

Opposition against dual role of Data Protection Commissioner

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The opposition is totally against the Information and Data Protection Commissioner assuming the added responsibility of safeguarding the Freedom of Information Act, Parliament was told yesterday.

Speaking on the second reading of the Bill, opposition spokesman for education and the media Evarist Bartolo said that the ideal guardian of the Act was the Ombudsman. But whoever was given this responsibility should be independent and not be accountable to the Prime Minister or any minister, but directly responsible to Parliament.

He also suggested that the Freedom of Information Act should be enshrined in the Constitution.

Mr Bartolo said that in its present form the Bill was weak and during committee stage the opposition would be doing its utmost to improve it.

In various countries around the world, where this law had been passed, one noted that it was often just the first step to a more transparent government. In other neighbouring countries, he said, the mentality of secrecy was still very strong.

No reference whatsoever was made to the public interest, and this meant the process would be arbitrary and limited.

Mr Bartolo said that as one of the later countries to adopt this Freedom of Information Act, Malta could have chosen a better model to follow. The UK Act was not the best example to follow because after 10 years it had still not been fully made part of the system.

The Bill did not make it clear how charges would be established, and questioned whether the price would serve as a deterrent.

If Malta really believed that information should be made available, it had to work together with other EU countries for freedom of information in other sectors of the union.

Mr Bartolo suggested that the Bill also encompassed the revision of examination papers and this would curb cases of abuse or corruption.

He believed that the right of information was a human right. It was in 2002 that the Council of Europe had recommended that the Freedom of Information Act be implemented, and there was nothing to boast about that Malta was doing this six years too late.

The European Court regarded the right of a person to have information about oneself. This also applied to the secret services because they could hide behind the pretext of security to prevent certain information from being divulged.

Mr Bartolo said that any entity, whether governmental or privatised but serving a government function, or funded by public money, should also be subject to the Act. A case in point was Malta International Airport, which had taken to answering any question by saying that this was no longer a government authority.

Malta had opted for the restrictive method, providing a list of such authorities. This had to be amended.

The criteria which established that one had to have been a resident for at least five years to ask for information was also restrictive. The countries which had the best practice, he said, had nothing of the sort and anyone could request information.

Why were all Cabinet documents exempt? Mr Bartolo acknowledged that in some countries they were, for a period, but in some countries, such as in New Zealand, these were released immediately. Malta had to look to all the various methods. After all, the Bill was pushing towards an open government. If Malta really wanted to strengthen good governance, then it had to take the concept seriously.

Mr Bartolo suggested the setting up of an independent national committee or commission for human rights, answerable to Parliament.

Referring to sanctions when the right of information was not given or information was destroyed, he said that some countries imposed a prison term as the penalty. In some countries the authorities gave a list of information in their possession so it could be requested. In other countries the Whistleblower Act was part of the Freedom of Information Act, thus making for a whole package.

Mr Bartolo emphasised the need of keeping records up to date. He said the introduction of the Bill was just the first step. Mentalities and cultures had to change, steps had to be taken by public authorities to make information easily accessible, the reasons for keeping information secret widely defined and a great deal to be done to educate the people so that they could make the best use of this information. Earlier, opposition spokes-man on the public service Helena Dalli said that the Prime Minister's speech last Wednesday, when introducing the Bill, was nothing but a list of the government's electoral promises. The Public Administration Bill had been promised for the past three legislatures.

Dr Gonzi should have mentioned the promise he had made to the dockyard workers on the eve of the election do assure them that he would to all he could to ensure their prosperous future. Then, through the media, they had found that this enterprise would be privatised.

Ms Dalli referred to the issue of job vacancies in the public sector and said that it was a clear case that the person chosen would be the one the minister wanted.

In principle the opposition agreed that there should be such an Act, but it had numerous reservations. The Bill did not limit what those who wished to use the information for commercial reasons could do with it. It was necessary to have some structure plan for the system.

She said clause 21, regarding the general function of the Information and Data Protection Commissioner, was a contradiction in itself because it gave the commissioner power over two opposing departments.

The merits of particular information not being revealed in order to protect the government had to be further discussed. The code of practice providing guidance to public authorities was important and must be followed to the letter.

In conclusion, Ms Dalli said the Bill needed to be finely reviewed in committee stage because much of its content left a lot to be desired.

Nationalist MP Charlò Bonnici said that the Bill gave people the right to information held by the government or its entities, and it was but one of a number of initiatives which the government had taken to give a wider voice to the people.

In the past, the state had always been on the defensive, especially when abuses were rampant and the citizen had no voice. It was now time to move forward, with the introduction of other Bills like the Whistleblower Act and the strengthening of the Ombudsman's Office and Mepa.

He suggested an information campaign so that people should know of this new right.

The success or failure of the Act would depend on a balance between giving out information and not impinging on data protection. The so-called guardians of information held by the state still had the duty to do his job to the full.

He suggested that the right of information be given to all Maltese citizens, wherever they were living.

Concluding, Mr Bonnici said that once the legislation was enacted, it was imperative that it was constantly updated.

Winding up the debate, Parliamentary Secretary Chris Said said that transparency and accountability formed two pillars of democracy. The Bill was the fruit of extensive consultations both before and after the relevant White Paper. A number of suggestions, including those from the Committee of Journalists and the Institute of Journalists as well as individual editors of local media, had found their way into the Bill.

Reference had also been made to laws existing in seven other countries, without losing sight of Malta's particular circumstances.

In the past every civil servant used to labour under the principle that any piece of information was confidential unless they were specifically ordered to reveal it. This had led to some confusion in the face of requests for information.

This was not the first such Bill that had been drafted to introduce the new mentality that information could and should be revealed and made accessible. Another concept was that certain information could only be released after a certain timespan. Further progress towards the release of information had been made with the introduction of local councils.

In 1995 the Civil Code had been amended to allow for certain documents to be exhibited in court cases. This had been followed by other regular changes up to 2005.

The regulations on the right of access to information on the environment were also being amended, with a mechanism to facilitate anyone feeling that they had not been given all available information to go through other channels of redress. In the past there had been other steps to enhance transparency, not least the establishment of the Office of the Ombudsman and the House Public Accounts Committee.

Transparency was also important in revealing corruption or abuse of power.

Dr Said said that one highlight of the Bill was the simplification of how one should go about requesting information, without having to give any reason for doing so. If the request was made to the wrong authority, the latter was duty-bound to pass the request on to the appropriate authority within 10 days and inform the requester that it had done so.

Whenever a request was not acceded to, the Commissioner for the Protection of Data would come onto the scene. If not even the commissioner acceded to the request one could go to the tribunal and, if necessary, to the Court of Appeal.

On the question of what and how much information should be given to the public about the new law, Dr Said said he agreed that it should be part of the commissioner's remit to make such information available.

The word "document" was being widened to signify any document on which any kind or amount of information was available. The definition of a person eligible to request information was also being widened to include any citizen of the EU.

The information requested would now be made available not only by government departments but also companies in which the government had a stake. Replies would have to be given within specific timeframes. Fees could not surpass the actual expenses made in making the information available.

Concluding, Dr Said said the circle had come fully around, from the notion that information was to be kept secret to the insistence that it should be made fully available.

The Bill was given a second reading without a division.

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