

Information and Data Protection Commissioner

CDP/COMP/869/2024

vs

COMPLAINT

1. On the 17th December 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 [REDACTED] (the "**controller**") installed a camera² that is overlooking an alley from which the complainant passes by right of use, to be able to access a property he resides in, and consequently, the processing activity conducted by means of the camera is infringing the provisions of the Regulation. The complainant submitted that *"[m]y neighbour who owns a commercial establishment which is adjacent to our residence recently installed a camera at the third floor level which points directly and exclusively to our residential drive in. Our drive in leads only to our residence... As only we have access to our drive in the camera is installed exclusively to track and monitor our movements without our consent."*

INVESTIGATION

2. By means of a letter dated the 17th January 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 he deemed necessary and relevant to defend himself against the allegation

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 on the side of the building with address [REDACTED]

raised by the complainant. In terms of article 58(l)(e) of the Regulation, the Commissioner 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 25th January 2025, the controller made his submissions for the Commissioner to consider in the legal analysis of the case. In essence, the controller held that *"the neighbour behind me is alleging that I installed a camera overlooking his 'private drive-in'. May I point out that this is completely false. This is a private alley that does not belong to my neighbour. All my neighbour enjoys over this alley is a right to use it."*
4. The controller submitted that *"...I decided to install a camera as a deterrent."* and that *"...this camera has never been connected to the system and has never recorded anything... The system we have monitoring the premises – internally is called Safire Smart."*
5. During the course of the investigation, by means of a communication dated 28th January 2025, the complainant submitted additional information and supporting documentation concerning the case. In these additional submissions, the complainant held that, when the site to his parents' tenement³ - his residence - was purchased from a third-party, it was acquired *"...free and unencumbered with all its singular rights and appurtenances including every right and/or title which the vendors have on the private alley abutting [REDACTED]"*. This emerges from the underlying deed of sale in the acts of [REDACTED] of the 27th December 1996 in which the complainant's parents, acquired the said plot, with its attached servitude.
6. The complainant provided the Commissioner with the Certificate of Title from the Lands Registry, over the tenement in question, issued on the 19th February 2024, which specifies the inclusion of a servitude therewith *"[b]id-dritt ta' uzu (sic) minn sqaq privat li jisbokka fi [REDACTED] [REDACTED]"* [emphasis has been added].
7. The Commissioner noted that no claim of servitude over the alley in question was presented by the controller as a concerned party, during the course of the investigation.

LEGAL ANALYSIS AND DECISION

8. In principle, the Commissioner recognises the need for the installation of a camera to ensure the security and safety of a private property. However, appropriate and sufficient guarantees should be

³ Situated at [REDACTED]

effectively provided to ensure that such camera is not capturing third-party properties.

9. Article 1 of the Regulation, read in conjunction with recital 10 thereof, aim to ensure a high level of protection of the fundamental rights and freedoms of natural persons, in particular article 8 of the Charter of Fundamental Rights of the European Union, which stipulates that everyone has the right to the protection of personal data concerning him or her.
10. As part of the legal analysis of the case, the Commissioner preliminarily considered whether the alleged processing activity falls within the material scope of the Regulation, in terms of articles 2(1) and 4(2) thereof. The Commissioner therefore noted the following from the controller's submissions: "*...I decided to install a camera as a deterrent.*" and that "*...this camera has never been connected to the system and has never recorded anything...*"
11. The Commissioner hence noted that, from the submissions and photographic evidence brought before it, the camera is indeed a device with video recording capabilities, which is installed and angled in such a way so as to be able to capture footage, and thus, surveil the underlying alley in question to which the complainant enjoys the right of passage from this alleyway. This point on the right of use is not disputed by either party, and, therefore, it follows that the camera installed by the controller is installed in such a manner that it creates a reasonable impression for the complainant that his personal data are being processed or may be processed at any point in time.
12. The controller would thus be processing the personal data of the complainant, thus rendering him an affected data subject should the camera become operational, when accessing the space being monitored. This means that [REDACTED] would be acting in his capacity as a controller within the meaning of article 4(7) of the Regulation. Accordingly, he is ultimately responsible to demonstrate that all processing activity carried out by him is or will be in full compliance with the provisions of the Regulation.
13. Whilst the controller submitted that the camera in question has not been operational, the Commissioner has significant concerns stemming specifically from the fact that, in the present case, the way the camera has been affixed to the external part of the property in question, could not provide sufficient guarantees that the principles of transparency and fairness are guaranteed.
14. The key elements of these two principles, include *inter alia*, the need to be transparent in relation to the manner how the personal data of the data subject are processed by the controller, the need to meet the data subject's reasonable expectations and the need to avoid any deceptive or manipulative methods that would lead to the unlawful processing of personal data.

15. This reasoning was also reflected in the judgement “*Raymond Orland vs John Caruana*”,⁴ where the Information and Data Protection Appeals Tribunal (the “**Tribunal**”) confirmed the decision of the Commissioner which ordered the appellant to remove the camera on the basis of the consideration that the appellant did not offer sufficient guarantees that the personal data of the appellee would not be processed by means of the camera.
16. During the course of the investigation, it was established that the complainant enjoys the right of use through the alley. The Tribunal in “*Lawrence Micallef et vs Carmel Formosa*”⁵ previously ruled that, even in cases where the surveilled property is private, but a right of way exists in favour of third parties, the provisions of the Regulation apply in their entirety, and any exemption on account of the surveilled property being private, would not apply.
17. The above reasoning - pursuant to similar facts and circumstances in “*Lawrence Micallef et vs Carmel Formosa*” - was also confirmed by the Tribunal in “*Dorothy Baldacchino et vs Carmel D’Amato et*”⁶. The latter judgement confirmed the Commissioner’s decision that a lawful basis under the Regulation was required – to which it was determined that a legitimate interest was not demonstrated by the controller, even despite the area being the controller’s in proprietary terms.
18. Similarly, the Tribunal in “*Anthony Scicluna vs Alvin Scicluna*”⁷ rejected the appeal lodged by the controller and confirmed the Commissioner’s decision, which, as also highlighted by the Tribunal, the fact that the complainant was able to physically access the surveilled area by making his way over the wall, and that he had a right to access it, even if only a sixth share over the land, compliance with the Regulation in its entirety was necessary, including notably article 5(1)(a) thereof - which entails the principles of lawfulness, fairness and transparency. The controller’s appeal was rejected, and consequently the Commissioner’s decision and determination in this case, that the activity is unlawful due to lack of legitimate interest being demonstrated, was upheld – because the extent of monitoring unnecessarily impinged upon the fundamental rights and freedoms of the concerned data subject.
19. Whilst the Commissioner notes from the submissions of the controller, that the reason why the controller introduced a device capable of recording personal data is because “...[he had a] reasonable suspicion that somebody tried to enter [his] property from [the] window seeing it

⁴ Appeal Number CDP/COMP/451/2020, decided on the 15th September 2022.

⁵ Appeal Number CDP/COMP/94/2022, decided on the 1st September 2022.

⁶ Appeal Number CDP/COMP/319/2021, decided on the 23rd June 2022.

⁷ Appeal Number CDP/COMP/264/2021, decided on the 6th July 2023.

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 installment of a device with video-recording capability will be in conformity with the provisions of the Regulation, notably, but not limited to, the principles of fairness and transparency under article 5(1)(a) thereof.

20. Whereas the controller may have had an interest to take measures which in some way deter suspected criminal activity onto his property, the Commissioner notes a lack of supporting evidence, such as of a grave threat to security and of a recurring nature, as referred to in the EDPB's Guidelines 3/2019 concerning data protection guidance on the use of video devices. In this respect, the Commissioner noted that no evidence of criminal reports in relation to the alleged intrusion were provided by the controller.
21. The controller, acting in such capacity under article 4(7) of the Regulation and pursuant to the principle of accountability under article 5(2) of the Regulation would need to consider *inter alia*, the balancing of any interest of the controller with the fundamental rights to data protection and privacy of the complainant, before undertaking any installment of a device capable of video-recording on an external part of the building. Which consideration and assessment by the controller should naturally include that residents will need to pass from the alleyway regularly, being a space which may in fact be monitored, as evident by the visible installation of a camera, when accessing or leaving their residence.
22. Furthermore, without prejudice to the foregoing, the controller should also have considered whether he could have employed other means to reach the same objective of protecting his property from suspected clandestine entry, in lieu of the installation of a device capable of video recording, visibly angled downwards, with an underlying area exclusively accessed by data subjects unrelated to the controller.
23. After assessing the submissions provided by the controller, the Commissioner concluded that the controller had not managed to effectively demonstrate that the camera in question, as installed, can offer sufficient and appropriate guarantees, to the complainant as data subject holding a right of way of the underlying alleyway, that they are not or would not be, subject to surveillance at a given point in time. Moreover, 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 which would merit the installation of the camera angled to capture the personal data of the complainant.

On the basis of the foregoing considerations, the fact that the camera in question has the capability of video-recording and processing personal data within the meaning of the Regulation, the Commissioner is hereby deciding that the controller is not offering sufficient and appropriate guarantees that the camera is not, or will not be, processing personal data of the complainant. The Commissioner is hereby deciding that camera installed by the controller is not in conformity with the principles of transparency and fairness, as set forth in article 5(1)(a) of the Regulation.

In virtue of article 58(2)(f) of the Regulation, the controller is hereby being ordered to remove the camera within twenty (20) days from the date of service of 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 14th day of July, 2025

The parties are hereby being informed that in terms of article 26(l) 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.⁸

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/>.

