

Litigation Chamber

Decision on the merits 81/2023 of 22 June 2023

File number: DOS-2021-00731

Subject: Complaint regarding camera surveillance (clandestine spill)

The Litigation Chamber of the Data Protection Authority, composed of Mr Hielke

Hijmans, chairman, and Messrs. Christophe Boeraeve and Frank De Smet, members;

Having regard to 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

to the free movement of such data, and repealing Directive 95/46/EC (General Regulation on the data protection), hereinafter "GDPR";

Considering the law of December 3, 2017 establishing the Data Protection Authority, hereinafter "LCA";

Having regard to the internal regulations as approved by the House of Representatives on December 20, 2018 and published in the Belgian Official Gazette on January 15, 2019;

Considering the documents in the file;

Made the following decision regarding:

The complainant :

Mr. X, hereinafter "the plaintiff";

The defendants: Y1, hereinafter "the first defendant"; And

Y2, hereinafter "the second defendant".

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I. Facts and procedure

1.

On February 1, 2021, the complainant lodged a complaint with the Authority for the Protection of given against the second defendant.

The complaint concerns the installation of a surveillance camera by the first defendant near a glass container. The complainant received a letter from the second defendant asserting that he probably committed an offense because after filing his empty bottles in the glass container, he left one or more next to the container. Therefore, a fine could be imposed on him.

2.

On February 16, 2021, the complaint was declared admissible by the Front Line Service on the basis of Articles 58 and 60 of the LCA and the complaint is forwarded to the Litigation Chamber under article 62, § 1 of the LCA.

3.

On March 18, 2021, in accordance with Article 96, § 1 of the LCA, the Chamber's request Litigation to proceed with an investigation is forwarded to the Inspection Service, as well as the complaint and the inventory of parts.

4.

On April 13, 2021, the investigation by the Inspection Service is closed, the report is attached to the file and this is forwarded by the Inspector General to the President of the Litigation Chamber (art. 91, § 1 and § 2 of the LCA).

The report contains findings relating to the subject of the complaint and concludes:

1. that there is no violation of Article 5, paragraph 1, a) and paragraph 2, of Article 6, paragraph 1 and article 24 of the GDPR;
2. that there is no violation of article 5 of the law of March 21, 2007 regulating the installation and the use of surveillance cameras<sup>1</sup> (hereafter: the Cameras Law) and Articles 1 and 4 of the Royal Decree of 10 February 2008 defining the manner of reporting the existence camera surveillance<sup>2</sup> (hereafter: the Royal Decree of 10 February 2008).

The report also contains findings that go beyond the scope of the complaint.

The Inspection Service notes, in general terms, that:

3.

it is a violation of Article 30, paragraphs 1, 2 and 3 of the GDPR.

5.

On October 27, 2022, the Litigation Chamber decides, pursuant to Article 95, § 1, 1° and article 98 of the LCA, that the case can be dealt with on the merits.

6.

On October 27, 2022, the parties concerned are informed by registered mail of the provisions as set out in article 95, § 2 as well as in article 98 of the LCA. They are

1 M.B. of May 31, 2007.

2 M.B. of February 21, 2008.

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also informed, pursuant to Article 99 of the LCA, of the deadlines for transmitting their conclusions.

For findings relating to the subject of the complaint, the deadline for receipt of submissions in response from the defendants was set for December 7, 2022, that for the conclusions in reply of the complainant on December 28, 2022 and finally that for the submissions in reply of the defendants on January 18, 2023.

For findings going beyond the subject matter of the complaint, the deadline for the receipt of the submissions in response from the defendants has been set for December 7, 2022.

7.

On October 28, 2022, the second defendant accepts all communications related to the case electronically.

8.

On November 3, 2022, the second defendant requests a copy of the file (art. 95, § 2, 3° of the LCA), which was sent to him on November 21, 2022.

9.

On December 7, 2022, the Litigation Chamber receives an adapted version of the register of processing activities of the second defendant.

## II. Motivation

### II.1. Identification of the controller and processor

10. The Litigation Chamber finds that both the complaint and the complainant's response to the questions from the Inspection Service clearly state that the complaint relates to the second defendant. In his complaint, the complainant wonders whether the surveillance camera that collected footage of him, used to fine SAC, was installed so valid in law. However, it appears from the investigation of the Inspection Service that the first defendant is the data controller for the surveillance camera described in the complaint and that the second defendant intervenes in this context as a subcontractor in order to establish the SAC fine on the basis of the images of the camera. The parties do not dispute not this finding. The first defendant must therefore be qualified as liable processing and the second processor defendant with respect to the processing litigious.

### II.2. Article 5, paragraph 1, a) (lawfulness) juncto Article 6, paragraph 1 of the GDPR and Article 5(2) in conjunction with Article 24(1) GDPR

11. The processing at issue in this case concerns the taking of images by one or several cameras around the glass container, images that were used later in connection with the imposition of an SAC fine. The question arises whether the processing of personal data by these surveillance cameras is indeed carried out in a lawful manner and whether, in this context, the technical and organizational measures have been taken to ensure compliance with the GDPR.

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12. The Litigation Chamber recalls that pursuant to Article 5, paragraph 1, a) of the GDPR, personal data must be processed lawfully. This means that the

processing must take place under grounds for processing as set out in Article 6, paragraph 1 of the GDPR.

13. The Inspection Service notes, on the basis of its investigation, that the processing is necessary for the performance of a task in the public interest or in the exercise of authority public authority vested in the data controller (art. 6.1.e) of the GDPR). The mission of public interest in question is to prevent and combat clandestine dumping and uncollected rubbish and to preserve public cleanliness and health. In this regard, the inspection report also refers to article 9.3 of the general police regulations of Y1 which stipulates that when an offense under a provision is committed by means of a vehicle motor vehicle, in the absence of the driver, the administrative fine is imposed on the vehicle license plate holder. The license plate holder can demonstrate by all means who was driving the vehicle at the time of the incident. If the holder number plate does not refute or deny the offence, the administrative fine is inflicted on him. In its declaration of confidentiality, the first defendant informs also the persons concerned that personal data may be processed in the public interest. In view of the foregoing, the Inspection Service concludes that the processing of the personal data of the complainant takes place within the framework of the public interest and that this processing is necessary for the performance of this mission of interest audience. No violation of Article 5.1.a) and Article 6.1 of the GDPR is therefore found.

14. Article 24(1) of the GDPR requires the controller to implement implementation of appropriate technical and organizational measures, taking into account the nature, the scope, context and purposes of the processing as well as the risks, including the degree probability and seriousness varies, for the rights and freedoms of natural persons, for ensure and be able to demonstrate that the processing is carried out in accordance with the GDPR. These measures should also be reviewed and updated if necessary.

This article reflects the principle of "responsibility", set out in article 5, paragraph 2 of the GDPR,

that "the controller is responsible for compliance with paragraph 1 and is able to provide proof". Article 24, paragraph 2 of the GDPR specifies that when this is proportionate with regard to the processing activities, the measures mentioned in Article 24, paragraph 1 of the GDPR include the implementation of policies appropriate in terms of data protection by the controller.

Since there is no question of a violation of Article 5, paragraph 1, a) and Article 6, paragraph 1 of the GDPR, the Inspection Service concludes that there is also no violation of Article 5, paragraph 2 and Article 24, paragraph 1 of the GDPR.

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15. On the basis of the inspection report and given that the complainant did not advance any argument indicating the contrary, the Litigation Division sees no reason to adopt a point of differing views in this regard. Therefore, the Litigation Chamber concludes that it is not question of a violation of Article 5, paragraph 1, a) and paragraph 2, of Article 6, paragraph 1 and Article 24, paragraph 1 of the GDPR in respect of the first defendant.

II.3. Article 5 of the Cameras Law and Articles 1 and 4 of the Royal Decree of February 10, 2008

16. On the basis of Article 5 of the Cameras Law and Articles 1 and 4 of the Royal Decree of 10 February 2008, it is necessary for the data controller to comply with certain rules if he wishes to proceed with the installation and use of one or more security cameras fixed surveillance in an open place. The obligations resulting from the aforementioned articles compliance with which is examined as part of the inspection investigation can be summarized as following :

To.

the decision to install is taken by a public authority which is responsible processing;

b. before installation, the controller must still obtain a positive opinion

the municipal council concerned, which consults the head of the body for this purpose;

vs.

the data controller affixes a pictogram at the entrance to the open place

indicating the existence of camera surveillance. In accordance with Articles 1 and

4 of the Royal Decree of 10 February 2008, this pictogram must be attached to a plate

aluminum at least 1.5 mm thick with a dimension of 0.60 x 0.40 m

and contain certain notices in a visible and legible manner.

17. During the inspection investigation, the first defendant argued the following:

"To. This is a temporary fixed surveillance camera installed in an open place,

throughout the territory of the municipality, the municipality uses security cameras

temporary fixed monitoring. This is why a pictogram is

affixed to all access points of the municipality. Photos and examples of these

pictograms are listed in appendix 2, as well as the work order consisting of placing

pictograms (appendix 3). The pictograms are produced according to the Royal Decree of

February 10, 2008 relating to the reporting of camera surveillance. An example

below the pictogram is shown in appendix 4.

b. The camera would be in use from March 2019 to date, given that the

municipality considered this place as a sensitive place of clandestine deposits and that this

would always be the case.

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vs. An opinion from the head of the body was obtained for the installation of this camera and this opinion

appears in appendix 5, more specifically in point 2.1 concerning mobile cameras

(temporarily fixed).

d. The head of the body was consulted before the camera was installed, as well as the service

company security, environmental service, peacekeepers and other

members of the local police force.

e. A decision of the municipal council of Y1 has been taken in this regard. The extract from this decision is set out in Annex 6.”

18. After analyzing these replies and the annexes, the Inspection Service concludes that Article 5 of the Cameras Act and Articles 1 and 4 of the Royal Decree of February 10, 2008 were complied with.

19. Considering the inspection report and the fact that the Complainant does not oppose any argument, the Chamber Litigation sees no reason to adopt a divergent point of view in this regard.

The Litigation Chamber therefore concludes that there is no violation of Article 5 of the Law cameras, or Articles 1 and 4 of the Royal Decree of February 10, 2008 in respect of the first defendant.

#### II.4. Article 30, paragraphs 1, 2 and 3 GDPR

20. Based on the register of processing activities, the Inspection Service finds that the second defendant processes personal data, both in both as processor and as controller. The Inspection Service will therefore assess compliance by the second defendant with the requirements concerning this register in light of the applicable quality and respective obligations.

21. Pursuant to Article 30(1) of the GDPR, every controller must keep a register of processing activities carried out under its responsibility. Section 30, paragraph 1, a) to g) inclusive of the GDPR provides that with regard to the processing carried out as data controller,

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following information should be available:

To)

the name and contact details of the controller and any controllers

spouses of the processing and, where appropriate, the representative of the controller

and the Data Protection Officer;



b)

the purposes of the processing;

c) a description of the categories of data subjects and the categories of data

of a personal nature;

d)

the categories of recipients to whom the personal data have been or

will be communicated, including recipients in third countries or

International organisations ;

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e)

where applicable, transfers of personal data to a third country or to

an international organisation, including the identification of this third country or this

organization

internationally and, in

the case of the transfers referred to in

section 49,

paragraph 1, second paragraph of the GDPR, the documents evidencing the existence of

appropriate safeguards;

f) as far as possible, the deadlines provided for the erasure of the various

data categories;

g) as far as possible, a general description of the security measures

technical and organizational as referred to in Article 32(1) GDPR.

22. In accordance with article 30, paragraph 2 of the GDPR, the processor maintains a register of

all categories of processing activities carried out on behalf of the data controller

treatment. This register contains the following information:

To)

the name and contact details of the subcontractor(s) and of each manager of the processing on behalf of which the processor is acting as well as, where applicable, the names and the contact details of the controller's or processor's representative and those of the data protection officer;

b)

the categories of processing carried out on behalf of each data controller treatment ;

vs)

where applicable, transfers of personal data to a third country or to an international organisation, including the identification of this third country or this organization

internationally and, in

the case of the transfers referred to in

section 49,

paragraph 1, second subparagraph, the documents attesting to the existence of guarantees appropriate;

d) as far as possible, a general description of the security measures technical and organizational arrangements referred to in Article 32(1).

23. With regard to the register of processing activities of the second defendant, the Inspection Service makes the following findings, as summarized below.

24. The record of processing activities of the second defendant which was provided to the Inspection Service does not meet the above minimum requirements. Concretely, the

In this regard, the Inspection Service notes the following violations:

To)

the contact details of the second defendant are not complete (cf. article 30, paragraph 1, a) and paragraph 2, a) of the GDPR) since the e-mail addresses [...]

and[...]the second defendant's website and privacy statement

(exhibits 13 and 14) are not mentioned;

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b)

the description of the categories of data subjects is incomplete (cf. article 30, paragraph 1, c) of the GDPR) given that in the columns "Category of persons concerned", the terms "Collaborator", "Politician" and "Contact persons affiliated associates" are mentioned several times without our knowing clearly, by

through such description, what these terms mean

concretely ;

vs)

the description of the categories of personal data is incomplete (cf.

Article 30, paragraph 1, c) of the GDPR) given that in the columns "Category of personal data", the terms "Personal identification data",

"criminal data", "medical data" and "financial data" are mentioned in

several times without it being clear, through such a description, what

what these terms mean concretely;

d)

the name and contact details of each controller on behalf of

of which the second defendant acts as a subcontractor are not

mentioned (cf. Article 30, paragraph 2, a) of the GDPR) and are therefore notably absent

in the "Administrative repression" and "Works in the neighborhoods" tabs.

25. In order to be able to effectively apply the obligations contained in the GDPR, the Chambre

Litigation stresses that it is essential that

the controller and

THE

subcontractors have an overview of the processing of personal data that they perform. This register is therefore primarily an instrument to help the controller or processor to comply with the GDPR for the various data processing that it carries out because the register makes visible the main characteristics of these treatments. The Litigation Chamber considers that this register of processing activities is an essential instrument within the framework of the liability already mentioned (Article 5, paragraph 2 and Article 24 of the GDPR) and that this register is the basis of all the obligations imposed by the GDPR on the data controller. It matters from when it is complete and accurate.

26. On December 7, 2022, the Litigation Chamber received from the second defendant a register of adapted processing activities. The Litigation Chamber finds that this record of processing activities takes into account several findings of the Service of Inspection.

27. With regard to the last finding of the Inspection Service, namely the mention of the name and contact details of each controller on whose behalf the second defendant acts, the Litigation Chamber points out that it has still not not been taken into consideration. The Litigation Chamber finds that the second defendant intervenes for several processing operations as a subcontractor, without specifying Decision on the merits 81/2023 – 9/11 for which data controller it acts. The Litigation Chamber therefore considers that it is a violation of Article 30(2)(a) GDPR.

28. For the sake of completeness, the Litigation Division points out that it appears from the register of processing activities that the functions of Data Protection Officer and

security advisor are exercised by the same person. In this regard, the House  
Litigation points out that the Court of Justice has recently ruled that there may be a question  
a conflict of interest within the meaning of Article 38, paragraph 6 of the GDPR when a delegate to the  
data protection is entrusted with other missions or tasks that would lead it to  
determine the purposes and means of the processing of personal data  
with the controller or its processor. This needs to be checked on a case-by-case basis.  
case based on an assessment of all relevant circumstances, namely the structure  
organizational structure of the controller or its processor, and in the light of the  
regulations applicable as a whole, including any policy of the person responsible for the  
treatment or its subcontractor<sup>3</sup>.

29. The Litigation Chamber considers that the defendant transmitted the register of the activities of  
processing, admittedly incomplete, in electronic form by e-mail at the first request of the  
Inspection Service. Therefore, the Litigation Chamber considers that there is no violation  
of Article 30, paragraph 3 of the GDPR.

### III. Penalties

30. On the basis of the documents in the file, the Litigation Division finds that there is a violation of  
Article 30(2)(a) GDPR.

31. Under Article 100 of the LCA, the Litigation Chamber has the power to:

- "1° dismiss the complaint without follow-up;
- 2° order the dismissal;
- 3° pronouncing the suspension of the pronouncement;
- 4° to propose a transaction;
- 5° issue warnings and reprimands;
- 6° order to comply with requests from the data subject to exercise these rights;
- 7° order that the person concerned be informed of the security problem;
- 8° order the freezing, limitation or temporary or permanent prohibition of processing;

9° order compliance of the processing;

10° order the rectification, restriction or erasure of the data and the notification of

these to the recipients of the data;

11° order the withdrawal of accreditation from certification bodies;

12° to issue periodic penalty payments;

3 CJEU 9 February 2023, X-FAB Dresden GmbH & Co. KG v. FC, C-453/21; ECLI:EU:C:2023:79.

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13° to issue administrative fines;

14° order the suspension of cross-border data flows to another State or a

international body;

15° forward the file to the public prosecutor's office in Brussels, which informs it of the

follow-up given to the file;

16° decide on a case-by-case basis to publish its decisions on the website of the Authority of

Data protection."

### III.1. Violation of Article 30(2)(a) GDPR

32. The Litigation Chamber considers that a reprimand is recommended in this case

on the basis of Article 100, § 1, 5° of the LCA for the violation of Article 30, paragraph 2, a)

of the GDPR. The Litigation Chamber considered that the register of processing activities which

was transmitted by the second defendant was incomplete, as is noted in

the inspection report. In this context, the Litigation Chamber points out that, although

that the second defendant is actually taking steps

to rectify these violations, too little effort has been made to develop the register

processing activities according to the provisions of Article 30 of the GDPR. In this respect too,

the Litigation Chamber emphasizes once again that in the meantime, the GDPR is applicable

almost five years ago and came into force seven years ago.

### III.2. Other grievances

33. The Litigation Division classifies the other grievances without follow-up and findings of the Inspection Service because, on the basis of the facts and the documents in the file, it cannot conclude that there is a violation of the GDPR. These grievances and findings of the Inspection Service are therefore considered to be manifestly unfounded within the meaning of article 57, paragraph 4 of the GDPR<sup>4</sup>.

#### IV. Publication of the decision

34. Given the importance of transparency regarding the decision-making process of the Chamber Litigation, this decision is published on the website of the Protection Authority Datas. However, it is not necessary for this purpose that the identification data of the parties are communicated directly.

<sup>4</sup> See point 3.A.2 of the Dispute Resolution Policy of the Litigation Chamber, of June 18, 2021, available at the next address

: <https://www.autoriteprotectiondonnees.be/publications/politique-de-classement-sans-suite-de-la-litigation-chamber.pdf>.

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FOR THESE REASONS,

the Litigation Chamber of

the Data Protection Authority decides, after

deliberation:

- to issue a reprimand with regard to the violation of Article 30, paragraph 2,

a) of the GDPR in respect of the second defendant, pursuant to Article 100, § 1, 5°

ACL; And

- to close the other grievances without further action, pursuant to Article 100, § 1, 1° of the LCA.

Pursuant to Article 108, § 1 of the LCA, this decision may be appealed to the

Court of Markets (Brussels Court of Appeal) within thirty days of its

notification, with the Data Protection Authority as defendant.

Such an appeal may be lodged by means of a contradictory request which must include the particulars listed in article 1034<sup>ter</sup> of the Judicial Code<sup>5</sup>. The contradictory request must be filed with the registry of the Markets Court in accordance with article 1034<sup>quinquies</sup> of the Code judicial<sup>6</sup>, or via the e-Deposit computer system of Justice (art. 32<sup>ter</sup> of the Judicial Code).

(se). Hielke HIJMANS

President of the Litigation Chamber

5 "The request contains on pain of nullity:

the indication of the day, month and year;

1°

2° the surname, first name, domicile of the applicant, as well as, where applicable, his qualities and his national register number or

Business Number ;

3° the surname, first name, domicile and, where applicable, the capacity of the person to be summoned;

4° the object and the summary statement of the means of the request;

5° the indication of the judge who is seized of the application;

6° the signature of the applicant or his lawyer."

6 "The request, accompanied by its appendix, is sent, in as many copies as there are parties involved, by letter recommended to the clerk of the court or filed with the registry."