

□ Procedure No.: PS/00374/2019

938-090320

RESOLUTION OF PUNISHMENT PROCEDURE

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

FACTS

FIRST: On August 25, 2019, it had entry in this Spanish Agency
of Data Protection a brief presented by Don A.A.A. (hereinafter the
claimant), through which he makes a claim against TODO FUNDICIÓN, S.L.,
with NIF B14997571 (hereinafter, the claimed one), for the installation of a
video surveillance installed in *** ADDRESS.1, there are indications of a possible
breach of the provisions of the data protection regulations.

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

That he denounced the same entity for having a panoramic camera of
recording on the exterior ceiling of the door of "TODO FUNDICIÓN S.L." located in the
***ADDRESS.1, focused on public roads. Attached: photographic report.

It adds that sanctioning procedure PS/00375/2018 was carried out, which
ended in Warning, and that nothing has changed.

SECOND: The Spanish Agency for Data Protection notified all the documents
sanction procedure PS/00375/2018, electronically, as required
Law 39/2015, and such notifications were expired.

THIRD: On January 9, 2020, the Director of the Spanish Agency for
Data Protection agreed to initiate a sanctioning procedure against the claimant, for the
alleged infringement of Article 5.1.c) of the RGPD, typified in Article 83.5 of the

GDPR.

FOURTH: On 02/25/20, the collaboration of the Security Forces and Corps is required.

State Security to travel to the scene of the events and carry out the timely inquiries.

FIFTH: On 06/12/20, this Agency received a reply from the Management

Police General (Córdoba Provincial Police Station), stating the following:

“Before this Unit appeared B.B.B., owner of the house located in

***ADDRESS.1 and (...), being able to verify that in portal nº 6, there was a

support of what could have been a video-surveillance camera and that in the portal

No. 4 there is a casing of the aforementioned establishment (...), being reflected in

Separate record attached and photographic document (annexes 1-2)”.

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2/5

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

In this proceeding, the following are considered proven facts:

FACTS

First. On 08/25/19 a claim was received from the epigrapher by means of which

transfers as the main fact the installation of a video surveillance system in

***ADDRESS.1, there being indications of a possible breach of the provisions of

data protection regulations.

Second. The company Todo Fundación has been identified as the main responsible party.

S.L., with NIF B14997571.

Third. The complainant states that the video surveillance device continues

installed in ***ADDRESS.1, without proceeding to uninstall the

itself, although it does not certify its operability.

Fourth. It is proven that there is currently no camera at the scene of the events.

of any video-surveillance, after corroboration by the Security Forces and Bodies displaced for legal purposes.

A photograph is attached (doc. nº 1 Report 03/06/20) in which the only thing that exists

It is a casing where the camera under investigation could presumably be installed.

complaint.

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

te to start and solve this procedure.

II

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

natural persons) carried out through the video surveillance system denouncing

ciated is in accordance with the provisions of the RGPD.

III

Article 6.1 of the RGPD establishes the assumptions that allow it to be considered lawful

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3/5

the processing of personal data.

For its part, article 5.1.c) of the RGPD, regarding the principles of processing to, provides that the personal data will be "adequate, pertinent 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 excessive data must be restricted. you or proceed to delete them.

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

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

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 treatment ing of images in public places can only be carried out -if applicable and pre-saw compliance with the legally enforceable requirements-, by the Forces and Bodies

of Security, unless the exception established in the aforementioned article 22 operates of the LOPDGDD for individuals or legal entities, public or private, respecting do 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 ary to capture the accesses, doors or entrances, so that, although the camera is inside the building, it is impossible not to record a minimal and important part dispensable from the public road, which is inevitably captured.

In order for this exception on the protection of private spaces to apply, cable, there shall be no alternative installation possibility. In these cases, the responsible for the treatment carried out through cameras will adapt the use of the so that the impact on the rights of third parties (passers-by) is minimal. mo possible. In no case will the use of surveillance practices be admitted beyond the environment object of the installation, not being able to affect the surrounding public spaces. contiguous buildings and vehicles other than those accessing the guarded space.

IV

The claim is based on the presumed illegality of the installation by the

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4/5

called from a video surveillance system, consisting of a camera located in the door of the claimed company, at ***ADDRESS.1, which could capture images of public areas disproportionately.

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.

As proof of these statements, the claimant provided the evidence indicated in the "Facts" section, first point, of this agreement.

Based on the foregoing, this Agency considered that there were indications of the installation of a video surveillance camera(s) at ***ADDRESS.1 that could capture images of public roads in excess, as well as the absence of the necessary distinctive I am informative.

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In the investigation phase, the displacement to the place of the facts by the of the State Security Forces and Corps (Córdoba National Police) issued I have Report dated 03/06/20.

Sometimes those responsible for this type of device leave them installed. two, but they are not operational, that is, they do not perform "personal data processing", so that even if they are observed from the outside, the operation is not accredited. life of them.

Article 77 section 5 of Law 39/2015 (October 1) provides the following.

"The documents formalized by the officials who are recognized as condition of authority and in which, observing the corresponding legal requirements, teeth the facts verified by those are collected will prove them except prove the contrary".

After carrying out the appropriate inquiries, it is verified that the device denounced denounced, has been removed from the place that is the object of the complaint, and there is only one carcassa, without any device, reason why it is appropriate to order the Archive of this procedure, as the commission of any administrative infraction was not accredited.

Therefore, in accordance with the applicable legislation, having examined the facts subject to complaint, based on the foregoing,

the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: ORDER the FILE of this procedure as there is no accredited the commission of any administrative infraction.

SECOND: NOTIFY this resolution to TODO FUNDICIÓN, S.L. and to the side complainant Mr. A.A.A.

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5/5

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

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