

Information and Data Protection Commissioner

CDP/COMP/836/2023

vs

COMPLAINT

1. On the 10th September 2023, Ms [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 Regulation¹ (the “**Regulation**”), alleging that the video devices² installed by M. [REDACTED] (the “**controller**”) are capturing beyond his private property, and therefore, the complainant considered the processing of her personal data to be an infringement of the Regulation.

INVESTIGATION

2. Pursuant to the internal investigation procedure and article 58(1)(e) of the Regulation, by means of a letter dated the 11th December 2023, the Commissioner provided the controller with a copy of the complaint and requested the controller to submit any information which he deemed relevant and necessary to defend himself 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 22nd December 2023, the controller submitted copies of the image grabs taken from the footage of the video devices and the following arguments:

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).

² The devices are installed on the property [REDACTED]

- a. that “we are the only residents in [REDACTED] There are no other residents with their address in this lane”;
- b. that “there are no official street lights illuminating the lane which has only one entrance/exit since the lane is a dead end. For these reasons there is a safety and security risk which is why the CCTVs are required to safeguard our tenants, ourselves and our property”; and
- c. that “[i]t is imperative to note that in no form or manner do we want to impinge on third parties property and the justified use of CCTV cameras is solely for the security, safety and well-being of the residents in our property and no other purpose whatsoever”.

LEGAL ANALYSIS AND DECISION

4. In principle, the Commissioner recognises the need for the installation of a video device to ensure the security and safety of private property. However, appropriate and sufficient guarantees should be effectively provided to ensure that such device is not capturing a public space and, or third-party properties.
5. 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.
6. Having noted the email dated the 22nd December 2023, wherein the controller submitted copies of the image grabs taken from the footage of the video devices, which demonstrate that the video devices are excessively capturing public space. As a result, this is leading to the collection and retention of the data of all the individuals accessing the monitored area, and thus, this constitutes a processing activity in terms of article 4(2) of the Regulation.
7. The Court of Justice of the European Union in the Ryneš³ judgment held that video surveillance which “covers, even partially, a public space and is accordingly directed outwards from the

³ Case C-212/13, paragraph 33.



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-Infurmazzjoni u l-Protezzjoni tad-Data*'⁴, where a video device was installed on the façade of a private property in such a manner to capture public space.

8. In the present case, it is abundantly clear that the processing activity conducted by means of the video devices 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. The European Data Protection Board⁵ (the "**EDPB**") provides that every legal basis that falls under article 6(1) of the Regulation could provide a basis for the processing of personal data by means of video recording. The installation of the video device by private individuals which is capturing a public space 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 property and not extensively monitor a public space. In fact, the EDPB states that "[i]n some individual cases it might be necessary to exceed the video surveillance to **the immediate surroundings of the premises**"⁶. In the present case, it is evident that the video devices are not merely capturing the immediate surroundings of the controller's property but are excessively monitoring public space.
11. After assessing the submissions provided by the controller, the Commissioner concluded that the controller had not managed to effectively demonstrate that there is indeed a lawful basis that could legitimise the processing activity conducted by means of the video devices. The

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.

⁶ Ibid. 6, para. 27.

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 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.

By virtue 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 solely capture the façade of his private property. If this is not possible due to a technical reason or any other reason whatsoever, the video devices 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 copies of the image grabs or photographic evidence that the devices have 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, “[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 16th day of January 2024

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.”

