Information and Data Protection Commissioner

CDP/COMP/644/2024

[redacted]

vs

[redacted]

COMPLAINT

1. On the 24th September 2024, [redacted] through his legal counsel (the "**complainant**") lodged a complaint with the Information and Data Protection Commissioner (the "**Commissioner**") pursuant to article 77(1) of the General Data Protection Regulation[1] (the "**Regulation**"), against [redacted] (the **"controller"**) concerning *"a serious breach of privacy involving the unauthorised publication of a private agreement"* uploaded on his website[2].

2. For the purpose of this complaint, the Commissioner assessed the relevant points raised by the complainant:

    a. that the agreement in question, which is confidential and contains the complainant's personal data, was intended to remain strictly confidential between the involved parties. However, without the complainant's express or tacit consent, the controller publicly disclosed some parts of the agreement, causing significant distress and raising data protection concerns. While the controller redacted the details of a third party, the complainant's personal data were left visible;

    b. that this agreement was a private contractual document involving the complainant and two other parties, and it contained sensitive personal information, including, but not limited to, the complainant's full name and other personal identifiers; and

[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] [redacted] available at: [redacted] last accessed on the 12th February 2025.

c. that, as a result of this breach, the complainant is deeply concerned about the potential misuse of his personal data, reputational harm and other negative impacts concerning his privacy and security.

INVESTIGATION

Request for submissions

3. Pursuant to the internal investigative procedure of this Office, the Commissioner sent a copy of the complaint to the controller and provided the controller with the opportunity to make any submissions that he deemed relevant and necessary to defend himself against the allegation raised by the complainant.

4. On the 8th November 2024, the controller stated that *"this report is vexatious and won't be adhered to"*. The controller further added that *"[g]iven that this report is vexatious it should have been dismissed on the first instance, and the IDP has no right whatsoever to clamp down on journalism"*. In an email dated the 11th November 2024, the Commissioner requested the controller to indicate whether he had any additional submissions to make in order to ensure that his right to be heard is fully guaranteed. The Commissioner informed the controller that if no submissions were received, he would proceed with issuing a legally binding decision. In this regard, on the 13th November 2024, the controller noted that *"[t]he submission by* [the complainant] *is vexatious and I have nothing else to say"*.

LEGAL ANALYSIS AND DECISION

5. Given the controller's lack of substantive submissions, the Commissioner proceeded to examine the complaint filed by the complainant on the 24th September 2024, alongside a review of the blog post[3] published on the controller's website. The blog post contained an extract from the contractual agreement involving [redacted] (represented by the complainant) and [redacted].

6. As a preliminary matter and without entering into the merits of the contents of the blog post, the Commissioner sought to determine whether the contents of the published contractual agreement contain *'personal data'* within the meaning of article 4(1) of the Regulation, specifically whether such data constitute "*any information relating to an identified or identifiable natural person*". The Commissioner emphasises that the definition of *'personal data'*, particularly the phrase *'any information'* intends to assign a broad interpretation of what

[3] ibid.

may constitute *'personal data'*. The Court of Justice of the European Union (the "**CJEU**") had shed further light on the definition of "*personal data*" and held that *"[t]he use of the expression 'any information' in the definition of the concept of 'personal data', within Article 2(a) of Directive 95/46, reflects the aim of the EU legislature to assign a wide scope to that concept, which is not restricted to information that is sensitive or private,* ***but potentially encompasses all kinds of information****, not only objective but also subjective, in the form of opinions and assessments,* ***provided that it 'relates' to the data subject.***"[4] [emphasis has been added].

7. In the present case, the blog post disclosed both the complainant's name and identity card number. The Commissioner noted that the complainant's name is publicly available online[5], as he holds a prominent role as the head of a [redacted]. This information is sufficient to single out the complainant, and therefore, the inclusion of the complainant's identity card number constitutes additional personal data that is neither necessary nor proportionate to achieve the article's purpose. The Commissioner observed that the controller could have reached the same objective of informing the public about the contractual agreement without including the complainant's identity card number, particularly given that certain parts of the agreement were already redacted to protect the personal data of third parties. This selective redaction demonstrates that the controller is aware of his obligations under the Regulation but failed to fully comply with them in this instance.

The Reconciliation of the Right to Protection of Personal Data with the Right to Freedom of Expression

8. Despite the Commissioner's repeated requests for submissions, the controller failed to provide any information to support his position or address the allegation raised by the complainant. In terms of the principle of accountability as set forth in article 5(2) of the Regulation, it remains the responsibility of the controller to effectively demonstrate that the processing is proportionate, necessary and justified for reasons of substantial public interest. In the absence of any submissions, the Commissioner was compelled to make a decision based on the available information at the time of the issuance of the decision.

9. The Commissioner recognises that the right to the protection of personal data and the right to freedom of expression are both fundamental rights[6], and further acknowledges that the rules governing the right to the protection of personal data should be reconciled with the freedom of

[4] Case C-434/16, *Peter Nowak vs Data Protection Commissioner*, decided on the 20th December 2017.
[5] [redacted], available at: [redacted] last accessed on the 3rd February 2025.
[6] Article 8(1) of the Charter of Fundamental Rights of the European Union: *Everyone has the right to the protection of personal data concerning him or her.*", and Article 11 of the Charter provides that *"Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers".*

expression and information. Notwithstanding this, these two rights are not absolute, and do not prevail over one another, as they are of equal importance. The fair balance that needs to be found between the two rights, has also been recognised by the European legislator. Indeed article 85 of the Regulation[7] contemplates for exemptions or derogations when personal data are processed in the context of the right to the freedom of expression. The reconciliation of the right to freedom of expression with the right to the protection of personal data is a matter which has been left to be regulated by the respective Member State. In this context, article 9 of the Data Protection Act (Cap. 586 of the Laws of Malta) lays down an exhaustive list of exemptions or derogations, which enable processing of personal data for the purpose of exercising the right to freedom of expression and information, specifically where such processing **is proportionate, necessary and justified for reasons of substantial public interest**. This provision does not give an automatic blanket exemption in every case and is only intended to apply where necessary **to strike a fair balance** between the right to the protection of personal data and the freedom of expression. [emphasis has been added].

10. In the *Satamedia*[8] ruling, the CJEU had the occasion to clarify on the notion relating to the balancing exercise in relation to journalistic freedoms and the right to the protection of personal data. In this regard, the CJEU stated that *"[i]n order to take account of the importance of the right to freedom of expression in every democratic society, it is necessary, first, to interpret notions relating to that freedom, such as journalism, broadly. Secondly, and in order* ***to achieve a balance between the two fundamental rights****, the protection of the fundamental right to privacy requires that the derogations and limitations in relation to the protection of data provided for in the chapters of the directive referred to above* ***must apply only in so far as is strictly necessary****."* [emphasis has been added].

11. The Commissioner also underlined that the decisive factor in balancing the right to the protection of personal data against the freedom of expression should lie in the contribution that the published information could make to a debate of *'substantial public interest'*. In fact, the wording used by the legislator, particularly the word *'substantial'* is indicative that the public interest should be real and of substance. The European Court of Human Rights in the judgment *Mosley vs the United Kingdom*[9] sheds further light on what is considered to be a matter of public interest, by stating that the *"focus must be on whether the publication is in the interest of the public and not whether the public might be interested in reading it"*.

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[7] Article 85(1) of the Regulation: *"Member States shall by law reconcile the right to the protection of personal data pursuant to this Regulation with the right to freedom of expression and information, including processing for journalistic purposes and the purpose of academic, artistic or literary expression"*.

[8] Case C-73/07, *Tietosuojavaltuutettu v Satakunnan Markkinapörssi Oy and Satamedia Oy*, decided on the 12th september 2007.

[9] Application no. 48009/08, *Mosley vs the United Kingdom*, decided on the 10th May 2011.

On the basis of the foregoing considerations, the Commissioner is hereby deciding that the controller failed to demonstrate that the publication of the identity card number of the complainant is proportionate, necessary and justified for reasons of substantial public interest, and therefore, such processing is an infringement of article 6(1) of the Regulation.

In terms of article 58(2)(d) of the Regulation, the Commissioner is hereby ordering the controller to redact the complainant's identity card number from the contractual agreement published on his website[10] on the [redacted]. The controller is requested to comply with this order within twenty (20) days from the date of service of this legally binding decision and inform the Commissioner of the action taken immediately thereafter.

Failure to comply with the Commissioner's order shall make the controller liable to the appropriate enforcement action in terms of article 83(6) of the Regulation, which may include the imposition of an administrative fine.

Ian DEGUARA (Signature)
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Date: 2025.02.12 15:05:46 +01'00'

Ian Deguara
Information and Data Protection Commissioner

[10] Ibid 2.

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*"[11].

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

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

[11] More information on the appeals procedure is available on our website at the following link: https://idpc.org.mt/appeals-tribunal/