

**Information and Data Protection Commissioner**

**CDP/COMP/477/2024**

**vs**

**COMPLAINT**

1. On the 19<sup>th</sup> August 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 Regulation<sup>1</sup> (the “**Regulation**”), alleging that [REDACTED] (jointly referred to as the “**controller**”) installed a number of CCTV cameras<sup>2</sup> that are unlawfully processing his personal data. The complainant submitted *inter alia* the following information in connection with his complaint:

- a. that the controller “*installed two CCTV cameras directly pointing at two of my properties [...] as well as “other cameras which are more difficult to spot” ; and*
- b. that additionally, there are “[...] cameras [that] are installed on the inside of the household (i.e. behind the apertures not outside like the other cameras) pointing towards third party properties (mine)” such that “my family feels threatened knowing that they are being recorded 24/7”.

<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 complained of are installed at [REDACTED]

## INVESTIGATION

2. By means of a letter dated the 4<sup>th</sup> November 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 submitted by the complainant, and granted the controller a period of twenty (20) days within which to respond and submit any information deemed necessary and relevant to defend themselves 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 complained of, including information in relation to the brand and model number of these cameras.
3. By means of an email dated the 7<sup>th</sup> November 2024, the controller provided the Commissioner with copies of the image grabs taken from the footage of two (2) CCTV cameras, both of which are located inside the property of the controller, mounted behind the interior apertures in each case.
4. In light of the submissions of the controller, on the 29th November 2024, the Commissioner required the controller to also submit a copy of the image grabs taken from the footage of the other CCTV cameras installed on the façade of the property of the controller.
5. By means of an email dated the 9<sup>th</sup> December 2024, the controller provided the Commissioner with the requested image grabs and confirmed that there are three (3) CCTV cameras installed on the façade of his property.

## LEGAL ANALYSIS AND DECISION

6. 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.

### The Lawfulness of the Processing

7. During the course of the investigation, the Commissioner ordered 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 all of the image grabs submitted by the controller and concluded that:

- i. two (2) CCTV cameras are installed inside the property of the controller, mounted behind the interior apertures in each case; and
  - ii. three (3) CCTV cameras are installed on the façade of the property of the controller.
8. The image grabs provided by the controller demonstrate that all of the cameras capture a public space, consequently leading to the collection and retention of the personal data of the complainant and other data subjects, constituting a processing activity in terms of the definition provided in article 4(2) of the Regulation.
  9. The Court of Justice of the European Union in the *Ryneš*<sup>3</sup> judgment held that where video surveillance "*covers, even partially, a public space and is accordingly directed outwards from the private setting of the person 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. Therefore, the processing of personal data carried out by the controller must fully comply with the provisions of the Regulation and respect the rights and freedoms of the affected data subjects.
  10. Article 5(1)(a) of the Regulation stipulates lawfulness of processing as one of the principles of data protection and requires that personal data must always be processed lawfully in relation to the data subject. Article 6(1) of the Regulation accordingly stipulates an exhaustive list of circumstances that constitute as a lawful basis.
  11. The European Data Protection Board<sup>4</sup> (the "**EDPB**") provides that every lawful basis that falls under article 6(1) of the Regulation could provide a valid basis for the processing of personal data by means of video recording. Generally, the installation of CCTV cameras by private individuals that capture a public space are deemed to be unlawful, except in very exceptional cases where the controller manages to concretely prove that there is a compelling legitimate

<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 29th January 2020, paragraph 16.

interest that justifies conducting the processing operation. However, even in such cases, the controller should strictly monitor the immediate surroundings of the property and should not extensively monitor a public space and third-party properties.

12. The Commissioner emphasises that it is 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 CCTV cameras is based on legitimate interest pursuant to article 6(1)(f) of the Regulation. In this regard, the Guidelines published by the EDPB explain that:

*"The legitimate interest needs to be of real existence and has to be a present issue (i.e. it must not be fictional or speculative). A real-life situation of distress needs to be at hand - such as damages or serious incidents in the past - before starting the surveillance. In light of the principle of accountability, controllers would be well advised to document relevant incidents (date, manner, financial loss) and related criminal charges. Those documented incidents can be a strong evidence for the existence of a legitimate interest. The existence of a legitimate interest as well as the necessity of the monitoring should be reassessed in periodic intervals (e. g. once a year, depending on the circumstances)".<sup>5</sup>*

13. 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 in such a way that they are overlooking public spaces. The systematic and continuous monitoring of a public space, 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 data subjects.

#### The Placement of the Cameras

14. With respect to the three (3) CCTV cameras installed on the façade of the property of the controller, the Commissioner noted that the cameras are recording a wide area comprised of the

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<sup>5</sup> *ibid.* 4, paragraph 20.

public road and foot path. Consequently, the Commissioner concluded that the CCTV cameras are extensively capturing a public space, and as a result, are systematically and continuously monitoring all the data subjects passing through that public space without having effectively demonstrated that there is an applicable lawful basis in terms of article 6(1) of the Regulation that justifies that processing operation.

15. In addition to the foregoing, the Commissioner noted that with regards to the two (2) CCTV cameras installed inside the property of the controller, behind the interior apertures, this makes it very easy for the controller to discreetly adjust the angle of view of the cameras, without the complainant knowing that his personal data is being processed by the controller. Consequently, the location of the cameras does not respect the principle of fairness as set forth in article 5(1)(a) of the Regulation, which also requires that the reasonable expectations of data subjects must be met.
16. The Commissioner further notes that the location where the cameras are installed makes it difficult for the controller to offer sufficient guarantees that the personal data of the complainant is not, or will not in the future, be processed. This reasoning is also in accordance with the judgement ‘*Raymond Orland vs John Caruana*’<sup>6</sup>, wherein 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 data subject 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 diġà għamel u biex jilħaq il-proprjeta Y għandu żewg mezz: li jistalla kamera oħra fil-parti Y iżda ma jistgħax joqgħod idawwar il-kamera [...]”*

17. Furthermore, the Tribunal in the judgement ‘*Matthew Bianco vs Philip Incorvaja*’<sup>7</sup> confirmed the decision of the Commissioner where it 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 could be easily adjusted by the appellant, and therefore, the appellant had failed to offer the necessary assurance that the personal data of the appellante would not be processed by means of the camera.

<sup>6</sup> Appeal Number CDP/COMP/451/2020, decided on the 15<sup>th</sup> September 2022.

<sup>7</sup> Appeal Number CDP/COMP/36/2020, decided on the 15<sup>th</sup> September 2022.

On the basis of the foregoing considerations, the Commissioner is hereby deciding that the controller failed to demonstrate that the processing of personal data conducted by means of the CCTV cameras is compliant with article 6(1) of the Regulation.

In virtue of article 58(2)(d) of the Regulation, the Commissioner is hereby ordering the controller to adjust the angle of the view of the cameras installed on the façade of the property and ensure that the cameras are no longer capturing public space. If this is not possible due to a technical reason or any other reason whatsoever, the cameras shall be removed.

In relation to the cameras mounted behind the interior apertures, the Commissioner is ordering the controller to stop the processing operation and remove the cameras in terms of article 58(2)(f) of the Regulation due to lack of sufficient guarantees that there would be no processing of personal data pertaining to the complainant.

The controller shall comply with the order of the Commissioner within twenty (20) days from the date of service of this legally binding decision. The controller shall inform the Commissioner of the corrective action taken immediately thereafter and provide photographic evidence and copies of the image grabs, where applicable, to effectively demonstrate compliance with this order. The controller shall submit this information by means of an email to be sent to [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 Deguara**

**Information and Data Protection Commissioner**

Decided today, the 16<sup>th</sup> of December 2024

### **Right of Appeal**

The parties are hereby being informed that in terms of article 26(1) of the Data Protection Act (Chapter 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. Further information is made available on <https://idpc.org.mt/appeals-tribunal/>.

An appeal to the Tribunal shall be made in writing and addressed to “*The Secretary, Information and Data Protection Appeals Tribunal, 158, Merchant Street, Valletta*”.