

**Information and Data Protection Commissioner**

**CDP/COMP/227/2024**

████████████████████  
**vs**  
████████████████████

**COMPLAINT**

1. On the 31<sup>st</sup> May 2024, ██████████ (the “**complainant**”) lodged a complaint with the Information and Data Protection Commissioner (the “**Commissioner**”) pursuant to article 77(1) of the General Data Protection Regulation<sup>1</sup> (the “**Regulation**”), stating that he received a WhatsApp message from ██████████ (the “**controller**”) for the purpose of political campaigning. The complainant alleged that the controller unlawfully processed his personal data, and therefore, considered that the processing of his personal data infringes the provisions of the Regulation.

**INVESTIGATION**

2. As part of the investigation procedure of this Office, the Commissioner provided the controller with a copy of the complaint and the opportunity to submit any information which he deemed relevant and necessary to defend himself against the allegation raised by the complainant. By means of an email dated the 21<sup>st</sup> July 2024, the controller submitted the following arguments for the Commissioner to consider during the legal analysis of this case:
  - a. that “*[t]he data referenced in the allegation pertains to the contact details of the complainant. It is important to note that this data is publicly available and was obtained from a public source and a publicly accessible website, namely the Local Council Electoral Register and [www.████████.com](http://www.████████.com)”;*

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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.



4. By means of an email dated the 21<sup>st</sup> July 2024, the controller confirmed that he processed the personal data of the complainant for political campaigning purposes. The controller submitted screen shots taken from the 'Local Council Electoral Register'<sup>6</sup> and [www.████████.com](http://www.████████.com)<sup>7</sup> to demonstrate that it was the complainant who made his mobile number publicly available.
5. The Commissioner clarifies that any information which may be obtained from public sources does not serve as an automatic exemption to enable the controller to process the personal data pertaining to the complainant. In fact, the controller should fully comply with its data protection obligations regardless of the source from where the data originate. This is made abundantly clear in article 14 of the Regulation which imposes an obligation upon the controller to provide the data subject with information about the processing operation where the personal data have not obtained from the data subject. In particular, article 14(2)(f) of the Regulation states that the controller should inform the data subject "*from which source the personal data originate, and if applicable, whether it came from publicly accessible sources*" [emphasis has been added].
6. The European Data Protection Board (the "EDPB") in its 'Statement 2/2019 on the use of personal data in the course of political campaigns'<sup>8</sup> emphasises that personal data which have been made public or otherwise been shared by voters, even if the data is not revealing political opinions, are still subject to the data protection legislation:

*"Personal data which have been made public, or otherwise been shared by individual voters, even if they are not data revealing political opinions, are still subject to, and protected, by EU data protection law. As an example, **using personal data collected through social media cannot be undertaken without complying with the obligations concerning transparency, purpose specification and lawfulness**"*

[emphasis has been added].
7. In the case of political campaigning, processing of personal data is generally conducted to pursue the legitimate interest of the political campaigners and the public in general. However, article 6(1)(f) of the Regulation could only serve as the appropriate legal basis if the controller manages to effectively demonstrate that this interest is not overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data. Recital 47 of the Regulation sheds light on the balancing test that needs to be conducted by the controller,

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<sup>6</sup> Ibid 2

<sup>7</sup> Ibid 3

<sup>8</sup> European Data Protection Board, 'Statement 2/2019 on the use of personal data in the course of political campaigns', available at: [https://www.edpb.europa.eu/our-work-tools/our-documents/statements/statement-22019-use-personal-data-course-political\\_en](https://www.edpb.europa.eu/our-work-tools/our-documents/statements/statement-22019-use-personal-data-course-political_en)

particularly, that the controller should process data in such a manner that the “*data subject can reasonably expect at the time and in the context of the collection of the personal data that processing for that purpose may take place.*” [emphasis has been added].

8. During the course of the investigation, it was revealed that the controller processed data from a website to match other information, such as personal data obtained from the Electoral Register, to customise voter outreach and create a profile on voters. In fact, the controller stated that “[t]he data referenced in the allegation pertains to the contact details of the complainant. It is important to note that this data is publicly available and was obtained from a public source and a publicly accessible website”. This poses the question: ‘*Can the data subject reasonably expect that the information he puts on a website be collected and used by campaigners for political engagement purposes?*’.
9. The element of ‘*reasonable expectation*’ is one of the critical factors which should be taken into consideration by the controller prior to the processing of personal data for the purpose of political campaigning. The element of ‘*reasonable expectation*’ is not just one of the conditions for ensuring the lawfulness of the processing pursuant to article 6(1)(f) of the Regulation, but it also crucial to safeguard the principle of fairness. The EDPB in its ‘*Guidelines 2/2019 on the processing of personal data under Article 6(1)(b) GDPR in the context of the provision of online services to data subjects*’<sup>9</sup> highlights the correlation between the element of ‘*reasonable expectation*’ and the principle of fairness:

“*Article 5(1)(a) GDPR provides that personal data must be processed lawfully, fairly and transparently in relation to the data subject. The principle of fairness includes, inter alia, recognising the reasonable expectations of the data subjects, considering possible adverse consequences processing may have on them, and having regard to the relationship and potential effects of imbalance between them and the controller.*”  
[emphasis has been added].

10. In this regard, the Commissioner emphasises that political campaigners should only process the personal data of voters in a transparent manner and for the reason that the voters reasonably expect. Whereas there is a reasonable expectation that data contained in the Electoral Register may be used by political campaigners for the purpose of engaging with voters and exchanging

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<sup>9</sup> European Data Protection Board, ‘*Guidelines 2/2019 on the processing of personal data under Article 6(1)(b) GDPR in the context of the provision of online services to data subjects*’, available at: [https://www.edpb.europa.eu/sites/default/files/files/file1/edpb\\_guidelines-art\\_6-1-b-adopted\\_after\\_public\\_consultation\\_en.pdf](https://www.edpb.europa.eu/sites/default/files/files/file1/edpb_guidelines-art_6-1-b-adopted_after_public_consultation_en.pdf)

political messages, the Commissioner does not consider that the complainant can reasonably expect that the information which was published on a website would be collected and used by the controller for the purpose of political campaigning. This leads the Commissioner to conclude that the practice of collecting data from a website to create a profile on voters without their consent and knowledge is tantamount to an unfair practice.

11. This is also in line with the Guidelines published by the Committee of the Convention for the protection of individuals with regard to the automatic processing of personal data (Convention 108), which states that “[p]olitical campaigns should not “scrape” data from social media for the purposes of building profiles on the electorate”.

**On the basis of the foregoing considerations, the Commissioner is hereby deciding that the controller’s practice of collecting and using data from a website for the purpose of political campaigning, without the knowledge and consent of the complainant, is tantamount to an unfair practice and an infringement of article 6(1) of the Regulation.**

**The controller is being warned that in the event of another infringement of a similar nature, the appropriate corrective action shall be taken accordingly.**

Ian  
DEGUARA  
(Signature)

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by Ian DEGUARA  
(Signature)  
Date: 2024.08.05  
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**Ian Deguara  
Information and Data Protection Commissioner**

### **Right of Appeal**

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 in writing to the Tribunal within twenty days from the service of the said decision as provided in article 23*”.

An appeal to the Information and Data Protection Appeals Tribunal shall be made in writing and addressed to ‘*The Secretary, Information and Data Protection Appeals Tribunal, 158, Merchants Street, Valletta*’<sup>10</sup>.

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<sup>10</sup> More details are available here: <https://idpc.org.mt/appeals-tribunal/>