

□ File No.: EXP202105856

RESOLUTION OF PUNISHMENT PROCEDURE

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

BACKGROUND

FIRST: Dated December 13, 2021, entered this Agency

Spanish Data Protection a written complaint filed by GUARDIA CIVIL

- POSITION OF ***PUERTO.1 (hereinafter, the complainant), through which he formulates
complaint against A.A.A. with NIF ***NIF.1 (hereinafter, the claimed one), by the facility
of a video surveillance system installed at ***ADDRESS.1, in which the cameras
are directed towards public roads and not being duly signposted

Mandatory informative posters of the video-monitored area.

The documents provided by the claimant are the following:

-

Report made by the FFCCSE in which it is shown that these
same non-compliances were previously detected, denounced
before this Agency, and that they have a written document from the AEPD in which
communicated to the Civil Guard that the defendant had been informed of his
obligations regarding the protection of personal data without the now
reported has proceeded to correct said breaches.

- Photo report

SECOND: Likewise, it should be stated that on September 30, 2020,
received in this Agency a complaint filed by the CIVIL GUARD - POSITION OF
*** POSITION 1 for these same facts that gave rise to the processing of the file
of reference E/08631/2020. Within the framework of said file, a letter was sent to the

denounced, duly notified on October 23, 2020, in which he was informed of the reception of the complaint in the Agency for some facts that would violate the data protection regulations, with regard to the treatment of images and where you could find out about the requirements to carry out carry out personal data processing through this type of device.

THIRD: On March 3, 2022, the Director of the Spanish Agency for Data Protection agreed to initiate a sanctioning procedure against the claimed party, for the alleged infringement of Article 5.1.c) of the RGD and Article 13 of the RGD, typified in Article 83.5 of the RGD.

FOURTH: Notification of the aforementioned start-up agreement in accordance with the established rules in Law 39/2015, of October 1, of the Common Administrative Procedure of the Public Administrations (hereinafter, LPACAP) and after the term granted for the formulation of allegations, it has been verified that no allegation has been received any by the claimed party.

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

2/9

Article 64.2.f) of the LPACAP - provision of which the respondent was informed in the agreement to open the procedure - establishes that if no allegations within the stipulated period on the content of the initiation agreement, when it contains a precise statement about the imputed responsibility, may be considered a resolution proposal. In the present case, the agreement beginning of the sanctioning file determined the facts in which the imputation, the infraction of the RGD attributed to the claimed and the sanction that could

prevail. Therefore, taking into consideration that the respondent has not formulated allegations to the agreement to initiate the file and in attention to what established in article 64.2.f) of the LPACAP, the aforementioned initial agreement is considered in this case proposed resolution.

In view of everything that has been done, by the Spanish Data Protection Agency

In this proceeding, the following are considered proven facts:

PROVEN FACTS

FIRST: The defendant is responsible for a video surveillance system with cameras facing public roads, located at ***ADDRESS.1, and it does not have duly signposted by means of the mandatory area information posters video surveillance

FOUNDATIONS OF LAW

Yo

In accordance with the powers that article 58.2 of Regulation (EU) 2016/679 (General Data Protection Regulation, hereinafter RGPD), grants each control authority and as established in articles 47 and 48.1 of the Law Organic 3/2018, of December 5, on the Protection of Personal Data and guarantee of digital rights (hereinafter, LOPDGDD), is competent to initiate and resolve this procedure the Director of the Spanish Data Protection Agency.

Likewise, article 63.2 of the LOPDGDD determines that: "The procedures processed by the Spanish Agency for Data Protection will be governed by the provisions in Regulation (EU) 2016/679, in this organic law, by the provisions regulations issued in its development and, as long as they do not contradict them, with a subsidiary, by the general rules on administrative procedures."

C/ Jorge Juan, 6

28001 – Madrid

The physical image of a person, in accordance with article 4.1 of the RGPD, is a personnel and their protection, therefore, is the subject of said Regulation. In article 4.2 of the RGPD defines the concept of "treatment" of personal data.

It is, therefore, pertinent to analyze whether the processing of personal data (image of the natural persons) carried out through the reported video surveillance system is in accordance with the provisions of the RGPD.

Article 6.1 of the RGPD establishes the assumptions that allow the legalization of the treatment of personal data.

For its part, article 5.1.c) of the RGPD, regarding the principles of treatment, provides that personal data will be "adequate, relevant and limited to what is necessary in relation to the purposes for which they are processed ("minimization of data")." This article enshrines the principle of data minimization in the treatment of personal data. It assumes that said treatment is adjusted and proportional to the purpose to which it is directed, and the processing of data must be restricted excessive or proceed to suppress them.

The relevance in the processing of the data must occur both in the field of collection of the data as well as in the subsequent treatment that is carried out on them.

Article 13, sections 1 and 2, of the RGPD, establishes the information that must be provided to the interested party at the time of collecting their data. In the case of treatments of personal data for surveillance purposes through camera systems or video cameras, the duty of information can be fulfilled by placing, in the video-monitored areas, an informative badge located in a sufficiently

visible, both in open and closed spaces, and using forms in the

that the planned information is detailed, which the person in charge must make available of those interested.

The content and design of the informative label must comply with the provisions of the Article 22.4 of the LOPDGDD.

On the other hand, in accordance with the provisions of article 22 of the LOPDGDD, referred to specifically to "Processing for video surveillance purposes", the processing of images in public places can only be made -if applicable and prior to the compliance with the legally enforceable requirements-, by the Forces and Bodies of Security, 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.

On some occasions, the protection of private spaces is only possible if the cameras are located in spaces such as facades. Sometimes it is also necessary capture the accesses, doors or entrances, so that, even if the camera is inside the building, it is impossible not to record a minimum and essential of the public road, which is inevitably captured.

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

4/9

For this exception on the protection of private spaces to be applicable,

There must be an alternative installation possibility. In these cases, the responsible of the treatment carried out through cameras will adapt the use of the installation, so that the impact on the rights of third parties (passers-by) is the minimum possible.

In no case will the use of surveillance practices beyond the environment be allowed.

object of the installation, not being able to affect the surrounding public spaces, adjoining buildings and vehicles other than those accessing the guarded space.

In accordance with the foregoing, the processing of images through a system of video surveillance, to be in accordance with current regulations, must comply with the following requirements:

- Respect the principle of proportionality.
- When the system is connected to an alarm center, it can only be installed by a private security company that meets the requirements contemplated in article 5 of Law 5/2014 on Private Security, of April 4.
- The video cameras will not be able to capture images of people who are outside the private space where the video surveillance system is installed, since the treatment of images in public places can only be carried out, unless Government authorization concurs, by the Security Forces and Bodies. Either spaces owned by third parties may be captured or recorded without the consent of their owners, or, where appropriate, of the people who are in them.

This rule admits some exceptions since, on some occasions, for the protection of private spaces, where cameras have been installed on facades or inside, it may be necessary to guarantee the security purpose the recording of a portion of public road. That is, cameras and video cameras installed for the purpose of security will not be able to obtain images of public roads unless it is essential for said purpose, or it is impossible to avoid it due to the location of those and, extraordinarily, the minimum space for said purpose. Therefore, the cameras could exceptionally capture the portion minimally necessary for the intended security purpose.

- The duty to inform those affected provided for in articles 12 and

13 of the RGPD and 22.4 of the LOPDGDD.

Specifically, at least one badge must be placed in video-monitored areas.

informative located in a sufficiently visible place, both in open spaces and closed, which will identify, at least, the existence of a treatment, the identity of the person in charge and the possibility of exercising the rights foreseen in said precepts. Likewise, the information must be kept available to those affected. to which the aforementioned RGPD refers.

- The person in charge must keep a record of treatment activities carried out under its responsibility, including the information to which it makes reference article 30.1 of the RGPD.

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

5/9

- Installed cameras cannot get images from third-party proprietary space and/or public space without duly accredited justified cause, nor can they affect the privacy of passers-by who move freely through the area. not allowed, for Therefore, the placement of cameras towards the private property of neighbors with the purpose to intimidate them or affect their privacy without just cause.

- In no case will the use of surveillance practices beyond the environment be admitted. object of the installation and in particular, not being able to affect public spaces surrounding buildings, adjoining buildings and vehicles other than those accessing the space guarded.

In relation to the above, to facilitate the consultation of interested parties, the Agency

Spanish Data Protection offers through its website

[<https://www.aepd.es>] access to data protection legislation

including the RGPD and the LOPDGDD (section “Reports and resolutions” /

“normative”), as well as the Guide on the use of video cameras for security and other

purposes, as well as the Guide for compliance with the duty to inform (both

available in the “Guides and tools” section).

It is also of interest, in the event of carrying out low-risk data processing, the

facilitates free tool (in the “Guides and tools” section), which through

specific questions, allows to assess the situation of the person in charge with respect to the

treatment of personal data that it carries out, and where appropriate, generate various

documents, informative and contractual clauses, as well as an annex with measures

guidelines considered minimum.

III

In the present case, the respondent has not presented arguments or evidence that

contradict the facts denounced within the period given for it. In accordance with

the evidence that is available and that has not been distorted during the

sanctioning procedure, the defendant is responsible for a system of

video surveillance with cameras oriented to public thoroughfares, located at ***ADDRESS.1, and

it is not duly signposted by means of the mandatory informative posters

video surveillance area. Based on the foregoing, the facts entail a violation

of what is established in articles 5.1 c) and 13 of the RGPD, which implies a commission of

both offenses typified in article 83.5 of the RGPD, which provides the following:

“The infractions of the following dispositions will be sanctioned, in accordance with the

section 2, with administrative fines of a maximum of EUR 20,000,000 or,

in the case of a company, an amount equivalent to 4% of the turnover

global annual total of the previous financial year, choosing the highest amount:

a) The basic principles for the treatment, including the conditions for the

consent under articles 5, 6, 7 and 9; (...)

b) The rights of the interested parties according to articles 12 to 22;

(...)"

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

6/9

For the mere purposes of prescription, article 72.1 of the LOPDGDD qualifies as very serious:

"a) The processing of personal data violating the principles and guarantees established in article 5 of Regulation (EU) 2016/679;

b) The processing of personal data without the concurrence of any of the conditions of legality of the treatment established in article 6 of Regulation (EU) 2016/679;

(...)

h) The omission of the duty to inform the affected party about the processing of their data personal in accordance with the provisions of articles 13 and 14 of the Regulation (EU) 2016/679 and 12 of this Organic Law;"

IV

The corrective powers available to the Spanish Agency for the Protection of Data, as a control authority, is established in article 58.2 of the RGPD. Among them they have the power to impose an administrative fine in accordance with article 83 of the RGPD -article 58.2 i)-, or the power to order the person responsible or in charge of the treatment that the treatment operations comply with the provisions of the GDPR, where applicable, in a certain way and within a specified term -article 58. 2 d). According to the provisions of article 83.2 of the RGPD,

the measure provided for in article 58.2 d) of the aforementioned Regulation is compatible with the sanction consisting of an administrative fine.

In this case, based on the facts set forth, it is considered that the sanction that should be imposed is an administrative fine for each of the offenses committed. The fine imposed must be, in each individual case, effective, proportionate and dissuasive, in accordance with article 83.1 of the RGPD. finally determining the administrative fine to be imposed, the provisions of the article 83.2 of the RGPD, which indicates:

"two. Administrative fines will be imposed, depending on the circumstances of each individual case, in addition to or as a substitute for the measures contemplated in the Article 58, paragraph 2, letters a) to h) and j). When deciding to impose a fine administration and its amount in each individual case will be duly taken into account:

a) the nature, seriousness and duration of the offence, taking into account the nature, scope or purpose of the processing operation in question, as well such as the number of interested parties affected and the level of damages that have suffered;

b) intentionality or negligence in the infringement;

c) any measure taken by the controller or processor to alleviate the damages suffered by the interested parties;

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

7/9

d) the degree of responsibility of the person in charge or of the person in charge of the treatment, taking into account the technical or organizational measures that they have applied under

of articles 25 and 32;

e) any previous infringement committed by the person in charge or the person in charge of the treatment;

f) the degree of cooperation with the supervisory authority in order to remedy the

infringement and mitigate the possible adverse effects of the infringement;

g) the categories of personal data affected by the infringement;

h) the way in which the supervisory authority became aware of the infringement, in

particular whether the person in charge or the person in charge notified the infringement and, if so, in what measure;

i) when the measures indicated in article 58, section 2, have been ordered

previously against the person in charge or the person in charge in question in relation to the same matter, compliance with said measures;

j) adherence to codes of conduct under article 40 or mechanisms of

certification approved in accordance with article 42,

k) any other aggravating or mitigating factor applicable to the circumstances of the case,

such as financial benefits obtained or losses avoided, directly or

indirectly, through the infringement.

For its part, in relation to letter k) of article 83.2 of the RGPD, the LOPDGDD, in

its article 76, "Sanctions and corrective measures", provides:

"1. The penalties provided for in sections 4, 5 and 6 of article 83 of the Regulation

(EU) 2016/679 will be applied taking into account the graduation criteria

established in section 2 of the aforementioned article.

2. In accordance with the provisions of article 83.2.k) of Regulation (EU) 2016/679

may also be taken into account:

a) The continuing nature of the offence.

b) The link between the activity of the offender and the performance of treatment of personal information.

- c) The profits obtained as a result of committing the offence.
- d) The possibility that the conduct of the affected party could have included the commission of the offence.
- e) The existence of a merger by absorption process subsequent to the commission of the infringement, which cannot be attributed to the absorbing entity
- f) Affectation of the rights of minors
- g) Have, when not mandatory, a data protection officer.
- h) Submission by the person in charge or person in charge, on a voluntary basis, to alternative conflict resolution mechanisms, in those cases in which exist interested".

among those

controversies

any

Y

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

8/9

The balance of the circumstances contemplated, with respect to the infraction committed by violating the provisions of articles 5.1 c) and 13 of the RGPD, it allows a fine to be set €300 (THREE HUNDRED EUROS) for each of them.

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

Spanish Data Protection Agency RESOLVES:

FIRST: IMPOSE A.A.A., with NIF ***NIF.1, for an infraction of articles

5.1.c) and 13 of the RGPD, both typified in article 83.5 of the RGPD, two sanctions

€300 (THREE HUNDRED EUROS) respectively, which adds up to a total amount of

€600 (SIX HUNDRED EUROS).

SECOND: REQUIRE A.A.A., with NIF ***NIF.1, under the provisions of the

article 58.2 d) of the RGPD, so that within ten business days from this act

of notification accredits before this body the adoption of the following measures:

- The removal of the camera from the current location, or its reorientation towards

your particular area.

- The placement of the informative device in the video-monitored areas or complete

the information offered in it (it must identify, at least, the existence of a

treatment, the identity of the person in charge and the possibility of exercising the rights

foreseen in said precepts), locating this device in a sufficiently

visible, both in open and closed spaces.

- Keep available to those affected the information referred to in the aforementioned

GDPR

THIRD: NOTIFY this resolution to A.A.A.

FOURTH: Warn the sanctioned party that he must make the imposed sanction effective once

Once this resolution is enforceable, in accordance with the provisions of the

art. 98.1.b) of Law 39/2015, of October 1, on Administrative Procedure

Common Public Administrations (hereinafter LPACAP), within the payment term

voluntary established in art. 68 of the General Collection Regulations, approved

by Royal Decree 939/2005, of July 29, in relation to art. 62 of Law 58/2003,

of December 17, through its entry, indicating the NIF of the sanctioned and the number

of procedure that appears in the heading of this document, in the account

restricted number ES00 0000 0000 0000 0000 0000, opened on behalf of the Agency

Spanish Department of Data Protection in the banking entity CAIXABANK, S.A.. In case

Otherwise, it will be collected in the executive period.

Received the notification and once executed, if the date of execution is

between the 1st and 15th of each month, both inclusive, the term to make the payment

voluntary will be until the 20th day of the following month or immediately after, and if

between the 16th and last day of each month, both inclusive, the payment term

It will be until the 5th of the second following month or immediately after.

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

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

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

9/9

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 month from

counting 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.

Finally, it is pointed out that in accordance with the provisions of art. 90.3 a) of the LPACAP,

may provisionally suspend the firm resolution in administrative proceedings if the

The interested party expresses his intention to file a contentious-administrative appeal.

If this is the case, the interested party must formally communicate this fact by

writing addressed to the Spanish Agency for Data Protection, presenting it through

Electronic Register of the Agency [<https://sedeagpd.gob.es/sede-electronica->

web/], or through any of the other registers provided for in art. 16.4 of the

aforementioned Law 39/2015, of October 1. You must also transfer to the Agency the

documentation proving the effective filing of the contentious appeal-

administrative. If the Agency was not aware of the filing of the appeal

contentious-administrative within a period of two months from the day following the

notification of this resolution would end the precautionary suspension.

Sea Spain Marti

Director of the Spanish Data Protection Agency

938-050522

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es