

## **This is a summary of the decision of the DPC**

The Data Protection Office (DPO) received an official complaint from the Complainant against Respondent regarding the installation of a CCTV camera near the boundary wall which separates the premises of Complainant and Respondent. The latter alleged that Respondent could spy on him and thus depriving him of his privacy and intimacy in his house.

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 his 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 said letter was returned to the office by the Mauritius Post Office and Complainant was requested to provide the correct contact details of Respondent. Another letter was then issued to Respondent.

The DPO received a reply from Respondent informing that as quoted below:

*"I took note of the allegations made by the complainant. These allegations are frivolous and baseless. I strongly disagree with all statements made by the latter.*

*The facts are follows:*

*In June/July 2019, following a theft at my place and acting upon the advice of the police, I installed a camera system to protect my family and secure my property.*

*Since August 2019, the complainant's aggressive dogs tried, on several occasions, to trespass via*

*my border wall. Following these incidents, I reported the matter to the police. Police investigated and verbally acknowledged that the dogs were indeed a threat to me and my family. Thereafter, I requested the complainant to keep his dogs away from my border wall but in vain. In May 2020, I placed a fence on my border wall to protect my family against the complainant's dogs. The complainant strongly disagree for the placement of the fence. Following this issue, I made a complaint to the locality Police Station. I installed an additional camera to protect the perimeter of the fence. The camera is located near my main entrance and therefore it cannot record conversation going on in the complainant's house.*

*Presently, there are six cameras to monitor the perimeter of my property. All CCTV cameras are positioned to capture images only within my premises. There is a CCTV signage displayed. Printed copies of each camera snapshot and evidence of signage displayed are enclosed for your perusal.*

*I remain at your disposal for any further information you may required"*

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

1. Signage is present.
2. The cameras are not capturing images of the Complainant's premises.
3. One camera was capturing an abandoned land and two cameras were capturing houses of other individuals

The Data Protection Office wrote to Respondent as provided below:

*"An analysis was made by this office on the images provided by you and it has been observed that:*

1. *Your cameras are not capturing images of Complainant's premises.*
2. *For the rear view left camera, this office is of the view that the said camera can capture the images of the abandoned land for security purposes as long as the plot of land remained unoccupied. In future, if there is any construction, needful should then be done by you to reposition this camera so as to capture images within your premises only.*

*Same applies to the main entrance camera who is currently capturing the road in front of your house and another abandoned plot of land.*

- 3. For the Side View Left and the Site View Right cameras, you are kindly requested to reposition the cameras to capture images of your premises only as both cameras are capturing houses of other individuals. You are required to inform this office of the measures taken within 21 days after receipt of this email "*

The Complainant was thus informed that his premises were not being captured by the cameras of Respondent.

The Complainant replied to this office stating that:

- the camera is two-way audio and that it has been placed nearby his premises less than 10 meters in a plain view facing his direction.
- he would request to see the images of Respondent's camera facing in his direction.
- this two-way audio camera that has been fixed facing his direction may not capture his premises area but it can record the conversation at least 25 meters neighborhood and this is disturbing his privacy. (Note - audio recording is considered very privacy he should disable audio recording and can't be misused for other reasons).
- has noticed that his camera technician is coming often to verify camera two-way audio that is facing his direction.

On a given date, the Respondent informed the office that needful has been done for the side view left and side view right cameras. On the same date, the office emailed Respondent to request a copy of images for verification and to inform the latter of the further statement provided by Complainant.

Thereafter, Respondent replied to this office as quoted below

*"(...)Please find attached requested images of my CCTV camera after blind spots have been added.*

*Note that my only reason for installing the CCTV cameras and the 2 way camera is for the security of my family and not to spy on neighbours. My whole time is devoted to my family and not to spend in doing unethical things.*

*The camera is placed near my entrance gate and is near the main road where there are lots of vehicles passing by. The reason why I placed the camera in this position is to have a clear view from where there was a robber who climbed my boundary wall some few years ago. From the bad experience I had to take things seriously concerning my family's security. My side view left and rear view left cameras will not be able to capture images if someone tries to infiltrate my property. Someone from the unoccupied land, at the back of my house, may damage the 2 cameras without being captured in the camera. My family may be at risk, especially if i am not at home.*

*Note that the 2 way camera was installed after I placed a shade net on my boundary wall which is between my property and Complainant's property. The shade net can be viewed on the video I am sharing.*

*My camera technician did come to my place for check ups on my CCTV camera - the side view right camera only. I noted that the camera was not in the same position/angle which was previously fixed. So I requested my technician to come at my place to fix its position. Also note that I purchased an HP laptop from my camera technician, he also sells HP laptops. I had an issue with my laptop so he came to my place for a check up.*

*Note that my camera technician never did any kind of intervention on the two way camera, as mentioned by Complainant. He is trying to mislead the investigation.*

*The camera technician is also a friend of mine. So I can invite my friend at any time to come to my place.*

*Moreover, it is very weird for someone who talks about privacy and yet knows who came to my place.*

*Now coming to your questions:*

*1. Yes, the camera is a two way camera. Due to its features i decided to install this camera:*

*i) It is a WIFI camera with an in built microphone. Mute voice recording exists in this camera. The mute mode is active on my camera. So no recording of any kind of voice is being done.*

*ii) Has a good wide angle of my property. Since Complainant informed me that there was a robber who came in my property and was trying to climb my boundary wall to go inside his house this worried me a lot as I have a wife and a little daughter whom i need to protect. So in order to avoid such an incident to occur again I placed this camera so as i can have a clear view of my property.*

*iii) Has intrusion detection alarm*

*iv) Image capturing and sending on mobile phone in case of intrusion*

*v) Can speak to someone from the mobile phone. If ever there is a suspected person in front of my gate, any family member can use the speaker option to talk to the person without going outside, without taking any risk.*

*Installation of a CCTV camera would have cost me additional cable cost.*

*2. No conversation is being recorded since I had set the mute option to 'ON'.*

*3. I am not agreeable to share any of my private images with Complainant.*

*My sole priority is my family. It is my duty to protect and to ensure my family is always safe in my house. I have no intention in recording conversations or to use images captured to tarnish anyone's image."*

It is observed from images provided by Respondent, corrective actions have been taken concerning the two cameras which were capturing images of other individuals houses.

The Respondent provided a copy video of his 2 way camera. Again, it is observed that the camera is not capturing the premises of Complainant and there is no sound in the video.

**The Data Protection Commissioner has decided as follows:-**

For the present matter, it is important to delve into the reasons why Respondent had to install these CCTV cameras on his premises. As provided by Respondent, cameras were installed following a theft at his place to protect his family and secure his property. It is to be noted that the Complainant is aware of this fact.

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)). In addition, the right to personal data protection is fundamental but not an absolute right; it may be limited if necessary for an objective of general interest or to protect the rights and freedoms of others.

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, the balancing of opposing interests always depends on the individual circumstances of the case and the context must be considered. For this present matter, it is observed from the start of the enquiry that the cameras are not capturing the premises of Complainant. Therefore, no breach of the Data Protection Act, based on enquiry above, has been found committed.