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Member of the International Federation of Library Associations (IFLA), the European Bureau of Library, Information and Documentation Association (EBLIDA) and of the Commonwealth Library Association (COMLA)

**MaLIA's position on the white paper
"Towards greater transparency and accountability"**

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1. Introduction

The Malta Library and Information Association welcomes the government's initiative to publish the document "Towards Greater Transparency and Accountability". As an association promoting access to knowledge and information, MaLIA feels that this is a step in the right direction.

After a thorough review of the white paper, MaLIA is submitting a number of comments on the proposed legislation that, it is hoped, will contribute towards an efficient implementation and application of freedom of information in Malta and Gozo.

It is important to emphasise from the beginning that the situation calls for a balance between the protection of information pertaining to the privacy of the individual and the right to access information. This Act, therefore, is inextricably linked to the Data Protection Act that is already established in Malta and MaLIA's position is based on this preamble.

2. Ideal approach

In principle, MaLIA agrees with the proposal to have a combined Freedom of Information/Data Protection Commissioner. The need for a specialised body responsible to advise government bodies on how to handle requests for information and the development of a code of practice are very important issues that MaLIA would like to highlight. This body must also have some control over other areas crucial to making a success of implementation, one of the most important being records management.

The specialised body should therefore include amongst its ranks, information professionals that are experts in dealing with information handling and records management.

3. The basic principle

MaLIA is making 2 suggestions related to the basic principles indicated on page 34 of the document presented. The first is that entitlement to obtain information should not be restricted to Maltese citizens. Apart from the fact that this is against the principle of European citizenship, this restriction also discriminates against the over 12,000 foreign nationals residing in Malta. As in the case with the UK legislation, MaLIA suggests that Freedom of Information requests are accepted from anywhere in the world.

The 'capacity constraints' debate should not, in MaLIA's opinion, be considered a valid defensive argument as the enacting of the Act per se should indicate a commitment on behalf of the government to dedicate the necessary financial and human resources towards the successful implementation of this Act. Indicating, a priori, that requests will have to be handled through existing staff does not indicate a professional approach and suggests that anyone, with a brief training session, will be in a position to handle information requests.

The other suggestion that MaLIA is proposing is that the Act should give organisations an entitlement to submit a request for information. The fact that the

same document indicates that an individual can submit a request on-behalf-of an organisation, renders this restriction superfluous from the beginning and will only contribute towards less clarity in the analysis of received requests and the respective enquirers. This analytical aspect is very important in the evaluation process that should follow the implementation of the Act.

4. Timeframes and records management

MaLIA believes that a reply within 20 working days is acceptable but is concerned about the extensions to 40 working days becoming commonplace for various reasons. Since no direct reference has been made to coverage within the white paper, MaLIA is assuming that the Act will be fully retrospective. Public authorities will therefore be obliged to provide information recorded before and after the date the Act was passed. To be able to comply with this obligation, public bodies need to have efficient and effective records management practices and procedures in place.

MaLIA is concerned that unless a concerted effort is made to upgrade the current record management practices and procedures within public authorities, requests will often take the full extension of 40 days before being replied to (if not more). This will, of course, increase the workload of the Commissioner that will receive complaints about delay in expected replies from the various authorities.

It is therefore suggested that, as indicated in the National Archives Act 2005 (Article 16), Records Officers are placed in all public organisations with immediate effect and emphasis on the need of proper records management practices is stressed with all organisations before the enacting of the Act.

MaLIA is of the opinion that there is no point in setting up a wonderful system to handle requests for information, if you can't find the information you need to provide, and find it within the time limits imposed by the legislation. The Records Officers will need to have a strong communication with the FOI/Data Protection people, even if they are not under the same management. It is suggested that best practices concerning request handling procedures and records management are looked into and used as case studies during the training phase required prior to the implementation of the act.

5. Proactive publication of information

As suggested, proactive publication of information is considered the best way to minimise individual requests. MaLIA is of the idea that the UK legislation should serve as a guideline in this area. This obliges public bodies to draw up a Publication Scheme of material they will make publicly available. The use of Publication schemes should be a means by which a public authority can make a significant amount of information available routinely, without waiting for someone to specifically request it.

Although the white paper (p. 37) indicated that it is sufficient to publish such information on the Internet, special care should be given not to create a disadvantage to persons without Internet access. Additionally, having access to a computer and the Internet does not necessarily guarantee accessibility to the required information. This may depend on the information literacy skills of individuals and also on technical hitches that an enquirer might encounter in his/her research.

It is therefore suggested that any eventual publication schemes will at least entail that a printed catalogue of available information and in what format is readily available. The production of such catalogue should be required by the Act and could be based on the Canadian model where the Act requires the publication of an "Access to Information Register." The register is organised into chapters corresponding to major government institutions, and each chapter describes all records under the control of that institution in enough detail to enable people to request specific items. Copies of this register are available in hundreds of libraries and thousands of post offices across Canada. MaLIA is suggesting the use of public libraries to disseminate this catalogue and assist enquirers about availability of published information. Moreover, other networks such as schools, local councils and government departments should also be used to disseminate information material as widely as possible. MaLIA considers accessibility as an important aspect to freedom of information.

MaLIA is also of the opinion that the proposed increase in published information has to be matched by a more professional approach to publishing by public authorities. To date, there seems to be a rather amateurish approach to the publishing of documents as time and again, public authorities continue to publish documents that do not include a proper title page, i.e. title, author, place of publication, publisher, date of publication and ISBN (International Standard Book Number). The lack of these important bibliographic details renders retrieval of such documents difficult for information professionals, let alone for officers that do not have specific training in information retrieval. MaLIA is therefore suggesting that public authorities place more importance on proper publishing procedures and the importance of bibliographic details in all the documents published. This, besides contributing to more professional resources, will render retrieval of information easier for individuals and organisations.

Once the right of access to information is fully in force, it is suggested that public authorities keep a log of requests made for information which is not included in their publication schemes. Consequently, the authorities may consider adding the class of information of specific requests as a new class to be covered by the scheme (if a substantial number of requests are received on a certain class). The log itself could also fall into a class for publication under the scheme (e.g. publishing an annual List of FoI requests received by the Ministry of Education, Youth and Employment).

6. Implementation of the Act

The gradual implementation of Act seems logical, especially if everyone agrees that this Act will have a significant impact on the ministries, departments and public bodies. MaLIA believes that it is crucial for all the relevant Directors in the various public authorities to have a clear understanding of what FoI could mean for them, be able to prepare a policy (possibly a common policy) for dealing with it, and have the will to commit adequate resources for doing what needs to be done. It is fundamental that the implementation of the Act is considered as a corporate responsibility and supported at the top levels of the public sector.

7. Fees

Whilst MaLIA appreciates that the supply of information is a costly exercise, there is an element of concern related to this issue. It is therefore suggested that, as indicated in Article 9 (Item 4) of the proposed Act, that standard fees are set and

observed by all public authorities. These fees should be based on the principle of cost-recovery and not set as a deterrent to minimise the amount of requests.

MaLIA also suggests that basic information should be made available free of charge. The proactive publication of information should in fact be focused on providing basic information to the public at no cost.

8. Training

A crucial part of support from the top people within the organisations will be to endorse a training strategy which works at three levels — strategic, awareness and expertise.

8.1 The strategic level

The directors and top management in the public sector must acquire a strategic awareness and understanding of FOI and how it will effect their own organisation and responsibilities. They must therefore understand the broad issues, see the need for an overall programme of implementation, and support those implementing it. They will therefore need a short, emphatic programme of strategic level training — an afternoon, if properly structured and presented, should be enough. MaLIA is fully aware that this new principle will come as a cultural shock to some of the top people within the public authorities who, for many years, have considered information within their organisations as confidential and have at times used the Data Protection Act as a tool to further suppress dissemination of information. A cultural change will therefore have to take place and this, unfortunately, may take time (definitely longer than an afternoon).

8.2 The awareness level

Because any request for information to a public authority can be classified as an FOI request, almost all staff needs to have a basic awareness of the Act and know how to react to requests for information. Above all, staff will need to be able to identify requests which may be contentious or difficult, and know what to do with them. Normally this will be to pass them quickly to the expert team, or individual, within their organisation. Awareness level training, again, need only be short (perhaps a day), but has to provide a snapshot of the legislation, focus on the key messages and be tailored to "front-line" staff, to give them the knowledge and confidence to deal with FOI. It can also include some basics on data protection if required.

8.3 The expertise level

Each authority is going to need one or more officers, the "professionals" within the organisation who have specific responsibilities for FOI, preferably for DP as well, and detailed special knowledge to deal with the complex and high-profile cases. Training for these "professionals" needs to bring out the exact purpose and provisions of the legislation. But it must also have a practical focus so that the information professionals can deal (with the required top management support) with potentially complex casework in a professional and informed manner. These information professionals will need detailed procedures for handling cases, including desk instructions.

The training of staff within the Commissioner's Office and in every government body is a crucial aspect in the implementation and efficient application of the Act. MaLIA emphasises the need for training at the three levels described above prior to the introduction of the Act and also after the implementation.

The proposed Information Officers should preferably be qualified information professionals. MaLIA strongly believes that such a post requires professional staff and that is the reason why emphasis on the word "professionals" has been placed in point 8.3 above.

If the recruitment of information professionals is not immediately feasible, specialised training by appropriate bodies should be given to all indicated officers. The proposal to have a dual role can be considered as functional and logical but MaLIA would like to emphasise that although there is a clear link between the Data Protection and the Freedom of Information Acts, these require quite distinct skills and competencies.

9. Conclusion

MaLIA fully supports the government's initiative to enact a Freedom of Information Act. Special attention should be given to the preparatory stages and the need for proper structures and training required for the effective implementation of the Act.

The most important aspect that MaLIA would like to emphasise is the need for a professional service that can only be achieved through the availability of professionally trained people dealing with information requests. In this respect, MaLIA would like to point out that as an association, it has a long history of providing training to people working in the information world including libraries and archives. Several of its members contribute to the preparation of information professionals in Malta and Gozo by lecturing on a part-time basis with the Division of Library and Information Studies at the University of Malta.

MaLIA is willing to contribute actively in the discussions and training activities leading to the implementation of this Act and welcomes any feedback to this document and any proposal for further discussions.