



### CASE REPORT

**Case no:** K/014

**Complaint:** Abuse of public funds - public funds used to finance legal costs for the defence of personal interests

**Complainant:** Dr Andrew Borg Cardona

**Complaint Date:** 13 October 2019

**Report date:** 21 November 2019

#### The Complaint

1. By email of 13 October 2019 (attached and marked Document A), Dr Andrew Borg Cardona requested the Commissioner for Standards in Public Life to determine whether:

i. *“the engagement of a London firm, with the associated costs being paid out of public funds, by a number of Ministers, including the Prime Minister, to respond to queries made to them by the authors of the book to be published in Malta (‘Murder in the Malta Express’) is behaviour that is appropriate in the circumstances?”*

2. In the opinion of the Complainant,

- ii. *“the individuals concerned, amongst whom Mrs Michelle Muscat, who has no official standing whatsoever, were addressed in their personal capacities and not in representation of their public office. Consequently, although the firm concerned responded for ‘the Government of Malta’, this is clearly not the case... as such ... their engagement is an abuse of public funds.”*
- iii. *“Moreover, given that the underlying reason for the engagement is clearly to achieve a chilling effect on the authors due to the apprehension that might have been caused in the light of the high costs involved in the event of*



*SLAPP<sup>1</sup> litigation in London, the engagement also constitutes a breach by the public officials concerned of their obligation to respect the right of freedom of expression enjoyed by the authors.”*

### Decision to Investigate

3. I decided that the Complaint warranted further investigation under the Act.

### The Facts

4. On 2 September 2019 Mr Manuel Delia wrote to the Prime Minister, Mrs Michelle Muscat, Mr Keith Schembri (the Prime Minister’s Chief of Staff), Minister Konrad Mizzi and Minister Chris Cardona, asking each one to respond to questions by 9 September 2019. Copies of the letters are herewith attached and marked Documents “B” to “F”. The questions were in connection with the publication of a book examining the circumstances prior to and the aftermath of the assassination of Daphne Caruana Galizia in Malta in 2017. The book was being authored by Mr Delia together with a team of international journalists.

5. Mr Delia received a letter dated 9 September from the British law firm Carter-Ruck, which wrote on behalf of the Government of Malta “in connection with the communications” made by Mr Delia to the afore-mentioned individuals. The legal letter is herewith attached and marked Document “G”.

6. At my request, Mr Delia provided me with copies of the letters sent to the afore-mentioned individuals (Documents “B” to “F”)

7. I wrote to the Prime Minister on 16 October 2019 (Document H, herewith attached) asking him:

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<sup>1</sup> SLAPP stands for “strategic lawsuit against public participation”. It refers to court proceedings that are instituted in order to burden critics with legal costs as a means of intimidating or silencing them. In the local context the term SLAPP is commonly understood as referring to lawsuits instituted in foreign jurisdictions, where legal costs and damages awarded can be significantly higher than those in Malta.



- i. *“whether the said firm of solicitors was instructed by you or any other person, on behalf of the Government of Malta or whether the instructions to Carter-Ruck were given by the individuals to whom the questions were addressed; and*
- ii. *who shall bear the costs pertaining to Carter-Ruck’s engagement”.*

### **Prime Minister’s Response**

8. The Prime Minister responded on 18 October 2019 (copy of letter attached and marked Document “1”) as follows:

*“... On the 2<sup>nd</sup> September 2019 Ministers Chris Cardona, Konrad Mizzi, and Government’s Head of Communications Mr. Matthew Carbone received a total of five e-mails from Mr. Emmanuel Delia.*

*The e-mails were sent to official Government e-mail addresses and in the case of the mails sent to Ministers Cardona and Mizzi these were also copied to Ministry staff. In the case of the mails sent to the Government’s Head of Communications the mails were marked separately ‘For the attention of’, the Prime Minister, Mrs Michelle Muscat and Mr. Keith Schembri respectively.*

*In those mails Mr. Delia stated that ‘Together with a team of international journalists, I will in the next few weeks be publishing a co-authored book that will examine the circumstances prior to and the aftermath of the assassination of Daphne Caruana Galizia in Malta in 2017.’ Mr. Delia also informed the recipients that they would feature in the book and that if they wished to comment about a number of points loaded with innuendo listed in the letters they could do so by not later than 5pm of the 9<sup>th</sup> September 2019.*

*It was clear from the circumstances that the e-mails were different from the many requests for comment from the media received on a daily basis, given Mr. Delia's claim that he was writing a book with a team of international journalists. Government therefore felt that it was appropriate that it should put forward its position on the basis of these emails. Also, the emails were purportedly addressed to individuals who all hold public office, as well as the Prime Minister's wife, with the obvious assumption on the latter being that she was of interest to the authors simply because of her husband’s role in Government.*



*It was in this context, given the international nature of the request, and the nature of the publication, that Government felt it was appropriate to seek further international advice.*

*The letter sent by Carter-Ruck was sent on behalf of the Government and not on behalf of individuals. It makes reference to the fact that the individuals concerned were reserving their position since the allegations addressed to those individuals in fact also constituted highly defamatory allegations against the Government as a whole and the reference to the individual's reservations were therefore essential to the reservation of Government's position.*

*Furthermore, kindly be informed that it is not the first time that holders of public office in Malta have, through the use of public funds, engaged foreign lawyers to advise them on matters relating to potential defamation on the basis of potential cause of harm to the country. On March 6, 2012 the then Prime Minister Dr Lawrence Gonzi informed Parliament during sitting 454 of that legislature that, following the obtaining of legal advice, the Maltese Government initiated legal proceedings abroad over an interview with Sea Shepherd founder Paul Watson published by foreign-based media outlet New Europe.*

*In fact on that occasion the then Prime Minister Lawrence Gonzi and the then Minister responsible for fisheries George Pullicino had engaged a Brussels law firm with the involvement of their own private legal consultant in Malta to file defamation proceedings in their names against the Brussels News Agency before the Brussels French speaking court (case with General Docket No. 2012/10464/A) in respect of an article entitled 'The Guardian of the World's Oceans') which was published on the website of the weekly newspaper 'New Europe'. Those proceedings were fully funded by Government even after the change in administration in 2013 and they were eventually settled in 2015.*

*In the circumstances, whilst confirming that it has engaged the services of Carter Ruck in response to the allegations made by Mr. Delia and his partners, any claim that the engagement of specialised international legal expertise in this context involves any abuse of public funds or/and denial of the right to freedom of expression is being rebutted."*



## The issue

9. The issues raised by the Complainant can be addressed in the following order:
- i. Was the Prime Minister entitled to seek legal representation on behalf of the Government of Malta and at its expense, or was this in response to an issue that was of a strictly private nature? In the latter case it would be in breach of clause 5.3 of the Code of Ethics of Ministers and Parliamentary Secretaries, that obliges ministers to “exercise the highest level of diligence including in the expenditure of public funds”.
  - ii. If the Prime Minister was entitled to seek legal representation in his official capacity, was it necessary to appoint an international law firm as opposed to relying on the Attorney General, whose task it is to represent the government in legal proceedings, and/or local specialist advisors?
  - iii. Was the appointment of Carter-Ruck intended to intimidate the authors of the book and in that way restrict their freedom of expression?

## Considerations

10. In relation to the first question, the first point to consider is who instructed Carter-Ruck and the answer seems quite clear in that the Prime Minister did so as Head of the Government of Malta. In fact, he claims, and the letter shows, that Carter-Ruck wrote on behalf of the Government and not on behalf of the individuals concerned. This distinction is fundamental.

11. The next point to consider is whether this distinction is genuine, that is to say whether Carter-Ruck was appointed by the Prime Minister to defend the interests of the Government of Malta or whether the firm was in actual fact appointed to represent the personal interests of the Prime Minister, his wife and the other individuals concerned in the face of potential personal reputational damage resulting from the publication referred to in the letters of the 2 September 2019 (Documents “B” to “F”). It is significant to note that the questions to the Prime Minister requested him to react to allegations that “*you and your government...*” may have been aware of the danger of the assassination; may have been in a position to prevent it; and had acted in a way to obscure the truth about the assassination; whereas the questions to the other individuals concerned matters that were of a strictly private nature in view of alleged wrong-doing on their part.



12. Whereas the legal letter does state that *“the individuals concerned reserve all rights in relation to the publication and repetition of any allegation that is defamatory and untrue”*, the main focus and thrust of the letter is a re-statement of Government’s position on its handling of the Egrant and the Daphne Caruana Galizia affairs in general, and the setting up of an independent public inquiry in particular.

13. I therefore cannot exclude that the Prime Minister sincerely believed that the allegations levelled at him and possibly of the individuals concerned through the questions put to all of them would impact the Government of Malta and Malta’s reputation and not just the reputation of the individuals concerned.

14. In this context it should be recognised that accusations of personal misconduct against senior government officials, particularly ministers, can jeopardise not only the reputation of the officials concerned but also that of the Government as a whole and, by extension, the country. It thus becomes a matter of public consequence that the official concerned should clear his or her name and it is therefore within the discretion of the Prime Minister to decide on a case-by-case basis whether the government should or should not step in and finance the legal costs of the individuals concerned.

15. Consequently, whereas as a general rule legal proceedings, such as actions to protect one’s reputation, should be undertaken by the official concerned in his or her personal capacity, situations may arise in which the Prime Minister may consider it expedient for the Government to become directly involved in legal proceedings.

16. The defence of the interests of the Government seems to have been the aim of former Prime Minister Lawrence Gonzi in the case referred to by Prime Minister Muscat in his reply reproduced above. In the course of this investigation I therefore requested former Prime Minister Lawrence Gonzi to explain the circumstances of the engagement of the foreign firm in that case. He replied to my email and forwarded to me the relevant correspondence exchanged (attached and marked Document J). In that case a Brussels-based law firm was instructed to start libel proceedings in Brussels. It results that this was done with the full *“knowledge and involvement of the Attorney General Dr Peter Grech”*.



17. The libel case was instituted in Brussels by the then Prime Minister Gonzi and by Minister George Pullicino, who were not mentioned by name in the allegedly defamatory article entitled *The Guardian of the World's Oceans* that had denounced “*politicians*” in general. The case was continued by the then-new Labour administration on the understanding, as evidenced in the relevant correspondence, that in the event of a successful outcome any damages awarded by the court should go to the Consolidated Fund (*erarju pubbliku*).

18. A decision as to when the public interest justifies legal action at public expense in an ostensibly private case such as this, is necessarily subjective and would involve the exercise of considerable discretion on the Prime Minister’s part. Considerations influencing the Prime Minister’s decision might include the nature of the charges that are being made, the extent of the possible damage to the reputation of the Government and the country if those accusations are not contested, how easily the accusations can be disproved, and the extent of exposure to legal costs. The important thing from an ethical point of view is that there should be reasonable justification for the Prime Minister’s decision, and that if the Government is funding legal proceedings, any costs or damages awarded by the court in the event of a favourable judgement should go to the Consolidated Fund. My remit in such cases is limited to ascertaining that these conditions have been met.

19. The test of what could be called reasonable justification necessarily and rightly allows the Prime Minister considerable leeway to decide how to act in any given situation. It is my view that in this particular case the Prime Minister’s decision to seek legal representation on behalf of the Government of Malta meets the test of reasonable justification.

20. If the Government of Malta has a legitimate interest in the case, it is the Prime Minister’s duty to defend its interests and this he is expected to do in what he considers the best possible manner. Hence, whereas the decision by the Prime Minister not to use the services of the Attorney General or a local law firm for a simple legal letter, and to instruct Carter-Ruck instead, could be considered unprecedented and possibly perceived as excessive, this may be defensible in the circumstances. The circumstances include the fact that the letters from Mr Manuel Delia refer to a publication by a “*team of international journalists*” about the assassination of Malta’s foremost journalist: a tragic event that has been the subject of international media exposure, which in turn has had a serious negative impact



on Malta's reputation abroad and not just on the personal reputation of the Prime Minister, his wife and his colleagues.

21. With regard to the Prime Minister's right as an individual to defend his own and his wife's interests, it must be emphasised at this stage that Carter-Ruck wrote that it was instructed by the Government *in connection with the communications on 2 September* to the individuals concerned but then went on to declare that "... *The individuals concerned reserve all their rights in relation to the publication and repetition of any allegation that is defamatory and untrue.*" This is rather a strange statement to make if the firm had not been instructed by them, although it may have been made simply to avoid the risk that a lack of reply by the individuals concerned may be construed as a tacit acceptance of any allegation made. This apparent ambiguity, intended or otherwise, seems to have provoked the Complaint. In my considered opinion, given that Government had an interest in answering the communications, the inclusion of a declaration of reservation of rights of the individuals concerned at Government's cost, in a simple legal letter, may be acceptable in the circumstances.

22. It is to be understood, however, that if the individuals concerned intend to pursue the matter further and initiate proceedings in Malta or elsewhere in the expectation of an award of damages, they should finance their own legal costs.

23. The third and final question concerns the nature of the response. The contents of the letter can be considered quite placid and perhaps intentionally designed to appear to contrast with the reputation enjoyed by the law-firm in question. There are no explicit threats of SLAPP, libel or other actions for damages in London or elsewhere that might have caused the "chilling effect" referred to in the Complaint. To my mind such threats were conspicuous by their absence. Nor can it be argued convincingly that a legal letter of the sort constitutes a form of lack of respect of the right to freedom of expression.

## Conclusion

24. In light of the foregoing I consider that the decision of the Prime Minister to instruct a foreign law firm to defend what the Prime Minister considered the interests of the Government of Malta, in the circumstances, fell within his legitimate discretionary powers. Consequently, I conclude that there was no *prima facie* breach of ethical or statutory duties on the part of the Prime Minister in this





case. This conclusion has been reached on the basis of my understanding as derived from the facts of the case, that the instructions given by the Prime Minister were intended to defend the Government's interests and not his own purely personal interests and those of his wife and colleagues.

25. It is of course to be expected that in the event that libel or other proceedings for damages are instituted by the individuals concerned for their own ultimate advantage or benefit, they should bear the relative costs. Under no circumstance should the Government finance, or give the impression that it is financing, the litigation costs of the individuals concerned, whether or not such persons are directly or indirectly related to government. Such litigation proceedings would be a purely private matter and the Prime Minister would be well-advised to keep this in mind and instructions to that effect be clearly given.

26. A copy of this report is being given to the Complainant and to the Prime Minister. It is also being submitted for information purposes to the Standing Committee for Standards in Public Life.

**Dr George-Marius Hyzler**

Commissioner for Standards in Public Life



Documents Attached:

- Document A Complaint by email from Dr Andrew Borg Cardona dated 13 October 2019
- Document B Letter from Manuel Delia to Prime Minister dated 2 September 2019
- Document C Letter from Manuel Delia to Mrs Michelle Muscat dated 2 September 2019
- Document D Letter from Manuel Delia to Keith Schembri dated 2 September 2019
- Document E Letter from Manuel Delia to Min Konrad Mizzi dated 2 September 2019
- Document F Letter from Manuel Delia to Min Chris Cardona dated 2 September 2019
- Document G Legal letter from Carter-Ruck to Manuel Delia dated 9 September 2019
- Document H Letter from the Commissioner for Standards to the Prime Minister dated 16 October 2019
- Document I Letter from the Prime Minister dated 18 October 2019
- Document J Exchange of correspondence with Dr Lawrence Gonzi

**Charles Polidano - Office of the Commissioner for Standards in Public Life**

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**From:** Andrew Borg Cardona <andrewbc@bcgladvocates.com>  
**Sent:** Sunday, 13 October 2019 18:47  
**To:** Office  
**Subject:** Engagement of Carter-Ruck

Would the Commissioner be so kind as to determine whether the engagement of a London firm, with the associated costs being paid out of public funds, by a number of Ministers, including the Prime Minister, to respond to queries made to them by the authors of the book to be published in Malta ("Murder in the Malta Express") is behaviour that is appropriate in the circumstances?

To my knowledge, the individuals concerned, amongst whom Mrs Michelle Muscat, who has no official standing whatsoever, were addressed in their personal capacities and not in representation of their public office. Consequently, although the firm concerned responded for "the Government of Malta", this is clearly not the case.

As such, in my opinion, their engagement is an abuse of public funds.

Moreover, given that the underlying reason for the engagement is clearly to achieve a chilling effect on the authors due to the apprehension that might have been caused in the light of the high costs involved in the event of SLAPP litigation in London, the engagement also constitutes a breach by the public officials concerned of their obligation to respect the right of freedom of expression enjoyed by the authors.

Kind regards

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Andrew Borg-Cardona LL.D., M.A. (Business Law) BCGL Advocates This email is intended for the designated recipient(s) only and is confidential. Statements made are legally privileged, without prejudice and not to be cited in litigation. Unless requested, in the interests of efficiency, hard copies will not be sent

Prime Minister

Together with a team of international journalists, I will in the next few weeks be publishing a co-authored book that will examine the circumstances prior to and the aftermath of the assassination of Daphne Caruana Galizia in Malta in 2017.

You will feature in the book which among other things will discuss:

1. Your reaction and behaviour in public at the time of and since the assassination;
2. Your behaviour two days before the assassination of Daphne Caruana Galizia in the presence of Minister Chris Cardona;
3. Your relationship with former EU Commissioner John Dalli;
4. Your rise to power;
5. Your decision to retain in office Minister Konrad Mizzi and your chief of staff Keith Schembri after the revelations of the Panama Papers and consequential revelations since then;
6. Your participation in the decision for Mr Christian Kaelin or Henley & Partners or both to pursue legal action against Daphne Caruana Galizia in courts outside of Malta;
7. Your history with Azerbaijani President Ilham Aliyev, his family and his government; and
8. Your relationship with "Professor" Joseph Mifsud.

The book as written takes into account your public comments, statements and responses to criticism you have received in respect of these matters.

However we wish to ask you if you have any additional or specific comments you would like to add to any or all these themes.

In addition we would seek your reaction to the suggestion that:

1. you and your government may have been aware of Daphne Caruana Galizia's execution before it happened: or
2. you and your government may have been in a position to prevent it had you wanted to; or
3. You and your government have acted in such a way as to obscure the truth about the assassination or to reduce the chances of finding it.

We will take appropriate account of your response which however will need to arrive to us by return email by 17:00 of Monday, 9 September 2019 after which time the commitment to print deadline will have expired.

With thanks,

Manuel Delia

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Mrs Michelle Muscat

Together with a team of international journalists, I will in the next few weeks be publishing a co-authored book that will examine the circumstances prior to and the aftermath of the assassination of Daphne Caruana Galizia in Malta in 2017.

You will feature in the book which among other things will discuss:

1. The allegation that Panama company Egrant Inc was set up for you by Nexia BT;
2. The allegation that you have received illicit payments from Leyla Aliyeva; and
3. The allegation that your business with Ms Michelle Buttigieg branded as Buttardi received illicit payments from Negarin Sadr.

The book as written takes into account your public comments, statements and responses to criticism you have received in respect of these matters.

However we wish to ask you if you have any additional or specific comments you would like to add to any or all these themes.

We will take appropriate account of your response which however will need to arrive to us by return email by 17:00 of Monday, 9 September 2019 after which time the commitment to print deadline will have expired.

With thanks,

Manuel Delia

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Mr Keith Schembri

Together with a team of international journalists, I will in the next few weeks be publishing a co-authored book that will examine the circumstances prior to and the aftermath of the assassination of Daphne Caruana Galizia in Malta in 2017.

You will feature in the book which among other things will discuss:

1. The Panama offshore company set up in your name;
2. The allegation that you have accepted kickbacks relating to the sales of Maltese passports to Russian citizens;
3. Your participation in the decision for Mr Christian Kaelin or Henley & Partners or both to pursue legal action against Daphne Caruana Galizia in courts outside of Malta; and
4. The documentation that shows that 17 Black, a Dubai company allegedly belonging to Yorgen Fenech, CEO of Electrogas, has been identified as a 'target client' by your Panama company and stood to be paid illicit funds by it.

The book as written takes into account your public comments, statements and responses to criticism you have received in respect of these matters.

However we wish to ask you if you have any additional or specific comments you would like to add to any or all these themes.

We will take appropriate account of your response which however will need to arrive to us by return email by 17:00 of Monday, 9 September 2019 after which time the commitment to print deadline will have expired.

With thanks,

Manuel Delia

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Minister Konrad Mizzi

Together with a team of international journalists, I will in the next few weeks be publishing a co-authored book that will examine the circumstances prior to and the aftermath of the assassination of Daphne Caruana Galizia in Malta in 2017.

You will feature in the book which among other things will discuss:

1. The Panama offshore company set up in your name;
2. The documentation that shows that 17 Black, a Dubai company allegedly belonging to Yorgen Fenech, CEO of Electrogas, has been identified as a 'target client' by your Panama company and stood to be paid illicit funds by it; and
3. The allegation that you have participated in a private agreement with Vitals Healthcare Group to grant them a concession for three public hospitals before the public procurement process.

The book as written takes into account your public comments, statements and responses to criticism you have received in respect of these matters.

However we wish to ask you if you have any additional or specific comments you would like to add to any or all these themes.

We will take appropriate account of your response which however will need to arrive to us by return email by 17:00 of Monday, 9 September 2019 after which time the commitment to print deadline will have expired.

With thanks,

Manuel Delia

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Minister Chris Cardona

Together with a team of international journalists, I will in the next few weeks be publishing a co-authored book that will examine the circumstances prior to and the aftermath of the assassination of Daphne Caruana Galizia in Malta in 2017.

You will feature in the book which among other things will discuss:

1. The allegation that you knew one or more of the alleged assassins charged with the murder of Daphne Caruana Galizia;
2. The allegation that you met one or more of the alleged assassins charged with the murder of Daphne Caruana Galizia before the assassination and between the assassination and their arrest;
3. The allegation that you may have had foreknowledge of the assassination;
4. The allegation that in January 2017 you visited a brothel in Velbert, Germany during an official work trip;
5. The allegation that you did not pursue your libel suit against Daphne Caruana Galizia on her reporting of your alleged visit to a brothel for fear that TAP phone data in possession of the court might confirm that allegation correct and also prove that you would have perjured yourself on the matter;
6. Your long term association with Dr David Gatt in spite of your awareness that wire-tapped conversations showed that when he was a police officer he was associated with criminal activity and the allegation that he masterminded a series of violent and criminal acts; and
7. The allegation that you have participated in a private agreement with Vitals Healthcare Group to grant them a concession for three public hospitals before the public procurement process.

The book as written takes into account your public comments, statements and responses to criticism you have received in respect of these matters.

However we wish to ask you if you have any additional or specific comments you would like to add to any or all these themes.

We will take appropriate account of your response which however will need to arrive to us by return email by 17:00 of Monday, 9 September 2019 after which time the commitment to print deadline will have expired.

With thanks,

Manuel Delia

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9 September 2019

**By Email only:** emanuel.delia@gmail.com

**PRIVATE AND CONFIDENTIAL  
NOT FOR PUBLICATION**

Carter-Ruck

Emanuel Delia

Dear Sir

**Our client: The Government of Malta**

We are instructed by the Government of Malta ("the Government") in connection with your communications on 2 September to the Prime Minister, his wife and three government ministers.

You have given no indication of the identity of the co-authors or the publishers of the proposed book. We invite you now to tell us who they are.

Although you say the book will be published in the "next few weeks", and it must have been in development for some time, you have stipulated that a response will need to be given within a week of receipt of your email, by 9 September, after which time "the commitment to print deadline will have expired". Given the serious nature of the allegations that you raise, and the complexity of the background, this is an unreasonably short timeframe in which meaningfully to address the claims.

You will appreciate that, whilst the allegations put to each individual differ, each is highly defamatory. All of the matters put to the individuals in your correspondence are expressed, by implication, to be linked to the murder of Daphne Caruana Galizia as "the circumstances prior to and the aftermath of the assassination" is said to be the overall subject of the book. The individuals concerned reserve all their rights in relation to the publication and repetition of any allegation that is defamatory and untrue.

We note your assurance that the book takes into account the public comments, statements and responses to criticism that the subjects of the allegations have made. Our client would expect that, insofar as investigations have reached a conclusion, the public findings are reported faithfully and comprehensively, and that the public statements made on behalf of the Government or individual ministers about these matters should be fairly reflected in any published book or other material.

We understand that the matters you raise in your correspondence are either the subject of ongoing court proceedings or investigation in Malta, or have already been the subject of Magisterial investigation. The Egrant inquiry, for example, found signatures had been falsified on documents, inconsistent testimonies and nothing linking the Prime Minister's family to the offshore company.

Our client is engaging with the Council of Europe concerning the establishment of a Public Inquiry into Ms Caruana Galizia's death, with a view to having a full and independent Inquiry that will not interfere with ongoing criminal proceedings.

**Carter-Ruck Solicitors**

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**Partnership Secretary**

Alison Phillips

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Authority

SRA No. 44769



As you know, criminal proceedings are ongoing against three individuals charged in December 2017 in connection with Ms Galizia's death and further investigations are being conducted by a Magistrate in relation to potential involvement by other individuals. Our client has been clear that Ms Galizia's death, and other allegations, should be investigated properly through the appropriate channels.

Yours faithfully

A handwritten signature in black ink, appearing to read "Carter-Ruck", written in a cursive style.

**Carter-Ruck**



## Commissioner for Standards in Public Life

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16<sup>th</sup> October 2019

Hon Dr Joseph Muscat  
Prime Minister

By email to: [joseph.muscat@gov.mt](mailto:joseph.muscat@gov.mt)

Prime Minister,

### Case K/014

I have received a complaint relating to the engagement of Carter-Ruck, a firm of solicitors based in London, to respond to questions put to you and other individuals by the authors of a book entitled *Murder on the Malta Express*, that was then to be published in Malta.

One of the reasons for the complaint appears to be that the letter from Carter-Ruck states that it received instructions from the Government of Malta “to respond to queries” put to you, Mrs Muscat, Minister Dr Konrad Mizzi, Minister Dr Chris Cardona and Mr Keith Schembri ostensibly not in, or related to, any of their official capacities and on matters that fall outside their official duties.

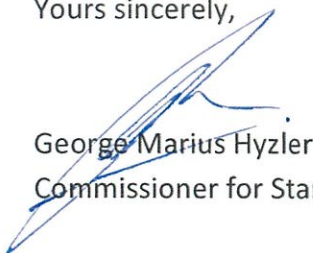
At this stage, I wish to determine:

- whether the said firm of solicitors was instructed by you or any other person, on behalf of the Government of Malta or whether the instructions to Carter Ruck were given by the individuals to whom the questions were addressed; and
- who shall bear the costs pertaining to Carter-Ruck’s engagement.

A copy of the relative complaint is attached herewith.

I would appreciate a reply by close of business of **Monday 21 October 2019**.

Yours sincerely,



George Marius Hyzler

Commissioner for Standards in Public Life



18 October 2019

Dr. George Marius Hyzler  
Commissioner for Standards in Public Life

*Dear Commissioner,*

Thank you for your letter of the 16<sup>th</sup> October enclosing a complaint by Dr Andrew Borg Cardona whereby it was questioned whether the engagement of a foreign law firm was appropriate in the circumstances described in the letter and alleging an abuse of public funds and a breach of the right to freedom of expression. *Red S*

I will start by describing the circumstances of the case.

On the 2<sup>nd</sup> September 2019 Ministers Chris Cardona, Konrad Mizzi, and Government's Head of Communications Mr. Matthew Carbone received a total of five e-mails from Mr. Emmanuel Delia.

The e-mails were sent to official Government e-mail addresses and in the case of the mails sent to Ministers Cardona and Mizzi these were also copied to Ministry staff. In the case of the mails sent to the Government's Head of Communications the mails were marked separately "For the attention of", the Prime Minister, Mrs Michelle Muscat and Mr. Keith Schembri respectively.

In those mails Mr. Delia stated that "Together with a team of international journalists, I will in the next few weeks be publishing a co-authored book that will examine the circumstances prior to and the aftermath of the assassination of Daphne Caruana Galizia in Malta in 2017." Mr. Delia also informed the recipients that they would feature in the book and that if they wished to comment about a number of points loaded with innuendo listed in the letters they could do so by not later than 5pm of the 9<sup>th</sup> September 2019.

It was clear from the circumstances that the e-mails were different from the many requests for comment from the media received on a daily basis, given Mr. Delia's claim that he was writing a book with a team of international journalists.

*Acknowledged 21/10  
CP*



Government therefore felt that it was appropriate that it should put forward its position on the basis of these emails. Also, the emails were purportedly addressed to individuals who all hold public office, as well as the Prime Minister's wife, with the obvious assumption on the latter being that she was of interest to the authors simply because of her husband's role in Government.

It was in this context, given the international nature of the request, and the nature of the publication, that Government felt it was appropriate to seek further international advice. The letter sent by Carter-Ruck was sent on behalf of the Government and not on behalf of individuals. It makes reference to the fact that the individuals concerned were reserving their position since the allegations addressed to those individuals in fact also constituted highly defamatory allegations against the Government as a whole and the reference to the individual's reservations were therefore essential to the reservation of Government's position.

Furthermore, kindly be informed that it is not the first time that holders of public office in Malta have, through the use of public funds, engaged foreign lawyers to advise them on matters relating to potential defamation on the basis of potential cause of harm to the country. On March 6, 2012 the then Prime Minister Dr Lawrence Gonzi informed Parliament during sitting 454 of that legislature that, following the obtaining of legal advice, the Maltese Government initiated legal proceedings abroad over an interview with Sea Shepherd founder Paul Watson published by foreign-based media outlet New Europe. *- See next to*

In fact on that occasion the then Prime Minister Lawrence Gonzi and the then Minister responsible for fisheries George Pullicino had engaged a Brussels law firm with the involvement of their own private legal consultant in Malta to file defamation proceedings in their names against the Brussels News Agency before the Brussels French speaking court (case with General Docket No. 2012/10464/A) in respect of an article entitled "The Guardian of the World's Oceans") which was published on the website of the weekly newspaper 'New Europe'. Those proceedings were fully funded by Government even after the change in administration in 2013 and they were eventually settled in 2015.

In the circumstances, whilst confirming that it has engaged the services of Carter Ruck in response to the allegations made by Mr. Delia and his partners, any claim that the engagement of specialised international legal expertise in this context involves any abuse of public funds or/and denial of the right to freedom of expression is being rebutted.

Joseph Muscat  
Prime Minister

**George Hyzler**

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**From:** Lawrence Gonzi <lawrence.gonzi@gonzi.com.mt>  
**Sent:** Thursday, November 7, 2019 6:53 PM  
**To:** George Hyzler  
**Cc:** George Pullicino  
**Subject:** RE: Investigation  
**Attachments:** Email Sequence.docx

Dear Dr Hyzler,

Thank you for your email. Kindly note that my reply is being copied to Architect Pullicino as this matter concerns him as well.

I have checked my records and identified a number of emails that can throw some light on this matter and the way it developed during the transition from my government in 2013 to the new administration of the last legislature. For the sake of correctness I need to point out that the attached list is not the full exchange of emails but merely a selected few that I believe are relevant to the issue at hand.

These emails put on record the following sequence of events :

1. The first email indicates the source of the original point of contention. Please remember that this took place during the time when I was Prime Minister and Minister Pullicino was the Minister responsible for the sector. In both instances the allegations concerned the whole government and not our persons or even our individual names (which were not mentioned in the article). This is precisely why I joined Minister Pullicino in the libel case notwithstanding the fact that I was not mentioned personally in the article. It is true that we made use of a private firm of lawyers in Brussels (at one stage assisted also by Dr Zammit Maempel in Malta) to handle the legal aspects of the procedure, but we did so with the full knowledge and involvement of the Attorney General Dr Peter Grech who continued to follow the matter - including corresponding directly with the Brussels firm of lawyers - throughout the whole process until settlement was reached in 2015.
2. The list then moves on to an email dated 25 June 2013 from the Minister of Finance (Edward Scicluna) in the new 2013 Labour administration. The new administration had been informed about the court case and we had requested the responsible entities to continue the case on the basis that the libel impacted the Maltese Government. This second email is an acknowledgement from Minister Scicluna to Mr Pullicino acknowledging the statement made by the latter that "f'kaz li tintrebaħ il-flus għandhom imorru għall-erarju pubbliku" proving that we had consistently argued that this matter concerned a libel towards the state of the Republic of Malta and not to us in our personal capacity.
3. The next email is dated 1st July 2013 and it is sent by the Brussels firm of lawyers. The email includes a paragraph which I have highlighted as it proves that the firm recognised the fact that we were no longer occupying the official executive positions held during my administration prior to the 2013 general elections. Please note the statement made by the lawyer : "*For obvious reasons, it is in the interest of the Maltese government to be further represented in the pending proceedings*".
4. The next email is dated 19<sup>th</sup> July 2013 and it is sent by Dr Peter Grech to the Brussels firm stating : "*I write further to our two telephone conversations of this morning and hereby confirm the Government's instructions to file the final written submissions which are due to be made by next Monday*". This was duly acknowledged by the lawyers as per the next email in the list of the same date. Kindly note that this last email mentions Dr Zammit Maempel's instructions to invoice the Ministry for Resources and Rural Affairs of Malta dating back to 2012 when we were still in office. This email exchange is followed by two other emails (including by Dr Peter Grech) of the same date acknowledging the instructions.
5. The following emails dated 22<sup>nd</sup> July 2013 addressed to Dr Peter Grech further confirm that the government of Malta was proceeding with the case and instructions were being issued and implemented at its behest, including

corrections to the written pleadings as to the correct name of the Partit Laburista. These were followed by an email from Minister Scicluna dated 22<sup>nd</sup> July (also highlighted) confirming the instructions.

6. The next emails address the initiative that was taken to try and reach a negotiated settlement with the defendants. These email exchanges took place between the Brussels Firm and Dr Peter Grech (always copied to the Minister and a number of government officials) laying down the details of a possible way forward which would be acceptable to the government of Malta but which required a telephone call to take place between the two sides. These did take place after clearance from Dr Grech. As per the copy of my email to Dr Grech dated 10<sup>th</sup> October 2013, the negotiations were unsuccessful. The email details the highlights of the conversation with the defendant and includes my explanation to Dr Grech (highlighted) stating that I had insisted with the defendant that *"the insult was directed to me and to Mr Pullicino in our position as Ministers in representation of the Malta Government. The insult/libel was serious because it was addressed to me as Prime Minister of Malta and to George Pullicino as Minister of the Maltese government"*.

7. The last two emails I include in the list are dated 13<sup>th</sup> March 2015 (from Dr Grech to us both) and 4th April 2015 (from me to Dr Grech) dealing with the points required to finalise a negotiated settlement – something which was achieved in the following weeks. These are important because they reiterate our repeated argument that this was a libel instituted by us as executive officers of the state (the Prime Minister and the Minister) and certainly not by us in our personal capacity.

Please do not hesitate to contact me if you require any clarification regarding the contents of this email.

Yours faithfully,

Dr. Lawrence Gonzi LL.D.,

Gonzi & Associates, Advocates  
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-----Original Message-----

From: George Hyzler <hyzlergeorge@gmail.com>  
Sent: Wednesday, November 6, 2019 2:06 PM  
To: Lawrence Gonzi <lawrence.gonzi@gonzi.com.mt>  
Subject: Investigation

Dear Dr Gonzi,

With reference to our chance meeting and conversation a couple of days ago - Prime Minister Joseph Muscat referred me to the case when you and George Pullicino had engaged a Brussels law firm with the involvement of your own private legal consultant in Malta to file defamation proceedings in your names against the Brussels News Agency in respect of an article entitled The Guardian of the World's Oceans published in New Europe. He claims these were fully funded by Government even after the change in administration in 2013 and eventually settled in 2015.

Do you recall the circumstances?

Regards,

George Hyzler