

Litigation chamber

Decision on the merits 80/2020 of

December 17, 2020

File number: DOS-2019-02262

Subject: Surveillance by cameras in a car wash

The Litigation Chamber of the Data Protection Authority, made up of Mr Hielke

Hijmans, chairman, and Messrs Jelle Stassijns 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 the

free movement of such data, and repealing Directive 95/46/EC (General Regulation on the

data protection, hereinafter the "GDPR");

Having regard to the law of 3 December 2017 establishing the Data Protection Authority, hereinafter the

"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;

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made the following decision regarding:

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The complainant, who wishes to remain anonymous, hereinafter "the complainant";□

Y, hereinafter "the defendant".□

## 1. Facts and procedure□

1. On April 16, 2019, the complainant filed a complaint with the Data Protection Authority against□  
the defendant.□

The subject of the complaint concerns the use made of surveillance cameras placed in the□  
defendant's car wash. This surveillance by cameras would not be indicated anywhere by means of□  
pictograms and would not be mentioned in the privacy statement as published□

on the defendant's website, so that the data subject does not have□

information relating to the exercise of their rights in this area. Video images and photos□

would have been used as evidence in respect of a data subject (other than the complainant),□

Madame Z, in order to demonstrate via Facebook that she was in the wrong. Without the consent of the□  
person concerned, photos were posted on the defendant's Facebook page, on□

which you could see the number plates of customers' cars as well as members□

Staff. The plaintiff assumes that the images are kept without any time limit,□

without mentioning that the persons concerned are filmed/photographed and therefore in defiance of the□

new camera legislation. Surveillance cameras would be present in□

the whole business of the defendant, both at the level of the car wash itself and on the first floor□

where people can vacuum their car, without it being indicated anywhere by means of a□

pictogram.□

2. On August 6, 2019, the complaint was declared admissible on the basis of Articles 58 and 60 of the LCA, the□  
complainant is notified under Article 61 of the LCA and the complaint is forwarded to the Chamber□

Litigation under article 62, § 1 of the LCA.□

3. On August 23, 2019, the Litigation Chamber decides to request an investigation from the Service□

of Inspection, pursuant to articles 63, 2° and 94, 1° of the LCA.□

4. On August 23, 2019, in accordance with Article 96, § 1 of the LCA, the Chamber's request

Litigation to proceed with an investigation is transmitted to the Inspection Department, as well as the  
complaint and the minutes of this decision.

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5. On 19 November 2019, 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 includes findings relating to the subject matter of the complaint and concludes that:

1.  
the defendant has not complied with the obligations arising from Article 6, § 2, paragraph 5 and from  
Article 9 of the Cameras Law<sup>1</sup>;

2.  
there are serious indications that Article 6, § 2, paragraph 4 of the aforementioned law has not been  
been respected.

6. The report also includes findings that go beyond the subject of the complaint.

The Inspection Service notes, in general terms, that:  
the defendant has not complied with the obligations arising from Article 31 of the GDPR;  
the defendant did not respect the obligations imposed by article 9 of the CCT n° 68;  
there are serious indications that Article 30 of the GDPR has not been complied with;  
there are serious indications that Article 12.1 of the GDPR has not been complied with.

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7. On December 16, 2019, the Litigation Division decides, pursuant to Article 95, § 1, 1° and  
article 98 of the LCA, that the case can be dealt with on the merits.

Based on the report of the Inspection Service, the Litigation Chamber decides to split the case into two separate cases:

1. Pursuant to Article 92, 1° of the LCA, the Litigation Chamber will take a decision on the merits with respect to the subject matter of the complaint

2. Pursuant to Article 92, 3° of the LCA, the Litigation Chamber will make a decision on substance, following findings made by the Inspection Service outside the framework of the complaint.

8. On December 16, 2019, the parties concerned are informed by registered letter of the provisions as set out in article 95, § 2 as well as in article 98 of the LCA. They are 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 defendant was set for January 30, 2020, that for the submissions in complainant's reply 12 working days after receipt of the submissions in response from the defendant and finally that for the submissions in reply of the defendant 12 working days after receipt of the complainant's reply submissions.

11 Law of March 21, 2007 regulating the installation and use of surveillance cameras.  
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For findings going beyond the subject matter of the complaint, the deadline for receipt of the Respondent's submissions in response was set for the same date as that which was set for the defendant's final reply submissions.

9. On January 2, 2020, the Respondent agrees to receive all communications relating to the case by electronic means and manifests its intention to make use of the possibility of being heard, this in accordance with Article 98 of the LCA.

10. On January 30, 2020, the Litigation Chamber receives the submissions in response from the defendant concerning the findings relating to the subject matter of the complaint.

11. Given that the complainant wishes to remain anonymous, the Litigation Chamber communicates to him  
on January 31, 2020 the submissions in response submitted by the defendant. Following this  
communication, the Litigation Division did not, however, receive any submission in reply from the  
from the complainant.

12. On February 24, 2020, the Litigation Chamber receives the submissions in reply from the  
respondent. As regards the findings relating to the subject matter of the complaint, these findings  
repeat the pleas and arguments developed in the submissions in response.

These submissions also include the Respondent's reaction to the findings  
carried out by the Inspection Service outside the framework of the complaint.

13. On October 23, 2020, the parties are informed that the hearing will take place on December 9, 2020.

14. On December 1, 2020, the complainant informed the Litigation Chamber that he wished to participate in  
hearing while remaining anonymous. The Litigation Chamber replied to this that the participation  
anonymous at an audition was not possible. The Complainant reacted by communicating that he  
did not wish to waive his anonymity and therefore did not wish to participate.

At the request of the Litigation Chamber for explanations as to its interest in relation to the  
complaint, the complainant replies that he has no personal interest, that it is only an interest  
public.

15. On December 9, 2020, the parties are heard by the Litigation Chamber.

16. On December 11, 2020, the minutes of the hearing are submitted to the respondent.

17. On December 17, 2020, the Litigation Chamber receives from the defendant some remarks relating  
in the minutes which it decides to include in its deliberation.

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## 2. Motivation

### I. Jurisdiction of the Litigation Chamber

18. The Litigation Chamber finds that the complaint relates to the processing of personal data  
staff of both clients and staff of the defendant, treatment to which

GDPR applies.□

19. As explained in its decision 17/2020<sup>2</sup>, the Litigation Chamber is an organ of the Authority□  
of Data Protection (hereinafter the DPA), created under Article 4(1) of the LCA, enjoying□  
autonomy and making independent decisions. APD is the authority□  
Belgian which is responsible for monitoring compliance with the GDPR within the meaning of Article 8 of the Charter of□  
fundamental rights of the European Union, Article 16 of the Treaty on the functioning of□  
European Union<sup>3</sup> and Article 51 of the GDPR. This control by the DPA and its Litigation Chamber□  
is an essential element for the protection of persons during the processing of personal data.□  
personal character, as organized more precisely by the GDPR.□

20. According to Articles 51.1, 51.2 and 52.1 of the GDPR, Member States must indeed□  
instruct one or more independent authorities to monitor the application of the GDPR in order to□  
protect the fundamental rights and freedoms of natural persons with regard to the processing and□  
to facilitate the free flow of personal data within the Union. These authorities of□  
control must exercise their powers with a view to the effective application of European law□  
data protection, including GDPR. Ensuring the usefulness of the effect of the law□  
European Union is one of the main tasks of the authorities of the Member States under the law of□  
the European Union<sup>4</sup>.□

21. They must allow the exercise of fundamental data protection rights□  
of a personal nature. To this end, supervisors should play an active role through□  
the tasks and powers conferred on them by Articles 57 and 58 of the GDPR. In application□  
of Article 57.2 of the GDPR, each supervisory authority must "facilitate" the lodging of complaints□

2 Published on the APD website.□

3 Treaty on the Functioning of the European Union, , OJ C 326, 26.10.2012, p. 47-390.□

4 See Koen Lenaerts, Piet Van Nuffel, *Europees recht* (6th edition), Intersentia, 2017, pp. 95-100, and more precisely about□  
data protection authorities, Hielke Hijmans, *The European Union as Guardian of Internet Privacy*, Springer 2016,□  
Chapter 7.□

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by a data subject or by an organization. It is therefore logical that the examination of these□  
complaints must make it possible to exercise rights and contribute to improving the control of their□  
own personal data by citizens.□

22. This is developed in national legislation in the ACL. In this regard, the Market Court has□  
underlined that under Belgian law, the APD (and a fortiori the Litigation Chamber) must be considered□  
as an administrative authority and not as a judicial body.□

23. In summary, the review by the Litigation Chamber is not primarily intended to settle disputes□  
between parties, but it is one of the instruments available to ODA to ensure compliance with□  
data protection rules, in accordance with the provisions of the European treaties,□  
GDPR and LCA.□

24. Since in this Complaint, the Respondent's customers and staff are subject to□  
to surveillance by cameras, the Camera Law and CLA no. 68 also apply.□

25. The Litigation Division is competent to examine not only the□  
findings made by the Inspection Service regarding the defendant's compliance with the GDPR□  
but also of the Cameras Law and CCT n° 68. The report of the investigation carried out by the Service□  
d'Inspection explains that under Article 6 of the LCA, the DPA has the power to "bring any□  
infringement of the fundamental principles of the protection of personal data, in□  
within the framework of this law and the laws containing provisions relating to the□  
protection of the processing of personal data, for the attention of judicial authorities□  
and, where appropriate, to take legal action in order to have these fundamental principles applied."□  
CLA No. 68 and the Cameras Law can be considered as a law (in the substantive sense),□  
Useful findings can therefore be made by the DPA Inspection Service in the light□  
of the aforementioned legislation."□

26. The Litigation Chamber adds to this that under Article 4, § 1 of the LCA5, the Authority of□  
data protection is responsible for monitoring compliance with the fundamental principles of the□

protection of personal data, within the framework of this law and the laws containing

provisions relating to the protection of the processing of personal data.

5 Art. 4. § 1. The Data Protection Authority is responsible for monitoring compliance with the fundamental principles of the

protection of personal data, within the framework of this law and the laws containing provisions relating to

to the protection of the processing of personal data.

Without prejudice to the powers of community and regional governments, community parliaments and

region, of the United College and of the United Assembly referred to in article 60 of the special law of 12 January 1989 relating to

Brussels, the Data Protection Authority carries out this mission, independently of the national law applicable to the

treatment concerned, throughout the territory of the Kingdom.

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Thus, the competence of the DPA as established in article 4, § 1 of the LCA allows not only

the Inspection Service to make findings concerning the law of March 21, 2007 and the CCT

n° 68 but this provision also allows the Litigation Chamber, as an organ of the DPA,

to proceed, with regard to the findings of the Inspection Service, to the exercise of its competence

its own as granted to it in Articles 92 to 108 inclusive of the LCA.

## II. Anonymity of the complainant

27. Although the Respondent asserts that the complaint should have been dismissed, the Chamber

Litigation decided, after the complaint had been declared admissible by the Service de Première

Line, to continue examining the complaint and to forward the file for investigation to the Service

of inspection.

28. The Litigation Chamber has taken cognizance of the complaint in which the plaintiff declares

wish to remain anonymous.

29. During the proceedings before the Litigation Chamber, the Respondent argues that Article 47 of the

internal regulations provide the following:

"Art. 47.

[...]



The identity of the complainant is in principle communicated.□

However, his identity is not communicated in cases where there is a serious risk that the□  
communication of his identity to the opposing party leads to harmful consequences□  
for the complainant. Where appropriate, the complainant's explicit consent to communicate his□  
identity is therefore required. If the complainant does not consent to disclosure, the complaint is□  
shelved without follow-up."□

30. Respondent points out, however, that Rule 47 of the Rules of Procedure forms part of□  
"Sub-section A: Procedure prior to the decision on the merits (article 95 of the APD law)", but□  
is not included in "Sub-section B: Deliberation procedure on the merits (article 98 of the law□  
DPA)" and considers that it can be inferred from this that in the proceedings on the merits, as in the present case, neither□  
the LCA (or APD law), nor the rules of procedure provide only in the phase on the merits, a□  
party can remain anonymous and that, if necessary, the registry transmits the conclusions and the□  
exhibits to the anonymous complainant.□

31. First of all, the Litigation Chamber explains that article 47 of the internal rules□  
applies during the proceedings on the merits, which is explained by the fact that Article 98 of the LCA□  
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refers to the application of article 95, § 2 of the LCA<sup>6</sup>. Section 98 of the LCA explicitly requires that□  
when the Litigation Division decides, pursuant to Article 95, § 1, 1° of the LCA, that the□  
file can be examined on the merits, it shall immediately inform the parties concerned by sending□  
recommended provisions as set out in Article 95, § 2 of the LCA, which provide□  
in particular clearly that the parties concerned are informed without delay by sending□  
recommended of the content of the complaint, where applicable, with the exception of documents enabling□  
know the identity of the complainant.□

32. The possibility of handling a complaint anonymously is therefore explicitly provided for in Article□  
95, § 2, 2° of the LCA, to which also refers, as already indicated above, article 98 of□  
the ACL and which also applies during the proceedings on the merits. Another interpretation of the law□

would imply that the complainant could not be effectively protected against the consequences□

detrimental to filing a complaint. These harmful consequences in the procedure□

on the merits are indeed of the same nature as in the previous phase of the procedure.□

33. This means that the LCA itself already provides that a complainant may request that the□

treatment thereof is anonymous. The Litigation Chamber therefore had to take into□

consideration of the complainant's request for the anonymous processing of his complaint and adapted□

its method accordingly by providing for the modality according to which the exchange of conclusions and□

documents between the parties takes place via the registry of the Litigation Chamber.□

34. Respondent goes on to assert that pursuant to Rule 47 of the Rules of Procedure,□

the Front Line Service should have dismissed the complaint, since the complainant does not consent□

not to communicate his identity. According to the defendant, the Front Line Service did not□

no longer considered the criteria set out in article 47 of the internal rules in order to be able to□

handle the complaint anonymously. The defendant argues that the Service de Première Ligne did not□

not analyzed whether or not there was a "serious risk" that disclosure of the complainant's identity□

to the defendant leads to "prejudicial consequences" for the plaintiff.□

6 Art. 95. § 1. The Litigation Chamber decides on the follow-up it gives to the file and has the power to:□

1° decide that the file can be dealt with on the merits;□

2° propose a transaction;□

3° dismiss the complaint without action;□

4° issue warnings;□

5° to order compliance with requests from the data subject to exercise these rights;□

6° to order that the person concerned be informed of the security problem;□

7° to send the file to the prosecutor's office of the King of Brussels, who informs him of the follow-up given to the file;□

8° to decide on a case-by-case basis to publish its decisions on the website of the Data Protection Authority.□

§ 2. In the cases mentioned in § 1, 4° to 6°, it shall immediately inform the parties concerned by registered mail:□

1° the fact that a file is pending;□

2° the content of the complaint, where applicable, with the exception of documents enabling the identity of the complainant to be

3° that the file can be consulted and copied to the secretariat of the litigation chamber, where applicable, with the exception of documents  
allowing to know the identity of the complainant, as well as the days and hours of consultation.□

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35. The Litigation Chamber must note that Article 47 of the internal rules□

provides for a review for those cases where there is a serious risk that disclosure of the identity□

of the plaintiff to the opposing party leads to harmful consequences for him. If a□

such a risk turns out to exist, the identity of the plaintiff is not automatically communicated to the opposing party.□

36. However, in cases where such a risk proves to be non-existent and where the plaintiff himself requests□

anonymity, article 47 of the internal rules goes on to provide that in such a case,□

the complainant's explicit consent is requested in order to be able to communicate his identity to the□

opposing party. If it appears that the complainant refuses, he should therefore, in accordance with□

article 47 of the internal rules, to file the complaint without follow-up.□

37. Not only did the risk weighting not take place, but there was also an omission to classify the□

complaint not acted upon once the complainant indicated that he wished to remain anonymous.□

The handling of the complaint was therefore vitiated by a procedural defect. The Litigation Chamber□

thus confirms the Respondent's argument that pursuant to Article 47 of the□

rules of procedure, the complaint should have been dismissed.□

38. To support the assertion that a complainant cannot remain anonymous during the procedure□

before the Litigation Chamber, the defendant further states that he does not understand how a□

unknown party may, in accordance with Article 108 of the ACL, appeal the decision□

of the Litigation Chamber while the defendant can only lodge an appeal against□

the DPA as a party, but not against the unknown plaintiff who, as the defendant indicates,□

then disappears as a part.□

39. The Litigation Chamber understands from this argument of the defendant that the latter considers□

that he could only bring an action against the DPA and not against the complainant, given that□

this one is anonymous. This, contrary to the plaintiff who could bring an action both against

DPA than against the respondent, which would constitute unequal treatment.

40. In this regard, the Litigation Chamber explains that if an appeal is lodged against its decision,

this action is always brought with the DPA as defendant, regardless of whether the plaintiff acted

or not anonymously in the proceedings before the Litigation Chamber. The part that

takes the initiative to lodge an appeal with the Court of Markets will therefore always be

confronted with ODA as an adverse party. The other party to the proceedings before the Chamber

Litigation does not intervene in the procedure before the Court of Markets, unless this party

decides to intervene

as part

voluntarily intervening

(art. 15

- 16

and art. 812 - 813 of the Judicial Code).

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41. The Litigation Division notes that it was seized of the complaint as it had been

declared admissible by the Front Line Service and that the processing of this complaint has not

took place in accordance with the procedural requirements as set out in Article 47 of the Regulation

of internal order.

III. Complainant's interest

42. The Respondent submits that Article 17 of the Judicial Code provides that no legal action

can be introduced unless the applicant proves a quality and an interest. He adds that in

criminal matters, although the concerned citizen can lodge a complaint, to play a role

whatsoever in the procedure, an interest and a prejudice must be demonstrated.

43. Although, given the anonymity of the Complainant, the Respondent has no certainty on this point, it

objects that the plaintiff probably has no interest or prejudice in this case because, according to

him, the plaintiff is not Mrs Z whose data was published on Facebook, and the

financial condemnation requested by the plaintiff is recovered by the Treasury (article 107 of the ACL).

44. With regard to the plaintiff's interest, the Litigation Chamber draws the attention on the following:

First of all, the Litigation Chamber underlines that article 17 of the Judicial Code is not directly applicable in the context of the processing of a procedure within the Authority of data protection, but that it must, where appropriate, be taken into account in the context of appeal proceedings before the Court of Markets against one of its decisions.

45. Article 58 of the LCA, however, provides: "Any person may lodge a complaint or request written, dated and signed with the Data Protection Authority". In accordance with Article 60, paragraph 2 of the LCA "A complaint is admissible when it:

- is written in one of the national languages;
- contains a statement of the facts and the information necessary to identify the processing for which she wears ;
- falls within the competence of the Data Protection Authority".

46. The travaux préparatoires of the LCA provide: "Any person may lodge a complaint or request to the Data Protection Authority: natural persons, but also legal persons, associations or institutions wishing to denounce

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an alleged violation of the rules. A complaint or request addressed to the Authority of data protection must be written, dated and signed by the person competent in the matter.

A request must be interpreted in the broadest sense of the word (request for information or explanation, request for mediation, etc.)"<sup>7</sup>.

47. The LCA therefore does not exclude that a person other than the data subject or the person

mandated by the latter, within the meaning of article 220 of the law of July 30, 2018 relating to the protection of natural persons with regard to the processing of personal data may file a complaint with the DPA.

48. Although the GDPR considers the “complaint” from the perspective of the data subject, by imposing obligations to supervisory authorities when a person lodges a complaint (see Articles 57, 1.f) and 77 of the GDPR), the GDPR does not prevent national law from giving the possibility to other persons as data subjects to lodge a complaint with the supervisory authority national. The possibility of such referral also corresponds to the missions entrusted by the GDPR to supervisory authorities. In this respect and in general, each supervisory authority: monitors the monitoring of the application of the GDPR and compliance with it (Art. 57.1.a) of the GDPR) and fulfills any other mission relating to the protection of personal data (art. 57.1.v) of the GDPR)8.

49. The Litigation Chamber considers in this respect that Article 58 of the LCA gives any person the possibility of lodging a complaint, provided that there is sufficient interest in it, in accordance with the aforementioned provisions of the GDPR.

50. The condition is, however, that the plaintiff demonstrates a sufficient interest. In this regard, the House of Litigation is forced to note that the plaintiff evokes only a public interest consisting in the protection of the privacy rights of any citizen making use of the car wash services with his car, without being informed of the use of camera images. In any case, he clearly stated that he had no personal interest.

51. The Complainant appears to simply be pursuing a public interest, which cannot be considered being sufficient. The mere pursuit of a public interest is not enough to justify a sufficient interest, this in the absence of any concrete element associated by the plaintiff with the processing of data by the defendant. Since the plaintiff does not make plausible the existence of an interest sufficient on his part to allow the processing of his complaint by the Protection Authority

7 Doc. parl., House of Representatives, 2016-2017, DOC 54 2648/001, p. 40 (comment on article 58 of the original bill).

8 Along the same lines: substantive decision 30/2020 of June 8, 2020.□

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of the data, the Litigation Division notes the non-compliance with the procedural rules due to□

the declaration of admissibility of the complaint and its subsequent processing.□

52. In view of the fact that the Complainant does not demonstrate that the Respondent processes data at□

personal nature concerning him and that he also does not justify a sufficiently concrete interest□

in order to be able to lodge a complaint, the Litigation Chamber further notes that the complainant□

also did not have the standing to be able to lodge a complaint and that consequently,□

the whole procedure is tainted by the absence not only of interest but also of quality in□

the complainant's leader.□

IV. Publication of the decision□

53. Given the importance of transparency regarding the decision-making process of the Chamber□

Litigation, this decision is published on the website of the Authority for the protection of□

data. However, it is not necessary for this purpose that the identification data of the parties□

are communicated directly.□

FOR THESE REASONS,□

the Litigation Chamber of the Data Protection Authority decides, after deliberation, pursuant to□

of article 100, § 1, 1° of the LCA, to close the present complaint without further action.□

Under article 108, § 1 of the LCA, this decision may be appealed within a period of□

thirty days, from the notification, to the Court of Markets, with the Authority for the Protection of□

given as defendant.□

(Sr.) Hielke Hijmans□

President of the Litigation Chamber□