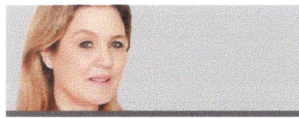


# Secrecy has gone viral



Petra Caruana Dingli

After the Panama Papers, will anyone ever feel that their data is secure again? Whether it was a breach of the internal data system or the e-mail server at Mossack Fonseca, secret documents are not necessarily safe. At every digital gateway or platform, hackers might be trying to break the lock.

The contents of the data are shocking, but the leak itself is not. Data mining happens regularly. Swissleaks and Wikileaks are still fresh in our memories. Last year there was even an online dating site whose clients were embarrassed to be exposed by a breach of the system.

Digital technology is transforming politics. It plays a decisive role in massive events. The Tunisian revolution in 2011, for example, was not caused by social media, but the sharing of information online was one reason why the government eventually lost control over events.

This also applies to incidents on a much smaller scale. A videoclip of a man beating his fallen horse in the street in Swatara went viral last week. The film was taken by a passer-by and widely shared on social media, causing outrage. This type of public awareness pressures the government to pay attention to animal welfare and ensure that

robust legislation is in place. While the traditional press faces threats of lawsuits about the Panama Papers, a parallel universe of online information flourishes undisturbed. On Facebook and Twitter an endless stream of video clips, memes, photos, comments and jokes about Panama is viewed by huge numbers of people, and the government cannot control it.

Privacy and secrecy are disappearing in the digital age. Every time you send an e-mail message or make a phone call, you leave a trace. People are wary of digital surveillance and the infringement of privacy, but on the other hand, transparency in government is expected.

**The number of times the newspapers report that their questions were not answered by government entities, or that information was denied, is much too frequent**

Any attempt to block free speech or access to information is frowned upon. Trying to muzzle people is a bad idea. For example, an art design competition is not in the same league as a national energy deal, but the mind-set is revealing.

In the renewed competition for a statue of Dom Mintoff, participating artists are forbidden from speaking about it. This restriction is utterly pointless and only engenders suspicion about the entire process.

The Prime Minister's aide Keith Schembri avoids press questions on his foreign companies and accounts, even though he is involved in the making of major government deals. This does not inspire confidence.

His consultants Nexia BT, local representatives of Mossack Fonseca, are reputed to have a desk at the Office of the Prime Minister but resisted answering press questions about it. Don't they understand that this information cannot be kept secret? It is in the public interest to know who has a desk at OPM and who is influencing the decision-makers. Castille is not a private fiefdom.

The number of times the newspapers report that their questions were not answered by government entities, or that information was denied, is much too frequent.

The representative of the International Consortium of Investigative Journalists has repeated a telling remark in his interviews. The Panama Papers will change the face of things, as secrecy is a main product of jurisdictions like Panama. If they can no longer sell secrecy, they no longer have a product.

Secrecy alone is a major reason why Konrad Mizzi's position was immediately considered untenable by many people when the story about his Panamanian company broke.

He opted for secrecy, protecting and hiding his assets through an unnecessarily complex structure, when already Cabinet

Minister. Whether he had yet managed to channel any funds into this structure or not is irrelevant, and the plea of political naivety is absurd.

Other politicians who have defended Mizzi, such as Owen Bonnici and Deborah Schembri, have only succeeded in damaging their own reputations too. If they could not recognise the gravity of the matter then they must be politically naïve as well, or worse.

In the public eye, Mizzi was not helped by the fact that he also opted for secrecy in the massive energy and health deals which he spearheaded as minister. To date, these major contracts have been withheld despite repeated calls to see them. The excuse is that their publication is "not in the national interest".

There was also secrecy surrounding official visits to Azerbaijan to discuss energy deals, which excluded civil servants and the Maltese press. This did not look good at all.

The details about Mizzi's wife's achievements as Maltese consul in China are also kept under wraps. In recent weeks, it was reported in the press that "Malta Enterprise is maintaining total silence about Sai Mizzi Liang's future as its envoy to Asia, also failing to give information about her achievements over the past three years".

For quite some time, her contact and work details in China were also shrouded in mystery, even though she is employed by Malta Enterprise. So much for the transparency of the Mizzi family.

No wonder the public simply would not believe that Mizzi's intentions in setting up a Panama company and New Zealand Trust for his family, and his attempt to open a Dubai account, were straightforward.

petradingli@gmail.com

# White Paper not good enough



David Fabri, Antoine Grima

David Fabri is head of the University of Malta's Department of Commercial Law.

Antoine Grima lectures on Consumer Law at the University's Faculty of Laws.

Estate agency work has for years persisted as the most startling and controversial non-regulated activity in Maltese law. The law does not provide any comprehensive legal framework for people engaging in the activity, which is very lucrative and widespread. Anybody can do it.

Here, we briefly examine the so-called White Paper and draft Bill recently published by the government which attempts to regulate this sector. The 1991 White Paper entitled 'Rights for the Consumer' had proposed a licensing and oversight framework for estate agents to improve the service and ensure better protection for the public. This was part of a major overhaul of consumer protection in Malta.

Important measures followed including the setting up of a Department for Consumer Affairs in 1992 and the passage of the Consumer Affairs Act in 1994. An estate agency legal framework however never materialised.

Much law was then added in 2000 when EU membership was approaching. No specific EU directive exists on estate agents and this shows from the lingering lacuna. This is not to suggest that the services offered by an estate agent are

entirely outside the law. If the transaction between an agent and a consumer exists in terms of general law, various private law rules apply, including EU-derived rules prohibiting unfair contract clauses and unfair commercial practices inserted in the Consumer Affairs Act.

Unfair commercial practices address behaviour such as providing incorrect information or using devious techniques to influence consumers' decisions even where these involve the purchase of a home. If the consumer authority identifies such malpractices, it may impose administrative fines and issue public warnings. The draft Bill proposes the setting up of another new authority, but its place within the whole enforcement fabric is unclear as the relevant regulations concerning its relations with other authorities are still unpublished.

Two plausible undesired scenarios may happen: duplication of work leading to contradictory regulatory measures, and inaction as enforcement agencies rely on each other.

The new authority may confuse consumers when it comes to lodging a complaint. One recalls the Fantasy Tours debacle where desperate consumers, due to lack of leadership, ended up knocking on every door possible in the hope of recouping their losses.

Consumers face another hurdle. A €50 charge is recommended to lodge a complaint. No provision for mediation is made, and once the process is triggered the authority would have to decide within an undefined timeframe.

Four issues arise. First, the charge may deter consumers from lodging complaints. This would hinder the authority from detecting malpractices. Secondly, investigations and decisions should take place within specific timeframes. Thirdly, decisions should be reasoned. Fourthly, the authority seems unable to intervene to address urgent circumstances where consumers risk imminent damage.

The new authority should have all the necessary instruments at its disposal to address

bad and poor conduct. When the draft Bill was launched, the heavy fines and possible imprisonment were noted with some suspicion. However, these measures are not triggered automatically as the authority may instead impose an administrative fine.

No guidelines regulate how this would work out. Curiously, no rules provide for the suspension or withdrawal of a licence; those breaching the law may continue offering their services.

The authority's internal organisation too is somewhat opaque. No criteria for the selection of its members are made. Anyone may be appointed and the minister may even waive the disqualification provision. Nothing indicates that consumer organisations will be represented. What safeguards and measures will curtail conflicts of interest?

The schedule regulating the conduct of affairs only briefly touches upon consumer-to-agent relations. It hints at the modalities that should take place before engaging an estate agent or property consultant. Consumers should be presented with pre-written agreements explaining the terms of business

and details of any applicable charges before using a service.

No requirement exists that such agreements are to be drawn up in a clear and concise manner. Consumers may end up taking quick decisions when presented with voluminous agreements in fine print.

One would have expected more initiatives in favour of the consumer. The rules should: allow for *à la carte* services according to the consumer's requirements; specify the duration of an agreement and not allow for an automatic renewal; regulate withdrawal charges to impede potential switching barriers that reduce consumer choice, and also a cooling off period.

A reference for the new authority to cooperate with the MCCA, the national competition agency, in tackling malpractices that may distort competition is also lacking. The White Paper comes at a time when the Competition Office has flagged its concerns on practices taking place in the sector, more specifically on the rates of commission.

Consumers need structures that reassure them that any fees, commissions and services provided are the result of a competitive environment and nothing else. The White Paper is inadequate in this regard.

Unfortunately, the draft Bill is proposed in isolation. No assessment has been carried out on the applicability of existing relevant consumer or competition legislation. The White Paper focuses on the licensing requirements for estate agencies and their agents with little tangible concern towards enhancing benefits and safeguards for consumers.

We are also led to believe that a few in-house lectures and exams will make professionals of us all, while the minister is allowed to grant exemptions from these requirements.

The recently proposed framework is not good enough to protect the consumer interest, and more work and study is required.

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