

[REDACTED]

vs

[REDACTED]

## COMPLAINT

1. On the 12<sup>th</sup> February 2024, [REDACTED] (the “**complainant**”) lodged a complaint against [REDACTED] (the “**controller**”) 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 controller is unlawfully processing her personal data by means of the camera installed in the block of apartments<sup>2</sup> that “*covers two thirds of the common landing, plus the elevator*”. The complainant further explained that “[t]he common area, that starts just outside her door is a shared ownership area that I use to access the elevator. Thus, everytime I go in and out of the elevator, she will know, thus violating my privacy rights”.

## INVESTIGATION

2. By means of a letter dated the 27<sup>th</sup> February 2024, the Commissioner provided the controller with a copy of the complaint, including the supporting documentation, and enabled the controller to submit any information which she deemed necessary and relevant to defend herself against the allegation raised by the complainant. In terms of article 58(1)(e) of the Regulation, the Commissioner ordered the controller to submit a copy of the image grab taken from the footage of the camera, including information in relation to the brand and model number of the camera or system installed by the controller.
3. On the 18<sup>th</sup> March 2024, the controller submitted an image grab taken from the footage of the camera and a photograph of the camera “*showing visible view from the camera, as well as*

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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).

<sup>2</sup> The block of apartments where the camera is installed is [REDACTED].

*placement of camera, and tape displayed on camera to eliminate recording of any shared space*". The controller informed the Commissioner that the brand of the camera is Kamera IP Kenik and the model number is KG-2130D (2.8mm), and the camera is installed to protect the property of the controller, including her own personal safety.

4. Pursuant to the internal investigation of this Office, the complainant was provided with the opportunity to rebut the arguments of the controller. On the 27<sup>th</sup> March 2024, the complainant submitted the following salient arguments for the Commissioner to consider during the legal analysis of this case:

- a. that the controller does not reside in the apartment in question and the apartment is being rented out, and therefore, it is the complainant who is the one exposed to danger, distress, and discomfort;
- b. that the complainant is constantly being recorded and she could not freely enjoy the ownership of the common area;
- c. that the camera may be placed inside the penthouse of the controller as that is where her undivided ownership begins and anything beyond the façade of the door of the controller is deemed to be common area; and
- d. that the camera theoretically points to the door of the controller, however, its location makes it impossible for the complainant to walk in and out of the elevator without passing by the door of the controller and, thus, in full view of the camera.

5. The complainant further submitted documentation together with the following explanations to substantiate her arguments:

- a. A common area plan – “[t]his contract plan clearly shows the space, or lack thereof, between the elevator and her door. From this plan alone, it should be evident that in allowing the camera to be where it is, I am denied my right to enjoy my property as granted by the European Charter of Fundamental Rights Article 7,8 because to avoid being captured by the camera, I have to either not use the lift or be deprived of my ownership in the common which, for full transparency, I paid 5K Euros, equal to each unit”;
- b. A photograph to show the size of the common area – “The size of the common is equal to the width of our front doors. That means that the second I walk out of the elevator, I am in front of her door; thus, again, capturing me in full view with her camera”;

- c. A photograph to indicate where the camera is installed within the common parts of the block of apartments– *“Again, this photo shows that the distance between the camera and the A9 door exceeds well beyond half the common area. It is impossible for me to walk out of property to the elevator without being on camera. This clearly shows that the camera’s aperture is well beyond her premises”*; and
  - d. A video – *“Additionally, I am sending a video of me walking out of the elevator immediately in front of her door. For as long as the camera captures the door... it is impossible for me not be captured. I will not be denied the full enjoyment of my property, and I demand a video assessment”*.
6. The controller was provided with the final opportunity to rebut the submissions of the complainant, however, the controller failed to provide a response within the timeframe specified by the Commissioner.

## LEGAL ANALYSIS AND DECISION

7. As a preliminary observation, the Commissioner notes that any advice or guidance provided on request by this Office is solely based on the information received from one party and it does not constitute a legally binding decision<sup>3</sup>. Therefore, any information which may be provided by this Office does not in any way limit or hinder the Commissioner from handling data protection complaints and from exercising his corrective powers where an infringement is detected.
8. For the purpose of the investigation of this complaint, the Commissioner examined the subject-matter of the complaint where the complainant alleged that the camera installed by the owner of the apartment next door is processing her personal data without a valid lawful basis in terms of article 6(1) of the Regulation. Consequently, the Commissioner sought to establish whether the camera installed by the controller in the common parts of the block of apartments is unlawfully processing the personal data of the complainant.
9. During the course of the investigation, in terms of article 58(1)(e) of the Regulation, the Commissioner requested the controller to submit a copy of the image grab taken from the recordings of the camera. The controller complied with this request and also included a photograph of the camera to demonstrate that the controller has manually covered parts of the

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<sup>3</sup> All the emails sent by this Office include the following disclaimer: *“...Opinions and advice given by this Office on data protection matters shall not constitute a legally binding decision and shall be without prejudice to the Commissioner’s power to investigate any complaint lodged by a data subject.”*

lens with electrical tape to ensure that the camera is solely capturing the apartment door of the controller.

10. *Prima facie* the action taken by the controller appeared to be compliant, however, the investigation revealed that the camera is installed in a very confined space that must be accessed by the complainant at all times to enter and exit her private property when using the elevator. The Commissioner emphasises that the complainant should be allowed to freely use the common parts, and she should not feel that she is being continuously monitored by a private individual each time she walks past the door of the controller to access or exit her private property.
11. The Commissioner further notes that the size of the landing area, the location of the elevator and the place where the camera is installed, make it practically and absolutely not possible for the controller to offer sufficient guarantees that the personal data of the complainant is not, or will not be, processed. Therefore, after taking into account that the camera is installed in an area that is not exclusively owned by the controller, the Commissioner is of the view that, based on the circumstances of the present case, the controller could only rely on consent in terms of article 6(1)(a) of the Regulation to legitimise the processing activity conducted by means of the camera. This is naturally without prejudice to the fact that during the course of the investigation, the controller did not present any evidence or at least attempt to indicate that the processing activity is based on any other legal bases pursuant to article 6(1) of the Regulation.
12. Consequently, in the light of the facts mentioned in the preceding paragraph of this decision, the Commissioner effectively concludes that the camera could never enable the controller to convincingly demonstrate that the processing operation is conducted in the course of a purely personal or household activity and therefore falls outside the material scope of the Regulation in terms of article 2(2)(c). This conclusion shall hold unless the controller installs the camera inside her apartment, which solution would still meet the objective which she seeks to achieve and would offer the necessary assurances to the complainant that the camera is not recording her movements and infringing her data protection rights.

**On the basis of the foregoing considerations, the Commissioner is hereby deciding that the controller failed to sufficiently demonstrate that the processing operation conducted by means of the camera falls outside the material scope of the Regulation, and consequently, the processing activity is not based on any of the lawful grounds set forth in article 6(1) of the Regulation.**

By virtue of article 58(2)(f) of the Regulation, the controller is hereby being ordered to stop the processing operation and remove the camera with immediate effect and, in any event, by no later than five (5) working days from the date of receipt of this legally binding decision. The controller is hereby being ordered to inform the Commissioner of the action taken immediately thereafter, supported by photographic evidence to effectively demonstrate compliance with the order. The information about the corrective 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, the controller is hereby being informed that “[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  
(Signature)

Digitally signed  
by Ian DEGUARA  
(Signature)  
Date: 2024.05.08  
10:52:40 +02'00'

**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”.