

**Information and Data Protection Commissioner**

**FOI/28/2020**

**Christian Peregin**

**vs**

**Office of the Prime Minister**

**BACKGROUND**

1. On the 15<sup>th</sup> June 2020, Mr Christian Peregin (the “**applicant**”) submitted a request to the Office of the Prime Minister (the “**Public Authority**”) in terms of the Freedom of Information Act, Chapter 496 of the Laws of Malta (the “**Act**”), requesting the following information:

*“1. Since March 2013, were any OPM/government officials official administrators on the prime minister’s Facebook page?”*

*2. Since March 2013, how much money was spent on the prime minister’s Facebook page in advertising (boosts and paid media)?*

*3. How much of this money was paid using taxpayer money? Can you show the instances in which this was done?*

*4. How much of this money was paid for by them personally? Can you provide receipts?*

*5. Since 2013, has there been any social media content that was produced by the OPM specifically for the prime minister’s page?*

*6. If so, what was the total production cost for such content?*

*7. Today, who are the administrators of the prime minister’s Facebook page?*

*8. Who are the administrators of the OPM’s official Facebook page?”*

2. On the 15<sup>th</sup> July 2020, the Public Authority issued a reply whereby it refused the applicant’s request on the basis that article 14(g) of the Act, which states that “*the document requested is not held by the Public Authority and the undersigned has no grounds for believing that the documents is held by, or connected more closely with the functions of, another public authority.*”

3. The applicant was not satisfied with the Public Authority's decision, and on the 11<sup>th</sup> August 2020, the applicant submitted a complaint to the Information and Data Protection Commissioner (the "Commissioner") to investigate the case and issue a decision. The applicant in his complaint noted the following:
- i. that his initial requests were refused by all the Cabinet members on the basis that this information is not held by any public authority;
  - ii. that an appeal in the case of the Prime Minister was filed and was also rejected based on the same reason;
  - iii. that the reason given by the Public Authority for not providing the requested information is unsatisfactory, "*[g]iven that most of this information is readily available from the Facebook accounts themselves, and from the spending records of each ministry, a blanket refusal of our FOI requests on the grounds that such information is not held by any authority is disingenuous at best and, at worst, an attempt to withhold key information that should be available to taxpayers and voters.*"

## INVESTIGATION

### Admissibility of the complaint

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

### Submissions received from the Public Authority

5. As part of the investigation procedure, by means of an information notice dated the 19<sup>th</sup> October 2020, the Public Authority was requested by the Commissioner to provide submissions or comments, which are over and above those already expressed to the applicant, in support of its decision to refuse to provide access to the requested information. The Commissioner also requested the Public Authority to confirm whether it has any accounting records within the DAS and, or CFMS, in relation to sponsored ads that were paid and published on the Prime Minister's Facebook official page, and if any, the information should include any bank statements for

credit/debit cards generally used to make online payments. The Public Authority was also requested to specify who is currently responsible for managing the Prime Minister's and OPM's official Facebook page.

6. On the 6<sup>th</sup> November 2020, the Public Authority provided its written submissions and reiterated the legal exemption cited to the applicant for not acceding to his request. Furthermore, the Public Authority submitted the following principal arguments for the Commissioner to consider:

- i. that the "*Prime Minister's Facebook Page is a personal Facebook page and not an official one*";
- ii. that the "*OPM does not have a Facebook Page*".

7. Following the receipt of the Public Authority's submissions, a meeting was held on the 19<sup>th</sup> January 2021 to further discuss the request made by the applicant.

8. Subsequent to the meeting, and in line with this Office's standing procedure, the Commissioner requested the Public Authority to make further submissions. In this regard, by means of an email dated the 30<sup>th</sup> January 2021, the Public Authority declared:

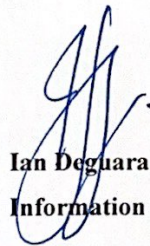
- i. that neither the Office of the Prime Minister nor the Prime Ministers have ever had an official Facebook page during the timeframe indicated in the applicant's request;
- ii. that no public funds have been committed or ever utilised to maintain the Facebook pages of the Prime Ministers since 2013;
- iii. that it does not have or had any employees on its payroll responsible for maintaining the Facebook pages of the Prime Ministers since 2013.

#### **LEGAL ANALYSIS AND DECISION**

9. Having taking into account the spirit and scope of the Act, which is designed to ensure the greatest possible transparency and to promote accountability in public authorities, by enabling to the extent possible, the exercise of the right of access to documents held by the public authorities.

10. Having examined the applicant's request and complaint, the submissions provided by the Public Authority, the outcome of the meeting held on the 19<sup>th</sup> January 2021 and the freedom of information legal framework relevant to this case.
11. During the course of the investigation, the Public Authority declared that it does not have an official Facebook page and that the personal Facebook pages of the Prime Ministers were not and are not maintained by public employees and no public funds were ever committed or utilised by the Public Authority to maintain such social media pages.
12. For this purpose, the Commissioner examines the reason provided by the Public Authority for refusing to comply with the applicant's request pursuant to article 14(g) of the Act, which states that "*the document requested is not held by the public authority and the person dealing with the request has no grounds for believing that the document is held by, or connected more closely with the functions of, another public authority;*" [emphasis has been added].

**On the basis of the foregoing, in terms of article 23(3)(b) of the Act, the Commissioner hereby decides that, following the declarations made by the Public Authority, more specifically, that it does not hold the requested document, the cited exemption to refuse the applicant's request for information is justified.**



**Ian Deguara**

**Information and Data Protection Commissioner**

Decided today, the 3<sup>rd</sup> day of February, 2021

**Right of Appeal**

In terms of Article 39(1) of the Act “*where 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 Tribunal shall be made in writing and addressed to:

The Secretary  
Information and Data Protection Appeals Tribunal  
Mizzi House,  
National Road,  
Hamrun.

Our Ref: CDP/FOI/28/2020

3<sup>rd</sup> February 2021

Mr Christian Peregin  
Lovin Malta, Hardrocks Business Park  
Triq Burmarrad  
Naxxar  
NXR 6345

By registered mail

Enclosed please find a hard copy of the Commissioner's legally-binding decision regarding the subject in caption.

Yours sincerely,



**Dr Cynthia Duncan**  
f/Information and Data Protection Commissioner