

[REDACTED]

vs

[REDACTED]

## COMPLAINT

1. On the 13<sup>th</sup> April 2024, 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 Regulation<sup>1</sup> (the “**Regulation**”), alleging that Ms [REDACTED] (the “**controller**”) installed two (2) cameras<sup>2</sup> that are unlawfully processing his personal data. The complainant submitted the following information in connection with his complaint:

- a. that “[m]y family live in a ground floor semi-detached maisonette, my neighbour lives on top of our maisonette having also a semi-detached maisonette”; and
- b. that “[m]y neighbour living on top of our house installed CCTV cameras, one at a side window facing our property being our garage roof (‘l-arja’ roof being our property) and another camera installed at a side door balcony facing our courtyard and also having some visual being our wall of garage”.

## INVESTIGATION

2. By means of a letter dated the 2<sup>nd</sup> May 2024 and pursuant to the internal investigative procedure of this Office, the Commissioner provided the controller with a copy of the complaint, including

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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 cameras in question are installed at [REDACTED]

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 copies of the image grabs taken from the footage of the cameras, including information in relation to the brand and model number of the cameras or system installed by the controller.

3. By means of an email dated the 22<sup>nd</sup> May 2024, the controller provided the Commissioner with copies of the image grabs taken from the footage of the cameras and submitted the following salient arguments for the Commissioner to consider during the legal analysis of the case:

- a. “[i]lli dawn iż-żewġ CCTV cameras igibu l-immagini waħda tal-arja ta’ garaxx fejn hemm installati pannelli fotovoltaiċi hekk kif jidher mid-dokument anness u mmarkat bħala Dok. B, u l-oħra ggħib l-immagini ta’ ħajt diviżorju bejn il-proprjetà tal-esponenti u dik tas-Sur [REDACTED] dan hekk kif jidher mid-dokument anness u mmarkat bħala Dok. C”;
- b. “[i]lli bħalma jidher minn Dok. B u Dok. C dawn ic-CCTV cameras mhumiex intiżi sabiex juru xi attivita’ umana u bl-ebda mod ma jagħtu għal triq pubblika jew spazju aċċessibbli mill-pubbliku iżda huma intiżi biss sabiex l-esponent tippoteġi darha minn xi skalata jew ħsara”;
- c. “[i]lli hekk kif jidher minn Dok. D, hawn anness, il-posizzjoni tal-garaxx tas-Sur [REDACTED] joħloq nuqqas ta’ sigurtà għall-proprjetà tal-esponenti billi terzi persuna jistgħu faċilment jiskalaw u jitilgħu fuq is-saqaf tal-garaxx u minn hemm faċilment jaqbzu għal gol-proprjetà tal-esponent, ossia t-terazzin”;
- d. “[i]lli għal dawn l-aħħar disa’ snin kemm ilhom installati dawn ic-CCTV cameras, l-iskop tagħhom kien is-sigurta’ tad-dar tal-esponenti. Illi di piu bħalma jidher minn Dok. C ċ-CCTV camera relattiva ma ggħib l-ebda immagini tal-bitħa tas-Sur [REDACTED] [REDACTED] iżda sempliciment hija ffukata fuq il-ħajt diviżorju u dan għas-sigurta tal-proprjeta tal-esponenti”; and
- e. “[i]lli, in vista tas-suespost, dawn c-CCTV cameras ma jsegwu l-ebda attivita umana iżda kienu ġew installati għal skopijiet personali u domestiċi u għalhekk huma koperti mill-artikolu 2(2)(c) tar-Regolament 2016/679”.

4. The controller re-submitted the image grabs taken from the footage of the CCTV cameras on the 18<sup>th</sup> July 2024 and held that “Ms [REDACTED] has adjusted the angles of focus of the CCTV cameras with regards to the dividing wall. The CCTV camera captures only her private property as shown in the image grab attached to this email and marked as Dok. DV1. With regards to the other CCTV camera, Ms [REDACTED] has also adjusted the angles of focus of the CCTV cameras ... With regards to this camera Ms [REDACTED] is willing to affix it permanently”.

## LEGAL ANALYSIS AND DECISION

5. As a preliminary step of the investigation, the Commissioner examined the subject-matter of the complaint where the complainant alleged that the cameras installed by the controller are processing his personal data without a valid lawful basis in terms of article 6(1) of the Regulation.

### The Lawfulness of the Processing

6. During the course of the investigation, the Commissioner requested the controller to submit copies of the image grabs taken from the footage of the cameras in terms of article 58(1)(e) of the Regulation. Accordingly, the Commissioner examined the final image grabs submitted by the controller on the 18<sup>th</sup> July 2024, including the submissions provided on the 22<sup>nd</sup> May 2024, and noted that the cameras are not affixed to the exterior part of the property, but they are placed behind the apertures.
7. The first image grab dated the 18<sup>th</sup> July 2024 and marked as Dok. DV1 demonstrates that the controller implemented the masking technique in such a manner to solely capture the dividing wall. In relation to the other image grab which is marked as Dok. DV2, the camera is capturing the property of the complainant, and as a result, the camera is leading to the collection and retention of the data pertaining to the complainant, 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<sup>3</sup> 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

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<sup>3</sup> Case C-212/13, paragraph 33.

*activity which is a purely ‘personal or household’ activity”* [emphasis has been added]. In the present case, it is abundantly clear that the processing activity 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 subject.

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 Board<sup>4</sup> (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. Generally, the appropriate legal bases to install a CCTV camera for the purpose of solely monitoring the third party property is either to obtain the consent of the affected data subject or else to process the personal data of the complainant on the basis of a compelling legitimate interest. In such case, it is evident that the complainant did not consent to the processing of his personal data.
11. The Commissioner emphasises that it remains the responsibility of the controller pursuant to the principle of accountability as set forth in article 5(2) of the Regulation to effectively demonstrate that the processing activity conducted by means of the camera is based on legitimate interest pursuant to article 6(1)(f) of the Regulation. The Guidelines published by the EDPB explain that:

*“The legitimate interest needs to be of real existence and has to be a present issue (i.e. it must not be fictional or speculative). A real-life situation of distress needs to be at hand – such as damages or serious incidents in the past – before starting the surveillance. In light of the principle of accountability, controllers would be well advised to document relevant incidents (date, manner, financial loss) and related criminal charges. Those documented incidents can be a strong evidence for the existence of a legitimate interest. The existence of a legitimate*

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

*interest as well as the necessity of the monitoring should be reassessed in periodic intervals (e. g. once a year, depending on the circumstances)”<sup>5</sup>.*

12. 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 camera. The controller did not produce any evidence to concretely show that there is a real and hazardous situation that would merit the installation of the camera overlooking the private property of the complainant. The systematic and continuous monitoring of a third-party property, which leads to the processing of personal data of the complainant in a general and non-discriminate manner, is deemed to be unlawful and an infringement of the rights and freedoms of the complainant.

#### The Placement of the Cameras

13. In addition to the foregoing, the Commissioner noted that both cameras are installed behind the apertures of the controller’s property, which makes it very easy for the controller to discreetly adjust the angle of view of the cameras without the controller knowing that his personal data is being processed by the controller. The placement and the manner how the cameras are installed certainly do not respect the principle of fairness. The key elements of the principle of fairness as set forth in article 5(1)(a) of the Regulation, include *inter alia*, the need to meet the data subjects’ reasonable expectations and the need to avoid any deceptive or manipulative methods that would lead to the processing of personal data.
14. The Commissioner further notes that the place where the cameras are installed makes it practically not possible for the controller to offer sufficient guarantees that the personal data of the complainant is not, or will not be, processed. This is also in accordance with the judgment ‘Raymond Orland vs John Caruana’<sup>6</sup>, where the Information and Data Protection Appeals Tribunal (the “**Tribunal**”) confirmed the decision of the Commissioner that ordered the appellant to remove the camera on the basis that the appellant did not offer sufficient guarantees that the personal data of the appellee would not be processed by means of the camera. The Tribunal held that:

*“Li kieku jrid l-appellanti jista’ jistalla l-kamera għal fuq il-proprjeta X kif diġa għamel u biex jilħaq il-proprjeta Y għandu żewġ mezzi: li jistalla kamera oħra fil-parti Y iżda ma jistgħax joqghod idawwar il-kamera sabiex bl-iskuża biex*

<sup>5</sup> *ibid.* 4, paragraph 20.

<sup>6</sup> Appeal Number CDP/COMP/451/2020, decided on the 15<sup>th</sup> September 2022.

15. Furthermore, the Tribunal in the judgment ‘Matthew Bianco vs Philip Incorvaja’<sup>7</sup> confirmed the decision where the Commissioner ordered the appellant to remove the camera which had been placed in between the deck balusters of a balcony on the basis that the camera could be easily adjusted by the appellant, and therefore, the appellant failed to offer the necessary assurance that the personal data of the appellate would not be processed by means of the camera.

**On the basis of the foregoing considerations, the Commissioner is hereby deciding that:**

- a. **the camera installed behind the window is capturing the private property of the complainant, and therefore, this processing activity constitutes an infringement of article 6(1) of the Regulation; and**
- b. **both cameras are installed behind the apertures of the controller’s property, which makes it very easy for the controller to easily adjust the angle of view of the cameras without the knowledge of the complainant, and therefore, the controller failed to provide sufficient guarantees that there would be no processing of personal data pertaining to the complainant.**

**In virtue of article 58(2)(f) of the Regulation, the controller is hereby being ordered to stop the processing operation and remove the two (2) cameras within twenty (20) days from the date of service of this 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 this 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**  
**Information and Data Protection Commissioner**

Decided today, the 7<sup>th</sup> of August, 2024

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<sup>7</sup> Appeal Number CDP/COMP/36/2020, decided on the 15<sup>th</sup> September 2022.



### 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*".

