

COMPLAINT

1. On the 4th of November 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 Mr [REDACTED] (the “**Controller**”), installed three video devices on the façade of [REDACTED] overlooking his private property, and therefore considered that the processing of his personal data by means of this video device is infringing 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 7th of November 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 copies of the image grabs taken from the footage of the video devices.
3. By means of an email dated the 20th November 2023, the controller submitted copies of the image grabs extracted from the three video devices together with two documents and salient arguments for the Commissioner to take into account during the legal analysis of the case:

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).

- a. that the screen grabs are “*proof of harassment which I have had to endure from [the complainant] over many months (often mornings and evenings). As you can see, he purposely leads his dog to urinate on my property, even though the Police had already spoken to him*”;
- b. that one of the documents dated 13th October 2022 refers to a “*case that was terminated when I decided to forgive [the complainant]*” while the other one refers to “*the present court case which led to [the complainant] filing a complaint against me to your office*”;
- c. that “*considering the narrowness of these alleys, the CCTV cameras would not have been able to take meaningful coverage to protect my property. Furthermore, I was assured by my CCTV installer (controller) [REDACTED] that the camera angles are correct and in line with the law*”; and
- d. that the complainant’s complaint “*against me rests on the premise that my CCTV cameras are violating his privacy, when the entrance of his property is not even visible in either CCTV camera. If he had to take a different route in the opposite direction, his down wouldn’t have been able to urinate on my property*”.

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. The Commissioner assessed the submissions provided by the controller by means of an email dated the 20th November 2023, wherein the controller submitted copies of the image grabs taken from the footage of the video devices showing the alleyways surrounding their property. The video devices are extensively capturing a public space and this leads to the collection and

retention of the data of all the individuals assessing the public space, thus constituting a processing activity in terms of article 4(2) of the Regulation.

7. 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 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. 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 video devices are angled in such a manner to cover a wide view of an entire public space. The installation of the video devices which is capturing 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 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 that could legitimise the

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.

processing activity conducted by means of the video device. 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 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 ordering the controller to bring the processing operation into compliance with the provisions of the Regulation by ensuring that the angle of view of the devices is solely capturing the façade of their 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 a copy of the image grab or photographic evidence that the device 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, “[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 Degnara
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.”

