

Helsinki Information Law Moot Court 2022 Problem

HOUSY, a company which is based and solely operates in the EU Member State of Newtonia, is a leading housing company which manages apartment buildings. Its main business model is an “all-round carefree package”, under which people who own flats can hire HOUSY to take care of their property and rental arrangements. This includes including choosing the tenants, managing the relationship with the tenants and taking care of the buildings in an effective manner. HOUSY manages over 1,000 apartment buildings under this package.

Recently, HOUSY received complaints from tenants about burglaries in 24 different buildings across Newtonia. HOUSY suspects that not all physical keys have been returned and that former tenants have used them to get into the storage area to steal goods. HOUSY would like to help its tenants and live up to its reputation of providing a reliable, modern and safe service. It therefore chose to install electro-mechanical locks offered by KEYLY, a producer from Leibnitzland, also an EU Member State.

KEYLY’s newly-developed locks require digital keys, each assigned a unique access code. Access rights for particular keys can be granted or revoked by HOUSY, which has terminals capable of programming keys at its customer-support locations. Although the system logs key usage, it is designed such that there is no centralised log. Rather, an event log (which records a swiped key’s unique ID code and a time stamp of the swipe) is stored locally in each lock. Only a KEYLY-certified locksmith can access the event log. The system is capable of storing up to 100 events in each lock at a time, with newer entries overwriting older ones. However, HOUSY has configured the locks such that public doors will only store up to 75 events, while locks on private flats will only store up to 10 events.

In a meeting in April 2020, HOUSY held a video call to inform the flat owners about the new system. Although the call was not publicly accessible, it was recorded by HOUSY and copies were made available to all of the flat owners. HOUSY explained that the system is designed in a way that locksmiths would only provide the access logs to the police, meaning that no other parties (including HOUSY, the flat owners and the tenants themselves) would be able to access them. When asked in the meeting whether the locks were compliant with data protection law, HOUSY replied that the system was compliant because landlords had a legitimate interest in protecting the security of their tenant’s property and that the system was designed to minimise the exposure of any information from the logs. The locks were installed for a total cost of €1,832,000 in 120 buildings on 16 July 2021.

LUMIKKI SUMMER, a tenant living alone in one of the flats with the new locks, was away on holiday while the locks were being installed. When she returned and discovered the new locks, she was deeply worried about her privacy, seeing the locks as tantamount to a totalitarian surveillance system. Ms. SUMMER complained to the Newtonian Data Protection Authority on 15 August 2021, stating:

- She was never informed about how the system works;
- Although her rental contract with the flat owner included a general reference to HOUSY’s online privacy policy, she signed the contract in January 2020, when the old locks were still in place;
- While there might have been burglaries in some apartment buildings, there have not been any in hers, at least not in the last 2 years;
- Even if locks which track when a key is used are needed, they are only required on public doors. They should not be used for the apartment doors themselves as privacy in the home is especially protected;

- If those locks need to be installed, the only correct way should be to have locks that store the data for a maximum of 5 days, regardless of the number of “events”. As she often goes on long vacation, the data might be stored in her case for months; and
- HOUSY should reinstall the old locks. Although this may be expensive, HOUSY is a large company and money should not be an issue.

The Newtonian DPA reaches out to HOUSY’s lawyer, EETU WINTER, for a statement. Mr. WINTER argues the following:

- The use of the locks does not constitute the processing of personal data by HOUSY. HOUSY simply manages apartments, admittedly independently, but it is the flat owners that sign the contract with the tenants and KEYLY who built and designed the locks;
- Even if HOUSY were processing personal data, the system brings clear advantages for everyone. Any processing is performed under the GDPR, art. 6(1)(f) as it is necessary for the purposes of a legitimate interest pursued by the controller or a third party, and that legitimate interest is not overridden by any interests or fundamental rights and freedoms of the data subject;
- LUMIKKI SUMMER had been offered another even bigger apartment in one of the other buildings managed by HOUSY for the same amount of rent, but refused to accept. Changing the locks in her building alone would cost €75,000, while changing the locks in all buildings would cost several millions. Forcing HOUSY to do this would be not proportional. Authorities like the DPA may only act if there is a risk for the fundamental rights of individuals; most tenants welcomed the change and some even felt that their rights to the protection of property has now been better protected;
- The tenants have all signed a contract which refers in general terms to the privacy policy that can easily be found on HOUSY’s homepage. This privacy policy states that personal data may be processed “as necessary for the landlord’s or others’ legitimate interests, unless overridden by the tenants fundamental rights and freedoms that require the protection of personal data”; and
- HOUSY’s website is regularly updated and information about the new locks was posted on 2nd May 2020, prior to the installation, in a post called “Attention: New locks will be installed on 16 July”. This information clearly set out how the locks worked, what information would be recorded and the reasons for these changes. The post also included contact details for HOUSY’s tenant-support staff, “for more information”. Finally, as part of their monthly newsletter, HOUSY sent an email to all tenants which prominently included the text: “New locks in certain buildings! Check our website to see how you are affected!” Ms. SUMMER does not recall seeing the message, though concedes it may have gone to her spam folder.
- Even if this were insufficient, the owners of the flats were well-informed and should have told their tenants about the issue.

The Newtonian DPA asks for statements on the following questions:

1. Does HOUSY process personal data?
2. If so, is HOUSY entitled to rely on the legitimate interest ground under art. 6(1)(f)?
3. If HOUSY is processing personal data, has it met the relevant transparency and information requirements under the GDPR?
4. May the DPA order HOUSY to change the locks in all the apartments?

Mooters are instructed to submit answers to those questions both from the perspective of LUMIKKI SUMMER as the applicant; and for HOUSY as the respondent.

Memos are due on 10 December 2021. Entries must be submitted according to the requirements in the Helsinki Information Law Moot Court 2022 Rules of Procedure, available at www.infolawmoot.fi.