

vs

COMPLAINT

1. On the 19th May 2025, [REDACTED] (the “**complainant**”) lodged a data protection complaint with the Information and Data Protection Commissioner (the “**Commissioner**”) pursuant to article 77(1) of the General Data Protection Regulation¹ (the “**Regulation**”). The complainant alleged that the couple [REDACTED] (the “**controller**”), had installed four (4) cameras on the exterior of their property,² directed towards the complainant’s property,³ and a public space, and consequently, considered this to be an infringement of the provisions of the Regulation.

INVESTIGATION

2. By means of a letter dated the 30th May 2025, 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 they 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 CCTV cameras, including information in relation to the brand and model number of the CCTV cameras or system installed by the controller.
3. On the 11th June 2025, the controller, through their legal representative, provided the following submissions for the Commissioner to consider during the legal analysis of this case:

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 property in question is located at [REDACTED]

³ The property in question is located at [REDACTED]

- a. that, with reference to the sittings before the local Criminal Courts, the Police have accused [REDACTED] family member to the complainant, of harassing and insulting the controller and their family numerous times and also damaging their property;
 - b. that these constitute serious offences and bring with them serious penalties that range up to imprisonment, and that the controller has lodged numerous criminal complaints against the complainant and all the family of the controller is under great stress with this neighbor [REDACTED];
 - c. that the controller has *“feared for life and limb in a neighborhood which has been terrified by the same [REDACTED]”*;
 - d. that the controller have the right to protect themselves from any damages and harm which can be inflicted on them, and that, as a result, this constitutes a compelling legitimate interest for such surveillance which is real and present, and which situation has caused them great distress;
 - e. that the cameras that are the subject of the complaint have been installed for more than fifteen (15) years with no complaint since; and
 - f. that the cameras have only served as evidence which was collected by the Police in order to prove the complainant’s guilt.
4. The controller, through their legal representative, submitted the following supporting documentation together with the submissions:
- a. the image grabs taken from the footage of the CCTV cameras;
 - b. the brand and model number of the CCTV cameras;
 - c. a copy of the final judgement by the Court of Magistrates in the case ‘Pulizija [REDACTED] vs [REDACTED] dated the 16th May 2025 – the defendant [REDACTED]⁴ being a family member of the complainant;

⁴ Indicated by the Court as residing at [REDACTED].

- d. a copy of the Police report dated the 1st November 2014, in which the controller (Ms [REDACTED]) reported vandalism and damage suffered on their motor vehicle parked in the vicinity of the controller's tenement;
- e. a copy of the Police report dated the 28th December 2021, in which a neighbour in the area, reported vandalism to their property and upon enquiring with the controller in question for the CCTV footage, it transpired that, whilst the controller's surveillance captured the vandalism occurring, it did not capture high enough to identify the perpetrator/s;
- f. a copy of the Police report dated the 2nd September 2024, in which the controller ([REDACTED]) reported vandalism and damage suffered on their motor vehicle parked in the street in front of the controller's tenement, in which the controller states in the report that the perpetrator in question is [REDACTED], a family member of the complainant; and
- g. a letter from a neighboring third party, the victim of the Police report as referred to in paragraph 4(e) hereof, who attests to the processing activity conducted by the controller, on the basis of frequent acts of vandalism and damages suffered to vehicles in the adjacent public street, and that, apart from feeling safer with the controller CCTV's in operation, such have helped Police officers in Police reports filed.

LEGAL ANALYSIS AND DECISION

- 5. The Commissioner recognises the need for the installation of video surveillance to ensure the security and safety of private property. However, this should in principle capture the confines of one's property, to which only in exceptional cases, such as in cases of a compelling legitimate interest, can such surveillance be carried out beyond one's personal or household scope.
- 6. The Commissioner proceeded to examine the complaint lodged by the complainant, wherein she alleged that the controller had installed four (4) cameras on the exterior of their property, which are capturing third-party properties and a public space, in breach of the Regulation. As part of the investigative procedure of this Office, 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 CCTV cameras and information in relation to the brand and model number of the cameras. The controller complied with the request of the Commissioner and submitted the

requested information, including further submissions and supporting documentation to defend themselves against the allegation raised by the complainant.

7. The Commissioner examined the image grabs taken from the footage of the cameras, which demonstrate that the cameras are indeed capturing a public space, and third-party properties. Pursuant to the judgment delivered by the Court of Justice of the European Union (the “CJEU”), if a camera involves the constant recording and storage of personal data and 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 for the purposes of the second indent of Article 3(2) of Directive 95/46”*.⁵ Therefore, in the present case, it is abundantly clear that the processing conducted by means of the cameras installed by the controller falls within the material scope of the Regulation, which means that the controller must comply with the requirements of the Regulation.
8. For the purposes of this legal analysis, the Commissioner proceeded to assess whether the controller has a valid legal basis in terms of article 6(1) of the Regulation to process the personal data of all those individuals who enter the monitored areas captured by their cameras.
9. Pursuant to the Guidelines 3/2019⁶, the European Data Protection Board (the “EDPB”) held that *“[i]n principle, every legal ground under Article 6(1) can provide a legal basis for processing video surveillance data. For example, Article 6(1)(c) applies where national law stipulates an obligation to carry out video surveillance. However, in practice, the provisions most likely to be used are article 6(1)(f) (legitimate interest) [and] article 6(1)(e) (necessity to perform a task carried out in the public interest or in the exercise of official authority”*.
10. After examining the submissions of the controller, particularly the supporting documentation, the Commissioner established that the controller is basing their processing operation on article 6(1)(f) of the Regulation. One of the lawful grounds established by article 6(1) is legitimate interest, which enables the controller to process personal data if it *“is necessary for the purposes of the legitimate interests pursued by the controller or by a third party, except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data”*.

⁵ C-212/13, František Ryneš v Úřad pro ochranu osobních údajů, delivered on the 11th December 2014, paragraph 33.

⁶ Guidelines 3/2019 on processing of personal data through video devices, version 2.0, adopted on the 29th January 2020, paragraph 16.

11. Recital 47, which corresponds to article 6(1)(f) of the Regulation, provides that the “*legitimate interests of a controller, including those of a controller to which the personal data may be disclosed, or of a third party, may provide a legal basis for processing, provided that the interests or the fundamental rights and freedoms of the data subject are not overriding, taking into consideration the reasonable expectations of data subjects based on their relationship with the controller*”.

12. The EDPB states in its Guidelines 3/2019 that:

“Video surveillance is lawful if it is necessary in order to meet the purpose of a legitimate interest pursued by a controller or a third party, unless such interests are overridden by the data subject’s interests or fundamental rights and freedoms (Article 6 (1) (f)). Legitimate interests pursued by a controller or a third party can be legal , economic or non-material interests. However, the controller should consider that if the data subject objects to the surveillance in accordance with Article 21 the controller can only proceed with the video surveillance of that data subject if it is a compelling legitimate interest which overrides the interests, rights and freedoms of the data subject or for the establishment, exercise or defence of legal claims”⁷.

13. The settled case-law of the CJEU emphasises that legitimate interest needs to fulfill a three-part test, which is outlined hereunder:

“As the Court has previously held, that provision lays down three cumulative conditions so that the processing of personal data is lawful, namely, first, the pursuit of a legitimate interest by the data controller or by a third party; second, the need to process personal data for the purposes of the legitimate interests pursued; and, third, that the interests or fundamental freedoms and rights of the person concerned by the data protection do not take precedence over the legitimate interest of the controller or of a third party (judgment of 4 July 2023, Meta Platforms and Others (General terms of use of a social network), C-252/21, EU:C:2023:537, paragraph 106 and the case-law cited)”⁸.

⁷ *ibid.* 4, paragraph 18.

⁸ C-621/22, Koninklijke Nederlandse Lawn Tennisbond vs Autoriteit Persoonsgegevens, decided on the 4th October 2024, paragraph 37.

14. In this respect, the Commissioner examined the present case based on the three cumulative conditions established by article 6(1)(f) of the Regulation. These conditions are: (i) the existence of a legitimate interest justifying processing; (ii) the necessity of processing for the realisation of the legitimate interest; and (iii) the prevalence of that interest over the rights and interests of the data subject, which calls for balancing of interests.

15. First, the processing is conditional upon the existence of a legitimate interest of the controller or a third party. The Regulation does not define legitimate interest, and thus, it is for the controller to determine whether there is a legitimate aim that could justify an interference with the right to the protection of personal data. The Commissioner interprets “*interest*” to be the broader stake that a controller may have in the processing, or the benefit that the controller or third parties may derive from such processing. This interpretation is substantiated by the recitals of the Regulation, which provide some non-exhaustive examples of situations in which legitimate interest could exist and this could be processing of data for the purpose of preventing fraud, processing of data for direct marketing purpose, the transmission of certain data within a group of companies and the processing of data for the purpose of ensuring network and information security. Furthermore, the case-law of the CJEU held that transparency or the protection of the property, health and family life, are legitimate interests.⁹

16. The EDPB has confirmed that the processing of personal data for safety and security purposes could constitute a legitimate interest. The EDPB provides that:

*“Given a real and hazardous situation, **the purpose to protect property against burglary, theft or vandalism can constitute a legitimate interest for video surveillance.** 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, controller 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.”¹⁰ [emphasis has been added].*

⁹ C-92/09 and C-93/09, Volker and Markus Scheke and Eifert, paragraph 77 and C-212/13, Rynes, paragraph 34.

¹⁰ *ibid.* 4, paragraphs 19 and 20.

17. In the present case, the controller has provided the Commissioner with substantial evidence in accordance with the principle of accountability as set forth in article 5(2) of the Regulation to demonstrate that the cameras are installed for safety and security purposes, on account of numerous incidents experienced in and around that area. This evidence compellingly shows that the controller and their family are indeed encountering real-life situations of distress. The submissions presented by the controller include police reports, a final judgement of the Criminal Court of Magistrates handed down against the complainant following criminal charges filed by the Police, and testimony of an overlying neighbor, all of which depict the reality of the area where the controller resides. This led the Commissioner to conclude that the objective which the controller essentially seeks to achieve through the installation of the cameras, constitutes a legitimate interest.

18. In relation to the second condition, the Commissioner assessed if the processing goes beyond what is necessary, and therefore, assessed if the processing is necessary for the purpose of the attainment of the legitimate interest at issue. The Commissioner noted that the principle of data minimisation as laid down in article 5(1)(c) of the Regulation requires that the processing must be adequate, relevant and limited to what is necessary in relation to the purpose of the processing. It therefore follows that the processing of personal data must be limited to what is plausibly necessary to pursue a legitimate interest and there must be a connection between the processing and the interest pursued.

19. Within this context, the Commissioner examined the EDPB Guidelines, which provide that:

“In general, the necessity to use video surveillance to protect the controllers’ premises ends at the property boundaries. However, there are cases where the surveillance of the property is not sufficient for an effective protection. In some individual cases it might be necessary to exceed the video surveillance to the immediate surroundings of the premises. In this context, the controller should consider physical and technical means, for example blocking out or pixelating not relevant areas.”¹¹.

20. After taking into consideration the circumstances of the case in question, the Commissioner assessed whether the controller could implement other alternative security measures that would be equally effective as the installation of the CCTV cameras. However, the

¹¹ ibid. 4, paragraph 27.

Commissioner concluded that the purpose of the processing could not be reasonably fulfilled by other means which are less intrusive to the rights and freedoms of the data subjects. For this reason, the Commissioner established that the processing conducted by the controller is necessary, proportionate and adequately targeted to meet the legitimate interest of the controller.

21. Finally, article 6(1)(f) of the Regulation calls for a balancing test, which requires that the controller assesses whether the legitimate interest of the controller is overridden by the interests or fundamental rights and freedoms of the complainant. The EDPB Guidelines state that:

“Presuming that video surveillance is necessary to protect the legitimate interests of a controller, a video surveillance system may only be put in operation, if the legitimate interests of the controller or those of a third party (e.g. protection of property or physical integrity) are not overridden by the interests or fundamental rights and freedoms of the data subject.”¹².

22. In this regard, the Commissioner considered the nature of the legitimate interest being pursued, the nature of the personal data at issue, the reasonable expectations of the complainant and the impact of the processing on the complainant. In relation to the latter point, the Article 29 Working Party - the predecessor of the EDPB - clarifies that the purpose of article 6(1)(f) of the Regulation is not to prevent any negative impact on the affected data subject, but to prevent any disproportionate impact.¹³ In the present case, the Commissioner evaluated the various factors contributing to the controller’s ongoing situation of real distress, including the persistent sense of fear they experience, due to the incidents documented in their submissions.
23. Furthermore, the Commissioner considered the recent decision delivered by the Information and Data Protection Appeals Tribunal on the 3rd October 2024, wherein the Tribunal held that the owner of the CCTV camera had a compelling legitimate interest to process the personal data of the appellate on the basis of the foregoing considerations:

“Illi mil-provi jirrizulta li bejn il-partijiet hemm diversi inkwiet bejniethom fuq dan il-Passaġġ tant li l-appellanti ppreżenta kawża ta’ spoll wara li

¹² ibid. 4, paragraph 30.

¹³ Opinion 6/2014 on the notion of legitimate interests of the data controller under Article 7 of Directive 95/46/EC.

mil-filmati rrizulta li l-appellati nehħew xi ġebel li huwa poġġa bħala għatba u li l-appellati nehħew stante li qed jikkontendu li dan sar sabiex huma ma jgħadduh bl-inġenji tagħhom ġewwa l-għalqa; li hemm l-kwistjoni bejniethom li l-passaġġ huwa Passaġġ tar-raġel u mhux bl-inġenji.

Illi dan it-Tribunal meta wiżen il-provi kollha prodotti jasal għal konkluzjoni li : (i) l-appellanti għandu interess legittimu li jipproteġi l-proprjeta tiegħu; li l-camera li tagħti għal passaġġ biss qegħda biss biex tipproteġi l-interess legittimu tiegħu; li tali interess jiżboq dak tal-appellati anke għaliex mingħajr din il-camera fil-passaġġ hemm riskju ta' xi tragedja bejn il-partijiet u li għalhekk qed jilqa' dan l-aggravju tal-appellanti in kwantu għandu interess legittimu a fini biss tal-camera li tagħti għal fuq il-passaġġ iżda mhux għal camera li tagħti għal proprjeta tal-appellati.”¹⁴

24. Based on the evidence produced by the controller during the course of the investigation, and the exceptional nature of the circumstances of the present case, the Commissioner concluded that the legitimate interest of the controller overrides the interests and rights of the complainant.

On the basis of the foregoing considerations, the Commissioner is hereby deciding that the processing activity conducted by means of the cameras installed by the controller is necessary for the purpose of the legitimate interest pursued by the controller, and therefore, the processing activity is lawful pursuant to article 6(1)(f) of the Regulation.



Ian Deguara
Information and Data Protection Commissioner

Decided today, the ^{24th} day of July, 2025

¹⁴ CDP/COMP/94/2022, Lawrence Micallef, Michelle Cassar, Rose Ann Micallef, Mary Micallef u Jessica Refalo vs Carmel Formosa.

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

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.