

Procedure No.: PS/00384/2019

938-051119

RESOLUTION OF PUNISHMENT PROCEDURE

Of the procedure instructed by the Spanish Agency for Data Protection and
based on the following

FACTS

FIRST: On May 10, 2019, it had entry in this Spanish Agency of
Data Protection a document presented by A.A.A. (hereinafter referred to as the claimant),
through which he makes a claim against INSTITUT MUNICIPAL DE L'ESPORT-
AJUNTAMENT PALMA with NIF P5701504B (hereinafter, the claimed one), by the
installation of a video surveillance system installed in the Marga Crespi-
Camí de la Muntanya-Palma de Mallorca-Illes Balears, with signs of a
possible breach of the provisions of art. 5.1 c) GDPR.

The reasons that support the claim and, where appropriate, the documents
provided by the claimant are the following:

“Palma City Council has installed security cameras in the swimming pool
Municipal Son Ferriol, within its facilities there are users of sports,
personnel of the City Council itself and personnel of the concessionaire companies of the
service (...)

We do not know that there is a person in charge and a person in charge who watches over the
compliance with personal data protection regulations and any other
applicable standard” (folio No. 1).

“The spirit of the rule says that video surveillance should be ruled out when
there are less harmful means for fundamental rights”

“We are not aware of the existence of a person in charge with whom to exercise the

ARCO rights, nor are there information forms available for them" (folio nº 1).

Together with the claim, it provides documentary evidence (Annex I) that proves the installation of the cameras, as well as the fact that a priori there is no informative poster(s) in the access door to the facilities.

SECOND: Prior to the acceptance of this claim for processing, it is transferred the claimed, in accordance with the provisions of article 65.4 of the Law Organic 3/2018, of December 5, on the Protection of Personal Data and guarantee of digital rights (hereinafter, LOPDGDD). The result of this action is describes below.

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"No response has been received to date on the facts transfer object"

THIRD: The claim was admitted for processing by resolution dated 01/11/2019.

FOURTH: On November 22, 2019, the Director of the Spanish Agency of Data Protection agreed to initiate a sanctioning procedure against the claimed, for the alleged infringement of Article 5.1.c) of the RGPD, typified in Article 83.5 of the GDPR.

FIFTH: On 12/02/19, this Agency received a written statement of allegations from the reported stating the following.

"The video surveillance system in this sports center obeys the purpose of security of these facilities taking into account the number of people who

access and the extensive schedule of the same that causes not being able to have various people to carry out these procedures; having analyzed the judgment of proportionality that is required of these treatments and that was overcome by having considered necessary, suitable and proportional to this purpose of control of security, according to article 22 of the Organic Law 3/2018 on Data Protection personal and guarantee digital rights.

That these cameras do not capture any space on the public road since they only

It is about two cameras that capture the space of the hall of this installation, since it is

This is the space that is intended to be protected and without it being necessary for this purpose capturing additional spaces (...)"

In view of everything that has been done, by the Spanish Protection Agency of Data in this procedure the following are considered proven facts,

FACTS

First. On 05/10/19, a claim is received at this Agency through the which translates as the main fact the following:

"Palma City Council has installed security cameras in the swimming pool

Municipal Son Ferriol, within its facilities there are users of sports,

personnel of the City Council itself and personnel of the concessionaire companies of the service (...)

We do not know that there is a person in charge and a person in charge who watches over the compliance with personal data protection regulations and any other applicable standard" (folio No. 1).

Second. The INSTITUT is accredited as the main responsible for the installation.

MUNICIPAL DE L'ESPORT, which recognizes the facility for security reasons from the entrance of the complex.

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Third. The entity denounced acknowledges the absence of an informative poster, for accidental external reasons, having corrected the situation, providing evidence such an extreme documentary.

Fourth. That these cameras were installed by a security company called nothing ***COMPANY.1, according to the attached budget; and that I provide the security and sufficient guarantees for their hiring to establish this system.

Fifth. The images that are captured are limited to the entrance area of the venue exclusively, without the images being used for labor control purposes.

FOUNDATIONS OF LAW

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By virtue of the powers that article 58.2 of Regulation (EU) 2016/679 (General Data Protection Regulation, hereinafter RGPD), recognizes each Control Authority, and according to the provisions of articles 47, 48.1, 64.2 and 68.1 of the LOPDGDD, the Director of the Spanish Data Protection Agency is competent to initiate and resolve this procedure.

II

In the present case, we proceed to examine the claim of entry date 05/10/19 through which the following is transferred as the main fact:
“Palma City Council has installed security cameras in the swimming pool Municipal Son Ferriol, within its facilities there are users of sports, personnel of the City Council itself and personnel of the concessionaire companies of the service (...)

We do not know that there is a person in charge and a person in charge who watches over the compliance with personal data protection regulations and any other applicable standard" (folio No. 1).

The facts described above may affect the content of the art.5.1 c) RGD. "Personal data will be:

c) adequate, pertinent and limited to what is necessary in relation to the purposes for those that are processed ("data minimization").

Article 13, sections 1 and 2, of the RGD, establishes the information that must be provided to the interested party at the time of data collection. In the case of processing of personal data for surveillance purposes through security systems cameras or video cameras, the duty of information can be fulfilled through the placement, in video-monitored areas, of an informative sign located in a place sufficiently visible, both in open and closed spaces, and using

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forms detailing the expected information, which the person in charge must make available to interested parties.

The content and design of the informative badge must comply with the provisions of the Annex to Instruction 1/2006, of November 8, of the Spanish Agency for Data Protection, on the processing of personal data for surveillance purposes through camera systems or video cameras.

On the other hand, in accordance with the provisions of article 22 of the LOPDGDD, referring specifically to the "Processing for video surveillance purposes", the

processing of images in public places can only be carried out -if applicable and prior compliance with the legally enforceable requirements-, by the Forces and Security Bodies, unless the exception established in the aforementioned Article 22 of the LOPDGDD for individuals or legal entities, public or private, respecting the conditions required in said article.

III

The claim is based on the alleged illegality of the installation by the claimed from a video surveillance system, composed of a number not of camera(s) located in the property located in Polideportivo Marga Crespí-Camí de la Muntanya-Palma de Mallorca-Illes Balears.

In addition, the claimant warns that the property reviewed does not have a sign in which the presence of the cameras and the identity of the responsible for data processing, so that interested persons can exercise the rights provided for in arts. 15 to 22 of the GDPR.

It also states that they have not been informed of how to exercise their rights within the framework of the regulations in force, nor "has a form for it" adapted to current regulations.

The entity reported on 12/02/19 states that it is responsible for the installation of the camera(s) for security reasons, providing documentary evidence that accredits the placement of an informative poster at the access door.

The images provided (doc. nº 1-2) are limited to the area of access to the facilities, considering the same proportionate, with the purpose of control access to sports facilities.

Notwithstanding the foregoing, no copy of the mandatory form has been provided must have in the complex, so that in case of exercising their rights any user (a) to be able to provide it.

The corrective powers of the Spanish Protection Agency

of Data, as a control authority, are established in article 58.2 of the RGPD.

Among them are the power to sanction with a warning -article 58.2

b)-, the power to impose an administrative fine in accordance with article 83 of the

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RGPD -article 58.2 i)-, or the power to order the person in charge or in charge of the

treatment that the treatment operations comply with the provisions of the

GDPR, when applicable, in a certain way and within a certain period

specified -article 58. 2 d)-.

According to the provisions of article 83.2 of the RGPD, the measure provided for in the

Article 58.2 d) of the aforementioned Regulation is compatible with the sanction consisting of

administrative fine.

Without prejudice to the provisions of article 83 of the RGPD, the aforementioned Regulation

has in its art. 58.2 b) the possibility of sanctioning with a warning, in relation

with what is stated in Considering 148:

“In the event of a minor offence, or if the fine likely to be imposed

would constitute a disproportionate burden for a natural person, rather than

sanction by means of a fine, a warning may be imposed. must however

Special attention should be paid to the nature, seriousness and duration of the infringement, its

intentional nature, to the measures taken to alleviate the damages suffered,

the degree of liability or any relevant prior violation, the manner in which

that the control authority has been aware of the infraction, compliance of measures ordered against the person responsible or in charge, adherence to codes of conduct and any other aggravating or mitigating circumstance.”

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In accordance with the foregoing, it has been proved that the system did not initially have of informative poster(s), although this extreme has been corrected on the occasion of the processing of this procedure.

However, a copy of the form(s) adapted to the regulations must be provided.

in force, which must be sent to this Agency, for its incorporation into this administrative file, being able to be oriented in the one established in the web page of this Agency www.aepd.es, "Video-surveillance" concluding the present process.

Therefore, according to the above,

By the Director of the Spanish Data Protection Agency,

Therefore, in accordance with the applicable legislation and having assessed the criteria for graduation of sanctions whose existence has been proven,

the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: PROCEED to WARN the entity INSTITUT MUNICIPAL DE

L'ESPORT-PALMA AJUNTAMENT, in such a way that within a maximum period of one month

From the notification of this act, you must prove:

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-Have an informative form available to the users of the

sports facilities, informing you of your rights, purpose and responsibility for treatment of your personal data.

SECOND: NOTIFY this resolution to the MUNICIPAL INSTITUT OF L'ESPORT-PALMA CITY COUNCIL and REPORT the result of the actions to the complainant Mr. A.A.A.

In accordance with the provisions of article 50 of the LOPDGDD, the

This Resolution will be made public once it has been notified to the interested parties.

Against this resolution, which puts an end to the administrative procedure in accordance with art.

48.6 of the LOPDGDD, and in accordance with the provisions of article 123 of the

LPACAP, the interested parties may optionally file an appeal for reconsideration

before the Director of the Spanish Agency for Data Protection within a period of

month from the day following the notification of this resolution or directly

contentious-administrative appeal before the Contentious-Administrative Chamber of the

National Court, in accordance with the provisions of article 25 and section 5 of

the fourth additional provision of Law 29/1998, of July 13, regulating the

Contentious-administrative jurisdiction, within a period of two months from the

day following the notification of this act, as provided in article 46.1 of the

aforementioned Law.

Sea Spain Marti

Director of the Spanish Data Protection Agency

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