

Information and Data Protection Commissioner

CDP/COMP/804/2023

vs

COMPLAINT

1. On the 25th August 2023, Mr [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 Mr [REDACTED] (the “**controller**”) installed a CCTV camera on the façade of [REDACTED], which is capturing public spaces, and as a result, the processing of his personal data infringes the provisions 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 15th September 2023, the Commissioner provided the controller with a copy of the complaint and requested them to submit any information deemed relevant and necessary to defend themselves against the allegation raised by the complainant. In particular, the Commissioner requested the controller to submit a copy of the image grab taken from the footage of the CCTV camera.
3. By means of a letter dated the 2nd October 2023, the controller submitted the following reply:
 - a. that it can be confirmed “*that prior to the complaint having been lodged with your good self a formal police report had been filed wherein the police reported on site and*

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 (General Data Protection Regulation).

confirmed that the footage being recorded is not in fact footage of the complainant or of his property. This was confirmed a while back and the police explained that the CCTV does not in any way film footage of the complainant or of his property. The only third party property caught in the footage is that of an individual neighbour who in fact requested such”; and

- b. that it can also be confirmed “*that the photographic evidence which has been presented is deceitful and was in fact captured from the middle of the road in front of my client personal property and not from the complainant’s personal property*”.
4. The Commissioner reiterated his request for a copy of the image grab, and on the 11th October 2023, the controller submitted a copy of the image grab. The image grab demonstrates that the CCTV camera is extensively monitoring a public space.

LEGAL ANALYSIS AND DECISION

5. In principle, the Commissioner recognises the need for the installation of a CCTV camera system to ensure the security and safety of private property. However, appropriate and sufficient guarantees should be effectively provided to ensure that such system is not capturing a public space.
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 noted the submissions provided by the controller by means of a letter dated the 2nd October 2023, wherein the controller ascertained that “*the footage being recorded is not in fact footage of the complainant or of his property*”. However, the CCTV camera should also not capture a public space. From the image grab produced by the controller, the Commissioner could establish that the CCTV camera is not capturing the private property of the complainant, however it is extensively capturing a public space which could be freely accessed by everyone, including, the complainant. In fact, the image grab shows that the CCTV camera is positioned in such a manner to capture both sides of the streets, which brings about the collection and



retention of the data of all the individuals accessing this public space, and thus, this constitutes a processing activity in terms of article 4(2) of the Regulation.

8. The Court of Justice of the European Union in the *Ryneš*² 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*’³, where a CCTV camera was installed on the façade of a private property in such a manner to capture public space.
9. 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.
10. 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.
11. The European Data Protection Board⁴ 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 the camera is angled in such a manner to cover a wide view of an entire public space. The installation of the CCTV camera for the purpose of monitoring a public space by a private individual is generally deemed to be unlawful, unless in very exceptional cases, the controller manages to concretely prove that there is a compelling legitimate interest to conduct this processing operation. However, even in such cases, the controller should strictly monitor the immediate surroundings of the premises and not excessively monitor a public space. This led the Commissioner to conclude that the controller had not managed to demonstrate that there is indeed a lawful basis

² Case C-212/13, paragraph 33.

³ Appeal Number 4/2019, decided on the 27th October 2020.

⁴ Guidelines 3/2019 on Processing of Personal Data through Video Devices, Version 2.0, adopted on the 29th January 2020, paragraph 16.

that could legitimise the processing activity conducted by means of the CCTV camera. The systematic and continuous monitoring of a public space, which leads to the processing of personal data of all the data subjects in a general and non-discriminate manner, is deemed to be unlawful and an infringement of the rights and freedoms of the data subjects.

In the light of the foregoing, the Commissioner hereby decides that the processing activity undertaken by the controller by means of the CCTV camera is not in conformity with article 6(1) of the Regulation. In terms of article 58(2)(d) of the Regulation, the Commissioner is ordering the controller to bring the processing operation into compliance with the provisions of the Regulation by ensuring that the CCTV camera is not capturing a public space and is solely monitoring the façade of the property [REDACTED]. If this is not possible due to a technical reason or any other reason whatsoever, the CCTV camera 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 a copy of the image grab or photographic evidence that the camera has been removed. 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, the controller shall be subject to an administrative fine in case of non-compliance with the Commissioner's order set out in this decision.



Ian Deguara
Information and Data Protection Commissioner

Decided today, the 23rd November, 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.”

