

Compliance with a Subject Access Request & Disclosure of personal data / capture of images using CCTV

This case study from 2017 describes a dispute between a Toll company and an individual employed by a third company who works as a service engineer for the Toll company. According to the individual (the complainant), the Toll company disclosed his personal data to his employer (in the form of an audio recording and a CCTV footage) without his knowledge or consent (Data Protection Commission, n.d).

According to the Toll company, during their initial dispute, the individual threatened to take down all the toll plaza systems. This led to the Toll company requesting the termination of the individual's services as a service engineer at the Toll company's premises. After the employer agreed, the Toll company considered the matter to be concluded (Data Protection Commission, n.d). However, two months after the incident had occurred, the individual's employer requested from the Toll company the CCTV and audio footage, which the Toll company eventually did provide.

At the time, the Data Protection Acts 1988 and 2003 were the enforced regulations, as the GDPR came into force in 2018. However, similarities can be found between these three legislative acts. Nonetheless, similar provisions to those quoted by the Commissioner in the Data Protection Acts can be found in the GDPR (2018). Specifically, the study addresses the following aspects regulated by the GDPR:

1. Article 6 related to the obligation to process personal data only if a specific ground for the processing of personal data exists (Section 2A(1) of the Data Protection Acts),
2. Article 14 related to the controller's obligation to provide a minimum set of information to data subjects with respect to the processing of their personal data (Section 2D(1) of the Data Protection Acts), and
3. Article 5(b) related to the principle of 'purpose limitation', i.e., the obligation not to further process personal data in a manner that is incompatible with the purpose for which the personal data had been initially collected (Section 2(1)(c)(ii) of the Data Protection Acts).

With respect to the three obligations mentioned above, the Commissioner had assessed in the present case that the Toll company had not complied with any of them (i.e., with the Data Protection Acts' sections analogous to the three GDPR articles) for the following reasons (Data Protection Commission, n.d):

1. the factual circumstances of the present case could not justify the Toll company's reliance on the pursuit of its legitimate interests as the legal basis for the processing of personal data. The fact that (a) the Toll company had considered the incident as being resolved and (b) two months had lapsed since the actual incident took place, led the Commissioner to the conclusion that no legitimate interest as such to be pursued. Additionally, as the Toll company did not request the individual's consent before processing the personal data, there was an absence of a legal basis for the processing;
2. the signs that were present at the scene of the incident were informing individuals that there was CCTV in operation and, additionally, the Toll company's privacy policy published on its website stipulated that all vehicles using the toll plaza are photographed/video recorded and that images could be used to investigate disputes in relation to a vehicle. However, the Commissioner found that these two information notices were not giving any information on the fact that audio was also being recorded, nor on the identity of the data controller. Thus, the Toll company had not complied with the information obligation under Section 2D(1) of the Data Protection Acts;
3. the fact that the Toll company had disclosed the individual's personal data to its employer was an additional processing operation undertaken for a purpose which was not compatible with the purpose for which the personal data had been initially collected, contrary to Section 2(1)(c)(ii) of the Data Protection Acts.

To sum up, the Commissioner concluded that the individual's complaint was legitimate, given the Toll company's non-compliance with the aforementioned Sections of the Data Protection Acts.

Had I been requested to mitigate this situation by enforcing different and/or new practices in the organization, I would have proposed the following:

- introducing additional clarity in the signs displayed in toll plaza, clearly informing individuals of the extent of personal data being collected by the CCTV and pointing them towards the organisation's privacy policy, it being available on its website;
- re-drafting the organisation's privacy policy in order to include all the elements required under Article 14 of the GDPR, including the possibility to request individuals' consent in case the collected personal data would need to be processed for additional purposes.

References:

Data Protection Commission (n.d.) Case studies. Available from:
<https://dataprotection.ie/en/pre-gdpr/case-studies> [Accessed 29 June 2021]

EUR-Lex (n.d.) 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 on the free movement of such data, and repealing Directive 95/46/EC. Available from: <https://eur-lex.europa.eu/eli/reg/2016/679/oj> [Accessed 29 June 2021]