



CASE REPORT

Case No: K/024

Complaint: Posting of political and offensive comments on Facebook

Complainant: Matthew Caruana Galizia

Complaint Date: 28 April 2020

Report Date: 1 September 2020

The Complaint

1. By letter dated 28 April 2020 Mr Matthew Caruana Galizia (“the Complainant”), writing in his capacity as Director of the Daphne Caruana Galizia Foundation, requested me to investigate comments made on Facebook by Joseph Borg, who was at the time head of the Hate Crime and Speech Unit in the Ministry for Home Affairs, National Security and Law Enforcement.

2. The Complainant stated as follows:

“1) On 27 April 2020, Arnold Cassola, a political activist and independent candidate in the 2017 parliamentary elections, made a public statement regarding evidence he had submitted to the Permanent Commission Against Corruption (PCAC). The evidence concerns a possible quid pro quo between Minister of Home Affairs Michael Farrugia and Yorgen Fenech.

2) The same day, Mr Cassola released a statement to the media regarding his submission to the PCAC and this statement was used by Malta Today



to report on the matter. See: Cassola: Michael Farrugia should come clean on Yorgen Fenech meeting.¹

3) Mr Borg posted a statement on Facebook, in accompaniment to the Malta Today article, containing the following remark, directed towards Mr Cassola: 'Profs Cassola just get a life as the one you have at the moment sucks.' A screenshot of the complete post is annexed to this letter.

The rest of the post appears to justify a system of endemic corruption and opaque deals struck between influential business owners and elected officials. This runs absolutely contrary to the Unit's mission statement, which is to 'support and empower individuals to build a safer and just society'."

3. The Complainant's letter, which was sent as an e-mail attachment, is appended to this report and marked as Document A. The letter includes a screenshot of the Facebook post that is the subject of the complaint.

Decision to Investigate

4. The Standards in Public Life Act (chapter 570 of the laws of Malta) empowers me to investigate the conduct of members of Parliament and persons of trust. The admissibility of this complaint depends on whether or not Joseph Borg can be considered a person of trust in terms of the Act. Article 2 of the Act defines "person of trust" to mean:

"any employee or person engaged in the private secretariat of a Minister or of a Parliamentary Secretary wherein the person acts as an adviser or consultant to a Minister or to a Parliamentary Secretary or acts in an executive role in the Ministry or Parliamentary Secretariat, and where the person has not been engaged according to the procedure established under article 110 of the Constitution".

5. For an individual to be considered a person of trust in terms of this definition, the following three questions must be answered affirmatively:

¹ The *Malta Today* news report to which the complainant refers is available at https://www.maltatoday.com.mt/news/national/101970/cassola_michael_farrugia_should_come_clean_on_yorgen_fenech_meeting#.Xw28bygzaUk.



- (a) Does the individual serve in the private secretariat of a minister or parliamentary secretary?
- (b) Does the individual function as an advisor or consultant to the minister or parliamentary secretary, or else in an executive role?
- (c) Does the individual hold an appointment on trust, that is to say an appointment that was *not* made following a public call for applications or through a publicly-funded employment service which ensures that there is no political discrimination in employment, as required by article 110 of the Constitution?

6. These questions should be answered on their own merits, without reference to any terminology used by the administration. For instance, the administration distinguishes between “persons of trust” and persons in “positions of trust”,² but my understanding is that the latter do not fall outside the parameters of the Act, at least in its present form.³ This issue has no bearing on the case under consideration, but it is being mentioned as an example of how definitions adopted for administrative purposes might unduly narrow the scope of the Act if they are allowed to influence its interpretation.

7. In order that I could determine whether or not Joseph Borg could be considered a person of trust in terms of the Act, independently of how he might be classified by the administration, my office wrote to the Permanent Secretary at the Ministry for Home Affairs, National Security and Law Enforcement (MHSE) on 29 April 2020 (copy of email attached and marked Document B) requesting him to specify:

- (a) the nature of Joseph Borg’s appointment as head of the Hate Crime and Speech Unit, in particular whether it was an appointment on the basis of trust or on the basis of a call for applications;
- (b) to whom he reported in his capacity as head of the Unit;

² See page 119 of the *Manual on Resourcing Policies and Procedures*, available from https://publicservice.gov.mt/en/Documents/Public%20Service%20Management%20ode/PSMC%20Manuals/Manual_on_Resourcing_Policies_and_Procedures.PDF.

³ The definition of “person of trust” as set out in article 2 of the Act may change by virtue of Bill no. 159, which is currently before the House of Representatives.



- (c) whether or not he was considered a public officer (that is to say a regular employee in the public service, appointed under article 110 of the Constitution) by virtue of his appointment as head of the Unit; and
- (d) whether or not he held a concurrent appointment in the public service or a government agency or entity.

8. This request prompted an extensive exchange of correspondence in which Permanent Secretary MHSE referred my office to his counterpart at the Ministry for Energy and Water Management (MEW) on the grounds that Joseph Borg's personal file had been passed to the latter ministry. However, Permanent Secretary MEW stated that his ministry did not employ Dr Borg, although it was waiting for approval from the Office of the Prime Minister to engage him on trust as an advisor to the CEO of the Water Services Corporation.⁴ This correspondence is attached as Document C, with the redaction of Dr Borg's identity card number for the sake of data protection.

9. To compound the mystery, it emerged that although Permanent Secretary MEW stated that his ministry did not employ Dr Borg, the latter had an official government email account which gave his user name as "Borg Joseph at MEW"⁵ and his position title as "Secretariat Officer".

10. The mystery was only resolved after I wrote to Dr Borg himself on 27 May 2020 (copy of letter attached as Document D). In his reply, dated 8 June 2020 (Document E), Dr Borg stated that he had been engaged as a person of trust by the Ministry for Home Affairs and National Security, but his contract of employment had expired the previous day, that is on 7 June 2020, and he was now a private citizen.

11. Subsequently I sought a copy of Dr Borg's contract from Permanent Secretary MHSE, who emailed it to my office on 25 June 2020. Permanent Secretary MHSE confirmed that the contract had not been renewed and that, as a result of its expiry, Dr Borg was no longer head of the Hate Crime and Speech Unit (copy of email and contract attached as Document F, with the redaction from the contract of Dr Borg's address and identity card number).

⁴ The Water Services Corporation is a public body established by law that currently falls under the responsibility of the Minister for Energy and Water Management.

⁵ The user name should not be confused with the email address. Dr Borg's official email address had an "@gov.mt" suffix, like most government email accounts.



12. Dr Joseph Borg's contract of employment had been signed on 22 August 2019, but it was effective for one year starting from 8 June 2019. It provided for the engagement of Dr Borg as a person of trust to perform duties assigned by the Minister for Home Affairs and National Security. Dr Borg's position title was specified as Research and Policy Coordinator and his salary was pegged to salary scale 4 in the public service.

13. I also sought an explanation from Permanent Secretary MEW as to how Dr Borg held an official email account with MEW if he was not an employee of this ministry.

14. On 15 June 2020 (Document G), Permanent Secretary MEW forwarded an email from his ministry's Chief Information Officer, who stated that in January 2020 the Ministry for Home Affairs and National Security had initiated a "bulk transfer" of staff email accounts to MEW. The Information Management Unit within MEW had "parked" these email accounts until further details about the staff in question were provided to it by the ministry's human resources section. It appears that no such details had been provided in the case of Dr Borg, as a result of which his email account remained active. However, Permanent Secretary MEW stated that he had taken action to close Dr Borg's email account.

15. The context in which this bulk transfer took place is that in January 2020 the Hon Dr Michael Farrugia, until then Minister for Home Affairs and National Security, became Minister for Energy and Water Management. It is therefore my understanding that the bulk transfer pertained to staff in Dr Farrugia's secretariat at Home Affairs who followed him to MEW. The "bulk transfer" effectively meant the transfer to MEW of responsibility for their email accounts and the amendment of staff user names and account details to reflect their new ministry.

16. The facts can therefore be summarised as follows with respect to Dr Joseph Borg:

- Dr Borg was appointed for one year with effect from 8 June 2019 as a person of trust in the service of Dr Michael Farrugia, then Minister for Home Affairs and National Security. Dr Borg was given the position title



of Research and Policy Coordinator, but he also assumed the role of head of the Hate Crime and Speech Unit when it was set up in October 2019.⁶

- Following Dr Farrugia's appointment as Minister for Energy and Water Management in January 2020, the official government email user name of Dr Joseph Borg was changed to "Borg Joseph at MEW" and his account details were amended to display his position title as Secretariat Officer in the Ministry for Energy and Water Management. Dr Borg's personal file was also transferred to MEW.
- However, Dr Borg's contract as Research and Policy Coordinator remained effective. He continued to function as head of the Hate Crime and Speech Unit within his former ministry, now designated the Ministry for Home Affairs, National Security and Law Enforcement.
- On 7 June 2020 Dr Borg's contract as Research and Policy Coordinator expired and was not renewed. At this point he ceased to function as head of the Hate Crime and Speech Unit.

17. I have not sought to ascertain whether Dr Borg was subsequently engaged on trust as an advisor with the Water Services Corporation since this is not relevant to my investigation.

18. From Dr Borg's contract it is clear that he met the requirements at (b) and (c) in paragraph 5 above. The contract does not state explicitly that Dr Borg was a member of the Minister's secretariat, but neither does it indicate that he was attached to any part of the permanent administrative apparatus of government. The contract also specifies that Dr Borg was being engaged "for services to be rendered to the Minister for Home Affairs and National Security and for any duties which may be assigned to him by the said Minister". This indicates that Dr Borg was engaged as a member of the Minister's personal staff. On this basis I have concluded that Dr Borg fell within the definition of "person of trust" in the Standards in Public Life Act at the time when he allegedly made the comments on Facebook that prompted the complaint.

19. Dr Borg did not hold any official appointment as head of the Hate Crime and Speech Unit: he was functioning in this capacity as a result of a simple

⁶ See news report at https://www.maltatoday.com.mt/news/national/98221/watch_hate_speech_unit_wont_carry_out_social_media_witch_hunts_minister_insists#.Xykh5SgzZPY.



assignment of duties. In my opinion it would be wrong to regard the Unit as part of the minister's secretariat, but this does not alter the status of Dr Borg as a person of trust subject to the Standards in Public Life Act. It only raises the question, addressed later in this case report, of whether it is appropriate for persons of trust to be assigned such duties.

20. The Standards in Public Life Act is silent as to whether I can investigate alleged misconduct by a person who was subject to the Act by virtue of the office he held when he allegedly committed the misconduct, but who subsequently ceased to hold that office. I sought legal advice on this point from Dr Henri Mizzi of Camilleri Preziosi Advocates, whose opinion is that *“even where a person has resigned or otherwise been removed from his position as a person of trust, he may still be investigated by the Commissioner for any allegation concerning statutory or ethical breaches that he may have committed during the tenure of his post as a person of trust.”* Dr Mizzi states that to read the law in a contrary sense *“would make a mockery of it”*. He adds that article 14 of the Act, which sets out time limits within which I can start an investigation, contains nothing to indicate that I cannot investigate an act committed by a person of trust who has since left office.

21. On the basis of the foregoing I decided that I should proceed with my investigation.

22. On 28 August 2020 I held a meeting with Minister Farrugia and Dr Borg as detailed in the final section of this report. During this meeting Minister Farrugia stated that Dr Borg had been engaged for service in the office of the Permanent Secretary at the Ministry for Home Affairs rather than in the Minister's own secretariat.

23. However, this is not consistent with Dr Borg's reporting relationship as set out in paragraph 1 of his contract. Moreover, the Permanent Secretary at Home Affairs did not move to MEW with Minister Michael Farrugia upon the appointment of the latter as Minister for Energy and Water Management, so had Dr Borg been serving in the office of the Permanent Secretary there would have been no reason to forward his personal file to MEW or to include his email account in the bulk transfer. These actions indicate that Dr Borg was regarded as a member of the Minister's personal staff, as does the fact that following the bulk transfer, MEW assigned Dr Borg the title of *“Secretariat Officer”* as part of his email account details.



24. The fact that the Permanent Secretary signed Dr Borg's contract is irrelevant, because this is standard practice for all contracts of engagement of persons of trust.⁷

25. Dr Borg was treated by his ministry as if he were a member of the minister's secretariat, and this was consistent with the provisions of his contract of engagement. I therefore found no reason to alter my conclusion that Dr Borg should be regarded as a member of the minister's secretariat for the purposes of this investigation. Dr Borg himself did not contest this point although he had the opportunity to do so.

The Code of Ethics for Public Employees and Board Members: Applicability and Relevant Provisions

26. Article 3(1)(b) of the Standards in Public Life Act makes persons of trust subject to the code of ethics set out in the first schedule of the Public Administration Act (chapter 595 of the laws of Malta). This code is entitled "Code of Ethics for Public Employees and Board Members". On the face of it, article 3(1)(b) of the Standards in Public Life Act might seem unnecessary since persons of trust are employed by the government and therefore already covered by the Code. An explanatory note on this point may therefore be appropriate.

27. The Public Administration Act defines the term "public employee" to mean:

- (a) public officers, that is to say government employees who are appointed under article 110(1) of the Constitution; and
- (b) the employees of agencies and other entities in the wider public sector, which are legally distinct from the government and, as such, are employers in their own right. These bodies employ staff under article 110(6) of the Constitution.⁸

⁷ See the templates for the engagement of persons of trust which are available at <https://publicservice.gov.mt/en/people/Pages/PeopleResourcingandCompliance/FormsandTemplates.aspx>.

⁸ The requirement to employ staff following a public call for applications or through a publicly-funded employment service which ensures that there is no political discrimination applies to both article 110(1) and article 110(6) of the Constitution.



28. Persons of trust in ministerial secretariats are employed by the government, but they are not generally considered public officers since they are not employed under article 110 of the Constitution. The appointment of persons of trust is a longstanding practice that raises constitutional issues.⁹ In any case, persons of trust are not considered public employees for the purposes of the Public Administration Act. This is why article 3(1)(b) of the Standards in Public Life Act is necessary to make persons of trust subject to the Code.

29. The following provisions of the Code appear relevant to this case:

“2. The provisions of this Code cover actions and behaviour within and outside the public administration, online and offline, as applicable.”

“13. Public employees and board members shall: (a) treat others, including both clients and colleagues, with courtesy, civility and respect; ... (c) treat with suitable respect, regard and consideration the opinions, beliefs and individuality of all persons; ...”

“16. Public employees and board members shall: (a) act in such a way as to gain and, or maintain the trust of their superiors and the public; ... (c) behave in a manner, in both their official and private capacities, such as to uphold and reinforce Malta’s reputation and good standing, and those of its governing institutions.”

“21. (1) Public employees and board members shall: ... (d) maintain political neutrality and not bring the public service into disrepute through their private activities; (e) ensure that any public comments made (including on social media), and, or their participation in political activities, do not undermine or jeopardise public confidence in the competence and impartiality of the public administration ...”

30. Also worthy of note is paragraph 21(2) of the Code, which states:

⁹ See “Who Are Persons of Trust? A Guidance Note” (17 October 2019), pp. 4–5. Available from <https://standardscommissioner.com/wp-content/uploads/persons-of-trust-guidance-note.pdf>.



“(2) Political participation and public comment by public employees and board members may be subject to limitations in line with rules and regulations aimed at maintaining public confidence in the impartiality of the public administration.”

The Context

31. In May 2014 the Planning Authority approved a floor area ratio policy in which Mrieħel among other localities was zoned for the development of high-rise buildings.¹⁰ In August 2016 the Planning Authority approved a joint application by the Tumas and Gasan groups of companies to construct four high-rise buildings in Mrieħel, to be known as the Quad Towers.¹¹

32. Subsequently, it was alleged that the Planning Authority had acted on the instructions of the Hon Dr Michael Farrugia when it included Mrieħel as a locality to be zoned for high-rise buildings. At the time Dr Farrugia was Parliamentary Secretary for Planning and the Simplification of Administrative Processes.

33. It was also alleged that Dr Farrugia had issued his instructions to the Planning Authority on the same day that he met Yorgen Fenech at the Office of the Prime Minister. At the time Yorgen Fenech headed the Tumas Group. This allegation was made against the background of the criminal charges against Yorgen Fenech in connection with the murder of Daphne Caruana Galizia and the allegations concerning his involvement in corruption.¹²

34. This is being stated only to place the complaint in context and should not be taken as an attribution of misconduct to Minister Farrugia. This issue is the subject of a separate pending complaint.

35. On 27 April 2020, *Malta Today* reported that *“Independent candidate Arnold Cassola has insisted Energy Minister Michael Farrugia explain his involvement in including Mrieħel in the list of high-rise zones ‘a few hours after*

¹⁰ <https://timesofmalta.com/articles/view/government-told-planning-authority-to-make-mrieħel-high-rise.619025>.

¹¹ <https://timesofmalta.com/articles/view/controversial-mrieħel-towers-given-the-go-ahead-by-the-planning.621005>.

¹² <https://timesofmalta.com/articles/view/junior-minister-sent-mrieħel-high-rise-policy-order-on-day-he-met.787106>.



meeting Yorgen Fenech". The report also stated that the Permanent Commission Against Corruption was examining the case.¹³

36. Dr Joseph Borg allegedly wrote his Facebook post in reaction to this news report and on the same day as it was published. The Facebook post, which is reproduced as part of Document A, states as follows:

"Before he was arrested in connection to a murder; like it or not Yorgen Fenech was one of the biggest, if not the biggest entrepreneur in Malta. So it comes as no surprise that he had meetings with various Ministers in the last 15 years as did his late father George before him. So what should we do investigate every Minister present and past to see if he/she ever signed any document that was proposed to them that in any way the Tumas Group benefited as I'm sure others did too?"

Profs Cassola just get a life as the one you have at the moment sucks."

Investigation Procedure

37. I wrote to Dr Joseph Borg on 27 May 2020 (Document D). I addressed Dr Borg as "Secretariat Officer, Ministry for Energy and Water Management" in accordance with the information available to me at the time, and I sent the letter through his official government email address.

38. In the letter I informed Dr Borg about the complaint, which I forwarded to him. I quoted the definition of the term "person of trust" in article 2 of the Standards in Public Life Act. I informed him that, in my view, this definition applied to him, and he was therefore subject to the Code of Ethics for Public Employees and Board Members as set out in the Public Administration Act. I quoted the relevant provisions of the Code (see paragraph 29 of this case report), and I requested him to present his reactions to the complaint in writing by not later than Wednesday 10 June 2020.

39. Dr Borg replied from a private email address on 8 June 2020 (Document E), stating as follows to the Director General in my office:

¹³ See news report at footnote 1.



“Firstly I was never employed by the Ministry for Energy and Water Management, never had or have a contract of employment as a POT [person of trust] or any other sort.

I had a contract with the previous Minister as a POT at the Ministry of Home Affairs and National Security which contract has elapsed and not renewed on the 7th June 2020. Therefore since yesterday I don’t hold any position with the government. I’m just a normal citizen that wishes to be left alone and not harassed by you, your department nor the Commissioner.”

40. I instructed my Director General to offer Dr Borg another opportunity to present his views on the substantive merits of the complaint against him. This was duly done on 12 June 2020 by means of an email which noted that Dr Borg’s official email account was still active, and which invited him to present any reactions to the complaint by not later than Friday 19 June 2020. The email also stated that *“After this date the Commissioner reserves the right to draw conclusions on the basis of the information and evidence available to him.”*

41. Dr Borg sent a brief reply on the same day saying *“As far as I know people are employed by contracts not with email accounts.”* This exchange is reproduced as Document H. Dr Borg’s private email address is redacted from Documents E and H.

Considerations

The merits of the complaint

42. Since Dr Borg has not contested the allegation that he wrote the Facebook post in question, it is being taken as confirmed.

43. The insult directed by Dr Borg at Prof Cassola in the second paragraph of his post is not especially serious as insults go. However, an insult it remains. As such it is deplorable, particularly coming from a person who was at the time engaged in salary scale 4, equivalent to a director in the public service, and serving, ironically, as head of the Hate Crime and Speech Unit. It does not do credit to Maltese public administration in general and to Minister Michael Farrugia in particular, given that Dr Borg had been hand-picked as a senior member of the Minister’s personal staff and the insult was part of a post that was made in the Minister’s defence. It undoubtedly represents a breach of



paragraphs 13 and 16 of the Code of Ethics for Public Employees and Board Members, particularly when read together with paragraph 2 of the same Code.

44. There is also the question of whether the first paragraph of Dr Borg's post, in which he defends his minister for meeting Yorgen Fenech, contravenes the requirement of political neutrality which is set out in paragraph 21(1) of the Code of Ethics. In other words, would Dr Borg's Facebook post have been acceptable in terms of the Code had he omitted the insult? This is a secondary issue, but an important one nevertheless. It is also a complex issue that requires careful consideration.

45. The first paragraph of the post is not a politically partisan statement in the sense that it attacks one political party or defends another. Still, it is an opinion on a matter of considerable political controversy. In effect, Dr Borg stepped into the political arena to defend his minister.

46. The requirement in paragraph 21(1) to "*maintain political neutrality*" and to avoid jeopardising "*public confidence in the competence and impartiality of the public administration*" goes beyond not making partisan statements. *Inter alia*, it also requires senior government employees to maintain a reserve on political matters so as to avoid placing themselves in the public eye by virtue of their personal opinions. The Facebook post by Dr Borg appears in conflict with this requirement, even if one disregards the insult in its second paragraph. The first paragraph of his post represents an opinion which a private citizen would be perfectly entitled to express, but one would not expect a senior government employee to air such an opinion in a forum accessible to the public.

47. In this context note should be taken of paragraph 21(2) of the Code, which says: "*Political participation and public comment by public employees and board members may be subject to limitations in line with rules and regulations aimed at maintaining public confidence in the impartiality of the public administration.*"

48. Paragraph 21(2) is a reference to instruments such as Directive 5, which was issued by the Principal Permanent Secretary under the Public Administration Act and is entitled "Political Participation and Communications



with the Media".¹⁴ Paragraph 5.3 of this directive bars public officers in salary scale 5 or higher from making any public comments, including comments on internet forums and social networking websites, on matters of public policy and political issues.

49. The said directive must therefore be considered as if it were an integral part of the Code of Ethics and, as such, directly applicable to Dr Borg by virtue of article 3(1)(b) of the Standards in Public Life Act. Dr Borg fell under paragraph 5.3 of the directive since he was in salary scale 4 (the lower the scale number, the higher the salary). Directive 5 reinforces paragraph 21(1) of the Code of Ethics.

50. There is nothing in article 3(1)(b) of the Standards in Public Life Act to suggest that persons of trust should be exempted from any parts of the Code of Ethics for Public Employees and Board Members. Paragraph 21(1) of the Code should therefore apply to persons of trust in the same manner as it would apply to career government officials. The obligation to maintain political neutrality is particularly important for senior career officials, so it should be equally important for persons of trust at equivalent levels. It is therefore my view that, in addition to contravening paragraphs 13 and 16 of the Code, the Facebook post by Dr Joseph Borg contravenes the requirement of political neutrality which is set out in paragraph 21(1) of the Code.

51. One might argue that even if persons of trust remain silent on political issues, their political allegiances can be inferred from the simple fact that they have been hand-picked by ministers to serve in their private secretariats. The conclusion of this argument would be that it does not make sense to apply the political neutrality requirement to persons of trust, and that article 3(1)(b) of the Standards in Public Life Act fails to acknowledge the political nature of appointments on trust.

52. However, this argument presupposes that the public is familiar with the distinction between persons of trust and career officials, and that a person of trust who finds himself or herself in the public eye for making political

¹⁴ Available at <https://publicservice.gov.mt/en/people/Documents/Directives/Directive-5.pdf>. Directive 5 was issued on 24 February 2011 under the Public Administration Act of 2009 (chapter 497 of the laws of Malta) and remains in force under the Public Administration Act of 2019 (chapter 595). It was amended on 4 February 2015, but the amendments have no bearing on the case under consideration.



statements would be correctly identified as such by the media as opposed to being described simply as a government official. The risk is that if persons of trust are allowed to make political statements, this will damage public trust in the impartiality of public officials across the board.

53. It is therefore my view that there are sound reasons why persons of trust, particularly those in senior roles, should not be exempted from the requirement of political neutrality which is set out in paragraph 21(1) of the Code of Ethics for Public Employees and Board Members. Like career officials, persons of trust, particularly those in senior roles, should accept that their appointment brings with it limitations on their ability to publicly air their personal views on matters of politics and public policy.

54. The distinction between persons of trust and career officials can be further blurred if persons of trust are assigned roles one would normally associate with career officials, as in the case of Dr Borg who served as head of the Hate Crime and Speech Unit. The very fact that those functioning in such roles are political appointees can damage public trust in the impartiality of public administration. This is why article 110 of the Constitution sets out the expectation that public employment should be on merit.

55. The foregoing does not prevent persons of trust from speaking in an official capacity on behalf of their minister, provided that they can maintain the attitude of professional restraint that one would expect from official government spokespersons in a modern European state.

Effective regulation of appointments on trust

56. This case highlights a number of additional issues concerning the appointment of persons of trust. These issues relate to administrative practices and do not reflect in any way on Dr Joseph Borg, but they are important issues that merit attention in their own right.

57. The contract of employment of Dr Joseph Borg was signed on 22 August 2019, yet the effective date of his appointment was 8 June 2019. This means that Dr Borg spent two and a half months working and being paid a salary from public funds without the cover of an employment contract.

58. As from October 2019 Dr Borg began to function as head of the Hate Crime and Speech Unit within the Ministry for Home Affairs, even though his



contract did not cater for such an assignment. For the sake of accountability, a post of such sensitivity and importance should have been filled through an appointment specific to the post. For the sake of effectiveness, as well as compliance with the Constitution, the appointment should have been made on the basis of merit following a call for applications. This is not to say that Dr Borg was unqualified for the role, or that he performed it badly. As a general rule, it does not follow that hand-picking an individual to fill a post results in the appointment of the best person for the job. Possibly quite the contrary.

59. In the course of a previous investigation I was informed that persons of trust are precluded by government policy from exercising “*executive powers on government matters and personnel*”.¹⁵ It appears to me, however, that the headship of the Hate Crime and Speech Unit is precisely this kind of executive role. It involves managing and giving direction to an important government function that may entail dealing with sensitive cases. As such the Unit should be regarded as part of the permanent machinery of government. It should in no way be treated as an extension of the minister’s secretariat, and indeed it should be kept at arm’s length from politics. This makes it all the more difficult to understand how the headship of the Unit was filled by the simple assignment of a person of trust who had been recruited for a completely different role.

60. A position-specific appointment as proposed above would have prevented the situation that developed between January and June 2020, when Dr Borg continued to function as head of the Hate Crime and Speech Unit within MHSE notwithstanding that this ministry had forwarded his personal file to MEW, effectively disclaiming responsibility for him. This hardly suggests that Dr Borg was subject to effective scrutiny by MHSE as head of the Unit during the five-month period in question. This situation makes very little sense from the point of view of correct public administration practice, apart from the issue of compliance with the provisions of the Constitution with respect to the merit principle.

61. The foregoing indicates that there is a preoccupying degree of laxity in the manner whereby persons of trust are appointed. Equally preoccupying is

¹⁵ See paragraph 22 of my report on case K/003, issued on 12 April 2019 and available from <https://standardscommissioner.com/wp-content/uploads/Commissioner-for-Standards-case-report-K003.pdf>.



the ease with which it is possible to circumvent the official policy that persons of trust should not exercise executive powers. More effective regulation and stronger safeguards are needed in connection with appointments on trust.

62. The Appointment (Persons of Trust) Bill, which is currently before Parliament,¹⁶ is intended to establish a legal basis for the appointment of persons of trust. However, the bill will not in itself resolve the shortcomings that this case has brought to light. It contains no safeguards with respect to the number of appointments on trust that can be made and the roles that such appointees can fill. Indeed, some aspects of the bill may exacerbate the problems highlighted in this case report with respect to appointments on trust in Maltese public administration.

63. The bill proposes to amend article 2 of the Standards in Public Life Act so as to substitute the current definition of “person of trust” with the following:

“person of trust’ means any employee or person engaged directly from outside the public service and the public sector to act as consultants and staff in the private secretariat of a Minister or Parliamentary Secretary or in the event that following repetitive public calls for engagement a post remains vacant if such engagement is for a period of less than one year and where the person has been engaged according to the procedure established under article 6A of the Public Administration Act”.

64. However, the Maltese text of the bill omits the reference to staff other than consultants in the first part of the definition:

“persuna ta’ fiduċja’ tfisser kwalunkwe impjegat jew persuna ingaġġata direttament minn barra mis-servizz pubbliku jew mis-settur pubbliku biex jaġixxu ta’ konsulenti tal-Ministru jew tas-Segretarju Parlamentari jew f’każ illi, wara sejñiet pubbliċi repetittivi għall-ingaġġ ta’ kariga tibqa’ vakanti, jekk tali ingaġġ ikun għal perjodu ta’ inqas minn sena u fejn il-persuna tkun giet ingaġġata skont il-proċedura stabbilita taħt artikolu 6A tal-Att dwar l-Amministrazzjoni Pubblika”.

65. The definition in the bill varies from the current definition as follows:

¹⁶ Bill no. 159, as published on 22 July 2020. Available from <https://parlament.mt/media/107601/bill-159.pdf>.



- (a) The applicability of the English version to secretariat staff does not depend on the nature of their duties (see paragraphs 4 and 5 of this case report). This is a positive aspect of the bill. However, the Maltese version is limited only to consultants, which would considerably narrow the scope of the Standards in Public Life Act. Should the bill be enacted as is, the Maltese text would prevail.
- (b) Both versions of the new definition are limited to persons of trust who are engaged from outside the public service or the wider public sector. There is an additional category of secretariat staff who are engaged from among serving public employees, and who are known as persons in “positions of trust”. It is my understanding that such persons are currently subject to the Standards in Public Life Act. Their exclusion from the definition of persons subject to the Standards in Public Life Act as proposed in the bill therefore constitutes a step backwards, in that it will exclude persons currently subject to the Act from its scope.
- (c) The bill provides for appointments on trust to fill vacancies in the permanent machinery of government that remain open following repeated public calls for applications. This is a deeply preoccupying development which is discussed below.

66. In my opinion, the bill will not achieve its aim of establishing a legal basis for appointments on trust unless the Constitution is amended to cater for such appointments. The administration has presented arguments to the effect that the Constitution already permits appointments on trust,¹⁷ but I consider these arguments to be flawed. I have already stated my reasons for this in public.¹⁸

¹⁷ See paragraphs 38 and 39 of the statement by the Principal Permanent Secretary entitled “An Analysis of the Commissioner for Standards in Public Life’s Report K/002” (11 November 2019) and the accompanying legal opinions, which are available from <https://www.gov.mt/en/Government/DOI/Press%20Releases/Pages/2019/November/11/pr192421.aspx>.

¹⁸ See pp. 2–3 of my statement dated 22 November 2019, which is available from <https://standardscommissioner.com/wp-content/uploads/Commissioner-for-Standards-statement-K002-2019-11-22-EN.pdf>. This is based on article 110(1) of the Constitution, which states that “*Subject to the provisions of this Constitution, power to make appointments to public offices and to remove and to exercise disciplinary control over persons holding or acting in any such offices shall vest in the Prime Minister, acting on the recommendation of the Public Service Commission*”. The term “public office” is defined by article 124 to mean any posts in the service of the government in a civil capacity, except for specific categories which do not include those held by persons of trust.



It is my view that the bill will, if enacted, be open to challenge before the courts on constitutional grounds in the absence of amendments to the Constitution.

67. Any amendments to the Constitution to cater for appointments on trust should include effective safeguards to ensure that such appointments are limited to ministers' secretariats and that vacancies elsewhere in public administration are filled on the basis of merit. The safeguards must be administered by an independent authority. I have presented detailed proposals for constitutional reform that address these among other issues.¹⁹

68. In this context I am particularly preoccupied by the mechanism in the bill through which appointments on trust would be used to fill posts in the permanent machinery of government that remain vacant following repeated public calls. This mechanism openly defies article 110 of the Constitution and directly challenges the principle, already in jeopardy, that all government staff should be employed on merit.

69. The use of appointments on trust to fill posts in the permanent machinery of government is not a new concept in spite of the fact that it is in conflict with the Constitution. Official government policy has provided for the possibility of such appointments since at least 2011.²⁰ Current policy actually limits such appointments to "*technical and/or ancillary*" positions that remain unfilled following public calls for applications.²¹

70. However, the mechanism as proposed in the bill is broader in scope than the current policy and subject to fewer restrictions. The bill will permit appointments on trust in any grade or occupational group of public employees in which there are longstanding vacancies. The scope for such appointments

¹⁹ *Towards Higher Standards in Public Life: Proposals to Modernise the Provisions of the Constitution on Parliament, the Judiciary and Public Administration* (30 October 2019), chapters 5 and 7. Available from <https://standardscommissioner.com/wp-content/uploads/constitutional-reform-proposals.pdf>.

²⁰ OPM Circular no. 21/2011, issued on 14 December 2011, mentioned "*managerial positions (e.g. CEO, Senior Manager, etc)*" and "*technical positions (e.g. Manager News and Registered Editor, Biomedical Engineer)*" as examples of posts that could be filled on the basis of trust. The document "*Policy on the Engagement of Persons/ Positions on a Trust Basis*", dated 7 July 2017, provided for appointments on trust to "*Other specific positions for technical and/or ancillary functions*".

²¹ See p. 118 of the *Manual on Resourcing Policies and Procedures*, available from https://publicservice.gov.mt/en/Documents/Public%20Service%20Management%20ode/PSMC%20Manuals/Manual_on_Resourcing_Policies_and_Procedures.PDF.



can be widened still further since it is up to the government of the day to decide how many vacancies it has in each grade or occupational group. Given the clientelistic pressures facing governments, this mechanism may over time lead to a considerable increase in the number of persons of trust, with a negative impact on standards in Maltese public administration.

71. The underlying aim of my office is to raise standards in public life, and widening the scope of appointments on trust would be in conflict with this aim.

Conclusion

72. Individuals hand-picked by ministers to execute roles within their secretariats as persons of trust should be made aware of their duties and responsibilities. Upon acceptance of the role they must understand that they are accepting to be bound by the rules that apply to public service employees. They are bound by a code of conduct that does not differ from that of career officials. I appreciate the difficulty since most would have been selected on the strength of their loyalty to their minister rather than necessarily on the merit of their strictly administrative competences, and therefore one can understand their eagerness to rush into the political arena in what they perceive as an opportunity to defend their minister especially on the enticing social media scene. This however is wrong. Persons of trust need to show restraint and ministers who appoint them should ensure that this is clearly understood by their trusted appointees as their actions reflect on ministers and on the government as a whole. Dr Borg's political statement contravened the requirement to avoid jeopardising public confidence in the impartiality of public administration, and the insult directed by him at Prof Arnold Cassola could be perceived as reflecting badly on the minister who appointed him.

73. For the reasons stated above I conclude that Dr Borg's post constitutes a breach of paragraphs 13, 16 and 21(1) of the Code of Ethics attached to the Public Administration Act (chapter 595 of the laws of Malta).

74. On 28 August 2020 I held a meeting in my office with Dr Borg in the presence of Minister Michael Farrugia. I requested the Minister's presence because I believe that ministers have a degree of responsibility for the conduct of persons of trust appointed by them, and they should consequently be made aware of misconduct by such persons. I informed Dr Borg that, in my view, the appropriate remedy in this case was for him to make an apology. I stated that if he did so I would be willing to apply the procedure set out in article 22(5) of



the Standards in Public Life Act. Under this article I have the power to close a case if the person investigated takes the remedial action proposed by me, and I would report it to the Standing Committee on Standards in Public Life for information purposes only.

75. On 31 August 2020, Dr Borg sent me a letter stating among other things that *“it was never my intention to hurt or offend anyone or put my Minister in any form of embarrassment due to my conduct or enter into any political controversy ... In hindsight I regret the kind of language used, and I apologize if I offended someone with my comments.”* The letter is appended to this case report as Document I.

76. With this apology, I consider the case as closed.

77. I hope that this report has underlined the importance of correct behaviour by persons of trust.

78. I recommend that:

- (a) persons of trust are made aware of their responsibilities under the Code of Ethics for Public Employees and Board Members;
- (b) the appointment of persons of trust is better regulated to avoid the procedural laxity highlighted in this report;
- (c) the policy that persons of trust should not exercise executive powers is more effectively enforced; and
- (d) the Appointment (Persons of Trust) Bill is rethought in order to address the issues I have raised in paragraphs 65 to 70 of this case report.

79. A copy of this report is being given to the Complainant, to Dr Joseph Borg, to Minister Michael Farrugia, to Prof. Arnold Cassola and to the Standing Committee for Standards in Public Life for information purposes. In view of the recommendations in the preceding paragraph, a copy is also being given to the Principal Permanent Secretary and the Minister for Justice, Equality and Governance.



Dr George Marius Hyzler
Commissioner for Standards in Public Life



Attached Documents

- Document A Letter dated 28 April 2020 from Mr Matthew Caruana Galizia, Director, Daphne Caruana Galizia Foundation.
- Document B Email dated 29 April 2020 to Permanent Secretary, Ministry for Home Affairs, National Security and Law Enforcement.
- Document C Correspondence dated 21–26 May 2020 with the Permanent Secretaries of the Ministry for Home Affairs, National Security and Law Enforcement and the Ministry for Energy and Water Management. The identity card number of Dr Joseph Borg has been redacted from this correspondence.
- Document D Letter dated 27 May 2020 to Dr Joseph Borg.
- Document E Email dated 8 June 2020 from Dr Joseph Borg using his private email address, which has been redacted.
- Document F Email dated 25 June 2020 from Permanent Secretary, Ministry for Home Affairs, National Security and Law Enforcement, together with contract of engagement of Dr Joseph Borg as a person of trust. Dr Borg’s home address and identity card number have been redacted from the contract.
- Document G Email dated 15 June 2020 from Permanent Secretary, Ministry for Energy and Water Management.
- Document H Exchange of emails dated 12 June 2020 with Dr Joseph Borg, whose private email address has been redacted.
- Document I Letter dated 31 August 2020 from Dr Joseph Borg.

George Marius Hyzler
Commissioner for Standards in Public Life
11 St Paul Street, Valletta VLT 1210
Malta

By email: office@standardscommissioner.com

Cc: Levent Altan, Executive Director of Victim Support Europe
Cc: Helena Dalli, European Commissioner for Equality

28 April 2020

Re: Comments by Joseph Borg, head of Hate Crime & Speech Unit

Dear Commissioner,

I write in reference to comments made on Facebook by Joseph Borg. I am asking you to admonish Mr Borg and recommend his dismissal from public service for these unacceptable comments he made yesterday.

Mr Borg is described as the “Head” of the Hate Crime & Speech Unit at the Ministry of Home Affairs, however his exact designation is unknown to us.

The Unit’s partner organisation, Victim Support Europe, and the European Commissioner for Equality, with political responsibility for the programme under which the Unit is funded, are in copy.

The facts are as follows.

- 1) On 27 April 2020, Arnold Cassola, a political activist and independent candidate in the 2017 parliamentary elections, made a public statement regarding evidence he had submitted to the Permanent Commission Against Corruption (PCAC). The evidence concerns a possible quid pro quo between Minister of Home Affairs Michael Farrugia and Yorgen Fenech.
- 2) The same day, Mr Cassola released a statement to the media regarding his submission to the PCAC and this statement was used by Malta Today to report on the matter. See: [Cassola: Michael Farrugia should come clean on Yorgen Fenech meeting](#).
- 3) Mr Borg posted a statement on Facebook, in accompaniment to the Malta Today article, containing the following remark, directed towards Mr Cassola: “Profs Cassola just get a life as the one you have at the moment sucks.” A screenshot of the complete post is annexed to this letter.

The rest of the post appears to justify a system of endemic corruption and opaque deals struck between influential business owners and elected officials. This runs absolutely contrary to the Unit’s mission statement, which is to “*support and empower individuals to build a safer and just society*”.

Yours sincerely,

Matthew Caruana Galizia
Director



DAPHNE
CARUANA
GALIZIA
FOUNDATION

Screenshot of the 27 April 2020 Facebook post by Mr Borg:

 **Joseph Borg**
2 hrs · 🧑🏻

Before he was arrested in connection to a murder; like it or not Yorgen Fenech was one of the biggest, if not the biggest entrepreneur in Malta. So it comes as no surprise that he had meetings with various Ministers in the last 15 years as did his late father George before him. So what should we do investigate every Minister present and past to see if he/she ever signed any document that was proposed to them that in any way The Thumas Group benefited as I'm sure others did too?
Profs Cassola just get a life as the one you have at the moment sucks



MALTATODAY.COM.MT
Cassola: Michael Farrugia should come clean on Yorgen Fenech meeting

👍 35 11 comments 5 shares

56 Melita Street, Valletta VLT 1122, Malta
+356 21236211 www.daphne.foundation matthew@daphne.foundation

VAT number: MT 25669501 Bankers: HSBC Bank Malta plc IBAN: MT83MMEB4433600000033401910001 BIC: MMEBMTMT

The Daphne Caruana Galizia Foundation is registered as a non-profit advocacy and civil rights organisation in Malta with enrolment number VO/1633 and foundation number LPF-280.

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

From: Charles Polidano - Office of the Commissioner for Standards in Public Life
Sent: Wednesday, 29 April 2020 16:45
To: kevin.mahoney@gov.mt
Subject: Complaint no. 043 concerning Mr Joseph Borg

Permanent Secretary
Ministry for Home Affairs, National Security and Law Enforcement

The Commissioner for Standards in Public Life has received a complaint relating to Mr Joseph Borg, head of your ministry's Hate Crime and Speech Unit.

The Commissioner for Standards needs to determine whether or not Mr Borg is subject to the Standards in Public Life Act. To this end you are kindly requested to provide this office with the following information:

- the nature of Mr Borg's appointment as head of the Hate Crime and Speech Unit, in particular whether it was an appointment on the basis of trust or an appointment on the basis of a call for applications;
- to whom Mr Borg reports in his capacity as head of the Unit;
- whether or not Mr Borg is considered a public officer by virtue of his appointment as head of the Unit; and
- whether or not he holds a concurrent appointment in the public service or a government agency or entity.

An early reply would be appreciated.

Charles Polidano
Director General



Office of the Commissioner for Standards in Public Life

11, St Paul Street, Valletta VLT 1210, Malta
+356 27 269 593 www.standardscommissioner.com

From: Gatt Anthony at MEW-OPS <anthony.a.gatt@gov.mt>
Sent: Tuesday, 26 May 2020 22:46
To: Charles Polidano - Office of the Commissioner for Standards in Public Life <charles.polidano@standardscommissioner.com>
Cc: Fiott Emily at MEW-DCS <emily.fiott@gov.mt>; Ivan Falzon <Ivan.Falzon@wsc.com.mt>
Subject: RE: [EXTERNAL] - Complaint no. 043 concerning Dr Joseph Borg

Dear Mr Polidano

I am trying to address your questions to the best of my knowledge:

- what is the nature of Dr Borg's current appointment within your ministry
Dr Borg is not engaged within MEW, to date. He has been identified to fill in the role of adviser to CEO – WSC on position of trust basis. His engagement is not yet approved by OPM.
- the position title of the person to whom he reports
Subject to OPM's approval, he will eventually report to CEO – WSC.

Feel free to revert for further details.

Thank you,
Anthony

From: Charles Polidano - Office of the Commissioner for Standards in Public Life <charles.polidano@standardscommissioner.com>
Sent: 26 May 2020 15:13
To: Gatt Anthony at MEW-OPS <anthony.a.gatt@gov.mt>
Cc: Fiott Emily at MEW-DCS <emily.fiott@gov.mt>
Subject: [EXTERNAL] - Complaint no. 043 concerning Dr Joseph Borg

Permanent Secretary
Ministry for Energy and Water Management

You are kindly requested to see chain of correspondence below concerning Dr Joseph Borg (ID [REDACTED]). This office is seeking to determine whether or not he falls within the jurisdiction of the Commissioner for Standards in Public Life as a person of trust. To this end you are kindly requested to state:

- what is the nature of Dr Borg's current appointment within your ministry, and
- the position title of the person to whom he reports.

An early reply would be appreciated.

Charles Polidano
Director General



Office of the Commissioner for Standards in Public Life

11, St Paul Street, Valletta VLT 1210, Malta
+356 27 269 593 www.standardscommissioner.com

From: Mahoney Kevin at MHSE
Sent: 21 May 2020 19:03
To: Polidano Charles at Standards
Subject: Re: [EXTERNAL] - Complaint no. 043 concerning Mr Joseph Borg

Yes its best you take it up with MEW because I have no visibility of what his relationship with them is.

Regards.

Kevin

Kevin Mahoney
Permanent Secretary
Ministry for Home Affairs, National Security and Law Enforcement

----- Original message -----

From: Polidano Charles at Standards <charles.polidano@parlament.mt>
Date: 21/05/2020 18:19 (GMT+01:00)
To: Mahoney Kevin at MHSE <kevin.mahoney@gov.mt>
Subject: Re: [EXTERNAL] - Complaint no. 043 concerning Mr Joseph Borg

Kevin

I understand from this that Dr Joe Borg has no appointment as such with MHSE, and he occupies the role of head of the Hate Crime Unit as part of his normal duties even though he is employed with MEW. Is this correct?

We still need clarification as to the nature of Dr Borg's current appointment and reporting relationship within MEW. This is necessary to enable the Commissioner for Standards to determine whether or not Dr Borg falls under the Standards in Public Life Act. We will take this up directly with MEW if you so advise.

Thanks,
Charles

Charles Polidano
Director General
Office of the Commissioner for Standards in Public Life

11 St Paul Street, Valletta VLT 1210, Malta
Tel: (+356) 27 269 593 Mobile: (+356) 79 054 640

From: Mahoney Kevin at MHSE
Sent: 21 May 2020 15:03
To: Polidano Charles at Standards
Subject: FW: [EXTERNAL] - Complaint no. 043 concerning Mr Joseph Borg

Charles

First reply has been received today re your query.

In view of this, do you still require the other details you requested in your original email?

Kevin

Kevin Mahoney
Permanent Secretary
Office of the Permanent Secretary

t +356 25689304 e kevin.mahoney@gov.mt
www.homeaffairs.gov.mt | www.publicservice.gov.mt

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MINISTRY FOR HOME AFFAIRS
NATIONAL SECURITY AND LAW ENFORCEMENT
201, STRAIT STREET, VALLETTA, MALTA

From: Fiott Emily at MEW-DCS <emily.fiott@gov.mt>
Sent: Thursday, 21 May 2020 14:40
To: Mahoney Kevin at MHSE <kevin.mahoney@gov.mt>
Cc: Gatt Anthony at MEW-OPS <anthony.a.gatt@gov.mt>; Borg Vincent B at MEW-DCS <vincent.b.borg@gov.mt>
Subject: FW: [EXTERNAL] - Complaint no. 043 concerning Mr Joseph Borg

PS MHSE

Please note that Dr Joe Borg is a non-public officer and thus he holds no substantive grade with the Public Service.

Kindly note that WSC has put forward a request in order that Dr Borg is appointed as POT with the entity. This request is currently in process.

Regards

Emily Fiott
Assistant Director
Office of the Director Corporate Services

t +356 22917145 e emily.fiott@gov.mt
www.energy.gov.mt | www.publicservice.gov.mt | Chat on Teams

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MINISTRY FOR ENERGY
AND WATER MANAGEMENT
52, OLD THEATRE STREET, VALLETTA, MALTA

From: Mahoney Kevin at MHSE <kevin.mahoney@gov.mt>
Sent: Wednesday, 20 May 2020 15:39
To: Fiott Emily at MEW-DCS <emily.fiott@gov.mt>
Cc: Vella Charles at MHSE <charles.e.vella@gov.mt>; Gatt Anthony at MEW-OPS <anthony.a.gatt@gov.mt>; Borg Vincent B at MEW-DCS <vincent.b.borg@gov.mt>
Subject: RE: [EXTERNAL] - Complaint no. 043 concerning Mr Joseph Borg

ID No of Mr Joe Borg is [REDACTED] (M)

Kevin Mahoney
Permanent Secretary
Office of the Permanent Secretary

t +356 25689304 e kevin.mahoney@gov.mt
www.homeaffairs.gov.mt | www.publicservice.gov.mt

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MINISTRY FOR HOME AFFAIRS
NATIONAL SECURITY AND LAW ENFORCEMENT
201, STRAIT STREET, VALLETTA, MALTA

From: Fiott Emily at MEW-DCS <emily.fiott@gov.mt>
Sent: Wednesday, 20 May 2020 08:46
To: Mahoney Kevin at MHSE <kevin.mahoney@gov.mt>
Cc: Vella Charles at MHSE <charles.e.vella@gov.mt>; Gatt Anthony at MEW-OPS <anthony.a.gatt@gov.mt>; Borg Vincent B at MEW-DCS <vincent.b.borg@gov.mt>
Subject: FW: [EXTERNAL] - Complaint no. 043 concerning Mr Joseph Borg

PS MHSE

Reference is made to the subjoined trail of e-mails.

It would be much appreciated that this Office is provided with Mr Joe Borg's ID number in order to be able to provide the requested information.

Regards

Emily Fiott
Assistant Director
Office of the Director Corporate Services

t +356 22917145 e emily.fiott@gov.mt
www.energy.gov.mt | www.publicservice.gov.mt | Chat on Teams

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MINISTRY FOR ENERGY
AND WATER MANAGEMENT
52, OLD THEATRE STREET, VALLETTA, MALTA

From: Gatt Anthony at MEW-OPS <anthony.a.gatt@gov.mt>
Sent: Tuesday, 19 May 2020 23:07
To: Fiott Emily at MEW-DCS <emily.fiott@gov.mt>
Subject: FW: [EXTERNAL] - Complaint no. 043 concerning Mr Joseph Borg

Can you assist pl?

From: Mahoney Kevin at MHSE <kevin.mahoney@gov.mt>
Sent: 19 May 2020 08:05
To: Gatt Anthony at MEW-OPS <anthony.a.gatt@gov.mt>
Cc: Vella Charles at MHSE <charles.e.vella@gov.mt>
Subject: RE: [EXTERNAL] - Complaint no. 043 concerning Mr Joseph Borg

Tony

Please provide me with a reply to mail hereunder.

Commissioner for Standards is chasing me on this issue.

Regards.

Kevin

Kevin Mahoney
Permanent Secretary
Office of the Permanent Secretary

t +356 25689304 e kevin.mahoney@gov.mt
www.homeaffairs.gov.mt | www.publicservice.gov.mt

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MINISTRY FOR HOME AFFAIRS
NATIONAL SECURITY AND LAW ENFORCEMENT
201, STRAIT STREET, VALLETTA, MALTA

From: Mahoney Kevin at MHSE
Sent: Tuesday, 05 May 2020 09:27
To: Gatt Anthony at MEW-OPS <anthony.a.gatt@gov.mt>
Cc: Vella Charles at MHSE <charles.e.vella@gov.mt>
Subject: FW: [EXTERNAL] - Complaint no. 043 concerning Mr Joseph Borg

Tony

Mr Joe Borg is presently deployed with MEW as well as currently heading the Hate Crime Unit within MHSE.

Since this Ministry has no access to his personal file, could you please inform me whether or not he holds a concurrent appointment in the public service or a government agency or entity and/or whether he has a substantive grade within the public service?

Best regards.

Kevin

Kevin Mahoney
Permanent Secretary
Office of the Permanent Secretary

t +356 25689304 e kevin.mahoney@gov.mt
www.homeaffairs.gov.mt | www.publicservice.gov.mt

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MINISTRY FOR HOME AFFAIRS
NATIONAL SECURITY AND LAW ENFORCEMENT
201, STRAIT STREET, VALLETTA, MALTA



27 May 2020

Dr Joseph Borg
Secretariat Officer
Ministry for Energy and Water Management

By email to joseph.f.borg@gov.mt

Dr Borg,

Complaint concerning Facebook post

I have received a complaint alleging that, on 27 April 2020, you posted comments on Facebook that dealt with a matter of political controversy and included derogatory and offensive remarks about another person. The complaint is attached.

Your official email account identifies you as a Secretariat Officer in the private secretariat of the Minister for Energy and Water Management. You thereby appear to fall within the definition of a “person of trust” for the purposes of article 2 of the Standards in Public Life Act (chapter 570 of the laws of Malta), that is to say *“any employee or person engaged in the private secretariat of a Minister or of a Parliamentary Secretary wherein the person acts as an adviser or consultant to a Minister or to a Parliamentary Secretary or acts in an executive role in the Ministry or Parliamentary Secretariat, and where the person has not been engaged according to the procedure established under article 110 of the Constitution”*.

As a person of trust you are, by virtue of article 3(1)(b) of the same Act, subject to the code of ethics set out in the first schedule of the Public Administration Act (chapter 595). The following provisions of this code appear relevant to the complaint:

2. The provisions of this Code cover actions and behaviour within and outside the public administration, online and offline, as applicable.

13. Public employees and board members shall: (a) treat others, including both clients and colleagues, with courtesy, civility and respect; ... (c) treat



with suitable respect, regard and consideration the opinions, beliefs and individuality of all persons; ...

16. Public employees and board members shall: (a) act in such a way as to gain and, or maintain the trust of their superiors and the public; ... (c) behave in a manner, in both their official and private capacities, such as to uphold and reinforce Malta's reputation and good standing, and those of its governing institutions.

21. (1) Public employees and board members shall: ... (d) maintain political neutrality and not bring the public service into disrepute through their private activities; (e) ensure that any public comments made (including on social media), and, or their participation in political activities, do not undermine or jeopardise public confidence in the competence and impartiality of the public administration ...

You are kindly requested to present your views on and reactions to the complaint in writing by not later than **Wednesday 10 June 2020**.

Dr George Marius Hyzler
Commissioner for Standards in Public Life

From: Joseph Borg <[REDACTED]>
Sent: Monday, 8 June 2020 09:34
To: Charles Polidano - Office of the Commissioner for Standards in Public Life
<charles.polidano@standardscommissioner.com>
Subject: Complaint concerning Facebook post

Dr Joseph Borg
Secretariat Officer
Ministry for Energy and Water Management

Please find attached for your attention a letter from the Commissioner for Standards in Public Life, together with the complaint which is mentioned in the letter. A reply from your end is being requested by not later than 10 June 2020.

Charles Polidano
Director General

Mr. Polidano,

Reference is being made to your email dated the 27th May 20220, regarding a complaint that the Commissioner for Standards in Public Life received in my regards. I'm attaching the letter for ease of reference.

Firstly I was never employed by the Ministry for Energy and Water Management, never had or have a contract of employment as a POT or any other sort.

I had a contract with the previous Minister as a POT at the Ministry of Home Affairs and National Security which contract has elapsed and not renewed on the 7th June 2020. Therefore since yesterday I don't hold any position with the government. I'm just a normal citizen that wishes to be left alone and not harassed by you, your department nor the Commissioner.

Dr. Joseph Borg

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

From: Mahoney Kevin at MHSE <kevin.mahoney@gov.mt>
Sent: Thursday, 25 June 2020 08:31
To: Charles Polidano - Office of the Commissioner for Standards in Public Life
Subject: RE: [EXTERNAL] - Complaint no. 043 concerning Mr Joseph Borg
Attachments: Mr Joseph Daniel Borg.pdf

Charles

In response to your email of the 12th June, 2020, reproduced hereunder, please note the following in reply to your three questions:

1. Statement made by Dr Joe Borg that his POT contract expired on the 7th June 2020 and that presently he holds no position with the Government is correct insofar as employment with this Ministry is concerned;
2. A copy of the POT contract with the then Ministry for Home Affairs and National Security is hereby attached and
3. Since his previous POT contract expired on 7/6/20, he is not currently occupying the post of Head of the Hate Crime Unit.

Regards.

Kevin

Kevin Mahoney

Permanent Secretary
Office of the Permanent Secretary

t +356 25689304 e kevin.mahoney@gov.mt
www.homeaffairs.gov.mt | www.publicservice.gov.mt

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MINISTRY FOR HOME AFFAIRS
NATIONAL SECURITY AND LAW ENFORCEMENT
201, STRAIT STREET, VALLETTA, MALTA

From: Charles Polidano - Office of the Commissioner for Standards in Public Life
<charles.polidano@standardscommissioner.com>
Sent: Monday, 22 June 2020 08:18
To: Mahoney Kevin at MHSE <kevin.mahoney@gov.mt>
Subject: FW: [EXTERNAL] - Complaint no. 043 concerning Mr Joseph Borg

Good morning Kevin

Grateful if you can address this at your earliest convenience.

Charles

Charles Polidano

Director General



Office of the Commissioner for Standards in Public Life

11, St Paul Street, Valletta VLT 1210, Malta
+356 27 269 593 www.standardscommissioner.com

From: Charles Polidano - Office of the Commissioner for Standards in Public Life
Sent: Friday, 12 June 2020 17:16
To: Mahoney Kevin at MHSE <kevin.mahoney@gov.mt>
Subject: RE: [EXTERNAL] - Complaint no. 043 concerning Mr Joseph Borg

Permanent Secretary
MHSE

Please refer to our previous correspondence concerning Dr Joseph Borg.

We have been in touch with Dr Borg, who informed us as follows on 8 June 2020:

“I had a contract with the previous Minister as a POT at the Ministry of Home Affairs and National Security which contract has elapsed and not renewed on the 7th June 2020. Therefore since yesterday I don't hold any position with the government.”

Please state whether this statement is true since your communications with this office appeared to indicate otherwise.

Please supply this office with a copy of Dr Borg's contract as person of trust with your ministry.

Please state also whether Dr Borg is still functioning as head of the Hate Crime and Speech Unit.

Charles Polidano
Director General



Office of the Commissioner for Standards in Public Life

11, St Paul Street, Valletta VLT 1210, Malta
+356 27 269 593 www.standardscommissioner.com

From: Polidano Charles at Standards <charles.polidano@parlament.mt>
Sent: Tuesday, 26 May 2020 15:04
To: Charles Polidano - Office of the Commissioner for Standards in Public Life <charles.polidano@standardscommissioner.com>
Subject: Fw: [EXTERNAL] - Complaint no. 043 concerning Mr Joseph Borg

STANDARD AGREEMENT - FULL-TIME BASIS
CONTRACTEE ENGAGED ON A PERSON OF TRUST BASIS
[NON-PUBLIC OFFICER]

It is to be noted that nomenclatures importing the male gender include also the female gender.

1. Agreement made on the 22/8/19.....between the Government of Malta and Mr Joseph Daniel Borg of [REDACTED], hereinafter called the Research and Policy Coordinator, for services to be rendered to the Minister for Home Affairs and National Security and for any other duties which may be assigned to him by the said Minister.
2. The Research and Policy Coordinator undertakes to perform his duties faithfully and diligently for a period of one year, renewable, on full-time basis, and will act in all respects according to the instructions or directives given to him by the Minister for Home Affairs and National Security, or by a senior Government official delegated for the purpose by the said Minister.
3. The agreement is effective as from the 8th June 2019.
4. Since, for the purpose of SL 452.81 entitled Contracts of Service for a Fixed Term Regulations, there is an objective reason why an incumbent in this position should not attain indefinite status if employed in excess of the legal limit stipulated in these Regulations, this due to the fact that he is engaged as Research and Policy Coordinator on a Person of Trust basis, the Contractee's service with Government will be terminated in the event that his contract is not renewed or is terminated.
5. The salary of the Research and Policy Coordinator shall be commensurate to Salary Scale 4 which in 2019 is at the rate of €35,251 (thirty-five thousand, two hundred and fifty-one euros) per annum paid in thirteen four-weekly payments in a calendar year. In addition, he shall receive the mid-year and Christmas bonus and any other benefits, including the additional cost of living increases provided however that these are not already being enjoyed by him under any of the provisions of the Social Security Act.
- 5a. Furthermore, the Research and Policy Coordinator shall be entitled to the following benefits:
 - Transport Allowance of €4,659 per annum
 - Mobile Refund of up to €815 per annum
6. If the Research and Policy Coordinator shall be compelled by reason of ill-health (not caused by his own misconduct) to resign office or if at any time it shall be certified by a duly qualified medical officer employed by the Government that he is incapable by reason of any infirmity of mind or body (not caused by his own misconduct) of rendering further effective service, the salary shall be paid up to the date of such resignation or certificate.
7. A certificate signed by a duly qualified medical officer employed by the Government shall be the conclusive evidence on the question as to whether the Research and Policy Coordinator was compelled to resign his office by reason of ill-health within the meaning of Clause 6 of this Agreement.
8. The Research and Policy Coordinator shall conform to general Government rules and regulations in force from time to time.



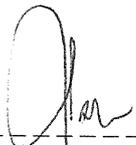
9. The Research and Policy Coordinator shall be allowed full pay sick leave for 30 working days followed by half-pay sick leave for a similar period during every period of twelve months.
10. The Research and Policy Coordinator shall be entitled to 208 hours vacation leave. This leave shall be computed as per MPO Circular No. 114/2005. However, the granting of such leave will be subject to the exigencies of the Public Service.
11. Any unutilised vacation leave is forfeited unless availed of by the expiration of the contractual period. The Contractee may opt to donate such leave to the Donation of Vacation Leave Central Fund. In such exceptional circumstances as inability to utilise vacation leave by force of administrative exigencies or in the case where the engagement is terminated before the lapse of the contract, compensation in lieu may be awarded, subject to the respective Minister's endorsement.
12. If the Research and Policy Coordinator shall at any time after signing hereof, neglect or refuse for any cause (other than ill-health not caused by his own misconduct) or become unable to perform any of his duties or to comply with any order, or shall disclose any information respecting the affairs of the Government to any unauthorised person/s or shall in any manner misconduct himself, his employment may be terminated forthwith and thereby all rights and advantages reserved to him by this Agreement shall cease.
13. This Agreement may be terminated by the Government at any time on one month's notice in writing or a payment of two weeks' salary, or by automatic termination upon the holding of General Elections without any form of monetary compensation, whichever is the earlier.
14. The Research and Policy Coordinator may at any time after expiration of one month from the commencement of the Agreement date, terminate his engagement by giving one month's notice in writing or paying the Government two weeks' salary.
15. If the Research and Policy Coordinator determines his engagement otherwise than in accordance with this Agreement, he shall be liable to pay as liquidated damages the amount equivalent to the proportion of the total remuneration package payable for four weeks' salary.
16. In the event of pecuniary damage arising from disregarding or failing to comply with any order, standing order, or instruction given by the Minister for Home Affairs and National Security or his representative, or from any neglect of duty whatsoever on his part, the Research and Policy Coordinator may be liable to a deduction from his salary to make good the damage or any part thereof, the amount of which shall be fixed by the Government.
17. The job description and performance indicators shall serve as a baseline upon which the respective Permanent Secretary, or one's delegate, assesses the performance of the Contractee. Attendance will be documented on a regular basis and as per schedule agreed upon between the Permanent Secretary and the Contractee.



18. Three months prior to the lapse of the term of the contract, line management will determine whether the engagement is still required and inform the line Permanent Secretary accordingly. On the approval of the line Permanent Secretary, the Contractee will be contacted to confirm whether he wishes to remain in employment and give such notice in writing. Furthermore, the contractee will be informed that should the request for renewal not be approved by the line Minister or the Principal Permanent Secretary, as the case may be, the contract would be considered as terminated.
19. Should the renewal process not yet be initiated and the term of contract lapses, this contract will automatically be considered terminated.
20. In cases where the request for renewal is awaiting approval, the contract shall remain in force until the formal communication is received.
21. On approval of the request for renewal, the term shall be with effect from the date the original contract lapses.
22. Should the contractee during the term of this contract be successful in a call for applications within the Public Service / Public Sector, his contract on a trust basis would have to be replaced to reflect the provisions applicable to persons engaged on a Position of Trust basis.

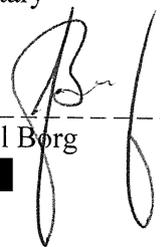
The parties intending to be legally bound are therefore signing this Agreement on the date set hereunder.

Signed by, on behalf of the
Government of Malta



Kevin Mahoney
Permanent Secretary

Signed by:



Mr Joseph Daniel Borg
ID. NO: XXXXXXXXXX

Witnessed by:

Mr Charles Vella
Director General
Strategy & Support

Signature of Witness:



Address of Witness:

201, Strait Street, Valletta

Date

22/8/19

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

From: Gatt Anthony at MEW-OPS <anthony.a.gatt@gov.mt>
Sent: Monday, 15 June 2020 11:30
To: Charles Polidano - Office of the Commissioner for Standards in Public Life
Cc: Gerada Jonathan at MEW-CIO; Borg Vincent B at MEW-DCS; Fiott Emily at MEW-DCS
Subject: RE: [EXTERNAL] - Complaint no. 043 concerning Dr Joseph Borg

Dear Mr Polidano

Email below from CIO-MEW refers. While it seems that there was a slight oversight from our end re Dr Borg's email account (following Minister's Farrugia appointment as Minister MEW from ex-MHAS), I confirm once again that Dr Borg was never engaged and/or paid by this Ministry. In the meantime we took immediate action to remove his email account under MEW.

Regards,
Anthony

From: Gerada Jonathan at MEW-CIO <jonathan.gerada@gov.mt>
Sent: 15 June 2020 11:22
To: Gatt Anthony at MEW-OPS <anthony.a.gatt@gov.mt>
Subject: Re: [EXTERNAL] - Complaint no. 043 concerning Dr Joseph Borg

PS,

As regards issue as per subject. Bulk email transfers in January 2020 were pushed to us from MHAS as is and parked until more details are provided. In this case, outlook does not reflect employee engagement status, all changes need to be instigated via HR or Secreteriat through HR since IMUs do not have visibility on such situations.

Do not hesitate to inform us on any changes required and push MITA to update accordingly.

Regards
Jonathan Gerada
CIO MEW

From: Charles Polidano - Office of the Commissioner for Standards in Public Life <charles.polidano@standardscommissioner.com>
Date: 12 June 2020 at 17:18:09 GMT+2
To: Gatt Anthony at MEW-OPS <anthony.a.gatt@gov.mt>
Cc: Fiott Emily at MEW-DCS <emily.fiott@gov.mt>, Ivan Falzon <Ivan.Falzon@wsc.com.mt>
Subject: RE: [EXTERNAL] - Complaint no. 043 concerning Dr Joseph Borg

Permanent Secretary
MEW

Please refer to our previous correspondence concerning Dr Joseph Borg.

Given your statement that Dr Borg was not engaged within MEW, you are kindly requested to explain why he holds an official government email account which identifies him as Secretariat Officer in your ministry as per the attached screenshot, which was taken on 27 May 2020.

Charles Polidano
Director General



Office of the Commissioner for Standards in Public Life

11, St Paul Street, Valletta VLT 1210, Malta
+356 27 269 593 www.standardscommissioner.com

From: Gatt Anthony at MEW-OPS <anthony.a.gatt@gov.mt>
Sent: Tuesday, 26 May 2020 22:46
To: Charles Polidano - Office of the Commissioner for Standards in Public Life <charles.polidano@standardscommissioner.com>
Cc: Fiott Emily at MEW-DCS <emily.fiott@gov.mt>; Ivan Falzon <Ivan.Falzon@wsc.com.mt>
Subject: RE: [EXTERNAL] - Complaint no. 043 concerning Dr Joseph Borg

Dear Mr Polidano

I am trying to address your questions to the best of my knowledge:

- what is the nature of Dr Borg's current appointment within your ministry
Dr Borg is not engaged within MEW, to date. He has been identified to fill in the role of adviser to CEO – WSC on position of trust basis. His engagement is not yet approved by OPM.
- the position title of the person to whom he reports
Subject to OPM's approval, he will eventually report to CEO – WSC.

Feel free to revert for further details.

Thank you,
Anthony

From: Charles Polidano - Office of the Commissioner for Standards in Public Life <charles.polidano@standardscommissioner.com>
Sent: 26 May 2020 15:13
To: Gatt Anthony at MEW-OPS <anthony.a.gatt@gov.mt>

From: Joseph Borg <[REDACTED]>
Sent: Friday, 12 June 2020 17:28
To: Charles Polidano - Office of the Commissioner for Standards in Public Life <charles.polidano@standardscommissioner.com>
Cc: joseph.f.borg@gov.mt
Subject: Re: Complaint concerning Facebook post

As far as I know people are employed by contracts not with email accounts.

On Fri, Jun 12, 2020, 17:24 Charles Polidano - Office of the Commissioner for Standards in Public Life <charles.polidano@standardscommissioner.com> wrote:

Dr Borg

Thank you for your email dated 8 June 2020.

The Commissioner for Standards has taken note of your statement that you ceased to hold any position in government on 7 June 2020, as well as the fact that as of today your official government email account remains active.

Should you wish to make any substantive comments on the complaint which was forwarded to you along with the Commissioner's letter of 27 May 2020, you are kindly requested to do so by **Friday 19 June 2020** at the latest. After this date the Commissioner reserves the right to draw conclusions on the basis of the information and evidence available to him.

Charles Polidano

Director General



From: Joseph Borg <[REDACTED]>
Sent: Monday, 8 June 2020 09:34
To: Charles Polidano - Office of the Commissioner for Standards in Public Life <charles.polidano@standardscommissioner.com>
Subject: Complaint concerning Facebook post

31st August 2020

Dr George Marius Hyzler
Commissioner for Standards in Public Life

Case K/024

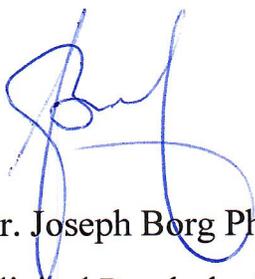
Dear Sir,

Further to our meeting of Friday 28th August 2020 in relation to a complaint received by your office in connection to a Facebook post I posted on my personal Facebook profile on the 27th April 2020.

Although it was never my intention to hurt or offend anyone or put my Minister in any form of embarrassment due to my conduct or enter into any political controversy, but just wanted to highlight the inaccuracies in the newspaper article.

In hindsight I regret the kind of language used, and I apologize if I offended someone with my comments. What I wrote in that post does not represent what I am as a professional nor as a person, it is only a reflection of my frame of mind at that time. I was angry and grieving the loss of my partner of 14 years due to her passing 7 days prior.

Kind regards,

A handwritten signature in blue ink, appearing to read 'Dr. Joseph Borg', with a large, stylized flourish extending from the end of the name.

Dr. Joseph Borg Ph.D.
Clinical Psychologist