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National Data Protection Commission

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OPINION/2022/38

## I. Order

1. By order of the then Assistant Secretary of State and Internal Administration, received on March 22, 2022, an opinion was requested from the National Data Protection Commission (CNPd) on the request for authorization to implement a video surveillance system in the Palace of Belém - Presidency of the Republic, in Lisbon, submitted by the Public Security Police (hereinafter PSP).

2. The request was submitted under article 5 of Law No. 95/2021, of 29 December, which regulates the use and access by security forces and services and by the National Emergency and Civil Protection Authority to video surveillance systems for capturing, recording and processing images and sound.

3. The request is accompanied by several annexes, which make up the reasoning, among which the impact assessment on data protection (AIPD) stands out.

## II. Analysis

### i. The competence of the CNPD

4. The competence of the CNPD to consider the present request is established in paragraph 3 of article 5, of Law no. compliance with the rules regarding the security of the processing of the data collected and with the provisions of paragraphs 4 to 6 of article 4 and articles 16, 18 to 20 and 22 of that legal diploma , with the highlights that we will now mention, which delimit the object of this opinion.

5. Thus, in accordance with the provisions listed in the normative segments of the aforementioned article 4, the object of this opinion is the observation of respect for the prohibition of installation and use of fixed or portable cameras in areas that, despite being located in public places , which, by their nature, are intended to be used as a guard (paragraph 4). But also by the use of video cameras when the capture of images and sounds involves the interior of an inhabited house or building or its

dependence or of hotels and similar establishments (nº 5), and, in general, when this capture affects , directly and immediately, the sphere of the reserve of intimate and private life (nº 6).

6. With regard to the processing of personal data, its collection and subsequent processing will also be the object of this opinion, especially when carried out through an analytical management system of the captured data, by application of technical criteria, according to the purpose of the system to be implemented (Article 16 of Law No. 95/2021).

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7. Still within the scope of processing, it will still be necessary to inquire about the procedural aspects (Article 18 of Law No. 95/2021), the conservation of recordings (Article 19 of Law No. 95/2021) and whether All persons included in recordings obtained in accordance with the aforementioned law are guaranteed the rights of information, access and elimination, with the exceptions provided for by law (Article 20 of Law No. 95/2021).

8. Finally, within the scope of disseminating the system, the CNPD must also verify the installation conditions, especially its existence and purpose (Article 22 of Law No. 95/2021).

ii. The video surveillance system and the purposes of processing personal data

9. The video surveillance system (hereinafter SVV or simply System) is directed essentially at the Palácio Nacional de Belém, which, in addition to being the Official Residence of the President of the Republic, also houses the Museum of the Presidency of the Republic.

10. With the aim of security, the implementation of the SVV is justified through four vectors: i) prevention, being a deterrent to potential offenders; ii) resource management, allowing them to be maximized in human and technical-police terms; iii) operational, enabling the speeding up of a police response in real time; iv) criminal investigation, enabling the identification of the perpetrators and the subsequent criminal liability when this is at stake, especially of terrorism crimes, falling under lines a),

b), d) and e) of paragraph 1 of article 3 . of Law No. 95/2021.

11.0 SVV integrates 92 (ninety-two) fixed video cameras, of which 81 (eighty-one) are on the interior coverage, while 11 (eleven) are capable of capturing images of the private space with public access, as well as the surrounding public space, as we will need to.

12. The interior coverage is directed towards the buildings that make up the Palácio Nacional de Belém, covering the existing buildings, patios, gardens and interior streets, as well as the private space with public access (Tropical Botanical Garden).

13. In turn, the surrounding public space comprises the buildings, public sidewalks and lanes delimiting the Palácio Nacional de Belém.

14. As stated, the SVV does not make audio recordings, further stating that «[...] it is not recording audio» (cf. Annex B).

15. It is also clarified that the system does not perform data analytics.

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16. Also as stated, the SVV in terms of capturing images is equipped with the technical capacity to implement protective masks, as well as to delimit the rotation movements of video cameras, both in the horizontal and vertical plane.

17. Through these technical procedures, it is possible to regulate the capture of images that affect, in a direct and immediate way, the sphere of the reserve of intimate and private life, such as the interior of inhabited houses or buildings or their dependencies.

18. However, as regards surveillance locations and filming angles, the statement of reasons accompanying the request does not present the likely angles of view of the cameras (cf. Annex A). The documentation identifies the location, but does not present frames with the likely capture of the footage. Thus, taking as an example camera no. 2, it is described as “It is intended to capture images of the Coach Museum (Picadeiro Real), adjacent sidewalks and the carriageway (Rua de Belém)”. Since there are numerous private buildings on the opposite side of Calçada da Ajuda, it is not clear whether the possible viewing angles of this camera cover such buildings and, if so, what application was designed for privacy masks.

19. However, in view of such omissions, the CNPD cannot verify whether the SVV complies with the limits or prohibitions set

out in paragraphs 5 and 6 of article 4 of Law No. 95/2021, in particular the prohibition of capturing images of the interior of houses or buildings inhabited outside the Palácio Nacional de Belém or hotels and similar establishments, and capturing images that directly and immediately affect the sphere of private and private life of citizens.

iii. The security of the video surveillance system

20. Regarding the system's security measures, although it is specified in the grounds accompanying the request that the cameras have anti-vandalism characteristics, there is no reference to "anti-tampering" alarm mechanisms, which is recommended. It is also recommended that the system includes intrusion alarms in the communication cabinets where the cameras are connected.

21. From what is stated in Annex B (p. 19) which accompanies the request, it appears that the operators' computers will be able to access the cameras. In this regard, the CNPD points out that it is good practice that only the system server is on the camera network, with access to the same, and the operators' computers must ensure that the images are viewed from the server. In this way, it is guaranteed that all accesses and other operations are centrally auditable in the system.

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22. Still in relation to security measures, in addition to the two access profiles already provided (access to real-time images and access to recorded images), an access profile to the image extraction functionality must also be created, the which must correspond to privileged access, therefore not recognized by all operators with permission to view the images. There must also be a specific record of which chambers and time interval in the extraction, as well as the person responsible for its execution.

23. Regarding authentication and user profiles, it is stated in Annex B that access to the video surveillance system depends on the introduction "[...] of two distinct, personal and non-transferable encodings: "username" and "password" ». It is recommended to adopt a double authentication factor, which, in the present scenario, could, for example, lead to an access code to the control room and a password to access the video surveillance application.

24. A final note, to point out that, although the availability of recorded images is ensured in the event of storage failures, the solution provided for in the event of accidental deletion does not cover all of the cameras. The CNPD recommends

implementing a backup system capable of also guaranteeing the availability of images for a period of 30 days.

iv. The integrity of recordings and the auditability of data processing

25. With regard to the extraction of images for sending them to the Public Prosecutor's Office, pursuant to article 18 of Law No. 95/2021, it is not explained how recordings of the 30-day file rotation are preserved in the system. It is therefore recommended that the SVV management software solution include mechanisms that enable the export in digital format, digitally signed, which attests to the veracity of its content; as well as encryption mechanisms, if you want to protect the export with a password or other security factor.

26. The existence of electronic records (log) of all interventions in the system is foreseen (cf. Annex E that accompanies the request), for the purpose of auditing the processing of personal data. The CNPD recommends, in this regard, the definition of a record retention policy, specifying the time period for retention and disposal of the corresponding monthly records, as well as the forecast of the respective indicators.

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v. the subcontracting

27. Regarding the installation and maintenance of the video surveillance system, because it is directly related to information security and the system's ability to fulfill the intended purposes, it is important to emphasize that this obligation falls on the data controller, regardless of whether who owns the video cameras and other equipment that make up the system.

28. Establishing Law No. 95/2021, in paragraph 1 of article 17, that the person responsible for processing the data is the requesting security force or service, any subcontracting in a company to ensure the maintenance or replacement of the equipment has to be formalized, contractually, with the PSP. If there is a contract signed between the Presidency of the Republic and a company to ensure maintenance and technical assistance to the video surveillance system, that contract must be framed under the terms of article 23 of Law No. August.

29. It is therefore important that a legal act be signed that specifically regulates the relationship between the PSP and the Presidency of the Republic, ensuring the domain of the processing of personal data by the person responsible for that treatment - which is the PSP -, also in the relationship with the company hired by the Presidency of the Republic.

### III. Conclusion

30. The CNPD, within the scope of its strict legal competence and based on the aforementioned, points out that:

The. the request does not come with the essential information to assess whether the application of privacy masks safeguards the limits defined in paragraphs 4 to 6 of article 5 of Law no. to neighboring buildings intended for residential housing and the hotel unit;

B. being responsible for the processing of personal data, under the terms of the law, the PSP, must be expressly framed by article 23 of Law no. 29 and 20.

ç. Measures capable of guaranteeing the security of the system and the auditability of the processing of personal data are adopted, as indicated above, in points 20 to 27.

Approved at the meeting of May 3, 2022

Filipa Calvão (President)

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