

MALTA

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Ad Hoc Information Report

Data protection: Redress mechanisms and their use

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The Jesuit Centre for Faith and Justice Foundation

Charmaine Christiano Grech

Peter G Xuereb

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Mapping of Redress mechanisms in the area of data protection

Redress Mechanism Number	Type of possible outcomes of procedure	first Instance	Total Number of times this procedure was initiated in 2009 (please provide source of information in footnote)	Total Number of times this procedure was initiated in 2010 (please provide source of information in footnote)	Total Number of times this procedure was initiated in 2011 (please provide source of information in footnote)
1	Admonishment	Information and Data Protection Commissioner	¹		
2	Rectification	Information and Data Protection Commissioner	²		
3	Administrative Fine	Information and Data Protection Commissioner	0 ³	0	0
4	Erasure of personal data	Information and Data Protection Commissioner	⁴		
5	Compensation for damages	Depending on the amount of damages either Court of	0 ⁵	0	0

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¹ The Office mainly keeps statistics according to the number of complaints received in each respective year, classified by topic. Kindly refer to Annex 2 for the statistics provided by the Office. Source: E-mail correspondence with Dr. Ingrid Camilleri, Head – Legal, Office of the Information and Data Protection Commissioner and face to face meeting held on the 8 May 2012

² The Office mainly keeps statistics according to the number of complaints received in each respective year, classified by topic. Kindly refer to Annex 2 for the statistics provided by the Office. Source: E-mail correspondence with Dr. Ingrid Camilleri, Head – Legal, Office of the Information and Data Protection Commissioner and face to face meeting held on the 8 May 2012

³ The Office mainly keeps statistics according to the number of complaints received in each respective year, classified by topic. Kindly refer to Annex 2 for the statistics provided by the Office. Source: E-mail correspondence with Dr. Ingrid Camilleri, Head – Legal, Office of the Information and Data Protection Commissioner and face to face meeting held on the 8 May 2012

⁴ The Office mainly keeps statistics according to the number of complaints received in each respective year, classified by topic. Kindly refer to Annex 2 for the statistics provided by the Office. Source: E-mail correspondence with Dr. Ingrid Camilleri, Head – Legal, Office of the Information and Data Protection Commissioner and face to face meeting held on the 8 May 2012.

⁵ The Office mainly keeps statistics according to the number of complaints received in each respective year, classified by topic. Kindly refer to Annex 2 for the statistics provided by the Office. Source: E-mail correspondence with Dr. Ingrid Camilleri, Head – Legal, Office of the Information and Data Protection Commissioner and face to face meeting held on the 8 May 2012

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		Magistrates or Civil Court			
6	Penalties (Criminal Sanction)	Information and Data Protection Commissioner	0 ⁶	0	0
7	Criminal Sanction	Court of Magistrates	0 ⁷	0	0

Detailed information

Redress Mechanism Number 1 (admonishment):

- Range of possible outcomes: The Commissioner instructs the processor and controller to take such measures as may be necessary to ensure that the processing is in accordance with the Act
- Legal basis: Section 40 (c) of the Data Protection Act (Chapter 440 of the Laws of Malta)⁸
- Type of procedure: Office of the Information and Data Protection Commissioner
- Possibilities of appeal: 2nd and 3rd instances. Any person who feels aggrieved by a decision of the Commissioner shall have the right to appeal to the Information and Data Protection Appeals Tribunal. Any party to an appeal to the Tribunal who feels aggrieved by a decision of the Tribunal shall have the right of appeal to the Court of Appeal only on a question of law.
- Burden of proof: there is no specific mention to burden of proof in the legislation, however a general principle of law in the Maltese legal regime is that who alleges must prove what he is alleging. In civil matters the level of proof required is that of a balance of probabilities.
- Available mechanism to lower the burden of proof: for example presumption of fact or reversal of the burden of proof or lump sum compensation arrangement etc.: there is no such mechanism available.
- Requirement of legal representation: can the complainant initiate/be active in a procedure on his own? The complainant can initiate and be active in the first instance and the second instance, however in the case of an appeal to the Court of Appeal, the

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⁶ The Office mainly keeps statistics according to the number of complaints received in each respective year, classified by topic. Kindly refer to Annex 2 for the statistics provided by the Office. Source: E-mail correspondence with Dr. Ingrid Camilleri, Head – Legal, Office of the Information and Data Protection Commissioner and face to face meeting held on the 8 May 2012

⁷ The Office mainly keeps statistics according to the number of complaints received in each respective year, classified by topic. Kindly refer to Annex 2 for the statistics provided by the Office. Source: E-mail correspondence with Dr. Ingrid Camilleri, Head – Legal, Office of the Information and Data Protection Commissioner and face to face meeting held on the 8 May 2012

⁸ Malta. Ministry for Justice and Home Affairs (2001), Data Protection Act, Chapter 440 of the Laws of Malta, online at: www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8906&l=1 All pages in this document accessed on 27 May 2012

proceedings can only be instituted by a warranted lawyer and the complainant must be accompanied by such lawyer in the proceedings.

- Is there free legal advice/representation available from a public body (please specify the public body)? The Office of the Information and Data Protection Commissioner gives legal advice to anyone who needs such advice. Representation is not provided.
- Is there *locus standi* for DP authorities, civil society organisations and associations to initiate/be active in procedure? Yes there is *locus standi* for DP authorities and associations to initiate and be active in procedure. According to Section 40 (b) it is the duty of the Commissioner, in fact, to start investigations if there is the suspicion that processing is being done in an illegal manner. Furthermore, Section 40 (d) states that associations representing data subjects can initiate and be active in procedures.⁹
- Cost of procedure: Procedure in front of Office of the Information and Data Protection Commissioner and the Tribunal is free of charge, however should anyone wish to appeal in front of Court of Appeal, the respective court and legal fees are applicable.
- Average duration of procedure: there is no fixed duration since this depends on the particular issue.
- Outcomes (please provide as much disaggregated information as available) for 2009, 2010, and 2011: The Office mainly keeps statistics according to the number of complaints received in each respective year, classified by topic. Kindly refer to Annex 2 for the statistics provided by the Office.¹⁰

Redress Mechanism Number 2 (rectification):

- Range of possible outcomes: Commissioner orders rectification if he concludes that personal data is processed or may be processed in an unlawful manner
- Legal basis: Section 42 of the Data Protection Act (Chapter 440 of the Laws of Malta)¹¹
- Type of procedure: Office of the Information and Data Protection Commissioner
Possibilities of appeal: 2nd and 3rd instances. Any person who feels aggrieved by a decision of the Commissioner shall have the right to appeal to the Information and Data Protection Appeals Tribunal. Any party to an appeal to the Tribunal who feels aggrieved by a decision of the Tribunal shall have the right of appeal to the Court of Appeal only on a question of law.
- Burden of proof: there is no specific mention to burden of proof in the legislation, however a general principle of law in the Maltese legal regime is that who alleges must prove what he is alleging. In civil matters the level of proof required is that of a balance of probabilities.
- Available mechanism to lower the burden of proof: for example presumption of fact or reversal of the burden of proof or lump sum compensation arrangement etc. : there is no such mechanism available.
- Requirement of legal representation: can the complainant initiate/be active in a procedure on his own? The complainant can initiate and be active in the first instance and the second instance, however in the case of an appeal to the Court of Appeal, the proceedings can only be instituted by a warranted lawyer and the complainant must be accompanied by such lawyer in the proceedings.

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⁹ Malta. Ministry for Justice and Home Affairs (2001), Data Protection Act, Chapter 440 of the Laws of Malta, online at:

www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8906&l=1.

¹⁰ Source: E-mail correspondence with Dr. Ingrid Camilleri, Head – Legal, Office of the Information and Data Protection Commissioner and face to face meeting held on the 8th May 2012

¹¹ Malta. Ministry for Justice and Home Affairs (2001), Data Protection Act, Chapter 440 of the Laws of Malta, online at:

www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8906&l=1.

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- Is there free legal advice/representation available from a public body (please specify the public body)? The Office of the Information and Data Protection Commissioner gives legal advice to anyone who needs such advice. Representation is not provided.
- Is there *locus standi* for DP authorities, civil society organisations and associations to initiate/be active in procedure? Yes there is *locus standi* for DP authorities and associations to initiate and be active in procedure. According to Section 40 (b) it is the duty of the Commissioner, in fact, to start investigations if there is the suspicion that processing is being done in an illegal manner. Furthermore, Section 40 (d) states that associations representing data subjects can initiate and be active in procedures.¹²
- Cost of procedure: Procedure in front of Office of the Information and Data Protection Commissioner and the Tribunal is free of charge, however should anyone wish to appeal in front of Court of Appeal, the respective court and legal fees are applicable.
- Average duration of procedure: there is no fixed duration since this depends on the particular issue.
- Outcomes (please provide as much disaggregated information as available) for 2009, 2010, 2011: The Office mainly keeps statistics according to the number of complaints received in each respective year, classified by topic. Kindly refer to Annex 2 for the statistics provided by the Office.¹³

Redress Mechanism Number 3 (administrative fine):

- Range of possible outcomes: The maximum administrative fine is of €23,293.73 for each violation and €2,329.37 per day during which such violation persists, however an amendment to the Data Protection Act is envisaged in which a classification of fines shall be listed in the pipeline¹⁴.
- Legal basis: Article 42 (3) and Article 54(j) of the Data Protection Act¹⁵
- Type of procedure: Office of the Information and Data Protection Commissioner
- Possibilities of appeal: 2nd and 3rd instances. Any person who feels aggrieved by a decision of the Commissioner shall have the right to appeal to the Information and Data Protection Appeals Tribunal. Any party to an appeal to the Tribunal who feels aggrieved by a decision of the Tribunal shall have the right of appeal to the Court of Appeal only on a question of law.
- Burden of proof: there is no specific mention to burden of proof in the legislation, however a general principle of law in the Maltese legal regime is that who alleges must prove what he is alleging. In civil matters the level of proof required is that of a balance of probabilities.
- Available mechanism to lower the burden of proof: for example presumption of fact or reversal of the burden of proof or lump sum compensation arrangement etc. : there is no such mechanism available.
- Requirement of legal representation: can the complainant initiate/be active in a procedure on his own? The complainant can initiate and be active in the first instance and the second instance, however in the case of an appeal to the Court of Appeal, the proceedings can only be instituted by a warranted lawyer and the complainant must be accompanied by such lawyer in the proceedings.

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¹² Malta. Ministry for Justice and Home Affairs (2001), Data Protection Act, Chapter 440 of the Laws of Malta, online at:

www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8906&l=1.

¹³ Source: E-mail correspondence with Dr. Ingrid Camilleri, Head – Legal, Office of the Information and Data Protection Commissioner and face to face meeting held on the 8th May 2012

¹⁴ Source: E-mail correspondence and face to face meeting held on the 8 May 2012 with Dr. Ingrid Camilleri, Head – Legal, Office of the Information and Data Protection Commissioner

¹⁵ Malta. Ministry for Justice and Home Affairs (2001), Data Protection Act, Chapter 440 of the Laws of Malta, online at:

www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8906&l=1.

- Is there free legal advice/representation available from a public body (please specify the public body)? The Office of the Information and Data Protection Commissioner gives legal advice to anyone who needs such advice. Representation is not provided.
- Is there *locus standi* for DP authorities, civil society organisations and associations to initiate/be active in procedure? Yes there is *locus standi* for DP authorities and associations to initiate and be active in procedure. According to Section 40 (b) it is the duty of the Commissioner, in fact, to start investigations if there is the suspicion that processing is being done in an illegal manner. Furthermore, Section 40 (d) states that associations representing data subjects can initiate and be active in procedures.¹⁶
- Cost of procedure: Procedure in front of Office of the Information and Data Protection Commissioner and the Tribunal is free of charge, however should anyone wish to appeal in front of Court of Appeal, the respective court and legal fees are applicable.
- Average duration of procedure: there is no fixed duration since this depends on the particular issue.
- Outcomes (please provide as much disaggregated information as available) for 2009, 2010, 2011: this has never been imposed since although the Data Protection Act provides for administrative fines, this is subject to regulations which are yet to be enacted in terms of Section 54 (j) of the Act¹⁷.

Redress Mechanism Number 4 (erasure of personal data):

- Range of possible outcomes: where Commissioner decides that personal data has been unlawfully processed, the Commissioner shall order the controller of personal data to erase the personal data.
- Legal basis: Article 43 of the Data Protection Act¹⁸
- Type of procedure: Office of the Information and Data Protection Commissioner
- Possibilities of appeal: 2nd and 3rd instances. Any person who feels aggrieved by a decision of the Commissioner shall have the right to appeal to the Information and Data Protection Appeals Tribunal. Any party to an appeal to the Tribunal who feels aggrieved by a decision of the Tribunal shall have the right of appeal to the Court of Appeal only on a question of law.
- Burden of proof: there is no specific mention to burden of proof in the legislation, however a general principle of law in the Maltese legal regime is that who alleges must prove what he is alleging. In civil matters the level of proof required is that of a balance of probabilities.
- Available mechanism to lower the burden of proof: for example presumption of fact or reversal of the burden of proof or lump sum compensation arrangement etc. : there is no such mechanism available.
- Requirement of legal representation: can the complainant initiate/be active in a procedure on his own? The complainant can initiate and be active in the first instance and the second instance, however in the case of an appeal to the Court of Appeal, the proceedings can only be instituted by a warranted lawyer and the complainant must be accompanied by such lawyer in the proceedings.
- Is there free legal advice/representation available from a public body (please specify the public body)? The Office of the Information and Data Protection Commissioner gives legal advice to anyone who needs such advice. Representation is not provided.

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¹⁶ Malta. Ministry for Justice and Home Affairs (2001), Data Protection Act, Chapter 440 of the Laws of Malta, online at:

www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8906&l=1.

¹⁷ Source: E-mail correspondence with Dr. Ingrid Camilleri, Head – Legal, Office of the Information and Data Protection Commissioner and face to face meeting held on the 8 May 2012

¹⁸ Malta. Ministry for Justice and Home Affairs (2001), Data Protection Act, Chapter 440 of the Laws of Malta, online at:

www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8906&l=1.

- Is there *locus standi* for DP authorities, civil society organisations and associations to initiate/be active in procedure? Yes there is *locus standi* for DP authorities and associations to initiate and be active in procedure. According to Section 40 (b) it is the duty of the Commissioner, in fact, to start investigations if there is the suspicion that processing is being done in an illegal manner. Furthermore, Section 40 (d) states that associations representing data subjects can initiate and be active in procedures.¹⁹
- Cost of procedure: Procedure in front of Office of the Information and Data Protection Commissioner and the Tribunal is free of charge, however should anyone wish to appeal in front of Court of Appeal, the respective court and legal fees are applicable.
- Average duration of procedure: there is no fixed duration since this depends on the particular issue.
- Outcomes (please provide as much disaggregated information as available) for 2009, 2010, 2011: The Office mainly keeps statistics according to the number of complaints received in each respective year, classified by topic. Kindly refer to Annex 2 for the statistics provided by the Office.²⁰

Redress Mechanism Number 5 (compensation for damages):

- Range of possible outcomes: damages to complainant
- Legal basis: Article 46 of the Data Protection Act²¹
- Type of procedure: civil
- Possibilities of appeal: 2nd instance to Court of Appeal
- Burden of proof: there is no specific mention to burden of proof in the legislation, however a general principle of law in the Maltese legal regime is that who alleges must prove what he is alleging. In civil matters the level of proof required is that of a balance of probabilities.
- Available mechanism to lower the burden of proof: for example presumption of fact or reversal of the burden of proof or lump sum compensation arrangement etc.: there is no such mechanism available.
- Requirement of legal representation: can the complainant initiate/be active in a procedure on his own? Since proceedings are instituted in court in this case, the proceedings can only be instituted by a warranted lawyer and the complainant must be accompanied by such lawyer in the proceedings.
- Is there free legal advice/representation available from a public body (please specify the public body)? The Office of the Information and Data Protection Commissioner gives legal advice to anyone who needs such advice. Representation is not provided.
- Is there *locus standi* for DP authorities, civil society organisations and associations to initiate/be active in procedure? In this case it is only the data subject who has *locus standi* to initiate and be active in procedure.
- Cost of procedure: depends on amount of damages being claimed
- Average duration of procedure: please provide available information: there is no fixed duration of procedure in front of civil court.
- Outcomes (please provide as much disaggregated information as available) for 2009, 2010, 2011: no such cases have been instituted to date²².

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¹⁹ Malta. Ministry for Justice and Home Affairs (2001), Data Protection Act, Chapter 440 of the Laws of Malta, online at:

www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8906&l=1.

²⁰ Source: E-mail correspondence with Dr. Ingrid Camilleri, Head – Legal, Office of the Information and Data Protection Commissioner and face to face meeting held on the 8 May 2012

²¹ Malta. Ministry for Justice and Home Affairs (2001), Data Protection Act, Chapter 440 of the Laws of Malta, online at:

www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8906&l=1.

²² Source: E-mail correspondence and face to face meeting held on the 8 May 2012 with Dr. Ingrid Camilleri, Head – Legal, Office of the Information and Data Protection Commissioner

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Redress Mechanism Number 6 (criminal sanctions - penalties):

- Range of possible outcomes: upon conviction, the contravenor shall be guilty of an offence and shall be liable to a fine (*multa*) not exceeding €23,293.73 or to imprisonment for six month or to both such fine and imprisonment, however an amendment to the Data Protection Act is envisaged in which a classification of fines shall be listed in the pipeline²³.
- Legal basis: Article 47 of the Data Protection Act²⁴
- Type of procedure: Criminal
- Possibilities of appeal: 2nd instances to Court of Appeal
- Burden of proof: there is no specific mention to burden of proof in the legislation, however a general principle of law in the Maltese legal regime is that who alleges must prove what he is alleging. In criminal matters the level of proof required is that of beyond reasonable doubt.
- Available mechanism to lower the burden of proof: for example presumption of fact or reversal of the burden of proof or lump sum compensation arrangement etc. : there is no such mechanism available.
- Requirement of legal representation: can the complainant initiate/be active in a procedure on his own? Although the Data Protection Act provides for penalties, this is subject to regulations which are yet to be enacted in terms of Section 54 (k) of the Act.²⁵
- Is there free legal advice/representation available from a public body (please specify the public body)? The Office of the Information and Data Protection Commissioner gives legal advice to anyone who needs such advice. Representation is not provided.
- Is there *locus standi* for DP authorities, civil society organisations and associations to initiate/be active in procedure? Although the Data Protection Act provides for penalties, this is subject to regulations which are yet to be enacted in terms of Section 54 (k) of the Act.²⁶
- Cost of procedure: Although the Data Protection Act provides for penalties, this is subject to regulations which are yet to be enacted in terms of Section 54 (k) of the Act.²⁷
- Average duration of procedure: Although the Data Protection Act provides for penalties, this is subject to regulations which are yet to be enacted in terms of Section 54 (k) of the Act.²⁸
- Outcomes (please provide as much disaggregated information as available) for 2009, 2010, and 2011: this has never been imposed since regulations are not in force yet²⁹.

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²³ Source: E-mail correspondence and face to face meeting held on the 8 May 2012 with Dr. Ingrid Camilleri, Head – Legal, Office of the Information and Data Protection Commissioner

²⁴ Malta. Ministry for Justice and Home Affairs (2001), Data Protection Act, Chapter 440 of the Laws of Malta, online at:

www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8906&l=1.

²⁵ Malta. Ministry for Justice and Home Affairs (2001), Data Protection Act, Chapter 440 of the Laws of Malta, online at:

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²⁶ Malta. Ministry for Justice and Home Affairs (2001), Data Protection Act, Chapter 440 of the Laws of Malta, online at:

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²⁷ Malta. Ministry for Justice and Home Affairs (2001), Data Protection Act, Chapter 440 of the Laws of Malta, online at:

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²⁸ Malta. Ministry for Justice and Home Affairs (2001), Data Protection Act, Chapter 440 of the Laws of Malta, online at:

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²⁹ Source: E-mail correspondence with Dr. Ingrid Camilleri, Head – Legal, Office of the Information and Data Protection Commissioner and face to face meeting held on the 8 May 2012

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Redress Mechanism Number 6 (criminal sanctions):

- Range of possible outcomes: upon conviction, the contravenor shall be guilty of an offence and shall be liable to a fine (*multa*) not exceeding €23,293.73 or to imprisonment for six month or to both such fine and imprisonment, however an amendment to the Data Protection Act is envisaged in which a classification of fines shall be listed in the pipeline³⁰.
- Legal basis: Article 41(2) of the Data Protection Act³¹
- Type of procedure: Criminal
- Possibilities of appeal: 2nd instances to Court of Appeal
- Burden of proof: there is no specific mention to burden of proof in the legislation, however a general principle of law in the Maltese legal regime is that who alleges must prove what he is alleging. In criminal matters the level of proof required is that of beyond reasonable doubt.
- Available mechanism to lower the burden of proof: for example presumption of fact or reversal of the burden of proof or lump sum compensation arrangement etc. : there is no such mechanism available.
- Requirement of legal representation: can the complainant initiate/be active in a procedure on his own? This procedure is only possible when the offender does not comply with an administrative order issued by the Data Protection Commissioner. In the event of such an occurrence the Office of the Information and Data Protection Commissioner makes a complaint to the Police, who in turn, will proceed criminally against the offender.
- Is there free legal advice/representation available from a public body (please specify the public body)? Not applicable in this case.
- Is there *locus standi* for DP authorities, civil society organisations and associations to initiate/be active in procedure? The DP authority works hand in hand with the Police in such cases; however it is only the Executive Police who can initiative the procedures upon a complaint by the Office of the Information and Data Protection Commissioner.
- Cost of procedure: free since this is instituted by the Executive Police.
- Average duration of procedure: there is no fixed duration of procedure in front of criminal court.

Outcomes (please provide as much disaggregated information as available) for 2009, 2010, and 2011: this procedure was not used in these dates.

³⁰ Source: E-mail correspondence and face to face meeting held on the 8 May 2012 with Dr. Ingrid Camilleri, Head – Legal, Office of the Information and Data Protection Commissioner

³¹ Malta. Ministry for Justice and Home Affairs (2001), Data Protection Act, Chapter 440 of the Laws of Malta, online at:
www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8906&l=1.

Annex

Number of complaints received in each respective year under review, classified by topic. The last column lists the number of complaints which resulted in a breach of the Data Protection Act (hereinafter referred to as “*the DPA*”) Chapter 440 of the Laws of Malta³²

	Category A	Category B	Category C	Category D	Category E	Category F	Total number of complaints	Breach of the DPA
2009	32	37	1	2	8	1	81	65
2010	9	31	1	2	6	1	50	32
2011	22	34	3	2	6	3	70	31*

Category A – unsolicited communication sent via email or SMS
 Category B – processing not in conformity with the criteria for processing as set out in article 9 of the DPA
 Category C – credit referencing agencies
 Category D – right of access
 Category E – CCTV cameras
 Category F - others

* some of the complaints received this year have not yet been concluded and therefore are not included in this number.

Source: E-mail correspondence with Dr. Ingrid Camilleri, Head – Legal, Office of the Information and Data Protection Commissioner and face to face meeting held on the 8 May 2012

³² Malta. Ministry for Justice and Home Affairs (2001), Data Protection Act, Chapter 440 of the Laws of Malta, online at: www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8906&l=1.