

# Debate & Analysis

## Reforming the secret state



**KEVIN AQUILINA**

One of the main pillars of the public administration in Malta has been – and continues to be – administrative secrecy.

**T**he public administration, in order not to be held accountable, goes all out of its way to ensure that not a single shred of information in its possession that might somehow harm it is divulged for publication. Government business is mainly transacted behind closed doors and citizens are kept out-

side, if not far away from, the decision making process.

There are, of course, instances where administrative secrecy is of the essence, provided it is not abused. For instance, when Malta is negotiating an international treaty, or the budget is being prepared though not yet approved, or the Police are carrying out a criminal investigation, or a magistrate is conducting an inquiry, one very well understands that transparency should be the exception, not the rule. Once the budget is read out in parliament, then there is no valid reason to retain the budget speech and accompanying documents secret. Or when a person has been arraigned in court, the police information with all the evidence therein becomes public. But this is not a straight forward process that applies across the board. For instance, once a magisterial inquiry is concluded and there is no evidence upon which to arraign a suspect in court, that inquiry results remain secret for eternity.

There are also instances where administrative secrecy is used to cover up abuse of power. And here lies the difficulty. Take the

case where the public administration fails to reveal information that should be in the public domain, but fails to do so to cover abuse of power, bad governance, and maladministration. Here administrative secrecy is used not to safeguard national security, the defence of Malta, the conduct of international relations, the transaction of confidential cabinet business, ongoing police and magisterial investigations in the detection of crime, the safeguarding of economic and financial business, or the protection of a person's privacy. Here administrative secrecy is resorted to simply cover up governmental wrongdoing, administrative or criminal.

Apart from having a feeble Freedom of Information Act that contains more hurdles than tools to access government-held information, the secret state operates via other laws that impede the press and other media – broadcasting and digital – from gaining access to such information. This detracts the press and other media from performing effectively their essential supervisory function of democratization of the state's institutions. These

measures include the withholding of essential information when replying to a parliamentary question; failure to reply to such question; taking an excessively long period of time to reply thereto; shifting the responsibility to reply to a parliamentary question from one minister to another; providing superficial information relative thereto; providing wrong or misleading replies; and, at times, not replying thereto for months on end.

At other times, ministers blatantly refuse to answer written questions submitted by journalists to their offices or during press conferences. When the going gets tough, ministers cancel press briefings or else invite only those press outlets loyal to the government of the day (Public Broadcasting Services Limited and the government's political party media). Government ministers also hide behind the screen of commercial secrecy when they fail to divulge information in relation to the operation of a government owned company on the pretext that although it is a commercial company the information it has cannot be divulged so as not to provide a competitive advantage to its competitors. At other times, the information provided is redacted in such a way, that the document in question – when read as a whole – ends up being senseless.

Not only is information not readily divulged but, when divulged, this is done in a way as not to make the information easily accessible or cumbersome to process. Take the case of Department of Information Press Releases which tend to have a vague heading: 'Statement by the Government of Malta' with no sub-heading to indicate the content of that press release. Take the case of various studies carried out by the government that are not only not rendered public, but that the public has no inkling that such studies have been carried out.

Perhaps the classical case of not divulging information concerns boards of inquiry reports. Apart from the fact that only 3 boards of inquiry have been held in public since 1977 when the Inquiries Act was enacted, two of which are concluded and one still ongoing, nobody knows how many boards of inquiry are appointed every year, their composition, their terms of reference, their conclusions, and what follow up action, if any, has been taken to implement their recommendations. There is no accountability to the public in so far as boards of inquiry are concerned. If one goes by the recommendations of the Daphne Caruana Galizia Assassination Board of Inquiry, we all know that not even one single recommendation in that report has to date been implemented.

The Jean Paul Sofia inquiry will, in all probability, meet the same fate. The Inquiries Act of 1977 is a law that has never been revisited since its enactment. Whilst in foreign jurisdictions, their respective inquiry laws have been altered and updated to democratize the inquiry boards' procedures, no such changes have been made to the Maltese counterpart. The same argument holds for magisterial inquiries that afford the least possible information to society at large and, perhaps more importantly, to victims of crimes whose life has been shattered and who have to bear the brunt of a criminal offence perpetrated in their respect.

Whilst in the case of the House of Representatives there is openness in so far as the House not only meets in public but its proceedings are aired on radio and television whilst parliamentary documents such as bills, acts of parliament, motions, papers laid, replies to parliamentary questions, agendas of the House and its committees, etc. are regularly published on parliament's website, it is still difficult to get hold of parliamentary archival sources that so far have not yet been published on the internet of previous legislatures that predate the internet. The same applies to court judgments that precede the year 2002 when court judgments went digital. As to the courts, it is only judgments that are published: court decrees are more often than not unpublished. Decrees by an inquiring magistrate are kept secret with no effort being made to discriminate between those decrees whose publication might derail the proper administration of justice and those that do not.

The public administration is too much afraid to publish government held information not because such publication poses a threat to the security of the state but simply because it might embarrass the government or highlight a wrongdoing that the government wants to be kept secret. Unless government-held information is democratized, the rule of law cannot function properly as it would not be possible for the press to perform their fourth estate supervisory duty over the government of the day. This contributes to cheapening the democratization process of state institutions whilst opening wide open the door for abuse, fraud, corruption, bad administration, and bad governance. Yet there is not one single inkling that government is going to act to ensure more transparency in the conduct of government business.

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### HAVE YOUR SAY

## OPEN PUBLIC CONSULTATION

Partial Review of the 2006 South Malta Local Plan, for Hal Far (Phase 1)

The Planning Authority has been tasked by the Government to commence a partial review of the 2006 South Malta Local Plan, as amended in 2017, specifically for Hal Far.

The current policy designates the Industrial Development Boundary for Hal Far Industrial Estate as shown in MAP 1 prioritizing the land within this boundary for exclusive industrial use. The policy also recognizes the potential impact of industrial development along the southern section of the estate on the protected Special Area of Conservation Natura 2000 site.

Consequently, it mandates a landscaped buffer zone with substantial tree planting of not less than 6 meters in this area of the estate.

Therefore, this review proposes the removal of the designated site as shown in MAP 1. The aim is to ensure

that the site is either retained or restored where possible, serving as a buffer zone to the Special Area of Conservation (SAC). This approach aims to keep potentially harmful industrial development as distant as possible from the area of high environmental value. The review also proposes to allocate a small portion of the site for low impact sport.

To view the objectives and MAP 1, visit the PA's website: [www.pa.org/mt/consultation](http://www.pa.org/mt/consultation)

The Planning Authority invites you to submit representations on the proposed objectives. Submissions must be sent via email to the following address: [halfar.review@pa.org/mt](mailto:halfar.review@pa.org/mt)

All submissions must reach the Authority by **Thursday 21<sup>st</sup> December, 2023.**



PLANNING AUTHORITY

[www.pa.org/mt](http://www.pa.org/mt)