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National Data Protection Commission

OPINION/2021/84

## I. Order

1. By order of the Assistant Secretary of State and Internal Administration, an opinion was requested from the National Data Protection Commission (CNPd) on the request for authorization to extend the video surveillance system in the Municipality of Leiria, submitted by the Public Security Police (PSP).
2. The CNPD considers the request under the terms of paragraph 2 of article 3 of Law no. 1/2005, of 10 January, amended and republished by Law no. 9/2012, of 23 February (hereinafter, Law No. 1/2005), which regulates the use of video cameras by security forces and services in public places of common use, for capturing and recording images and sound and their subsequent processing.
3. The request is accompanied by a document containing the grounds for the request and the system's technical information, hereinafter referred to as "Rationale", as well as the data protection impact assessment (AIPD).

## II. appreciation

- i. Object of the opinion to be issued under the terms of article 3 of Law No. 1/2005, of 10 January

4. Pursuant to paragraph 2 of article 3 of Law no. 1/2005, the CNPD's opinion is limited to pronouncing on the compliance of the request with the rules regarding the security of the treatment of the collected data, as well as as well as about the special security measures to be implemented, adequate to guarantee entry controls on the premises, data carriers, insertion, use, access, transmission, introduction and transport and, as well as verification of compliance with the duty of information and before whom the rights of access and rectification can be exercised.
5. Pursuant to the provisions of the same legal precept and paragraphs 4, 6 and 7 of article 7 of that law, the CNPD's opinion is also subject to respect for the prohibition of installing fixed cameras in areas that, despite being located in public places, are, by their nature, intended to be used in guarding or the use of video cameras when the capture of images and sounds covers the interior of an inhabited house or building or its dependence, or when this capture affects , directly and immediately, the

privacy of people, or results in the recording of conversations of a private nature.

6. The CNPD must also verify that all persons appearing in recordings obtained in accordance with this law are guaranteed the rights of access and elimination, with the exceptions provided for by law.

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PAR/2021/36

1v.

7. Pursuant to paragraph 7 of article 3 of the same law, the CNPD may also formulate recommendations with a view to ensuring the purposes set out in the law, subjecting the issuance of a totally positive opinion to the verification of the completeness of the fulfillment of its recommendations.

ii. The purposes of the treatment resulting from Video Surveillance in public places of common use in the Municipality of Leiria

8. Notwithstanding, under the terms of the legal powers defined in Law no. 1/2005, it is not up to the CNPD to pronounce on the proportionality of the use of video surveillance systems in public places of common use, this competence already exists when it comes to cameras are installed in areas that are, by their nature, intended to be used for guarding or capturing images or sound that directly and immediately affect people's privacy, or result in the recording of conversations of a private nature (cf. paragraphs 4 and 7 of article 7 of Law no. 1/2005).

9. The extension of the video surveillance system in the Municipality of Leiria implies the processing of personal data which, due to its scope and extent, is likely to significantly affect the private life of people who circulate or are in the municipality of Leiria.

10. In fact, it is intended to increase the number of cameras in relation to the current video surveillance system, more than tripling the number currently in existence - to the current 19 cameras it is intended to add 42 cameras (cf. total of 61 video surveillance cameras. In addition to the extent of the processing of personal data, it should also be considered here that such cameras have the ability to rotate and enlarge the image, which means the ability to capture, in all directions and with great acuity, images of people and vehicles. , which adds the possibility of capturing sound.

11. It is recalled that the processing of data has, as stated, two purposes: the purpose of protecting people and goods, public and private, and preventing the practice of facts qualified by law as crimes, in places where there is a reasonable risk of their

occurrence, on the one hand, and the prevention and repression of traffic offences, on the other hand, pursuant to subparagraphs c) and d) of paragraph 2 of Law n.º 1/2005. For the first purpose, 33 chambers are now added, while for the second purpose 9 chambers are intended.

12. Annex B of the Statement of Grounds provides for the adoption of measures aimed at safeguarding people's privacy, through the application of image masks, which substantially mitigates the impact on privacy. However, the possibility of deleting or altering them is also foreseen, which, not being explained under what conditions it can occur, does not allow to judge on the proportionality of the processing of personal data under the terms of article 7 of Law no. 1/2005.

PAR/2021/36

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CMPB>

National Data Protection Commission

13.0 is the same for the sound capture functionality.

14. It is insisted that the capture of sound and the capture of images of people in their homes and in spaces that deserve protection greatly impact privacy, and cannot be dependent on the subjective criteria of the agent who is currently operating the system, demanding, therefore, precise guidelines.

iii. Responsible for treatment

15. The CNPD also highlights that the person responsible for processing personal data can only be the PSP, which is why it is strange that, in Annex C of the Justification, this responsibility is also attributed to the Data Protection Officer. Indeed, it states that the conservation and processing of data collected through the video surveillance system is the responsibility of «Data Protection Officer» (and identified there), in addition to «PSP - Head of the Operational Area of the Leiria District Command».

16. It is reiterated that the Data Protection Officer's intervention in all these procedures can only be advisory or control, and he does not have, under the law, decision-making powers on the processing of personal data and, therefore, , and cannot be held responsible for its implementation (cf. article 35 of Law No. 59/2019, of 8 August).

iv. subcontracting

17. 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 underline that this obligation falls on the data

controller, regardless of whether who owns the video cameras and other equipment that make up the system.

18. Establishing Law No. 1/2005, in Article 2(2), that the data controller is the security force with jurisdiction in the catchment area or the requesting security service, any subcontracting in company to ensure the maintenance or replacement of equipment must be formalized, contractually, with the PSP. It is not excluded that the PSP subcontracts the Municipality of Leiria, which may subcontract companies, under the terms regulated in article 23 of Law No. 59/2019, of 8 August. What cannot be a reversal of roles, leaving the PSP without the domain or control of the processing of personal data that the video surveillance system performs.

19. It is therefore important that a contract or agreement be signed that specifically regulates this subcontracting relationship, binding the Municipality under the terms of that legal rule - which in the specific case does not seem to occur, since the text of the protocol annexed to the Rationale is insufficient from this perspective.

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PAR/2021/36

2v.

20. Specifically with regard to subcontracting, it is recalled that under the terms of the same article 23, they depend on the prior authorization of the person in charge.

v. Video surveillance system security

21. Annex F to the Statement of Grounds states that 'The equipment used for viewing the images will be installed in a reserved access place within the police subunit that has an access control mechanism that registers the persons responsible for viewing and recording the captured images, only accessible by duly accredited police officers». The same annex informs that «the images captured will be recorded on physical equipment installed in a reserved access place in the PSP Command of Leiria, with a physical access control mechanism, which registers the people who accessed that space».

22. However, having an access control mechanism by authorized persons is not enough. This mechanism must be able to identify, at any given moment, who is in the room, so it is essential that, in addition to the entrances, also the exits. Only in this way is it possible to demonstrate the subjective imputability of any event. In addition, this mechanism must require two-factor authentication.

23. As for the registration of non-accredited persons, mentioned in point 5 of Annex B of the Justification, since this registration depends on the action of an accredited person, it is necessary to adopt a solution that does not allow failures or omissions in the registration of those people.

24. Also in the context of system security, it is essential to ensure that the cabinets that contain the connections of UTP cables to the cameras - therefore installed in public space - are not accessible to anyone, especially due to the risk of acts of vandalism or intentional actions system attacks, such as turning off cameras to prevent filming of planned illicit acts. It is therefore essential that they are not located on the ground or at a height that makes them easily accessible and that they are equipped with an alarm system in the event of an intrusion attempt.

25. Finally, it is pointed out that it is useless to have a segregated and isolated network if a communication channel on the Internet is occasionally opened, thus exposing the system to the vulnerabilities of an open network.

26. Indeed, it is essential to ensure that the support and maintenance services for the video surveillance system are physically provided on site, remote access being not admissible as it can compromise security.

PAR/2021/36

3

CMPP

National Data Protection Commission

saw. Auditability of the processing of personal data

27. Regarding the provision of the existence of chronological records, in Annex F, it is noted that a generic statement that all operations are subject to registration is not enough. Indeed, for a system to be truly auditable, it is imperative to ensure that it has the details of the operation carried out, so that it is possible at all times to know who and what has been done with the personal data.

28. In fact, in the same sense, Resolution of the Council of Ministers No. 41/2018, of March 28, points out, which also determines the implementation of this requirement by the services of the Direct and Indirect State Administration. It provides for the obligation to record all actions that a user performs on personal data, including access attempts, as well as the obligation to guarantee its integrity, through a digital signature and TimeStamp.

29. For a better understanding of what is being said, take the following example: it is not enough to record that there was an

action on a mask, it is necessary to specify whether it was placed, removed or changed.

30. Finally, it is also important to take into account the fact that chronological records (logs) are essential for detecting failures and anomalies. However, this function of chronological records is only achieved if they are the object of analysis.

31. In this way, it is important to point out that the person responsible for the treatment, that is, the PSP, must be endowed with human resources with sufficient technical knowledge to analyze the records and identify any incidents. Assuming that not all PSP district commands are able to have specialists to carry out this function or task, the CNPD suggests that their attribution to the National Directorate's IT services be considered.

### III. Conclusion

32. It is not within the competence that is legally attributed to it to comment on the concrete grounds for extending the video surveillance system in the Municipality of Leiria, the CNPD, with the arguments set out above:

The. It emphasizes that capturing sound and capturing images of people in their homes and in spaces that deserve protection have a great impact on privacy, and cannot be dependent on the subjective criteria of the agent who is currently operating the video surveillance system, complaining, for this very reason, precise guidelines - in the absence of these, or in the absence of information to the CNPD about them, the CNPD cannot conclude its judgment on compliance with the requirements of article 7 of Law No. 1/2005;

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PAR/2021/36

3v.

B. It warns against the inadmissibility of considering the Data Protection Officer (EPD) as responsible for the treatment, since in all personal data processing, the intervention of the EPD can only be consultative or control, not having it, under the terms of the law, decision-making powers on the processing of personal data and, therefore, cannot be held responsible for its execution;

ç. And insists that, being responsible for the processing of personal data, under the terms of the law, the PSP, must be expressly and clearly delimited in a contract or agreement the intervention of the Municipality as a subcontractor of this entity, as well as of any subcontractors.

33. The CNPD also recommends that measures be adopted capable of guaranteeing the security of the system and the auditability of the processing of personal data, as indicated above, in points 21 to 31.

Lisbon, June 25, 2021

Filipa Calvão (President, who reported)