

Tribunal tal-Appelli dwar l-  
Informazzjoni u l-Protezzjoni tad-Data



Information and Data Protection  
Appeals Tribunal

## **TRIBUNAL TAL-APPELLI DWAR L-INFORMAZZJONI U L- PROTEZZJONI TAD-DATA**

**Appeal number 5/2019**

**Access Info Europe**

**Vs**

**Ministry for Home Affairs and National Security**

**Judgement: 24<sup>th</sup> March 2022**

Chairman: Dr Anna Mallia LL.D., LL.M. (Lond), Dip.Tax

Members: Mr Charles Cassar M.B.A.(Exec.), Dip.Lab.Stud., Cert.Mediator (UK)

Mr David Bezzina HNDip C.S., BSc IT (Hons)





The Tribunal,

Having seen the appeal by Access Info Europe;

Having seen the reply by the Ministry for Home Affairs and National Security  
Having heard the parties, read the evidence produced including the statement  
made by the Information and Data Protection Commissioner in accordance with  
Article 26(4) of Chapter 586 of the Laws of Malta, and their final submissions  
Decides as follows:

That this appeal rests on the interpretation of the meaning of 'eligible person'  
under Article 2 of Chapter 496 of the Laws of Malta which states:

*"eligible person" means a person who is resident in Malta and who has been so  
resident in Malta for a period of at least five years and who is either a citizen of  
Malta or a citizen of any other member state of the European Union or a citizen  
of any other state the citizens of which have a right in virtue of any treaty between  
such state and the European Union to be treated in Malta in the same manner as  
citizens of member states of the European Union.*

#### Facts of the case

The appellant made a request under the Freedom of Information Act to the  
Ministry of Home Affairs and National Security. The said Ministry refused the  
request on the basis that Access Info Europe does not fall within the definition of  
'eligible person' under the Freedom of Information Act. Access Info referred the  
matter to the Information and Data Protection Commissioner and the said  
Commissioner on 31<sup>st</sup> October 2019 decided against the request made by Access  
Info Europe in that they do not qualify as an 'eligible person' according to Chapter  
496 of the Laws of Malta.





Now as regards the appeal made by Credit Info, the grievance of the appellant regarding fundamental human rights or breach thereof are not the competence of this Tribunal and the appellant may address the grievances regarding the alleged breach of the fundamental human rights to the appropriate fora.

The Tribunal has competence therefore to address only the first grievance of the appellant in that the correct interpretation of Article 2 of the Malta's Freedom of Information Act by the Ministry and the Commissioner is incorrect.

According to the appellant, this definition does not require that an eligible person needs to satisfy all these criteria, that is, a person must be resident in Malta and that he has been so resident in Malta for a period of at least five years ; that he is either a citizen of Malta or a citizen of any other member state of the European union but it requires that a person can either be resident in Malta or has been so resident in Malta for a period of at least five years , or that a citizen of Malta; or that a person is a citizen of any member state of the European Union. The appellant argues that they fall under the definition of a citizen of a member state of the European Union and therefore they fall within the definition of 'eligible person'.

Having seen the parliamentary debates submitted by the Commissioner with his statement of case, and that during the debate it was made clear that this definition applies by Hon Lawrence Gonzi that: *Ghalhekk ahna dehrilna li la m'hemmx ir-reciprocita allura f'dak il-kaz ma kellniex naghtu dan id-dritt lill-umanita kollha li tezisti fil-globu imma ghandna naghtu dan id-dritt primarjament lil min jghix f'Malta, primarjament lic-cittadini Maltin u wara c-cittadini Maltin lir-residenti f'Malta, lic-cittadini Ewropej u anke lic-cittadini ta' dawh il-pajjizi l-oħra li m'humiex membri tal-Unjoni Ewropea pero li magghom l-Unjoni ewropea ghandha dan l-arrangament ta' reciprocita. (fol 458 parliamentary debates).*

From this debate it is clear that the intention of the legislator was never to withhold such information from the EU citizens although the wording used in the legislation regarding the criteria of 'eligible person' according to Article 2 of Chapter 496 of the Laws of Malta leaves scope for interpretation.





The Tribunal,

Having seen the appeal by Access Info Europe;

Having seen the reply by the Ministry for Home Affairs and National Security  
Having heard the parties, read the evidence produced including the statement made by the Information and Data Protection Commissioner in accordance with Article 26(4) of Chapter 586 of the Laws of Malta, and their final submissions  
Decides as follows:

That this appeal rests on the interpretation of the meaning of ‘eligible person’ under Article 2 of Chapter 496 of the Laws of Malta which states:

*“**eligible person**” means a person who is resident in Malta and who has been so resident in Malta for a period of at least five years and who is either a citizen of Malta or a citizen of any other member state of the European Union or a citizen of any other state the citizens of which have a right in virtue of any treaty between such state and the European Union to be treated in Malta in the same manner as citizens of member states of the European Union.*

#### Facts of the case

The appellant made a request under the Freedom of Information Act to the Ministry of Home Affairs and National Security. The said Ministry refused the request on the basis that Access Info Europe does not fall within the definition of ‘eligible person’ under the Freedom of Information Act. Access Info referred the matter to the Information and Data Protection Commissioner and the said Commissioner on 31<sup>st</sup> October 2019 decided against the request made by Access Info Europe in that they do not qualify as an ‘eligible person’ according to Chapter 496 of the Laws of Malta.





But for the Tribunal and having also reviewed the legislation of other Members States in this regard from where it results that EU citizens can request such information, decides in favour of the appellant and revokes the decision of the Commissioner of the 31<sup>st</sup> October 2019 and orders the Ministry for Home Affairs and National Security to consider the request of the appellant on the merit. This Tribunal is making it clear that it is not decision on the ~~merit of the~~ request of the appellant to the said Ministry and it has decided on the preliminary plea raised by the Ministry aso to locus standi of the appellant.

*Swornly deleted*

Dr. Anna Mallia  
Chairperson

Mr. Charles Cassar  
Member

Mr. David Bezzina  
Member