

**Information and Data Protection Commissioner**

**CDP/COMP/244/2024**

**vs**

**COMPLAINT**

1. On the 15<sup>th</sup> June 2024, Ms [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 Mr [REDACTED] installed two (2) cameras that are unlawfully processing her personal data. The complainant argued that the controller installed “*CCTV cameras located in the common areas of the apartment without permission or any proper signage. There is also a CCTV camera at the roof level pointing at my private part of the roof*”<sup>2</sup>.

**INVESTIGATION**

2. By means of a letter dated the 2<sup>nd</sup> July 2024, the Commissioner provided the controller with a copy of the complaint, including the supporting documentation, and enabled the controller to submit any information which he deemed necessary and relevant to defend himself 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, including information in relation to the brand and model number of the cameras or system installed by the controller.

<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 CCTV cameras are installed at [REDACTED]

3. By means of an email dated the 5<sup>th</sup> July 2024, the controller submitted two (2) copies of the image grabs taken from the footage of the cameras and argued that these cameras were installed for security and safety purposes after the controller suffered damages to his property.

## **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 cameras installed by the controller are processing her personal data without a valid lawful basis in terms of article 6(1) of the Regulation.
5. During the course of the investigation, the Commissioner requested 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 the image grabs provided by the controller and noted that the controller installed two cameras, one on his apartment door and the other one on the roof.

### Camera installed on the apartment door of the controller

6. The Commissioner proceeded to first consider the camera installed within the block of apartment and noted that the camera is mainly focused to capture the main door of the apartment of the controller, however, due to the fact that the camera is installed in a very confined space, it is inevitably also capturing the common area that must be accessed by the complainant at all times to enter and exit her property. The Commissioner emphasises that the complainant should not feel that she is being continuously monitored by a private individual each time she walks past the door of the controller to access or exit her private property.
7. The Commissioner further emphasises that the size of the place where the camera is installed makes it practically and absolutely not possible for the controller to offer sufficient guarantees that the personal data of the complainant is not, or will not, be processed. The Commissioner is of the view that, based on the circumstances of the present case, the controller could only rely on consent in terms of article 6(1)(a) of the Regulation to legitimise the processing activity conducted by means of the camera. This is naturally without prejudice to the fact that during the course of the investigation, the controller did not present any evidence to concretely

demonstrate that the processing is based on any other legal bases pursuant to article 6(1) of the Regulation.

8. Consequently, in the light of the facts mentioned in the preceding paragraph of this decision, the Commissioner effectively concludes that the camera installed over the apartment door could never enable the controller to convincingly demonstrate that the processing operation is conducted in the course of a purely personal or household activity and therefore falls outside the material scope of the Regulation in terms of article 2(2)(c) of the Regulation.

Camera installed on the roof of the block of apartments

9. The complainant also complained about another camera that the controller installed on the roof of the block of apartments. The image grab produced by the controller during the course of the investigation demonstrates that the camera is primarily angled to monitor the roof area of the controller, however, the camera is also capturing the door of the roof. This inevitably leads to the processing of personal data pertaining to the complainant whenever she accesses the roof area.
10. It always 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 camera is based on at least one of the lawful bases laid down in article 6(1) of the Regulation. However, in this case, the controller failed to substantiate his arguments or produce any concrete evidence to show that the processing is indeed necessary to pursue his interest.

**On the basis of the foregoing considerations, the Commissioner is hereby deciding that the controller failed to sufficiently demonstrate that the processing operations conducted by means of the cameras fall outside the material scope of the Regulation, and consequently, the processing is not based on any of the lawful grounds set forth in article 6(1) of the Regulation.**

**By virtue of article 58(2)(f) of the Regulation, the controller is hereby being ordered to stop the processing operation and remove the camera installed over the door of the apartment of the controller.**

By virtue of article 58(2)(d) of the Regulation, the controller is hereby being ordered to adjust the angle of view of the camera installed over the roof and ensure that the camera is not capturing the door. The camera must be adjusted in such a manner to solely capture the roof area of the controller. If this is not possible due to a technical reason or any other reason whatsoever, the camera shall be removed.

These orders shall be implemented by the controller within twenty (20) days from the date of service of the decision. The controller is hereby also being ordered to inform the Commissioner of the action taken immediately thereafter, supported by photographic evidence and a copy of the image grab to effectively demonstrate compliance with the order. The information about the corrective action taken shall be submitted by means of an email on [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 Meguara

Information and Data Protection Commissioner

Decided today, the 15<sup>th</sup> July 2024

**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*”.

