

Information and Data Protection Commissioner

CDP/COMP/199/2024

[REDACTED]

vs

[REDACTED]

COMPLAINT

1. On the 17th May 2024, [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] [REDACTED] (the “**controller**”) installed two (2) cameras ²that are unlawfully processing her personal data.

INVESTIGATION

2. Pursuant to the investigative procedure of this Office, by means of a letter dated the 22nd May 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 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.

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 (General Data Protection Regulation).

² The cameras in question are installed at [REDACTED]

[REDACTED]

3. By means of an email dated the 7th June 2024, the controller submitted two (2) copies of the image grabs taken from the footage of the cameras and provided the following arguments in relation to the following:
 - a. that “*the CCTV cameras are not properly attached due to construction and finishing works on my property*”; and
 - b. that “*the CCTV that they complained about saying it is on third party wall is on the façade of my garage drive-in*”.

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 her 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. During the course of the investigation, the Commissioner established the following: (i) the image grabs show the cameras are capturing public space; and (ii) the cameras are not “*properly attached due to construction and finishing works on my property*”.

The Lawfulness of the Processing

6. The image grabs produced by the controller demonstrate that the cameras are capturing public space, and therefore, the cameras are leading to the collection and retention of personal data pertaining to the complainant and any other data subject accessing the monitored public space, 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*

³ 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 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. However, generally, the appropriate legal bases are consent and legitimate interest. The Commissioner emphasises that it always 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 at least one of the lawful bases laid down in article 6(1) of the Regulation.
10. After assessing the submissions and image grabs 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 systematic and continuous monitoring of a 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 the rights and freedoms of the complainant.

The manner how the cameras are placed

11. Without prejudice to the foregoing, the controller submitted that the cameras are not “*properly attached due to construction and finishing works on my property*”. The fact that the cameras are not fixed to a permanent structure makes it very easy for the controller to adjust the angle of view of the cameras. This certainly does not respect the principle of fairness, which, includes

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

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.

12. The Commissioner further notes that the manner how the cameras are installed makes it practically impossible 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'⁵, 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 jilhaq il-proprjeta Y għandu żewġ mezz: li jistalla kamera oħra fil-parti Y iżda ma jistgħax joqgħod idawwar il-kamera sabiex bl-iskuża biex jisorvelja l-parti Y jinvadi l-proprjeta tal-appellat Orland li hija mmarkata bl-ittra Z".

13. Furthermore, the Tribunal in the judgment 'Matthew Bianco vs Philip Incorvaja'⁶ 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 was not fixed to a permanent structure, and therefore, the appellant failed to offer the necessary assurance that the personal data of the appellee would not be processed by means of the camera.

On the basis of the foregoing considerations, the Commissioner is hereby deciding that the controller failed to sufficiently demonstrate that the processing operations conducted by means of the cameras fall 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.

In virtue of article 58(2)(f) of the Regulation, the controller is hereby being ordered to stop the processing operation and remove the cameras within twenty (20) days from the date of service of this legally binding decision. The controller is hereby being ordered to provide photographic

⁵ Appeal Number CDP/COMP/451/2020, decided on the 15th September 2022.

⁶ Appeal Number CDP/COMP/36/2020, decided on the 15th September 2022.

evidence to demonstrate compliance with the order of the Commissioner. 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 Tegua

Information and Data Protection Commissioner

Decided today, the **26** th August, 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*".