

Information and Data Protection Commissioner

CDP/COMP/884/2023

vs

COMPLAINT

1. On the 6th October 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 Regulation¹ (the “**Regulation**”), alleging that the video device installed on the balcony of [REDACTED] by Mr [REDACTED] [REDACTED] (the “**controller**”) is 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)(e) of the Regulation, by means of a letter dated the 10th October 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 a copy of the image grab taken from the footage of the video device.

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).

3. By means of an email dated the 2nd December 2023, the controller provided a copy of the image grab taken from the footage of the CCTV camera and submitted that “[d]in ic CCTV giet installata biex tissorvelja propjeta tieghi u ebda propjeta ta' terzi. Ninfirmak ukoll li d decizjoni li ninstalla CCTV hadta wara li jien soffrejt hsarat konsiderevoli fuq vettura tieghi waqt li kont ipparkjat quddiem il propjeta tieghi. Rapport ta dan l-incident jinstab fl-ghassa tal-pulizija ta' Rahal Gdid”.

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 2nd December 2023, wherein the controller submitted a copy of the image grab taken from the footage of the video device and stated that the video device was installed after his vehicle was damaged. Despite the fact that the controller implemented the masking technique to cover third party properties, however, the video device is excessively capturing a public space. As a result, this is leading to 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.
7. The Court of Justice of the European Union in the Rynes² 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

² Case C-212/13, paragraph 33.

*għall-Infurmazzjoni u l-Protezzjoni tad-Data*³, 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 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. For the purpose of this legal analysis, the Commissioner noted that (i) the video device is installed by a private individual; (ii) the video device is installed at a considerable height, which covers a wide view of an entire public space; and (iii) the purpose of the processing is to monitor the vehicle whilst parked on a public road. The Commissioner considers that the installation of the video device 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 a private individual. 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 the processing activity undertaken by the controller by means of the video device is not in conformity with article 6(1) of the Regulation. In terms of article 58(2)(f) of the Regulation, the Commissioner is hereby ordering the controller to cease the processing operation and remove the video device within twenty (20) days from the date of receipt of this legally-binding decision.

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

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

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.”

