

vs

## COMPLAINT

1. On the 4<sup>th</sup> July 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 [REDACTED] (the “**controller**”) installed two (2) cameras<sup>2</sup> on the main entrance door of the block of apartments, where both the controller and the complainant reside, and consequently, these cameras are leading to the unlawful processing of the personal data pertaining to the complainant.

## INVESTIGATION

2. By means of a letter dated the 11<sup>th</sup> July 2024 and pursuant to the internal investigative procedure of this Office, the Commissioner provided the controller with a copy of the complaint, including the supporting documentation, and enabled the controller to submit any information which he deemed necessary and relevant to defend himself 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.

<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]

3. By means of a letter dated the 5<sup>th</sup> August 2024, the controller provided the Commissioner with his submissions including the following salient arguments for the Commissioner to consider during the legal analysis of the case:
  - a. that *“first of all, note that these were installed by Alberta security camera under security and legal basis”*;
  - b. that *“in addition with that, two other neighbours [REDACTED] had given me the consents [sic] to install them and they accepted the case to have some view of their property ”*; and
  - c. that *“[a]part from that, every camera footages store the data within certain time period, but this is obvious to capture any resident living in [REDACTED] going in or out from the residence.”*

As part of the submissions, the controller provided the Commissioner with a copy of the police report dated the 5<sup>th</sup> July 2022, wherein the spouse of the controller reported that someone unlawfully entered into their apartment and stole some items. Subsequently, the controller submitted two (2) image grabs by means of an email dated the 7<sup>th</sup> August 2024, showing that the cameras are capturing the main entrance door of the block of apartments and public space.

#### **LEGAL ANALYSIS AND DECISION**

4. 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.
5. 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 image grabs submitted by the controller by means of an email dated the 7<sup>th</sup> August 2024 and noted that the cameras are affixed to the main entrance door of the block of apartments, and consequently, the controller is systematically and continuously monitoring the common entrance door and public space. This 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.

6. 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 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 subjects.
7. 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.
8. 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 CCTV cameras for the purpose of monitoring public space and the common parts is either to obtain the consent of the affected data subjects or else to process the personal data of the affected data subjects 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.
9. 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 cameras is based on legitimate interest pursuant to article 6(1)(f) of the Regulation.
10. After assessing the submissions provided by the controller, the Commissioner noted that the cameras are monitoring the common entrance door of the block of apartments that must be accessed by the complainant at all times to enter and exit his apartment. The Commissioner emphasises that the complainant should be allowed to freely use the property, and he should not feel that he is being continuously monitored by a private individual each time he leaves or enters the property.

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

<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.

11. As part of the legitimate interest assessment, the controller must be able to prove that the processing is necessary and there isn't a less intrusive way that could be adopted by the controller to meet his intended objective. In such case, the Commissioner is of the view that there are alternative means how the controller could reasonably achieve the same objective whilst simultaneously respecting the fundamental rights and freedoms of the complainant, particularly, the rights to respect for private life and to the protection of personal data as guaranteed by article 7 and 8 of the Charter of Fundamental Rights of the European Union. This therefore led the Commissioner to conclude 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 cameras. The systematic and continuous monitoring of the main common entrance door and public space, 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 his rights and freedoms.

**On the basis of the foregoing considerations, the Commissioner is hereby deciding that the cameras installed by the controller are unlawfully processing the personal data of the complainant, and therefore, this processing activity constitutes an infringement of article 6(1) of the Regulation.**

**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 Meguara**  
Information and Data Protection Commissioner

**Decided today, the 2<sup>nd</sup> of September, 2024.**

**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*”.

