



BANK ĊENTRALI TA' MALTA
EUROSISTEMA
CENTRAL BANK OF MALTA

**FREEDOM OF INFORMATION
CODE OF PRACTICE**

This Code of Practice is not intended to provide a complete summary of the Freedom of Information Act and must not be construed to be a substitute for a reading of the Act itself. Potential applicants should therefore refer to the Act for further information.

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FREEDOM OF INFORMATION CODE OF PRACTICE

1.0 INTRODUCTION

The Central Bank of Malta (the Bank) as a Public Authority subject to the provisions of the Freedom of Information Act (Cap. 496) (the Act) is obliged to comply with the Act in providing certain information to eligible persons as defined in the Act.

Some of the main features of the Act affecting the Bank are that:

- An eligible person has the right of access to documents held by the Bank in accordance with and subject to the provisions of the Act;
- No applicant is required to justify or give any reasons for a request under the Act; any beliefs of the Bank as to what the applicant's reasons are for seeking access must not affect the request;
- Timeframes are stipulated within which the Bank is bound to reply to the applicant of its intentions regarding the request for information;
- A complaints procedure is provided for in the Act giving the applicant the right to apply to the Information and Data Protection Commissioner (IDPC) for a ruling as to whether a request for information has been correctly treated in terms of the Act;
- The Bank may withhold documents falling within the exemptions provided for within the Act.

In order to ensure that the obligations emanating from the Act are followed and fully implemented, the Bank has developed this Freedom of Information Code of Practice.

2.0 DEFINITIONS

In accordance with the Act, the following definitions apply:

- “*applicant*” means the person who makes a request for the disclosure of a document in accordance with article 3;
- “*document*” means 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;
- “*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;

3.0 RESPONSIBILITIES

Responsibility for day-to-day matters with respect to Freedom of Information is vested in the Information and Data Protection Officer (IDPO), who reports to the Governor or the Deputy Governor of the Bank through the appropriate internal channels. Responsibility includes the receipt of requests, their processing, referral to other Public Authorities (where this is necessary) and any communications with applicants as may be necessary under the terms of the Act. In the course of duties, the IDPO shall be guided by the terms of this Code of Practice. The IDPO shall be assisted by the Alternate FOI Officer in the fulfillment of these duties, further to assuming all the duties and responsibilities pertaining to the FOI Officer when the latter is unavailable.

The Bank has also appointed a Complaints Officer to assess requests made in terms of the Internal Complaints Procedure.

4.0 OBLIGATIONS UNDER THE ACT

4.1 Publication Scheme

In accordance with Article 17 of the Act, the Bank publishes and maintains updated the following details on its web-site:¹

¹ www.centralbankmalta.org

- A description of its structure, functions and responsibilities;
- A general description of the categories of documents held by it;
- A description of all manuals and similar types of documents which contain policies, principles, rules or guidelines in accordance with which decisions or recommendations are made in respect of members of the public (including bodies corporate and employees of the Bank in their personal capacity); and
- A statement informing members of the public who may wish to obtain access to official documents from the Bank, including particulars of the IDPO to whom requests for such access should be sent.

4.2 Clarification of requests made by eligible persons

The Bank will assist an applicant who submits a request for a document or information in writing, including by electronic means, that is not in line with the requirements set out in the Act, or that is not clear in terms of the document required. In this regard the IDPO shall assist the applicant, in reformulating the request in line with the Act or to clarify the request, as the case may be. The Applicant shall at all times resubmit a new Application Form reflecting the modifications agreed upon with the IDPO.

Assistance to the applicant may include:

- guidance to make a request in line with the Act;
- requests for details on the type of information the applicant is looking for; or,
- an outline of the different types of documents that may meet the terms of the request.

Whenever such information is requested of applicants, the IDPO shall not seek to determine the aims or motivation of the applicant. The scope of any requests for information by the IDPO shall solely be to identify the document or information required by the applicant. Whenever assisting with requests, the IDPO shall not require applicants to be in possession of administrative information such as file numbers or names.

In the event that an applicant, after being given due assistance by the IDPO still cannot clarify the terms of the request, the applicant shall be formally informed that the Bank is not in a position to process the request as, notwithstanding assistance provided by the latter to clarify the scope of the request, the applicant could not provide the necessary clarifications. The applicant would also be informed of the Bank's internal complaints procedures and of the right to request an investigation and review by the IDPC in accordance with the Act.

4.3 Transfer of Requests between Public Authorities

In situations where the document or information requested is not held by the Bank but is believed to be held by another Public Authority, the IDPO ensures that the request is transferred to the correct Public Authority. Such transfers will be made as soon as possible but not later than 5 working days after the day on which the request is received to enable the other Public Authority to inform the applicant as to whether his/her request will be met or not within the twenty working day period allowed by the Act.

4.4 Consultation with Third Parties

Whenever a request is made for a document or information that relates to third parties or other Public Authorities, and such document or information does not appear to fall within the scope of the exemptions under the Act, the IDPO shall inform the third parties or other Public Authorities in question on the possible disclosure of the document or information. The scope of this consultation shall be to confirm whether the document or information in question falls within the scope of the exemptions foreseen by the Act, or any restriction on disclosure foreseen by any other law.

4.5 Dealing with Vexatious Requests

Whereas the Bank remains bound to provide the documents or information requested by applicants in accordance with the provisions of the Act, the Bank ensures that vexatious requests are not allowed to hinder the proper functioning of the Act or the effectiveness of the Bank in implementing it. In determining whether a request is vexatious, the Bank is guided by the following:

- whether a request is likely to cause unjustified disruption or burden to the Bank.
- whether the request is a repeated request by the same person for the same information.

Whenever a refusal is issued, the applicant shall be informed of the Bank's internal complaints procedure and the right to seek investigation and review by the IDPC in accordance with the Act.

4.6 Fees

Access to documents or information under the provisions of the Act is subject to a Bank fee in accordance with the *Fees charged by Public Authorities for access to documents Regulations* (LN 158 of 2010) as noted in the Bank's application forms issued pursuant to the *Application and other Forms Regulations* (LN 160 of 2010) . The Bank shall seek to inform the applicant of the fee applicable to the request at the earliest possible.

4.7 Submission of documents or information to applicants

Whenever a Freedom of Information request is received electronically, the IDPO shall submit the documents or information requested in electronic format whenever possible, unless the applicant explicitly requests otherwise. Whenever a Freedom of Information request is received by traditional communication methods, the IDPO shall submit the documents or information requested using the same communication methods whenever possible, unless the applicant explicitly requests otherwise. Acknowledgements shall be sent in electronic format whenever the applicant communicates an electronic address to the Bank.

Whenever the Bank communicates a decision to an applicant that access to a document or information will be granted and at the same time informing the applicant of the fees applicable to the request, the Bank shall make available the document or information to the applicant within a maximum of 10 working days of the relevant payment being made. Whenever the Bank communicates a decision to an applicant that access to a document or information will be granted and at the same time informing the applicant that no fee will be charged, the Bank shall make available the document or information to the applicant within a maximum of 10 working days from the notification of the said decision. The same timeframes will apply whenever the Bank decides to grant access to a document or information in the context of the internal complaints procedure.

The Bank may consider a request for access to a document or information as being abandoned by the applicant whenever the applicant fails to effect any payment due within 20 working days of the Bank having communicated its decision to the applicant. The request shall not be considered to have been abandoned whenever the applicant has addressed a complaint.

4.8 Internal Complaints Procedure

Although applicants are entitled to address complaints or seek review of any decision taken by the Bank by recourse to the IDPC, nonetheless the Bank offers applicants the possibility to present complaints to the Bank itself through the adoption of an internal complaints procedure.

To this effect, the Bank has established independent procedures whereby applicants are able to seek review of any decision taken, or to complain about matters relating to the implementation of the provisions of the Act. This procedure shall be referred to and be duly explained in all formal replies submitted by the Bank in relation to the Act. It shall, in particular, be included in each reply form in conjunction with information relating to the right of the applicant to address a complaint to, or seek the review of, the IDPC.

The internal complaints procedure is simple and easy to invoke. In particular, it allows the applicant to:

- i) file a complaint in writing (including by electronic means);
- ii) give reasons for disagreement with the Bank's decision to withhold the information requested; and,
- iii) report failure to meet the stipulated deadlines in the Act, as well as the failure to send notifications.

The whole procedure is designed to address the complaint and notify the applicant of the Bank's decision within 10 working days from receipt of the complaint. The applicant shall not be charged additional fees over and above those prescribed by the Act and the *Fees charged by Public Authorities for access to Documents Regulations*. The procedure does not require the submission of information by the applicant which is not envisaged by the Act.

In those instances where the Bank has communicated its readiness to provide the requested information, the internal complaints procedure still provides for the addressing of relevant complaints foreseen by the Act, such as the information not being provided in the preferred format. Furthermore, whenever fees are charged in accordance with the *Fees charged by Public Authorities for access to documents Regulations*, the internal complaints procedure provides for:

- a) reporting of disagreement by the applicant on the implementation of the said Regulations by the Bank;
- b) the possibility for the applicant to give reasons why he/she considers that the fee should not be applied in relation to his/her request pursuant to the provisions of the

Act - this without prejudice to the Bank's discretion in this regard as stipulated in the Act.

Whenever the Bank's decision in the context of the internal complaints procedure is not favourable to the applicant, the applicant shall be reminded of his/her right to address a complaint or seek a review of the decision by the IDPC in accordance with the Act.

The Bank shall act on complaints received not later than 30 days from the date of its last relative communication or the act or omission giving rise to the complaint, whichever is the later date, in accordance with the Act.

4.9 Inclusion of disclosure of information clauses in contracts

The Bank shall consider its obligations in terms of the Act when entering into contracts with private companies. Contractors shall be made aware that information relating to contracts may be disclosed under the Act unless such information falls within the scope of the exemptions established by the Act or any other law regulating disclosure.