

COMPLAINT

1. On the 27th November 2023, [REDACTED] qua [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 [REDACTED] (the “**controller**”) installed a number of cameras on his private property overlooking the premises of [REDACTED] and therefore, the complainant considered that the processing of personal data conducted by means of these cameras is an infringement of the provisions of the Regulation. The complainant provided to the Commissioner with photographic evidence to demonstrate that the controller installed four (4) bullet cameras and one (1) dome camera. In relation to the latter camera, the complainant submitted “*a photo showing the cameras/PIR sensor (outdoor alarm) at the back of the property. As you can see the dome camera which is remotely operated is facing down however the PIR sensor and camera are pointing and overlooking right into our property*”.

INVESTIGATION

2. Pursuant to the internal investigative procedure of this Office, by means of a letter dated the 5th December 2023, the Commissioner sent a copy of the complaint, including the supporting documentation, to the controller and provided the controller with the opportunity to provide any information which he deemed necessary and relevant to defend himself against the

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.

² The cameras are installed at [REDACTED]

allegation raised by the complainant. In addition, pursuant to article 58(1)(e) of the Regulation, the Commissioner ordered the controller to provide copies of the image grabs taken from the footage of the cameras and information in relation to the brand and model number of the CCTV cameras in question.

3. By means of an email dated the 3rd January 2024, the controller submitted copies of the image grabs taken from the footage of three (3) cameras. On the 12th January 2024, the controller further submitted the following explanation to justify the installation of the cameras:

“Evidently you can see that ladders being left there for other reason to intimidate & provoke me and here I have my family that I have to protect and the cameras are for no more than that. The other two camera were disconnected as they are passing new wires and maybe they cut the wires or they came faulty”.

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 controller installed cameras which are overlooking the premises of [REDACTED] and consequently, leading to the unlawful processing of personal data.

The Lawfulness of the Processing

5. Accordingly, the Commissioner proceeded to determine whether the processing of personal data conducted by means of the CCTV cameras is based on at least one of the lawful bases as set forth in article 6(1) of the Regulation.
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 submissions provided by the controller on the 3rd January and the 12th January 2024, wherein the controller confirmed that he has installed five (5) cameras on his property for safety and security purposes. However, the controller argued that only three (3) cameras are functioning because the remaining cameras were disconnected. Together with these submissions, the controller submitted the image grabs taken from the footage of three (3) cameras. The image grabs taken from the bullet cameras are

mainly capturing the roof area of the premises of [REDACTED], whereas the image grab taken from the dome camera is capturing the private property of the complainant. In relation to the dome camera, the complainant provided photographic evidence to effectively demonstrate that the angle of view rotates based on a motion sensor. As a result, all these cameras are leading to the collection and retention of the data pertaining to the complainant and any other data subject accessing the property of [REDACTED], and thus, this constitutes a processing activity in terms of article 4(2) of the Regulation.

7. The Court of Justice of the European Union in the Rynes³ 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.
8. 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.
9. The European Data Protection Board⁴ (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 third party property 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 controller had not obtained the consent of the complainant or any other affected data subject to monitor third-party property.
10. 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

³ Case C-212/13, paragraph 33.

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

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.

11. 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 cameras. 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 cameras overlooking third party property. The systematic and continuous monitoring of a third-party property, which leads to the processing of personal data of the complainant and other data subjects in a general and non-discriminate manner, is deemed to be unlawful and an infringement of the rights and freedoms of the affected data subjects. The Commissioner is of the view that the controller could reasonably achieve his intended objective, namely the safety and security of his private property, by installing the bullet cameras overlooking his private property.

Disconnected cameras

12. By means of an email dated the 12th January 2024, the controller submitted that the “*other two camera were disconnected as they are passing new wires and maybe they cut the wires or they came faulty*”. In his assessment, the Commissioner noted that the cameras in question are in bullet form, and these are positioned in such a manner to point towards the premises of [REDACTED] and therefore, this makes it absolutely impossible for the controller to solely capture his private property.
13. Despite the fact that during the course of the investigation, the controller stated that these cameras are disconnected, the Commissioner could not accept this argument, in particular, when considering that these cameras may be connected at any point in time to capture beyond the controller’s private property without the knowledge of the affected data subjects. This certainly goes against the principle of fairness, in particular, the reasonable expectation of the data subjects. Given that the bullet cameras are pointing directly towards the premises of [REDACTED] the controller failed to provide sufficient and appropriate guarantees that the personal data of the complainant and any other data subject is not, or will not, be processed by means of these cameras.

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

- a. to effectively demonstrate that the processing activity conducted by means of the cameras is lawful, and therefore, this constitutes an infringement of article 6(1) of the Regulation;
and
- b. to provide sufficient and appropriate guarantees that the cameras which are allegedly disconnected are not, or will not, process the personal data of the complainant and any other data subject.

In virtue of article 58(2)(f) of the Regulation, the controller is hereby being ordered to stop the processing operation and remove all the cameras, which are the subject of this complaint, 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

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 2nd 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*”.