

This is a summary of the decision of the DPC

The Data Protection Office (DPO) received an official complaint from Complainant stating that Respondent has fixed a CCTV camera which is pointing towards the road and as such, this is causing prejudice and much harm to him and his family.

Subsequently, a letter was issued by this office to Respondent to inform the latter of the complaint and Respondent was required within 21 days after receipt of the letter to :

1. Provide her written statement on the allegation(s) made by Complainant and a copy of the recordings of all the cameras installed in a CD or DVD or printed copy to this office.
2. To confirm whether there is signage displayed.
3. To urgently reposition the CCTV camera/s to record images only within her premises if the camera/s are capturing images outside her premises.

The DPO received a reply from Respondent informing that:

“On [date], I, unfortunately, lost my husband after a long fight against cancer. I have 2 children, a son and a daughter, both married, having their own lives and their families to look after. Although my daughter visits me regularly, I found myself alone in my house, my grandson of only 8 years stays with me here and there.

With my new status of a widow, after two months, my family and I decided for my own security, it was better to install cameras on all the openings, and these cameras can be viewed by my daughter at any time so that if something happens to, she can react quickly.

As I mentioned before, it is only for my security, never my intention to spy or cause prejudice to anybody. I live at this place since 46 years, if I had bad intentions towards neighbours, I would have done it much earlier, not now only after the death of my husband !!!

As you can see in the video and pictures provided, I ask my technician to put a black square, so as not to interfere in other's privacy. I also asked my technician to focus the angles of the cameras on my house openings (front door, back door, inside doors), I must also mention that I dont have a yard, both my front and back door open directly on the road.

You will notice that my back door camera, the one that complaint has been lodged, slightly towards the street because I needed a view on my car which sometimes stays on the road, as I have been a victim of robbery on my car previously.

I tried to explain in details as much as possible the reason for my cameras. I excuse myself if somebody had the feeling that I was causing prejudice to them...”

From the materials provided by Respondent, it is observed that:

1. Signage is present near a white door and a plate containing number of the street.

2. Two cameras are capturing/recording images of her premises
3. The pavements and the road are being captured by two other cameras. However, at two places, there is a black covering certain areas.

The Data Protection Office wrote to Respondent as provided below:

"This office took note that the cameras have been installed for your own security purposes. From the pictures and recording provided to us, it is observed that two cameras are capturing the pavement(s) as well as the road. In addition to that, from the recording that has been provided to this office, the cameras are capturing the images of people who are on the road. This could be an infringement to the rights of privacy of the individuals concerned. Enclosed the pictures which are capturing images outside your premises (highlighted in yellow and/or red).

On a separate note, we can understand that viewing your car, which is parked on the road is essential for security purposes, given that you have previously been a victim of a robbery. In this context, you may explore other alternative solution for protecting your car.

The rules of data protection require that CCTV camera(s) must be positioned in a way that capture(s) images only within your premises/properties and not images of public space and/or the images of individuals/other peoples' properties and premises.

You are thus kindly requested to reposition the two mentioned CCTV cameras to record images only within your premises/properties and to inform the office of the measures taken within 21 days after receipt of this letter. Failure to comply with the deadline may lead to an offence under the Data Protection Act 2017. "

The Police requested an update with regard to this complaint by phone since Complainant also made a declaration to the Police. The office was informed by phone that a site visit was carried out by the Police at Respondent's place and that they noted that two cameras were capturing images of the road and that Respondent has a garage. Respondent was then informed by the police to capture images of her premises.

Following the conversation with the Police, the office issued a letter to the Police to request the below clarifications:

- When did the police conduct the site visit at Respondent's premise(s)?
- What did the police observe?
- To confirm whether Respondent has a garage which she could use to park her car.

The Barrister-at-law representing Respondent forwarded by email the reply sent to this office which the DPO did not receive. The reply is as follows:

“(...)

For the purpose of the present matter, it is important to delve into the reasons why our Client had to install these CCTV cameras on her premises. As previously indicated to you in her witness statement, our Client recently lost her husband and since then lives on her own in the house. Her grandson of 8 years old often stays there with her. Given such Circumstances, and in light of the fact that there has been cases of robbery in the neighbourhood, our Client decided to install these aforementioned CCTV cameras with the only purpose of protecting her property, health and life- this is the sole legitimate interest of our Client.

As has often been held in Data Protection cases, the Data Protection Office has to do a balancing exercise between the data subject's fundamental rights and freedom against the legitimate interest of the CCTV Camera operator. Moreover, as you are aware, this balancing of opposing interests always depends on the individual circumstances of the case and the context must be considered,

In the present matter, the following is of particular relevance:

- a) As can be seen from the video recordings provided to the Data Protection Office, our Client, with a view of ensuring that the privacy of her neighbour is not infringed by the CCTV cameras, asked the technician to put a black squares on the entrances/exits of their homes.*
- b) It is to be noted that the Complainant has merely mentioned that because the said CCTV camera is pointing toward the road, this is causing prejudice to him and his family, without even substantiating his claim. One of the cornerstone of any democratic system is that an alleged offender has the right to know of the case he/she has to meet.*
- c) It is not denied by our Client that two of the CCTV cameras is indeed capturing part of the pavement(s) as well as the road and that the cameras are capturing images of people who are on the road. However, it is also to be noted that these aforementioned cameras are equally monitoring who shows up at the entrance of our Client's house and also help to keep an eye on her vehicle, which she parks in front of her house. Moreover, our Client has attempted to reposition the CCTV cameras so that it captures only her entrance but unfortunately this is not possible.*
- d) Finally, as enshrined in our Constitution, one of the fundamental rights and freedom of an individual is the right of the individual to life, liberty, security of the person [...] (Section 3(a)).*
- e) It is hereby submitted that the given that the legitimate interest of our Client in*

installing these CCTV cameras is purely for security purposes, she undertakes to:

- a. Register as a Controller;*
 - b. Ensure that the sign is clearly visible and legible;*
 - c. Respond to Subject Access requests promptly; and*
 - d. Erase any personal data, should she be requested to by a data subject.*
- f) In the alternative, should the Data Protection Office deem that these CCTV cameras are purely for a personal or household activity, then section 4(b) of the Act would apply which states that This Act shall **not** apply to the processing of personal data by an individual in the course of a purely personal or household activity. Consequently, the provisions of the Act would not apply in the case and she cannot be held to be in contravention of the provisions of the Act."*

The DPO received a letter from the Police. The Police informed that:

1. On a particular date and time, two police officers visited Respondent in connection with the complaint registered by Complainant, the next-door neighbour of Respondent, regarding a CCTV Camera fixed to the prejudice of Complainant.
2. After the visit, the following information came to light:
 - Respondent was in a very good term with Complainant but things have changed since the death of her husband.
 - The main entrance of Respondent's house is found along [Street 1] and the back yard along [Street 2].
 - The main entrance and garage of Complainant are found along [Street 2].
 - There is a garage for vehicle to have access in, through [Street 1] but due to certain driving difficulties, Respondent used [Street 2], behind her house for parking.
 - A CCTV camera was found fixed on a concrete structure outside her backyard enclosure without any signage, pointing on pavement and [Street 2] public road.
 - With her permission, Police viewed the actual recording and have not seen any breach as to the private yard and premises of Complainant, but the

outside camera was covering a range beyond her plot of land [Street 2] and pavement. She was advised to reset the range angle of the camera and to place signage of CCTV camera to which she promised.

- On another date and time, the Police visited the house and premises of Respondent. He viewed the footage and found that the outside camera has been reset which cover pavement and road behind her enclosure along [Street 2].

The Office issued a letter to the Police to clarify point 2 of the letter above. The Police was requested to confirm whether the said camera after being reset is still capturing images of the pavement and the road.

A meeting was conducted at the Data Protection Office with the police officer who has conducted a site visit at Respondent's premises. The police officer submitted the site visit report, a copy of images captured by the CCTV cameras of Respondent and evidence of signage.

The site visit report findings are as follows:

- There are a total of 4 cameras installed by Respondent.
- 2 cameras are capturing images outside Respondent's premises (road and pavement).
- Camera no (1) is capturing images along [Street 2], a pavement in front of Respondent's premises. The camera is not capturing images within Complainant's premises nor pavement in front of his premises as same is shield with a dark spot.

The Data Protection Commissioner has decided as follows:-

After enquiry conducted with the assistance of the Police, it has been shown that there are no cameras collecting images relating to Complainant and his premises. The images being captured relate to Respondent, her premises and car only. In these circumstances, no breach of the Data Protection Act is found. The enquiry is thus closed.