

vs

COMPLAINT

1. On the 8th May 2025, [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 three (3) cameras² on the façade immediately above her residence’s door, in a manner leading to the unlawful processing of the personal data pertaining to the complainant as a resident of a tenement accessible from an adjacent door.

INVESTIGATION

2. By means of a letter dated the 2nd September 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 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.
3. By means of an email dated the 2nd October 2025, the controller made the following salient arguments, for the Commissioner to consider during the legal analysis of the 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 Installed at [REDACTED]

- a. that, the controller installed CCTV surveillance for security purposes, “...*solely to protect [her] private property, following previous incidents of damage*”;
 - b. that, the CCTV surveillance system installed is ‘Hikvision’, which is configured in a way to ensure “*that only [her] property is recorded*”;
 - c. that, “[o]ne camera is positioned at [her] *front door*...” which “*was installed after damage was caused to the front door*...” in the prior year, and that the camera is “...*therefore in place strictly for protection and documentation of any future incidents*”;
 - d. that, “[a]nother camera, *faces my private garage*...” and that “*the camera monitors only [her] garage entrance and property boundary*”
 - e. that, “[t]he other camera which is located on [her] *property’s facade*, is directed strictly at [her] *own facade*”; and
 - f. that, “*I can confirm that no public areas and neighbouring properties are recorded*”, that the “[c]ameras are focused exclusively on [her] *property*...” and that “...[she has] *taken every measure to remain fully compliant with data protection requirements*”.
4. Annexed with the email in question dated the 2nd October 2025, the controller also submitted CCTV image grabs, as supporting documentation.
 5. By means of an email dated the 30th October 2025, the Commissioner requested the controller to bring the processing into conformity with the provisions of the Regulation, however, no response was forthcoming.

LEGAL ANALYSIS AND DECISION

6. 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 effectively provided to ensure that such camera is not capturing third-party properties.
7. As a preliminary step of the investigation, the Commissioner examined the subject-matter of the complaint where the complainant alleged that the processing activity conducted by the cameras, installed by the controller, are unlawfully processing his personal data, whereby the surveillance is not only capturing the controller’s property, but also a public space, from which the complainant must necessarily pass and hence be captured, in order to access his adjacent residence, in violation of a lawful basis pursuant to article 6(1) of the Regulation.

8. 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.
9. 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. As a corollary, the Commissioner gave the controller the opportunity to provide his submissions, including the request to 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.
10. By means of the email received by the Commissioner from the controller dated 2nd October 2025, the Commissioner confirmed that the cameras in question constitute devices equipped with video recording capabilities, and hence the activity in question indeed enables the applicability to the material scope of the Regulation.
11. Surveillance by means of a video recording device which involves the registration and, or constant retention of personal data, in principle constitutes as processing of personal data according to the Regulation because the activity brings about the collection and retention of personal data of natural persons which enter the space being monitored and who are identifiable based on their appearance. In fact, the Court of Justice of the European Union (the “CJEU”) confirmed that *“the image of a person recorded through a camera constitutes as personal data in the sense of the provision mentioned in the previous point to the extent that it allows the person concerned to be identified”*.³
12. The CJEU in the Rynes⁴ judgment 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 subjects.

³ Judgment of the 11th December 2014, *František Rynes vs Úřad pro ochranu osobních údajů*, C-212/13, para 22.

⁴ Case C-212/13 (n 3), paragraph 33.

13. Owing to the angle, proximity and manner in which these cameras are installed – at both sides of the door in question adjacent to the complainant’s stairway – creates a reasonable impression, for each and every individual who passes through the monitored space or otherwise accesses such stairway, that their personal data may be, or is being, processed – in conflict with the principle of fairness as provided by the Regulation.⁵
14. From the image grabs examined, it emerges that the angle of vision of the cameras in question is not configured to primarily focus on the controller’s property. In some instances – and despite an attempt by means of certain technical configurations applied in an attempt to reduce the processing of personal data – a notable degree of the angle of vision of these CCTV cameras would nevertheless be capturing a public space(s). Needless to say, the technical configurations in and of themselves are not acceptable as they may be unilaterally removed, without data subjects knowing or being able to verify.
15. This means that the controller’s activity cannot be considered “in the course of a purely personal or household activity (the ‘household exemption’).⁶ As a corollary, the Regulation and its provisions apply in their entirety and [REDACTED] will be considered as acting in her capacity as a controller within the meaning of article 4(7) of the Regulation. She is ultimately therefore responsible to demonstrate that all processing activity carried out is or will be in full compliance with the provisions and principles of the Regulation.
16. The principle of lawful processing for instance, which is one of the principles of EU data protection framework namely the Regulation states, that every processing data operation needs to have a legal basis for processing. Therefore, article 6(1) of the Regulation stipulates what could constitute as a legal basis while also considering the other principles for data processing as stipulated in article 5 of the Regulation.
17. The European Data Protection Board⁷ (the “EDPB”) provides that every legal basis that falls under article 6(1) of the Regulation could provide a basis for the processing of personal data by means of video recording. Generally, the appropriate legal bases to install CCTV cameras for the purpose of monitoring public space and the common parts is either to obtain the consent of

⁵ Article 5(1)(a) of the Regulation.

⁶ Article 2(2)(c) of the Regulation.

⁷ Guidelines 3/2019 on Processing of Personal Data through Video Devices, Version 2.0, adopted on the 29th January 2020, paragraph 16.

the affected data subjects or else to process the personal data of the affected data subjects on the basis of a compelling legitimate interest.

18. It is evident to the Commissioner that the complainant, as a data subject who has to pass through the spaces monitored by the cameras in question to access his property, did not give his consent for his personal data to be processed by the controller by means of either of the cameras.

19. The Commissioner considered therefore, if the controller could be considered as having a legitimate interest in terms of article 6(1)(f) of the Regulation in order to conduct this processing activity, which provides that the processing may be based on such legal basis where the:

“processing 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”.

Recital 47 of the Regulation which corresponds to article 6(1)(f) of the Regulation reiterates the forgoing clearly.

20. The Commissioner also considered, from the guidelines of the EDPB that, should the data subject object to video surveillance processing – pursuant to a legitimate interest – on the basis of article 21 of the Regulation, the controller may proceed if there is a **compelling** legitimate interest.⁸

21. The settled case-law of the CJEU emphasises that legitimate interest needs to fulfil a three-part test.⁹ As part of the evaluation of the existence of a legitimate interest therefore, the controller has to be able to **demonstrate** (i) the existence of an legitimate interest, that (ii) the processing

⁸ The EDPB states in its Guidelines 3/2019 that:

“[v]ideo 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” [emphases have been added].

⁹ C-621/22, Koninklijke Nederlandse Lawn Tennisbond vs Autoriteit Persoonsgegevens, decided on the 4th October 2024, paragraph 37:

“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).”

is necessary, and that (iii) there is no less intrusive way that can be adopted by the controller to reach the intended objective and respect the rights and fundamental liberties of the complainant, particularly, the right to respect to private life and to the protection of personal data as guaranteed by articles 7 and 8 of the Charter of Fundamental Rights of the European Union.¹⁰

22. Accordingly, the Commissioner proceeded to examine the present case – in respect of all three (3) CCTV cameras – based on this cumulative three-part test for the purposes of determining whether the controller could be able to rely on the ground of legitimate interest under article 6(1)(f) of the Regulation as a legal basis to legitimise the processing activity, for the purposes of 6(1) of the Regulation.
23. First, 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. Interests which are considered as legitimate emerge from the case-law of the CJEU, which held that transparency or the protection of property, health and family life, are legitimate interests.¹¹
24. The EDPB has itself confirmed that the processing of personal data for safety and security purposes could constitute a legitimate interest, however, subject to real and serious reasons, which ought to be well documented.¹²
25. The Commissioner noted the submissions of the controller that the CCTV cameras were installed to protect her private property following previous incidents of damage to her front door. However the Commissioner did not receive evidence to back the controller’s claims, such as photographic evidence of such, nor did he receive, most importantly, a copy of a police report/s pertaining to the forgoing.

¹⁰ Charter of Fundamental Rights of the European Union [2012] OJ C326/391.

¹¹ C-92/09 and C-93/09, Volker and Markus Scheke and Eifert, paragraph 77 and C-212/13, Rynes, paragraph 34.

¹² Guidelines 3/2019 (n 7), paragraphs 19 and 20:

“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.” [emphasis has been added]

26. After assessing the submissions provided by the controller, the Commissioner concluded that 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 surveillance by virtue of cameras as installed.
27. As the processing activity by virtue of these cameras did not fulfil the first part of the legitimate interest test, the Commissioner did not proceed to assess the rest of the three-part test, given that it must be fulfilled cumulatively in order for the controller to rely on a legitimate interest for the purposes of article 6(1)(f) of the Regulation.
28. This leads to Commissioner to conclude that since the controller has not managed to effectively demonstrate that there is indeed a lawful basis that could be availed of by the controller to legitimise the processing by the three (3) cameras, the systematic and continuous monitoring by virtue of the cameras, angled to capture a public space – and third party properties – which leads to the processing of personal data of the complainant and any data subjects who pass through the monitored space(s), is consequently unlawful and an infringement of the rights and freedoms of the complainant.
29. In the decisions of the Tribunal in the names of *Raymond Orland vs John Caruana* and *Matthew Bianco vs Philip Incorvaja*, on the 15th September 2022, the Tribunal confirmed the Commissioner's decisions whereby the controllers were ordered to stop the processing activities in question given that they were processing personal data without a legal basis in terms of article 6(1) of the Regulation.

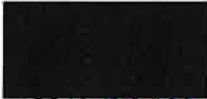
On the basis of the foregoing considerations, the Commissioner is hereby deciding that the cameras installed by the controller are unlawfully processing the personal data of the complainant, and therefore, this processing activity constitutes an infringement of article 6(1) of the Regulation.

Pursuant to article 58(2)(f) of the Regulation, the controller is hereby being ordered to stop the processing operation and remove the three (3) cameras within TWENTY (20) DAYS from the date of service of this decision.

The controller shall inform the Commissioner in writing of the corrective action taken together with photographic evidence demonstrating compliance. Such information shall be submitted by email to the Commissioner on idpc.cctv@idpc.org.mt.

Failure to comply with the orders of the Commissioner within TWENTY (20) DAYS from the date of service of the decision and where no appeal has been filed within that period, shall result in the imposition of an administrative fine of five hundred euro (€500), together with a daily fine of fifty euro (€50) for each day during which such infringement persists.

Without prejudice to the forgoing, nothing precludes the controller from installing a CCTV camera externally on their property, which is of a fixed nature, installed in a way which captures only their property. Such a camera may be installed, in this case, under the arch on the right hand-side, and angled towards the door.



Dr Reno Borg
Information and Data Protection Commissioner

Decided today, the 15th day of September, 2026

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 Information and Data Protection Appeals Tribunal shall be addressed to:

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