

Litigation Chamber

Decision on the merits ANO 03/2019

from April 2, 2019

File number: DOS-2018-04764

Subject: Complaint for the installation of a camera in the common kitchen of a building

including student rooms

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

D. Van Der Kelen, chairman, and Messrs. I. Vandermeersch and F. 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) ;

Considering the law of December 3, 2017 creating the Data Protection Authority;

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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1. Facts and procedure

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On September 11, 2018, the complainant filed a complaint with the Authority for the Protection of
given against the defendant.

The subject of the complaint concerned the installation by the defendant of a camera in the kitchen
of a building of student rooms.

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On October 4, 2018, the complaint was declared admissible on the basis of articles 58 and 60 of the law
of December 3, 2017, the plaintiff is informed by virtue of article 61 of the law of December 3
2017 and the complaint is forwarded to the Litigation Chamber pursuant to Article 62, § 1 of the
law of December 3, 2017.

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On October 23, 2018, the Litigation Division decided, pursuant to Article 95, § 1, 1° and
article 98 of the law of December 3, 2017, that the case can be dealt with on the merits.

On October 30, 2018, the parties involved are informed by registered mail of the

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provisions as set out in article 95, § 2 as well as in article 98 of the law of
December 3, 2017.

On October 31, 2018, the defendant notified the Litigation Chamber that he agreed to receive

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by electronic means any communication concerning the case (article 98, 1° of the law of
December 3, 2017).

On November 19, 2018, the complainant requested a copy of the file (article 95, § 2, 3° of the law

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of December 3, 2017) and agrees to receive electronically any communication

concerning the case (art. 98, 1° of the law of 3 December 2017). In addition, the complainant asks

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to be heard (article 98, 2° of the law of 3 December 2017).□

On November 21, 2018, a copy of the file was sent to the complainant.□

On November 27, 2018, the parties involved were informed, pursuant to article 99 of the law of□

December 3, 2017, deadlines for transmitting their conclusions. The deadline for the□

receipt of the defendant's submissions in response was set for December 27, 2018, that□

for the submissions in reply of the complainant on January 28, 2019 and that for the submissions□

in reply of the defendant on February 28, 2019. The date of the hearing has been set for March 20, 2019.□

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On December 18, 2018, the defendant requests a copy of the file (article 95°, § 2 of the law□

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of December 3, 2017).□

On December 18, 2018, a copy of the file is sent to the defendant.□

On December 22, 2018, the Litigation Chamber receives the submissions in response from the□

respondent. He states there that a rental contract was concluded for the period of 01/09/2017□

as of 07/31/2018. The cameras were installed on Saturday 08/18/2018. In compliance with Article□

8b of the rental agreement, the plaintiff had informed the defendant on 25/06/2018 that he wanted□

use their student room on 16/08, 17/08, 21/08 and 22/08 and possibly the week□

above (the week before 08/16/2018). At the time of installation and testing, no one□

had the right to be present in the building and to use the accommodations and facilities.□

According to the defendant, the installation of the camera in the kitchen can in no way be□

qualified as illegal installation of a camera in a private space, given that visitors□

and family members of students also have access to this space.□

On January 7, 2019, the Litigation Chamber receives the complainant's submissions in reply□

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in which he points out that it is clear from the communication with the defendant
that his purpose was to use his room during the period of the second session exams,
including from 18/08 to 20/08 inclusive, and not only on the days of these exams. Furthermore,
the complainant claims that as of 08/18/2018 the cameras could not yet be used,
not even for said tests, because the legally required pictograms were not
still present and that prior notification had not yet taken place. Furthermore, the
complainant believes that the installation of cameras in the common area constitutes a violation
disproportionate privacy and that the lessor has other possibilities to achieve
the goal.

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On January 24, 2019, the parties are informed that the hearing scheduled for March 20, 2019
is postponed to April 2, 2019.

On February 28, 2019, the Litigation Division receives the defendant's submissions in reply
in which he explains that cameras were installed following acts of
vandalism caused by the occupants of the kots and their visitors. The installation date of the
camera is fixed at 08/18/2018, because the defendant assumes that on this date,
no students will be present in the building. On this same date, however, the camera is
covered by the plaintiff, while according to the defendant, he could not be present.

On 08/18/2018 the pictograms are displayed, on 08/20/2018 the defendant makes the statement
surveillance camera and informs the occupants of the kots on 08/21/2018.

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Furthermore, the defendant claims that the camera was installed in the kitchen, which must be
considered as a "closed place not accessible to the public" within the meaning of article 7 of the law of
March 21, 2007 regulating the installation and use of surveillance cameras. All the
legal requirements in this respect have been complied with by the defendant. The defendant considers

that the installation of the camera in the kitchen is proportional to the purpose, to
namely the fight against acts of vandalism, damage and incivility. The defendant
repeats that the complainant could not be present in the building on 18/08/2018 and does not see
not how a disproportionate violation could have been committed against the
complainant's "private life".

On April 2, 2019, the parties are heard by the Litigation Chamber.

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2. Legal basis

Article 5.1.c) of the General Data Protection Regulation:

"Personal data must be: [...] c) adequate, relevant and limited to what
is necessary in relation to the purposes for which they are processed (data minimization);"

3. Motivation

The Litigation Chamber considers that the simple fact of installing a surveillance camera in a
common space where the inhabitants have no choice but to enter it – because access to this
space is simply necessary – sufficient to decide that a violation of Article 5.1. c) of
General Data Protection Regulation has been committed and the sanction must be pronounced
resumed below. The fact that the legal requirements for reporting a surveillance camera
have been met has no influence on the disproportionate nature of the installation of a camera
in a space where the persons concerned are necessarily subject to surveillance
by camera for the duration of their presence in this space.

The Litigation Chamber cannot accede to the plaintiff's request to grant
damages since it does not have this jurisdiction.

FOR THESE REASONS,

the Litigation Chamber of the Data Protection Authority decides, after deliberation:

- to order, pursuant to Article 100, § 1, 8° of the law of 3 December 2017, that the processing at the
means of the camera installed in the common kitchen is definitively prohibited;

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- to order, pursuant to Article 100, § 1, 10° of the law of December 3, 2017, the deletion of

data processed by this same camera in the common kitchen;

- to publish this decision on the website of the Data Protection Authority,

pursuant to article 100, § 1, 16° of the law of December 3, 2017, admittedly after anonymization.

Pursuant to article 108, § 1 of the law of December 3, 2017, this decision may be the subject of a

recourse within thirty days, as from the notification, to the Court of Markets.

President

(Sr.) Dirk Van Der Kelen