

CDP/COMP/772/2023

VS

COMPLAINT

1. On the 16th August 2023, [REDACTED] (the “**complainant**”) lodged a complaint with the Information and Data Protection Commissioner (the “**Commissioner**”) pursuant to article 77(1) of the General Data Protection Regulation¹ (the “**Regulation**”), alleging that [REDACTED] and [REDACTED] (the “**controllers**”) are unlawfully processing his personal data by means of “*a camera being installed above our outside yard, overlooking our main door*”², which he considers to be an infringement of the provisions of the Regulation.

INVESTIGATION

2. Pursuant to article 58(1)(a) of the Regulation and this Office’s internal investigation procedure, on the 21st August 2023, the Commissioner requested the controllers to put forward their submissions in order to defend themselves against the allegation raised by the complainant, and were also requested to provide a copy of the image grab taken from the footage of the CCTV camera.
3. By means of an email dated the 14th September 2023, the controllers submitted the following arguments for the Commissioner to consider in the legal analysis of this case:
 - a. that the installation of the CCTV camera was prompted by the need to safeguard the well-being and safety of the community cats:

¹ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC.

² The CCTV camera is installed at [REDACTED]

- b. that [REDACTED] is a registered cat feeder with the Naxxar Local Council and has been providing essential care to the community cats living in the San Pawl Tat-Tarġa, part of Naxxar, for over ten (10) years;
- c. that the complainant has been involved in numerous actions aimed at harming the cats and, over the past years, the community cats have been subjected to numerous threats, abuse, and malicious acts;
- d. that these disturbing incidents include, but are not limited to, the: (i) objection to cats; (ii) suspicious cat deaths; (iii) harassment and cruelty towards cats; and (iv) disappearance of cats;
- e. that these incidents were reported, supported by photographic evidence, to both the Naxxar Police and the Naxxar Local Council on multiple occasions;
- f. that an investigation was initiated by the Naxxar Police, which involved collaboration with the Naxxar Local Council and the Animal Welfare, however, the authorities consistently requested video evidence as a prerequisite for further legal action;
- g. that during discussions with the Naxxar Local Council, the controllers were informed that the Local Council lacked the necessary funds to install a camera on the premises, and that in response to this pressing demand, the controller took it upon themselves to install a surveillance camera on their property, specifically positioned to monitor the cat feeding station exclusively;
- h. that the primary purpose of this camera is to safeguard the welfare of the cats and serve as a deterrent to those responsible for the cruel acts committed against the cats;
- i. that the neighbourhood has become a location for the unauthorised dumping of animals;
- j. that the presence of the camera will help to minimise the stray cat population and prevent further abandonment of animals in the area;
- k. that it is not the intention of the controllers to intrude into the neighbours' lives or become involved in their affairs, but the controllers as responsible and law-abiding

members of the community, have every right to take measures to protect the well-being of the community cats; and

- I. that the controllers have taken great care to ensure that the camera does not invade the privacy of any individual or capture any other private property, and the recorded footage is only viewed in the event of an incident, and there is absolutely no intention or time to access or view any other content.
4. Alongside the submissions, the controller submitted the following documentation:
- a. a copy of the police report dated the 15th April 2021, including photos, in relation to the killing of a cat and the throwing of chilli peppers in the planters where the cats are usually fed;
 - b. a copy of the police report dated the 21st July 2021 in relation to insults suffered by [REDACTED]; and
 - c. a copy of the police report dated the 17th October 2022 in relation to a missing cat.

LEGAL ANALYSIS AND DECISION

5. In principle, the Commissioner recognises the need for the installation of a CCTV camera system by private individuals to ensure the security and safety of their private property. However, appropriate and sufficient guarantees should be effectively provided to ensure that such system is solely capturing the private property of the persons responsible for the installation of the CCTV camera(s).
6. In this regard, it should be pointed out that article 1 and recital 10 of the Regulation aim to ensure a high level of protection of the rights and fundamental freedoms of natural persons, in particular, article 8 of the Charter of Fundamental Rights of the European Union, which states that each and every person has the right to the protection of their personal data.
7. Having analysed the complaint submitted by the complainant in terms of article 77(1) of the Regulation on the 16th August 2023, wherein he alleged that the CCTV camera was *“installed above the entrance to the garages – the owners [controller] do not own garages and is overlooking our main door and outside yard where we spend time as a family”*.

8. Having noted the submissions provided by the controllers on the 14th September 2023, in particular, that the “*primary purpose of this camera is to safeguard the welfare of the cats and serve as a deterrent to those responsible for these cruel acts*”. From the image grab produced by the controller, the Commissioner could establish that the CCTV camera is not capturing the private property of the controllers, but it is capturing a public space which could be freely accessed by everyone. In fact, the image grab shows the registration numbers of the vehicles parked in the area being monitored by the CCTV, which data are considered to be ‘*personal data*’ within the meaning of article 4(1) of the Regulation. The systematic and continuous monitoring of a public space brings about the collection and retention of personal data pertaining to natural persons.
9. The Court of Justice of the European Union in the Rynes³ judgment held that video surveillance which “*covers, even partially, a public space and is accordingly directed outwards from the private setting of the personal processing the data in that manner, it cannot be regarded as an activity which is a purely ‘personal or household’ activity*” [emphasis has been added]. This reasoning was endorsed by the Information and Data Protection Appeals Tribunal in relation to the decision ‘*Raymond u Mary Ann konjuġi Cutajar vs Kummissarju għall-Infommazzjoni u l-Protezzjoni tad-Data*’⁴, where a CCTV camera was installed on the facade of a private property in such a manner to capture public space.
10. In the present case, it is abundantly clear that the processing activity conducted by means of the CCTV does not fall within the household exemption in terms of article 2(2)(c) of the Regulation, and therefore, the processing of personal data should fully comply with the provisions of the Regulation and the rights and freedoms of the affected data subjects.
11. The principle of lawful processing, which is one of the principles of data protection, states that every processing data operation needs to have a legal basis for processing. Therefore, article 6(1) of the Regulation stipulates what could constitute as a legal basis while also considering the other principles for data processing as stipulated in article 5 of the Regulation.
12. The European Data Protection Board⁵ provides that every legal basis that falls under article 6(1) of the Regulation can provide a basis for the processing of personal data by means of video recording. For the purpose of this legal analysis, the Commissioner noted that (i) the camera is

³ Case C-212/13, paragraph 33.

⁴ Appeal Number 4/2019, decided on the 27th October 2020.

⁵ Guidelines 3/2019 on Processing of Personal Data through Video Devices, Version 2.0, adopted on the 29th January 2020, paragraph 16.

installed by private individuals; and (ii) the camera is installed at a considerable height, which covers a wide view of an entire public space. The installation of the CCTV camera for the purpose of monitoring a public space is generally deemed to be lawful if there is a legislation which permits the processing activity for a specified purpose(s) and subject to the necessary and appropriate safeguards to protect the rights and freedoms of the data subjects. In such case, the Commissioner noted that there is no legal basis in terms of article 6(1) of the Regulation, which could legitimise the processing activity conducted by the controller as private individuals. Therefore, the monitoring of a public space which leads to the processing of personal data is deemed to be unlawful and an infringement of the rights and freedoms of data subjects.

In the light of the foregoing, the Commissioner hereby decides that, whereas he recognises the genuine intention that the controller is seeking to achieve to safeguard the safety and well-being of community cats, the processing activity undertaken by means of the CCTV camera is not in conformity with article 6(1) of the Regulation. In terms of article 58(2)(f) of the Regulation, the Commissioner is ordering the controller to cease the processing activity and remove the CCTV camera within twenty (20) days from the date of receipt of this legally-binding decision.

The controller is requested to inform the Commissioner of the corrective action taken immediately thereafter, supported by photographic evidence. The information about the action taken shall be submitted by means of an email on idpc.cctv@idpc.org.mt

In terms of article 83(6) of the Regulation, “[n]on compliance with an order by the supervisory authority as referred to in Article 58(2) shall, in accordance with paragraph 2 of this Article, be subject to an administrative fine up to 20 000 000 EUR”.



Ian Deguara
Information and Data Protection Commissioner

Decided today, the 12th day of October, 2023

Right of Appeal

The parties are hereby being informed that in terms of article 26(1) of the Data Protection Act (Cap. 586 of the Laws of Malta), any person to whom a legally binding decision of the Commissioner is addressed, shall have the right to appeal to the Information and Data Protection Appeals Tribunal within twenty (20) days from the service of the said decision as provided in article 23 thereof.

An appeal to the Tribunal shall be made in writing and addressed to “The Secretary, Information and Data Protection Appeals Tribunal, 158, Merchants Street, Valletta.”