

CDP/COMP/663/2024

vs

COMPLAINT

1. On the 30th September 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] (the "**controller**") installed a camera² that is overlooking the private property of the complainant, and consequently, the processing activity conducted by means of the camera is infringing the provisions of the Regulation. The complainant submitted that "[m]y next door neighbour [REDACTED] who resides at [REDACTED] has installed a camera in her window facing our patio. I spoke with the [REDACTED] police station and they guided me to contact you. We are currently undergoing a court case in this November as we have reoccurring issues with her".

INVESTIGATION

2. By means of a letter dated the 3rd October 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, and enabled the controller to submit any information which she deemed necessary and relevant to defend herself against the allegation raised by the complainant. In terms of article 58(1)(e) of the Regulation, the Commissioner

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 camera in question is installed at [REDACTED]

ordered the controller to submit a copy of the image grab taken from the footage of the camera, including information in relation to the brand and model number of the camera or system installed by the controller.

3. By means of an email dated the 6th January 2025, and following several reminders sent by this Office, the controller made her submissions for the Commissioner to consider in the legal analysis of the case. In essence, the controller held that “*il camera ghamilta ghal vjolenza li ghamlietli il gara bin nom ta [REDACTED] ...kienet tghamel hafna hsara. Bhal twaddab affarijiet fil bitha darba sibt barmil ta zingu tqil comb allahares hrigt fil bitha ax kont nghodda b wahda. Tazzi ghal barra kien hemm wahda bi ftit ma gietx fuq il karozza ta tifla fil gardina kienet titfa li jigi ghal ida*” and “*tghamel il Andalismu. ghalhekk vhamilt il camera ...Haga ohra ghamlitli. f awwissu sifirt nahseb semghat xi haga ax tissendika forsi semghat li se nsiefer avolja provajt li ma nurijiex peress li battila ittra bl avukat biex tnehhi il periklu tal gallarija wara li mil gebel mwaqqa ghaddew xi 15 il sena li nghidila biex tirranga il periklu. u tnehhi id drains ta l ilma li jghatu ghal propjeta tieghi. x hin rat il qorti riesaq irrangata Imma id drains ha jkollna il qorti f jannar. Mela biex irrangat il gallerija ghamlita meta siefirt jien u dahlet in nies jahdmu minn go tieghi u jagnu fil parapetti tieghi. gejt mis safar u nsib ir ritratti li se nibatilkhom. Sibt dizaztru. Ghandi bzonn camera iddur kullimken ma din ic certu bnidma egoista u tghamel kullimkien taghha*”.

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 camera installed by the controller is processing her personal data without a valid lawful basis in terms of article 6(1) of the Regulation.

The Lawfulness of the Processing

5. During the course of the investigation, in terms of article 58(1)(e) of the Regulation, the Commissioner ordered the controller to submit information pertaining to the camera in question, namely a copy of the image grab taken from the footage of the camera, to be in a position to evaluate whether the processing activity falls within the scope of the Regulation. However, the controller failed to provide the requested information.

6. On the basis of the photographic evidence submitted by the complainant, the Commissioner established that the camera in question is not affixed to the exterior part of the property but is placed internally behind the controller's aperture, angled outwards and having the field of vision pointing at the complainant's property.
7. As a result, the manner how the camera is placed in that it is overlooking the complainant's tenement, and accordingly is reasonably capturing footage of such premises where the complainant carries out their private life, entails the collection and retention of data pertaining to the complainant, which in terms of article 4(2) of the Regulation constitutes a processing activity.
8. The Court of Justice of the European Union in the Rynes judgment³ 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]. 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 subject.
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. Article 6(1) of the Regulation accordingly stipulates what could constitute as a legal basis, whilst also taking into consideration the other principles for data processing as stipulated in article 5 of the Regulation.
10. The European Data Protection Board (the "**EDPB**") in its Guidelines 3/2019⁴ provides that every legal basis that falls under article 6(1) of the Regulation may provide a ground for the processing of personal data by means of video recording. Generally, the appropriate legal bases to install a CCTV camera for the purpose of monitoring areas that fall outside the parameters of the property of the CCTV owner is either to obtain the consent of the affected data subject or else to process the personal data of the complainant on the basis of a compelling legitimate interest. In the present case, it is evident that the complainant did not consent to the processing

³ Case C-212/13, paragraph 33.

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

of her personal data.

11. The Commissioner emphasises that it 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 a legitimate interest pursuant to article 6(1)(f) of the Regulation. 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)"⁵.

12. 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 camera. The controller did not produce evidence to concretely show that there is a sufficiently real and hazardous situation in the spirit of the aforementioned guidelines that would merit the installation of the camera overlooking the private property of the complainant. The systematic and continuous monitoring of a third-party property, which leads to the processing of personal data of the complainant in a general and indiscriminate manner, is deemed to be unlawful and an infringement of the rights and freedoms of the complainant.

The Placement of the Camera

13. The Commissioner noted that camera is installed behind the apertures of the controller's property, which makes it very easy for the controller to alter the angle of view of the camera without the complainant knowing that her personal data is being processed by the controller.

⁵ Guidelines 3/2019, paragraph 20.

The placement of the camera certainly does not respect the principle of fairness. The key elements of the principle of fairness as set forth in article 5(1)(a) of the Regulation, include, *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.

14. The Commissioner further notes that the place where the camera is installed makes it practically not possible 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 [REDACTED],⁶ 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-proprjetà X kif diġà għamel u biex jilħaq il-proprjetà Y għandu żewġ mezz: Ii jistalla kamera oħra fil- parti Y iżda ma jistgħax joqgħod idawwar il-kamera..."

15. Furthermore, the Tribunal in the judgment [REDACTED]⁷ 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 could be easily adjusted by the appellant, 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 and the fact that the camera is placed behind the aperture of the controller, angled outwards, and directed toward the property of the complainant, the Commissioner is hereby deciding that the controller has not effectively demonstrated that the processing activity is being conducted fairly and in accordance with one of the lawful bases as 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 camera within twenty (20) days from the date of service of

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

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

this decision. The controller is hereby being ordered to inform the Commissioner of the action taken immediately thereafter, supported by photographic evidence to effectively demonstrate compliance with this order. 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 Deguara
Information and Data Protection Commissioner

Decided today, the 26th day of February, 2025

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 thereof⁸.

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"*.

⁸ Further information is available on <https://idpc.org.mt/appeals-tribunal/>.