

938-0419

Procedure No.: PS/00368/2018

RESOLUTION OF PUNISHMENT PROCEDURE

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

BACKGROUND

FIRST: Dated 06/06/2018, you have entered this Agency in writing from the MANAGEMENT
GENERAL OF THE POLICE AND THE CIVIL GUARD (hereinafter the claimant), in the
that on the occasion of an inspection at the KARMA establishment, located on Carretera A4,
direction Madrid, Vía Polígono industrial Los Albardiales, km 54, municipal district of
Ontígola, Toledo, on 05/17/2018 they draw up the minutes and provide a copy thereof, communicating
a potential breach of the GDPR. It is indicated that there are cameras in the establishment both in
the interior as well as the exterior, and that there are cameras that record the public thoroughfare, collecting great
part of the sidewalk. There is an informative poster of the system at the access door to the premises that
It lacks an address before which to exercise rights. Identifies the person inspected
as KARMA SHOW GIRLS SL (hereinafter the claimed).

Three photographs accompany:

-In number 1, there is a camera on the façade, near a window with bars. The
focus angle is open to the right. On the left side it can be seen that the
wall so the camera would be on the left side of the facade, focusing on your
right.

In photo 2, you can see an informative sign for video surveillance, SIOMAX 24 hours, "zone
video surveillance" in which, according to the claimant, there is no address to go to exercise
rights.

In photo 3, you can see a monitor with images of the interior of the premises and the exterior. Of

outside there are three different shots, one captures the front entrance of the establishment, the other two side shots from different angles, of the same entrance. One of the shots captured it could be with the camera in photo number 1 because it focuses on a side sweep to the left taking some metal bars of considerable height. Another shot focuses more on the center of the door, aerial shot picking up four or five metal bars to the right and one to the left, the separation being the space for the entrance through the door. The last take, it is the most aerial. The three images focus excessively on public roads, capturing not only the entrance but the sidewalk and the road that passes next to it and in one the zebra crossing near.

SECOND: On 06/21/2018 the Inspection Service of this Agency sends a written to the one claimed with the literal:

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2/9

“This Agency has received a communication in which it is shown the existence of a video surveillance installation of its ownership, which presents some deficiencies in compliance with the requirements set forth in the regulations for the protection of data, which can be consulted on the website www.aepd.es, through the section Areas of action (video surveillance).

So that the Agency can assess the actions carried out by you for the adequacy of the system to the aforementioned requirements, I require that, within the maximum period of one month from receipt of this notification, send to this Agency detailed documentation that can prove that the aforementioned installation is in accordance with the data protection regulations and that, in particular, is duly marked and has been

limited the capturing of images of adjoining land and houses or of any other

foreign space, providing recent graphic documents duly dated. “

Having been sent by the electronic notification system notific@,

After 10 days, the shipment was not opened, meaning it was rejected. In view of this, it

sent by postal mail, being delivered on 07/09/2018.

After the time granted, no response was received.

THIRD: On 11/8/2018, the director of the AEPD agreed to admit it for processing

of the claim, being sent to the claimant.

FOURTH: On 04/29/2019, it was agreed to start a sanctioning procedure with

warnings for KARMA SHOW GIRLS SL for violations of articles 12 and 6.1.a)

of the GDPR.

FIFTH: The shipment was sent through the "notify" platform, part of the Service of

Electronic Notifications (SNE) and Authorized Electronic Address, (DEH) in accordance with

Order PRE/878/2010 and Royal Decree 769/2017, of 07/28 for the Support service of the

Electronic Notification Service and Authorized Electronic Address, including a

certificate which means that:

Reference: 86259545cc7f0517e5bb

Acting Administration: Spanish Data Protection Agency (AEPD)

Holder: KARMA SHOW GIRLS SL - B45828431

Subject: "Notification available in the Folder or DEH of the indicated holder"

with the following result:

Availability date: 04/30/2019 08:51:03

Automatic rejection date: 05/11/2019 00:00:00

Automatic rejection generally occurs after ten days have elapsed.

from its availability for access according to paragraph 2, article 43, of

Law 39/2015, of 1/10, of the Common Administrative Procedure of the Administrations

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3/9

Public (LPCAP). And in a particular way, after the term established by the Administration acting in accordance with the specific legal regulations that apply.”

The LPCAP adds in its article 14 "Right and obligation to relate electronically with the Public Administrations

2. In any case, they will be obliged to interact through electronic means with the Public Administrations to carry out any process of a procedure administrative, at least the following subjects:

a) Legal persons.”

And it is specified in article 41” General conditions for the practice of notifications

"1. The notifications will preferably be made by electronic means and, in all case, when the interested party is obliged to receive them by this means.

Notwithstanding the foregoing, the Administrations may make notifications by means of non-electronic in the following cases:

a) When the notification is made on the occasion of the spontaneous appearance of the The interested party or his representative at the registration assistance offices and request personal communication or notification at that time.

b) When, in order to ensure the effectiveness of the administrative action, it is necessary practice the notification by direct delivery of a public employee of the Notifying Administration.

Regardless of the means used, notifications will be valid as long as allow to have proof of its sending or making available, of the reception or access by

the interested party or his representative, their dates and times, the full content, and the reliable identity of the sender and recipient thereof. The accreditation of the notification made will be incorporated into the file.”

As a consequence, the notification of the agreement is understood to have been produced with all the legal effects.

Although the initial agreement indicated that "if within the stipulated period it does not carry out allegations to this initial agreement, it may be considered a proposal for resolution, as established in article 64.2.f) of Law 39/2015, of October 1, of the Common Administrative Procedure of Public Administrations (hereinafter, LPACAP).”, it is considered appropriate to submit this proposal to adjust the treatment to the proceeding.

SIXTH: A resolution proposal is issued with the literal:

“1-That the Director of the Spanish Agency for Data Protection sanction to KARMA SHOW GIRLS S.L., with NIF B45828431, for an infraction of article 6.1 of the RGD, typified in Article 83.5 of the RGD, with a warning.

2-That the Director of the Spanish Data Protection Agency sanction

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28001 – Madrid

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4/9

KARMA SHOW GIRLS S.L., with NIF B45828431, for an infringement of article 12 of the RGD, typified in Article 83.5 of the RGD, with a warning.

3-Order the controller, KARMA SHOW GIRLS S.L., that the treatment operations comply with the provisions of the RGD in the sense of putting end to the taking of images of the disproportionate part of the public road, not necessary

for the purpose of surveillance, and complete the information on the poster or posters informative and made available to users. This adaptation can be credited with the means of proof that it deems appropriate, also serving the taking of images of the monitors and identification of the cameras that capture each shot, as well as a sketch of the camera situation.”

SEVENTH: Faced with the proposal, a written request is received from the respondent. In it he indicates that the cameras were installed by the security company SIOMAX SEGURIDAD SL for security and internal control reasons. The interiors are all located in areas common and indicated with signs.

The exterior cameras, three, are located on the two facades of the premises, capturing its façade and the essential part of the street to be able to see who enters ”It is true that from the outside, it seems that they capture more of the image of public thoroughfares due to their location, but they were digitally layered in the form of patches like show the accompanying photos in recording mode so that they do not record the part under shading but not set to live view on indoor monitor did the same, a defect that has now been corrected and programmed in the same way, as can be seen in the photo of the monitor itself”. Request that the procedure be archived, after have fulfilled the measures.

-they provide in document 1, photographs of the camera and its field of vision, where "it is proves that at no time is an image outside the private area captured”.

Examined the photos you can see:

-Image photo camera 1, is the one that corresponded to the first on the left of the monitor, in which the public road was seen disproportionately, seeing the four or five metal bars to the right and one to the left, focusing on the access area. The new one photo has some black masks that do not reveal the excess of public roads, only the part of the entrance.

-The photo image 2 is the left lateral sweep, obtained with the camera that in the account of events indicated is photograph 1 and is in the new image provided, masked in black the space that exceeded parts of the public road

On the third image from the right of the monitor, now it provides image camera 3 in that the part of the public thoroughfare appears masked.

Provides photography of information posters of the video surveillance system with the responsible, and the venue in which to exercise the rights.

Finally, it provides a photo of the monitor with the images and the patching.

PROVEN FACTS

1)

On 06/06/2018, you have entered this Agency in writing from (hereinafter the claimant), in which the GENERAL DIRECTORATE OF THE POLICE AND THE GUARD

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5/9

CIVIL on the occasion of an inspection at the KARMA establishment, located on Carretera A4, direction Madrid, Vía Polígono industrial Los Albardiales, km 54, municipal district of Ontígola, Toledo, on 05/17/2018 drew up minutes and communicated a possible infraction to the AEPD of the GDPR. It is indicated that the establishment has cameras both inside and outside. outside, and that there are cameras that record the public road, collecting a large part of the sidewalk. It is also indicated in the minutes that there is an informative poster of the system at the door of access to the premises that lacks address before which to exercise the rights.

The certificate identifies the inspected person as KARMA SHOW GIRLS SL.

Attached to the minutes are three photographs:

It is indicated that the establishment has cameras both inside and outside.

outside, and that there are cameras that record the public road, collecting a large part of the sidewalk.

There is an informative poster of the system at the access door to the premises that lacks

address before which to exercise the rights. Identifies the person inspected as

KARMA SHOW GIRLS SL (hereinafter the claimed).

Three photographs accompany:

-In number 1, there is a camera on the façade, near a window with bars. The

focus angle is open to the right. On the left side it can be seen that the

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two side shots from different angles, of the same entrance. One of the shots captured

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taking some metal bars of considerable height. Another shot focuses more on the

center of the door, aerial shot picking up four or five metal bars to the right and

one to the left, the separation being the space for the entrance through the door. The last

take, it is the most aerial. The three images focus excessively on public roads, capturing not

only the entrance but the sidewalk and the road that passes next to it and in one the zebra crossing

near.

2) After receipt of the proposal, the claimed party has modified the images that

they captured the public road, adding a mask that does not allow viewing such road spaces

public. Likewise, it has modified the informative poster by completing the person in charge and the headquarters

before which to exercise rights.

FOUNDATIONS OF LAW

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By virtue of the powers that article 58.2 of the RGD recognizes to each authority of control, and as established in arts. 47 and 48.1 of the LOPDGD, the Director of the Spanish Agency for Data Protection is competent to resolve this procedure.

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6/9

II

Article 22 of Organic Law 3/2018, of 5/12, on Data Protection

Personal and guarantee of digital rights (hereinafter LOPDGD) indicates: "

Processing for video surveillance purposes

1. Natural or legal persons, public or private, may carry out the treatment of images through camera systems or video cameras in order to preserve the safety of people and goods, as well as its facilities.
2. Images of public roads may only be captured to the extent that it is essential for the purpose mentioned in the previous section...
4. The duty of information provided for in article 12 of Regulation (EU) 2016/679 is understood fulfilled by placing an informative device instead sufficiently visible identifying, at least, the existence of the treatment, the identity of the responsible and the possibility of exercising the rights provided for in articles 15 to 22 of the Regulation (EU) 2016/679. A code may also be included in the informative device of connection or internet address to this information."

In any case, the person in charge of the treatment must keep available to the affected the information referred to in the aforementioned regulation.”

Article 12.1 of the RGPD states: “1. The data controller will take the appropriate measures to provide the interested party with all the information indicated in articles 13 and 14” The RGPD lists the categories of information that must be provided to a data subject in relation to the processing of your personal data in the cases in which they are collected of the same (article 13) or obtained from another source (article 14).

12.7 indicates: "The information that must be provided to the interested parties by virtue of Articles 13 and 14 may be transmitted in combination with standardized icons that allow to provide in an easily visible, intelligible and clearly legible form a adequate overview of the planned treatment”

In terms of video surveillance of premises, to comply with the right to information, An informative badge must be used that must be displayed in a visible place, and as minimum, in the accesses to the monitored areas, whether they are interior or exterior. If the video-monitored space has several entrances, said badge must be available of video-monitored area in each of them.

So that not all the information is contained in the badge, it can be done in layers. The design and layout of the first layer of the privacy statement or notice on the badge must be such that the interested party has a clear view of the information available on the processing of your personal data, where and how you can find such detailed information within the layers of the privacy statement or notice.

It is recommended that the first layer or modality inserted in the warning icon of video-surveillance area contains the most important information, the details of the purpose of the treatment, the identity of the person in charge and a description of the rights of the interested party,

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28001 – Madrid

legal basis of the treatment and identification of the person in charge of the treatment and form of Contact. The importance of providing this information in advance arises, in particular, of recital 39 of the RGD, not being necessary to specify the location requires surveillance equipment; however, the context of the surveillance.

Thus, in summary, on the sign or sign of the video-monitored area, you must inform about:

- 1 -The existence of the treatment (video surveillance).
- 2 -The identity of the data controller or the video surveillance system, and the address of the same.
- 3 -The possibility of exercising the rights recognized in articles 15 to 22 of the RGD.
- 4
-Where to obtain more information about the processing of personal data.

Second layer information should be readily available in one place accessible to the interested party, be it an information sheet at a reception, cashier, etc. or placed in a visible public space, or refer to a web address with the rest of the elements of article 13 of the RGD.

The AEPD in its role of disseminating and helping to comply with the regulations for the protection of data has edited and is available on its website, the "GUIDE ON THE USE OF VIDEO CAMERAS FOR SECURITY AND OTHER PURPOSES" that contains what is necessary for compliance with the duty to inform.

According to the information contained in the complaint, it has been confirmed that in the establishment of the claimed one the aforementioned complete poster did not appear, since it must

indicate the person responsible for data processing, the venue in which to exercise the rights, and the rest of the information can be sent to the query, for example, the website of the establishment or in the same establishment.

III

Another of the requirements that image processing must meet through a video surveillance system to be in accordance with current regulations is that the camcorders will not be able to capture images of people 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 it is concurred government authorization, by the Security Forces and Bodies. They also can't recording spaces owned by third parties without the consent of their owners. this rule admits some exception since, on some occasions, for the protection of spaces private, where cameras have been installed on facades or inside, it can be necessary to guarantee the purpose of security the recording of a portion of the road public. That is, cameras and video cameras installed for security purposes may not obtain images of public roads unless it is essential for that purpose, or it is impossible to avoid it due to their location. Therefore, the cameras could exceptionally capture a portion minimally necessary for the purpose security that is intended.

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8/9

It is clear that the claimed had three cameras, which with different approaches from different surfaces were taking up space from the public thoroughfare of

free access for any person, being able to collect their data if it were the
in case they moved through said space, in front of the establishment and in a lateral part. the
Images captured in this way conform to the concept of personal data. uptake of
images of people through video surveillance cameras and their transmission to a monitor,
where it is viewed, even when the system is limited to enabling its viewing, and not its
recording, by reproducing the image of individuals, constitutes an act of
processing of personal data that provides information on natural persons
identifiable about their personal image, where they are and activity that
they perform.

In this sense, the facts suppose on the part of KARMA SHOW GIRLS S.L. the
commission of an infringement of article 6.1.a) of the RGPD.

Article 83.5 of the RGPD indicates:

IV

“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, of an amount equivalent to a maximum of 4% of the total turnover
annual global of the previous financial year, opting for the highest amount:

- a) the basic principles for treatment, including the conditions for consent
according to articles 5, 6, 7 and 9;
- b) the rights of the interested parties according to articles 12 to 22;

KARMA SHOW GIRLS S.L. by violating article 12 and 6.1 a of the RGPD has committed
two infractions, of article 83.5 a) and 83.5.b) of the RGPD.

v

Article 58.2 of the RGPD establishes what are the corrective powers of the
Control Authority, in the event of an infraction of its precepts. This article
provides the following:

“2. Each control authority will have all the following corrective powers

listed below:

b) sanction any person responsible or in charge of the treatment with a warning when the

treatment operations have violated the provisions of this Regulation;

d) order the person in charge or in charge of the treatment that the treatment operations

comply with the provisions of this Regulation, where appropriate, in a

certain manner and within a specified period;

In the present case, considering that the treatment in the

proposal, it is not appropriate to regularize the treatment operations, but to declare that the

offenses have been committed.

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28001 – Madrid

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9/9

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: IMPOSE KARMA SHOW GIRLS S.L., with NIF B45828431, for a

violation of article 6.1. a) of the RGPD, as determined in article 83.5 a) of the RGPD,

a sanction of warning, as established in article 58.2.b) of the aforementioned RGPD.

SECOND: IMPOSE KARMA SHOW GIRLS S.L., with NIF B45828431, for a

infringement of article 12 of the RGPD, as determined by article 83.5 a) of the RGPD, a

sanction of warning, as established in article 58.2.b) of the aforementioned RGPD.

THIRD: NOTIFY this resolution to KARMA SHOW GIRLS S.L..

FOURTH: In accordance with the provisions of article 50 of the LOPDPGDD, 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 LOPDPGDD, 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 one month from the day following the notification of this resolution or directly contentious appeal before the Contentious-Administrative Chamber of the National High Court, with in accordance with the provisions of article 25 and section 5 of the fourth additional provision of Law 29/1998, of 07/13 regulating the Contentious-administrative Jurisdiction, in the period of two months from the day following the notification of this act, as provided for 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 interested party states its intention to file a contentious-administrative appeal. If this is the In this case, the interested party must formally communicate this fact in writing addressed to the Spanish Agency for Data Protection, presenting it through the Electronic Registry of the Agency [<https://sedeagpd.gob.es/sede-electronica-web/>], or through any of the remaining records provided for in art. 16.4 of the aforementioned Law 39/2015, of 1/10. Also must transfer to the Agency the documentation that accredits the effective filing of the Sponsored links. If the Agency was not aware of the filing contentious-administrative appeal within 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

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