *arrange for the dissemination in such form and manner as it considers appropriate of such information and advice as it may consider expedient to give the public about matters relating to the exercise of its functions under this Act or any other enactment*";

g. that the functions of the Public Authority are clearly set out in the MFSA Act, particularly article 4 thereof, and therefore, the requested document cannot be classified under one of the official functions of the Public Authority and as a result, the Public Authority is legally prohibited from publicly disclosing the document;

h. that "*Article 14(2) of the MFSA Act goes on to make an important qualification in this regard … by providing that "*[*i*]*n arranging for the publication of any such information or advice, the Authority shall have regard to the duty of professional secrecy and, as far as practicable shall refrain from publishing any matter which relates to the private affairs of an individual, where the publication of that matter would or might, in the opinion of the Authority, seriously and prejudicially affect the interest of that individual."*";

i. that the MFSA Act is considered to be the *lex specialis* rendering, amongst other legislative provisions, article 17 thereof, unequivocally applicable to the particular matter at hand with respect to confidentiality and disclosure of information to third parties; and

j. that the remaining provisions of the said Article 17 proceed to specifically list those persons, bodies or entities in whose favour the MFSA may legally disclose confidential information.

8. As part of the investigation of this case, the Commissioner gained access to the requested document and carefully analysed its contents for the purpose of making his deliberations on the applicability or otherwise of the exemptions invoked by the Public Authority to reject the applicant's access request.

LEGAL ANALYSIS AND DECISION NOTICE

General Considerations

9. 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 the public authorities is in principle public, save for those documents that specifically fall within the exemptions provided for by law.

10. This has been supported by the jurisprudence of the Court of Appeal in the judgment '*Din l-Art Ħelwa vs l-Awtorita' tal-Ippjanar'*[2], which held that "*[l]-Att dwar il-Liberta' tal-Informazzjoni hi liġi intiża biex tipprovdi 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."* This judgment further provides that "*l-Att dwar il-Liberta tal-Informazzjoni (Kap. 496) fl-artikolu 3 jagħti lil kull persuna eliġibbli dritt ta' access għal dokumenti miżmuma minn awtoritajiet pubbliċi salv il-varji eċċezzjonijiet speċifikati mill-liġi".*

[2] Appeal Number 7/2019, decided on the 16th May 2019.

11. Transparency is an absolute prerequisite of good governance in a democratic society, and it empowers citizens to closely scrutinise the conduct of public authorities and hold them accountable. It is also the basis for the exercise of the right of the freedom of expression and information, as clearly highlighted by the judgment, '*Allied Newspapers Limited vs Foundation for Medical Services'*[3], which held that "*il-leġiżlatur permezz tal-Kap. 496 jagħti tifsira legali u jipprovdi ċerti garanziji għat-twettiq fil-prattika tal-libertà tal-informazzjoni bħala s-sisien tal-libertà fundamentali tal-espressjoni"*. Moreover, the Court of Appeal in the same judgment made reference to the parliamentary debates in relation to the freedom of information legislation, which accentuate the spirit and scope of the legislation:

> *"Fi kliem l-Onor. Prim Ministru meta kien qiegħed jippilota l-Att dwar il-Libertà tal-Informazzjoni mill-Parlament: "il-prattika kienet li l-informazzjoni tibqa' kunfidenzjali sakemm ma jkunx hemm raġuni biex isir mod ieħor. ... Bil-proposta ta' din il-liġi qegħdin naqilbu din il-prattika kompletament ta' taħt fuq, għax issa il-premessa li qegħdin inressqu għall-konsiderazzjoni tal-Qorti hija premessa li tgħid li l-informazzjoni issa se tkun soġġetta li tiġi żvelata sakemm ma jkunx hemm raġuni valida skont kriterji stabbiliti mil-liġi għaliex m'għandhiex tkun żvelata. ... It-trasparenza hija wkoll mezz ewlieni biex tiżgura li l-korruzzjoni u l-abbuż ta' poter ma jaqbdux għeruq u li jinkixfu u jinqerdu fejn ikunu preżenti."*

Definition of a '*document*'

12. One of the contentious points raised by the Public Authority is that the document requested by the applicant *"falls outside the parameters of article 86* [of the Regulation] *since it cannot be* ***considered as an official document being held by MFSA*** *for the performance of a task carried out in the public interest since the report does not relate to activities carried out by the MFSA as part of its official authority*" [emphasis has been added].

13. Article 3 of the Act clearly establishes the right to eligible persons to access documents held by public authorities and article 2 of the Act defines '*document'* in the

[3] Appeal Number 11/2020 LM, decided on the 18th November 2020.

following terms: "***any article that is held by a public authority*** *and on which information has been recorded in whatever form, including electronic data, images, scale models and other visual representations, and audio or video recordings, regardless of whether the information can be read, seen, heard or retrieved with or without the aid of any other article or device*" [emphasis has been added].

14. The Court of Appeal in the judgment 'Caroline Muscat vs Malta Film Commission'[4] adopted a wide interpretation of the term 'document' and held that "[i]*l-Kummissjoni appellanta ma tistax tippretendi li d-disposizzjonijiet tal-liġi, u anki ir-rikjesta tal-appellata, għandhom jingħataw interpretazzjoni tant restrittiva li hija b'hekk tista' taħrab mill-obbligi tagħha kif imfissra fil-Kap. 496.*"

15. During the course of the investigation, the Commissioner established that the document requested by the applicant is indeed held by the Public Authority and thus, the document falls within the remit of the Act.

Article 36(1) of the Act

16. The Public Authority cited article 36(1) of the Act as one of the reasons of its refusal of the FOI request and stated that the requested report qualifies as an exempt document because its disclosure would disclose matters in the nature of, or relating to, opinions, advice or recommendations obtained, prepared or recorded, or consultation or deliberation that has taken place.

17. The Commissioner examined article 36(1) of the Act, which provides that "[s]*ubject to article 35 and to subarticles (2) and (3) hereof, a document is an exempt document if its disclosure under this Act would disclose matter in the nature of, or relating to, opinions, advice or recommendations obtained, prepared or recorded, or consultation or deliberation that has taken place, in the course of, or for the purposes of, the deliberative processes involved in the functions of the Government or another public authority."*

18. The Commissioner noted that some documents merit higher protection than others due to the sensitive nature of their content and the harm which the Public Authority or an individual could realistically suffer as a result of the disclosure. For this reason, the

[4] Appeal Inferior No. 72/22/LM, decided on the 22nd February 2023.

exemptions contemplated under the Act fall under two distinct categories: absolute and qualified exemptions.

19. The Commissioner established that the objective pursued by article 36(1) of the Act is to protect the internal working documents of the Public Authority, however, this exemption is not absolute and consequently, the Public Authority should satisfy the public interest test by concretely demonstrating how the *"public interest that is served by non-disclosure outweighs the public interest in disclosure"*. In the submissions provided to the Commissioner, the Public Authority did not provide any evidence which shows that the Public Authority had conducted the public interest test, which is a requirement set forth in article 35 of the Act.

20. The Commissioner noted that the Public Authority emphasised several times that the document requested by the applicant "*does not relate to activities carried out by the MFSA* ***as part of its official authority***" and the "*Report of the Board of Review being requested by the applicant can never be categorised as* ***an official function of the MFSA***". However, the Public Authority relied upon article 36(1) of the Act to justify its refusal on the basis that the document would disclose matters "*that has taken place, in the course of, or for the purposes of, the deliberative processes involved* ***in the functions of the Government or another public authority***" [emphasis has been added]. It therefore follows that the Public Authority is contradicting itself when it is arguing that the document does not relate to its official functions as a public authority, but the document is deemed to be exempt because it would reveal information concerning its deliberative processes involved in its functions as a public authority.

21. This led the Commissioner to conclude that the requested document does not contain any of the requirements that would qualify the document as an internal working document pursuant to article 36(1) of the Act and therefore, the Commissioner discarded the arguments of the Public Authority.

<u>Article 5(3)(a) of the Act – Non-Applicability of the Act</u>

22. The Public Authority cited article 5(3)(a) of the Act as one of the reasons for refusing the request of the applicant, which provision states that the Act shall not apply to a

document in so far as such document contains personal data subject to the Data Protection Act (Cap. 586 of the Laws of Malta).

23. The essence of the document requested by the applicant relates to the report of the Board of Review, which had been appointed by the Board of Governors on the 3rd November 2020, to specifically carry out the necessary verifications regarding a possible breach of ethics by Mr Joseph Cuschieri and Dr Edwina Licari who, at the time of the fact-finding exercise carried out by the Board of Review, were occupying top management positions within the Public Authority.

24. For the purpose of this legal analysis, the Commissioner sought to establish whether the document requested by the applicant, contains information, which is deemed to be personal data, and consequently, ought to be precluded from the applicability of the freedom of information legislation in terms of article 5(3)(a) of the Act.

25. In this regard, the Commissioner noted that the document requested by the applicant contains information relating to identified natural persons and thus, this constitutes '*personal data*' pertaining to Mr Joseph Cuschieri, Dr Edwina Licari and a third party, namely Mr Yorgen Fenech, within the meaning of article 4(1) of the Regulation.

26. In its submissions, the Public Authority argued that the disclosure of the document to the applicant would be unlawful because there is no legal basis in terms of article 6(1) of the Regulation that would legitimise this processing activity. The Commissioner remarked that, where the Act imposes an obligation upon the Public Authority to disclose the information to the applicant in terms of its transparency and accountability obligations, the processing activity would be deemed necessary for the performance of a task carried out in the public interest and consequently lawful in terms of article 6(1)(c) of the Regulation.

27. The Commissioner highlights that article 5(3)(a) of the Act and the provisions of the Regulation should not be interpretated as an automatic derogation that would exonerate the Public Authority from complying with its obligations emanating from the Act. When the requested document contains personal data, the Public Authority should carry out a reconciling exercise to determine whether the right of the applicant to have access to a document prevails over the right to the protection of personal data of the individuals concerned. Indeed, the Court of Justice of the European Union (the

"**CJEU**") held in several rulings that "*in general, no automatic priority can be conferred on the objective of transparency over the right to protection of personal data*"[5].

28. The outright denial of a document based on the fact that the document contains personal data is not in accordance with the law. In fact, the CJEU has not treated the exemption of personal data protection[6] as an outright denial to the right of access to documents but applied a necessity and proportionality test to assess if the public interest outweighs the data protection rights of the individuals in question. In '*Volker und Markus Schecke and Eifert vs Hessen'*[7], the CJEU noted that "*the right to the protection of personal data is not, however, an absolute right, but must be considered in relation to its function in society*."

29. A similar approach has been adopted by our national courts in relation to the interpretation of article 5(3)(a) of the Act. The Court of Appeal[8] held that "*[g]ħalkemm huwa veru li d-dritt għall-informazzjoni mhuwiex wieħed assolut, speċjalment fejn id-dritt għall-privatezza u l-kunfidenzjalità tabilħaqq ikun mhedded, min-naħa l-oħra din il-Qorti tqis li l-ewwel presuppost għandu dejjem jkun favur l-'interess pubbliku sostanzjali' li jiġu mħarsa d-dritt għall-informazzjoni u l-libertà tal-espressjoni. Biex ma tingħatax l-informazzjoni rikjesta, irid jiġi żgurat illi l-pubblikazzjoni tal-informazzjoni tkun tikkostitwixxi ksur ta' xi prinċipju tal-protezzjoni tad-data, kif salvagwardjati mill-GDPR u l-liġijiet nazzjonali, fil-każ ta' Malta, il-Kap. 586. Barra minn hekk ma jistgħux* ***jiġu rikonċiljati d-drittijiet tal-libertà tal-espressjoni u dak tal-privatezza jekk ma ssirx evalwazzjoni dwar jekk l-iżvelar tal-informazzjoni mitluba, tirriżulta fi ksur irraġonevoli u inġustifikat tad-drittijiet tal-privatezza tal-individwu konċernat.*** *Il-privatezza tad-data u l-kunfidenzjalità huma eċċezzjonijiet għad-dritt għall-informazzjoni, u mhux bil-maqlub*." [emphasis has been added].

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[5] Case C-615/13 P Client Earth and PAN Europe vs European Food Safety Authority, decided on the 16th July 2015 and Volker und Markus Schecke and Eifert, C-92/09 and C-93/09, decided on the 9th November 2010.

[6] Article 4(1)(b) of the Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents, which reads as follows: *"The institutions shall refuse access to a document where disclosure would undermine the protection of privacy and the integrity of the individual, in particular in accordance with Community legislation regarding the protection of personal data."*

[7] Judgement of the Court (Grand Chamber) of 9 November 2010, joined cases C-92/09, C-93-09.

[8] Allied Newspapers Limited vs Projects Malta Limited, appeal no. 33/2019 LM, 2nd September 2020.

30. The Commissioner considered that an interference with the right to the protection of personal data could only be justified if the disclosure in terms of the Act would respect the principle of proportionality, be objectively necessary and genuinely meet objectives of substantial public interest. Accordingly, this requires the striking of a proper and fair balance between the various interests and rights involved, and it is therefore necessary to ascertain whether the disclosure of the requested information, would go beyond what is necessary for achieving the aim pursued.

31. In its submissions, the Public Authority submitted that the public interest was satisfied "*with the two Public Statements published in the MFSA on the 3rd of November 2020 and 26th November 2020*". For this purpose, the Commissioner considered the two (2) public statements which the Public Authority opted to publish on its website in relation to reports being published by the media concerning the visit of Mr Cuschieri and Dr Licari to Las Vegas in 2018.

32. By means of its first public statement published on the 30th October 2020, the Public Authority informed the public that the "*Board, fully aware of its responsibility, **has decided to initiate an assessment of the facts reported to safeguard the interests of the Authority.** The review is to be conducted in the most transparent and ethical manner. Meanwhile, both Mr Joseph Cuschieri and General Counsel Dr Edwina Licari have suspended themselves voluntarily until all the necessary assessments are concluded and a final decision is taken on both cases*" [emphasis has been added].

33. Subsequently, the Public Authority proceeded to inform the public about the outcome of the assessment carried out by the Board of Review. In its statement published on the 26th November 2020, the Public Authority provided the following information: "*On 25 November 2020, the Malta Financial Services Authority received the report of the Board of Review, which had been appointed by the Board of Governors on 3 November 2020 to carry out the necessary verifications regarding a possible breach of ethics by Mr Joseph Cuschieri and Dr Edwina Licari. On the same day, the Board of Governors of the Malta Financial Services Authority received Mr Cuschieri's resignation from his role of Chief Executive Officer. The Authority has taken note of Mr Cuschieri's resignation. It has also taken note of the Board of Review's opinion on the cases of both Mr Cuschieri and Dr Licari. **The Board of Review's conclusion regarding Mr Cuschieri leads the MFSA Board to ratify his resignation. As regards Dr Licari, the Board of Review's***

conclusions do not warrant her continued self-suspension. *The Board of Governors has decided to present a copy of the Board of Review's report for information to the Minister of Finance and Employment*" [emphasis has been added].

34. This is in itself indicative that the Public Authority recognised that the subject-matter in relation to the exercise carried out by the Board of Review is a matter of public interest otherwise the Public Authority would not have chosen to publicly address this matter by publishing two (2) statements on its website.

35. However, the Commissioner noted that the reconciling exercise which the Public Authority had to conduct at the time of reply of the FOI request, was not whether the publication of these statements satisfied the public interest element, but whether the information contained in the requested document merits to be disclosed to the public on the basis of substantial public interest when balancing it against the right to the protection of personal data.

36. In this regard, the Public Authority had to effectively demonstrate which factors were taken into consideration when carrying out the balancing test, which includes *inter alia*, the consequences of the disclosure, the reasonable expectations of the individuals in question, and how the disclosure would affect the individuals' private lives. It is the Public Authority that should bear the onus to unequivocally show that there would be a connection between the disclosure and the adverse consequences upon the rights and freedoms of the data subjects.

37. This led the Commissioner to decide that the Public Authority had failed to carry out a reconciling exercise to effectively demonstrate which decisive factors were taken into consideration when it decided that the document is excluded from the scope of the Act. On the basis that the Public Authority did not even attempt to demonstrate that there exists a real and non-hypothetical risk that would lead to unjustified adverse effects on the private lives of Mr Cuschieri and Dr Licari or even show how the Public Authority exercised its discretion reasonably and proportionately, the Commissioner is disregarding the arguments of the Public Authority in relation to article 5(3)(a) of the Act. Consequently, the processing activity is deemed to be proportionate, necessary and justified for reasons of substantial public interest.

Article 5(3)(b) of the Act – Non-applicability of the Act

38. The Public Authority cited article 5(3)(b) of the Act as another reason which triggers the non-applicability of the Act. The Act shall not apply to documents in so far as such document contains information the disclosure of which is prohibited by another law. In its submissions, the Public Authority cited article 14 and article 17 of the Malta Financial Services Authority Act (the "**MFSA Act**") (Cap. 330 of the Laws of Malta) as the provisions which prohibit the disclosure of the requested document.

Article 14 of the MFSA Act

39. For the purpose of this legal analysis, the Commissioner examined article 14(1) of the MFSA Act, which states that "*Authority shall arrange for the dissemination in such form and manner* ***as it considers appropriate of such information and advice as it may consider expedient to give the public about matters relating to the exercise of its functions under this Act or any other enactment***". Article 14(2) of the MFSA Act continues to read that "[i]*n arranging for the publication of any such information or advice,* ***the Authority shall have regard to the duty of professional secrecy and, as far as practicable shall refrain from publishing any matter which relates to the private affairs of an individual****, where the publication of that matter would or might, in the opinion of the Authority, seriously and prejudicially affect the interest of that individual*." [emphasis has been added].

40. In its submissions, the Public Authority argued that the Report of the Board of Review could not be categorised as an official function of the Public Authority in terms of article 4 of the MFSA Act, and thus excluded from the dissemination to the public. Furthermore, the Public Authority submitted that even in the event that the said report were to be categorised as such, the Public Authority is legally bound to refrain from publishing any matter which relates to the private affairs of an individual.

41. Whereas the Commissioner agrees with the Public Authority that the assessment of the facts carried out by the Board of Review is not one of the core functions of the Public Authority, however, article 14 of the MFSA Act does not exclude those instances where the document could be disseminated to the public if it contains

information which does not relate directly to the exercise of its functions. It is the understanding of the Commissioner, based on the legal maxim '*ubi lex voluit lex dixit*', that had the legislator intended to establish this prohibition, it would have clearly stated so. There is, however, nothing in the MFSA Act, which prohibits the disclosure of the information requested by the applicant.

42. The Commissioner rejects the arguments made by the Public Authority that "*even in the event that the said Report were to be categorised as such, which MFSA categorically refutes for the reason mentioned in point 1, the MFSA is legally bound to refrain from publishing any matter which relates to the private affairs of an individual*". Without prejudice to the preceding paragraph, the Commissioner reiterates that the Public Authority had failed to demonstrate how the disclosure of the requested document would prejudice the private affairs of Mr Cuschieri and Dr Licari, especially, when considering that the information relates directly to their professional work conduct and not to their private lives.

Article 17 of the MFSA Act

43. The Commissioner assessed article 17(1) of the MFSA Act, which provides that "[o]*ther than for the proper discharge of their duties or functions under this or any other Act,* ***or as may be otherwise provided in any other law****, the members of the Board of Governors or of any other organ of the Authority, and the officers and employees of the Authority shall treat any information acquired in the discharge of their duties as confidential, and shall not, directly or indirectly, disclose such information to any other person, except with the consent of the person who had divulged the information*" [emphasis has been added].

44. The Commissioner noted that article 17 of the MFSA Act does not refer to absolute confidentiality and the law sets forth a number of exceptions where the Public Authority may be required to disclose information. In fact, one of the exceptions listed in article 17(1) of the MFSA Act is that disclosure of information is permitted as may be "***provided in any other law***" [emphasis has been added]. It is abundantly clear that this provision enables the Public Authority to disclose information if this is permitted by any other law. Thus, there is no conflict between the MFSA Act and the Freedom of Information Act, as suggested by the

Public Authority, and consequently, the principle of "*lex specialis derogat generalis*" does not apply to this case.

45. In this regard, the Commissioner established that article 17 of the MFSA Act does not prohibit the disclosure of the requested document and this led him to decide that the provisions of the Freedom of Information Act do indeed apply in their entirety.

On the basis of the foregoing considerations, pursuant to article 23(3)(b) of the Act, the Commissioner is hereby serving a decision notice and concluding that the refusal of the Public Authority to provide the applicant with a "*copy of report of Board or Review presented to the MFSA board according to public statement dated 25 November 2020*" is not justified.

By virtue of article 23(4)(a) of the Act, the Public Authority is hereby being ordered to provide the applicant with an electronic copy of the report of the Board of Review after redacting the full names of:

- **the members of the internal audit committee and of any other person within the Public Authority who assisted in the compilation of the report of the Board of Review; and**
- **the signatures of the members of the Board of Review.**

The redacted report shall be sent to the applicant within twenty (20) working days from the date of receipt of this decision notice and confirmation of the action taken shall be notified to the Commissioner immediately thereafter.

Ian DEGUARA (Signature)
Digitally signed by Ian DEGUARA (Signature)
Date: 2023.02.28 14:07:01 +01'00'

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, Merchant Street
Valletta.