

CDP/COMP/254/2024

VS

COMPLAINT

1. On the 21st June 2024, [REDACTED] (the “**complainant**”) lodged a data protection 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 the [REDACTED] (the “**controller**”) unlawfully processed information in relation to her trade union membership.
2. The complainant submitted the following information in relation to her complaint:
 - a. that the complainant is employed as a ‘Learning Support Educator’ with the [REDACTED] within the [REDACTED] [REDACTED] and works at the [REDACTED] [REDACTED] which falls under the remit of the said [REDACTED];
 - b. that, in March 2024, the complainant was summoned to a meeting in the Office of the Head of School and there were also present other individuals;
 - c. that during the said meeting, the Head of School asked the complainant “*Inti membru tal- [REDACTED]?*” and the complainant replied in the affirmative, and then the Head of School requested the complainant “*tini l-ID Card Number tieghek ghax ha jkolli nibghat email biex nirreġistrak mad- [REDACTED] peress illi ha timxi mad-direttivi tal-UPE*”;

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).

- d. that the complainant was not given any further information as to who was keeping the requested information relating to her membership of the [REDACTED] [REDACTED] where and how such information was kept, precisely for which purpose and for how long such information was kept, except that it was somehow being registered or recorded at the [REDACTED]; and
- e. that the complainant does not believe that the consent for the processing of her trade union membership by the controller was obtained pursuant to law, and therefore, the controller lacks the legal basis for such processing.

INVESTIGATION

- 3. Pursuant to the internal investigative procedure of this Office, the Commissioner sent a copy of the complaint to the controller and enabled the controller to provide any information which it deemed relevant and necessary to defend itself against the allegation raised by the complainant. On the 8th August 2024, the controller submitted the following principal arguments for the Commissioner to consider during the legal analysis of this complaint:
 - a. that the [REDACTED] can represent individual members on individual personal issues and, in such case [REDACTED] itself communicates such individual directives to the controller via an email², and thus, the processing of the trade union membership of the educator, which is qualified as a special category of personal data under article 9(1) of the Regulation, has a clear legal basis which falls within article 9(2)(b) of the Regulation;
 - b. that there are instances when the [REDACTED] still issues directives simply addressed in a general and collective way to its members, instead on an individual basis, and educators decide to still follow a collective directive issued, and in such cases, the educators become liable to disciplinary action as per public service regulations and thus, the controller has a legal obligation to process the necessary personal data pertaining to these educators in terms of article 6(1)(c) of the Regulation; and
 - c. that at no point were the Heads of School instructed by the [REDACTED] to request the LSE's union membership information and this is because the [REDACTED] only requests general data sheets³, which do not contain personal data, in order to gain a clear understanding of the impact of union directives on students.

² The controller submitted an email of such case where the complainant was following an individual directive.

³ Copy of the general data sheets were provided by the controller for the Commissioner to consider during the legal analysis of this case.

4. On the 20th September 2024, the complainant submitted the following salient arguments:
 - a. that the controller has no legal obligation which necessitates the collection of personal data regarding the complainant's trade unionistic affiliation;
 - b. that the controller in its submissions held that it had a legal basis to process personal data of educators following what the controller categorises as "*collective (trade union) directive*", which contradicts the statement of the controller that "[a]t no point were Heads of Schools asked or instructed by the [REDACTED] to request the LSE's union membership information, as this data is never required by the [REDACTED]";
 - c. that the controller stated that the complainant, as well as those who were following a particular trade union's directives were "*liable to disciplinary action as per public service regulations*", but the controller fails to specify the regulation or regulations under which the employees were presumably so liable;
 - d. that the complainant sustains that even if, for argument's sake, the complainant was liable to disciplinary action under the public service regulations for following a trade union directive, the controller still had no right to demand information regarding her actual trade unionistic membership and much less to demand such sensitive data in the manner in which it was extracted from her; and
 - e. that whilst an employer may have a legitimate interest in determining which employees are following a trade union directive for logistical and operational purposes, the employees following the trade union directive have no obligation to disclose their actual membership of the trade union, and conversely, the employer has no right to demand information about their actual trade union membership.
5. The Commissioner provided the controller with the final opportunity to provide its submissions in relation to the counterarguments presented by the complainant. By means of an email dated the 14th October 2024, the controller submitted that the complainant had failed to present any evidence to substantiate her allegation, and therefore, the controller relies on the submissions previously made during the course of the investigation.

LEGAL ANALYSIS AND DECISION

6. As a preliminary step of the investigation, the Commissioner assessed the subject-matter of the complaint, wherein the complainant alleged that during a work-related meeting, she was requested by the Head of School to verbally disclose her trade union membership. The complainant contended that the Head of School requested her to “*tini l-ID Card Number tiegħek għax ha jkolli nibgħat email biex nirreġistrak mad- [REDACTED] peress illi ha timxi mad-direttivi tal- [REDACTED]*”. For this reason, the complainant had reasons to believe that the controller received information in relation to her trade union membership from the [REDACTED], which information was subsequently processed by the controller for its own purposes.
7. For the purpose of this legal analysis, the Commissioner sought to determine whether the controller requested the [REDACTED] to collect and disclose the trade union membership of the complainant, and if the answer is in the affirmative, to indicate the legal basis of the processing pursuant to article 6(1) and article 9(2) of the Regulation.
8. During the course of the investigation, the controller strongly refuted this claim, stating that it had never requested the [REDACTED] to disclose information in relation to the complainant’s trade union membership. The controller submitted that the information in relation to the trade union membership of the complainant was only processed after this information was directly disclosed to the controller by the [REDACTED].
9. To this end, the Commissioner examined the supporting documentation furnished by the controller during the investigation, which included *inter alia*, a copy of an email dated the 23rd April 2024, wherein the Executive Head of the [REDACTED] informed the controller that the complainant was following an individual directive with immediate effect, namely, that the complainant “*is not to accept face to face or virtual meetings with [REDACTED] unless accompanied by a [REDACTED] official*”. Therefore, the controller argued that the processing of information pertaining to the complainant’s trade union membership is lawful pursuant to article 9(2)(b) of the Regulation.

On the basis of the foregoing considerations, the Commissioner is hereby deciding that the controller processed the information in relation to the trade union membership of the complainant only after the [REDACTED] communicated such information



directly to the controller. Therefore, the processing operation conducted by the controller in relation to the complainant is lawful and the complaint is being dismissed in its entirety.

Ian
DEGUARA
(Signature)

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by Ian DEGUARA
(Signature)
Date: 2024.11.28
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Ian Deguara
Information and Data Protection Commissioner

Right of Appeal

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 in writing to the Tribunal within twenty days from the service of the said decision as provided in article 23”⁴.*

An appeal to the Information and Data Protection Appeals Tribunal shall be addressed to:

The Secretary
Information and Data Protection Appeals Tribunal
158, Merchants Street
Valletta.

⁴ Further information may be accessed here: <https://idpc.org.mt/appeals-tribunal/>