

Information and Data Protection Commissioner

CDP/COMP/895/2023

vs

COMPLAINT

1. On the 20th October 2023, [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] installed a video device on his glass balcony railing of [REDACTED], which is capturing her private property, and therefore considered the processing of her personal data to be an infringement of the Regulation.

INVESTIGATION

2. Pursuant to the internal investigation procedure and article 58(1)(a) of the Regulation, by means of a letter dated the 25th October 2023, the Commissioner provided the controller with a copy of the complaint and requested the controller to submit any information which he deemed relevant and necessary to defend himself against the allegation raised by the complainant. In particular, the Commissioner requested the controller to submit a copy of the image grab taken from the footage of the video device.
3. By means of an email dated the 13th November 2023, the controller provided an image grab and submitted the following salient arguments for the Commissioner to take into account during the legal analysis of this case:

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).

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- a. that *“I have installed a CCTV camera on the window of my garage following damage caused on it as can be seen in the pictures attached (Image 1 and 2)”*;
- b. that *“[F]ollowing a dispute on common area ownership of garages, I have lodged a court case with the original owners of the block, who still own the penthouse, maisonette in question and garages”*; and
- c. that *“my window was damaged. I lodged a police report as per (Image 3) attached. For my safety I installed a CCTV camera overlooking my garage window. I made every effort to only capture the immediate vicinity of the window and blocking any unneeded view as per guidelines by IDPC website.”*

LEGAL ANALYSIS AND DECISION

4. In principle, the Commissioner recognises the need for the installation of a video device to ensure the security and safety of private property. However, appropriate and sufficient guarantees should be effectively provided to ensure that such device is not capturing a public space and, or third-party properties.
5. In this regard, it should be pointed out that article 1 and recital 10 of the Regulation aim to ensure a high level of protection of the rights and fundamental freedoms of natural persons, in particular, article 8 of the Charter of Fundamental Rights of the European Union, which states that each and every person has the right to the protection of their personal data.
6. Having noted the submissions provided by the controller by means of an email dated the 13th November 2023, wherein the controller submitted a copy of the image grab taken from the footage of the video device, which shows that the controller implemented the masking technique in a manual manner to cover the property of the complainant. However, the video device is still capturing a public space. As a result, this is leading to the collection and retention of the data of all the individuals accessing this 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 *Ryneš*² 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]. This reasoning was endorsed by the Information and Data Protection Appeals Tribunal in relation to the decision ‘*Raymond u Mary Ann konjuġi Cutajar vs Kummissarju għall-Infommazzjoni u l-Protezzjoni tad-Data*’³, where a video device was installed on the façade of a private property in such a manner to capture public space.
8. In the present case, it is abundantly clear that the processing activity conducted by means of the CCTV 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.
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 Board⁴ provides that every legal basis that falls under article 6(1) of the Regulation can provide a basis for the processing of personal data by means of video recording. For the purpose of this legal analysis, the Commissioner noted that the video device is fixed to the railing of the balcony, which makes it absolutely impossible for the video device to solely capture the window of the garage. The installation of the video device by a private individual which is capturing a public space is generally deemed to be unlawful, unless in very exceptional cases, the controller manages to concretely prove that there is a compelling legitimate interest to conduct this processing operation. However, even in such cases, the controller should strictly monitor the immediate surroundings of the property and not extensively monitor a public space. This led the Commissioner to conclude that the controller had not managed to demonstrate that there is indeed a lawful basis that could legitimise the processing activity conducted by means of the video device. The systematic and continuous monitoring of a public space, which leads to the processing of personal data of all the data

² Case C-212/13, paragraph 33.

³ Appeal Number 4/2019, decided on the 27th October 2020.

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

subjects in a general and non-discriminate manner, is deemed to be unlawful and an infringement of the rights and freedoms of the data subjects.

In the light of the foregoing considerations, the Commissioner hereby decides that the processing activity undertaken by the controller by means of the video device is not in conformity with article 6(1) of the Regulation. After taking into consideration that the video device is fixed to the railing of the balcony, and at a considerable height, which makes it absolutely impossible to solely capture the window of the garage, the Commissioner is hereby ordering the controller pursuant to article 58(2)(f) of the Regulation to cease the processing of personal data and remove the video device without undue delay and by no later than twenty (20) days from the date of receipt of this legally-binding decision.

The controller is requested to inform the Commissioner of the corrective action taken immediately thereafter, supported by photographic evidence that the device has been removed. The information about the 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, “[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



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.”