

**Information and Data Protection Commissioner**

**CDP/COMP/776/2023**

vs

**COMPLAINT**

1. On the 17<sup>th</sup> August 2023, Mr [REDACTED] (the “**complainant**”) lodged a complaint with the Information and Data Protection Commissioner (the “**Commissioner**”) in terms of article 77(1) of the General Data Protection Regulation<sup>1</sup> (the “**Regulation**”), alleging that the video devices installed on the façade of [REDACTED] by Ms [REDACTED] (the “**controller**”) are capturing his private property, and therefore considered the processing of his personal data to be an infringement of the Regulation.

**INVESTIGATION**

2. Pursuant to the internal investigation procedure and article 58(1)(a) of the Regulation, by means of a letter dated the 21<sup>st</sup> August 2023, the Commissioner provided the controller with a copy of the complaint and requested the controller to submit any information which she deemed relevant and necessary to defend herself against the allegation raised by the complainant. In particular, the Commissioner requested the controller to submit copies of the image grabs taken from the footage of the video devices.
3. By means of an email dated the 23<sup>rd</sup> October 2023, the controller provided copies of the image grabs, however, she failed to provide any submissions to explain how the processing operation is deemed to be lawful in terms of article 6(1) of the Regulation. The Commissioner requested

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<sup>1</sup> 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 (General Data Protection Regulation).



8. 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.
9. 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.
10. Accordingly, the Commissioner examined the email of the controller dated the 24<sup>th</sup> October 2023 and noted that the controller did not provide any submissions to indicate which is the legal basis upon which she is relying in terms of article 6(1) of the Regulation to extensively capture public spaces and third-party properties by means of the video devices. The systematic and continuous monitoring of third-party properties and public spaces leads to the processing of personal data of all the data subjects in a general and non-discriminate manner, and the Commissioner deems this to be unlawful and an infringement of the rights and freedoms of the data subjects.

**In the light of the foregoing considerations, the Commissioner hereby decides that the processing activity undertaken by the controller by means of the video devices is not in conformity with article 6(1) of the Regulation. In terms of article 58(2)(d) of the Regulation, the Commissioner is hereby ordering the controller to adjust the angle of view of the video devices in such a manner to no longer continue capturing third party properties and public spaces. If this is not possible due to a technical reason or any other reason whatsoever, the video device shall be removed. The controller shall comply with this order by no later than 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 in case the devices are removed. The information about the action taken shall be submitted by means of an email on [idpc.cctv@idpc.org.mt](mailto: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 Dequara

Information and Data Protection Commissioner

### **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.”

