

Procedure No.: PS/00176/2020

□ RESOLUTION OF PUNISHMENT PROCEDURE

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

BACKGROUND

FIRST: The MUNICIPAL POLICE OF MADRID (hereinafter, the claimant) with
date 01/07/2020 filed a claim with the Spanish Agency for the Protection of
Data. The claim is directed against A.A.A. with NIF ***NIF.1 (hereinafter, the
reclaimed). The reasons on which the claim is based are, in summary: the claimed
responsible for the establishment, with a video surveillance system, lacks
of informative posters. He was already the subject, for the same facts, of a procedure
E/05334/2017, although there is no acknowledgment of what was sent.

SECOND: Upon receipt of the claim, the Subdirector General for
Data Inspection proceeded to carry out the following actions:

On 01/31/2020, the claim submitted was transferred to the defendant for analysis
and communication of the decision adopted in this regard. Likewise, he was required to
that within one month it send certain information to the Agency:

- Copy of the communications, of the adopted decision that has been sent to the
claimant regarding the transfer of this claim, and proof that
the claimant has received communication of that decision.
- Report on the causes that have motivated the incidence that has originated the
claim.
- Report on the measures adopted to prevent the occurrence of
similar incidents.
- Any other that you consider relevant.

There is no record of any response from the respondent to the information request from the AEPD.

THIRD: On 07/01/2020, in accordance with article 65 of the LOPDGDD, the

Director of the Spanish Agency for Data Protection agreed to admit for processing the claim filed by the claimant against the respondent.

FOURTH: On 09/18/2020, the Director of the Spanish Protection Agency

of Data agreed to initiate a sanctioning procedure against the defendant, for the alleged

infringement of article 13 of the RGPD contemplated in article 83.5.h) of the aforementioned

Regulation, considering that the sanction that could correspond would be

WARNING.

FIFTH: Once the initiation agreement has been notified, the one claimed at the time of this

The resolution has not presented a written statement of allegations, for which reason the

indicated in article 64 of Law 39/2015, of October 1, on the Procedure

Common Administrative Law of Public Administrations, which in section f)

establishes that in the event of not making allegations within the period established on the

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content of the initiation agreement, it may be considered a proposal for

resolution when it contains a precise statement about the responsibility

imputed, reason why a Resolution is issued.

SIXTH: Of the actions carried out in this proceeding, they have been

accredited the following:

PROVEN FACTS

FIRST: On 01/07/2020 it has entry in the AEPD Inspection Act in

Public Establishment of the MUNICIPAL POLICE OF MADRID (hereinafter, the claimant), filing a claim against the claimed, motivated by the fact that the latter, As the person in charge of a commercial establishment, it has a system of video surveillance lacking informative signs.

SECOND: Photographs of the establishment and cameras are provided installed inside.

FOUNDATIONS OF LAW

By virtue of the powers that article 58.2 of the RGPD recognizes to each control authority, and according to the provisions of articles 47 and 48 of the LOPDGDD, The Director of the Spanish Agency for Data Protection is competent to initiate and to solve this procedure.

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The physical image of a person under article 4.1 of the RGPD is a data personnel and their protection, therefore, is the subject of said Regulation.

II

Article 4.2 of the RGPD defines the concept of "treatment" of data personal.

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 the articles 13 and 14".

The GDPR lists the categories of information that must be provided to a interested in relation to the treatment of your personal data in the cases in which that are collected from it (article 13) or obtained from another source (article 14).

Article 12.7 indicates that: "7. The information to be provided to the concerned under articles 13 and 14 may be transmitted in combination with standardized icons that allow to provide in an easily visible, intelligible way

and clearly legible an adequate overview of the planned treatment”

Article 22 of the LOPDGDD establishes the specificities of the treatment of data for video surveillance purposes, indicating the following:

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"1. Natural or legal persons, public or private, may carry out the

processing of images through camera systems or video cameras with the purpose of preserving the safety of people and property, as well as their installations.

2. Images of public roads may only be captured to the extent that

is essential for the purpose mentioned in the previous section.

However, it will be possible to capture public roads to a greater extent

when necessary to ensure the safety of goods or facilities

strategic or infrastructure linked to transport, without in any case

may involve capturing images of the interior of a private home.

3. The data will be deleted within a maximum period of one month from its

collection, except when they had to be kept to prove the commission of

acts that threaten the integrity of persons, property or facilities. In that

case, the images must be made available to the competent authority in

within a maximum period of seventy-two hours from the date of knowledge of the

existence of the recording.

The blocking obligation provided for in

article 32 of this organic law.

4. The duty of information provided for in article 12 of the Regulation (EU)

2016/679 will be understood to be fulfilled by placing an informative device

in a sufficiently visible place identifying, at least, the existence of the treatment,

the identity of the person in charge and the possibility of exercising the rights provided for in the

Articles 15 to 22 of Regulation (EU) 2016/679. It may also be included in the

informative device a connection code or internet address to this

information.

In any case, the data controller must keep available to

those affected the information referred to in the aforementioned regulation.

5. Under article 2.2.c) of Regulation (EU) 2016/679, it is considered

excluded from its scope of application the treatment by a natural person of images

that they only capture the interior of their own home.

This exclusion does not cover processing carried out by a security entity

private that had been contracted for the surveillance of a home and had access

to the images.

6. The processing of personal data from the images and

sounds obtained through the use of cameras and video cameras by the Armed Forces

and Security Bodies and by the competent bodies for surveillance and control in

penitentiary centers and for the control, regulation, vigilance and discipline of the

traffic, will be governed by the legislation transposing Directive (EU) 2016/680,

when the treatment is for the purposes of prevention, investigation, detection or

prosecution of criminal offenses or execution of criminal sanctions, including

protection and prevention against threats to public safety. Outside

In these cases, said treatment will be governed by its specific legislation and

additionally by Regulation (EU) 2016/679 and this organic law.

7. What is regulated in this article is understood without prejudice to the provisions of

Law 5/2014, of April 4, on Private Security and its development provisions.

8. The treatment by the employer of data obtained through information systems cameras or video cameras is subject to the provisions of article 89 of this law organic.”

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III

In order that the duty of information provided for in article 12 of the RGD is complied with in a concise and understandable manner for the affected party, the aforementioned Article 22 of the LOPDGDD provides for a system of "layered information". In this sense, the first layer, which must refer, at least, to the existence of the treatment, the identity of the person in charge and the possibility of exercising the rights provided for in the articles 15 to 22 of the RGD, will be contained in a device, whose design and layout they must be such that the affected party has a clear view of the information available about the processing of your personal data and where and how to find the information detailed. 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 surveillance.

Second layer information must be available in one place easily accessible to the affected person, be it an information sheet at a reception, cashier, etc., placed in a visible public space or in a web address, and must refer to the rest of the elements of article 13 of the RGD.

Article 13 of the RGD establishes the information that must be provided when personal data is obtained from the interested party, which is as follows:

"1. When personal data relating to him is obtained from an interested party, the responsible for the treatment, at the time these are obtained, will provide all the information indicated below:

a) the identity and contact details of the person in charge and, where appropriate, of their representative;

b) the contact details of the data protection delegate, if applicable;

c) the purposes of the treatment to which the personal data is destined and the basis legal treatment;

d) when the treatment is based on article 6, paragraph 1, letter f), the legitimate interests of the person in charge or of a third party;

e) the recipients or categories of recipients of the personal data, in your case;

f) where appropriate, the intention of the controller to transfer personal data to a third country or international organization and the existence or absence of a adequacy decision of the Commission, or, in the case of transfers indicated in articles 46 or 47 or article 49, paragraph 1, second paragraph, reference to adequate or appropriate safeguards and means of obtaining a copy of these or the fact that they have been loaned.

2. In addition to the information mentioned in section 1, the person responsible for the treatment will facilitate the interested party, at the moment in which the data is obtained personal, the following information necessary to guarantee data processing fair and transparent

a) the period during which the personal data will be kept or, when not possible, the criteria used to determine this period;

b) the existence of the right to request from the data controller access to the personal data related to the interested party, and its rectification or deletion, or the limitation of its treatment, or to oppose the treatment, as well as the right to data portability;

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c) when the treatment is based on article 6, paragraph 1, letter a), or the Article 9, paragraph 2, letter a), the existence of the right to withdraw the consent at any time, without affecting the legality of the treatment based on consent prior to its withdrawal;

d) the right to file a claim with a supervisory authority;

e) if the communication of personal data is a legal or contractual requirement, or a necessary requirement to sign a contract, and if the interested party is obliged to provide personal data and is informed of the possible consequences of not providing such data;

f) the existence of automated decisions, including profiling, to referred to in article 22, sections 1 and 4, and, at least in such cases, significant information about the applied logic, as well as the importance and anticipated consequences of said treatment for the interested party.

3. When the person in charge of the treatment projects the subsequent treatment of personal data for a purpose other than that for which it was collected, will provide the interested party, prior to said further treatment, information for that other purpose and any additional information relevant to the meaning of paragraph 2.

4. The provisions of sections 1, 2 and 3 shall not apply when and in to the extent that the interested party already has the information.”

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

IV

- Respect the principle of proportionality.

- When the system is connected to an alarm center, you 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 the people who are outside the private space where the security system is installed.

video surveillance, since the processing of images in public places can only be carried out, unless there is government authorization, by the Forces and Corps of Security. Nor can spaces owned by third parties be captured or recorded without the consent of their owners, or, as the case may be, of the persons who are find.

This rule admits some exceptions since, on some occasions, for the protection of private spaces, where cameras have been installed on facades or in inside, it may be necessary to ensure the purpose of security recording of a portion of the public highway. That is, cameras and camcorders installed with security purposes may not 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 the

articles 12 and 13 of the RGPD, and 22 of the LOPDGDD, in the terms already indicated.

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- 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.

- The installed cameras cannot obtain images from private space of

third party and/or public space without duly accredited justified cause, nor can

affect the privacy of passers-by who move freely through the area. No this

allowed, therefore, the placement of cameras towards the private property of neighbors

with the purpose of intimidating them or affecting their private sphere without just cause.

- In no case will the use of surveillance practices be admitted beyond the

environment object of the installation and in particular, not being able to affect the spaces

surrounding public, adjoining buildings and vehicles other than those accessing the

guarded space.

In summary and to facilitate the consultation of interested parties, the Spanish Agency

Data Protection offers through its website [<https://www.aepd.es>] access

to the legislation on the protection of personal data, including the RGPD and the

LOPDGDD (section “Reports and resolutions” / “regulations”), 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 section “Guides

and tools”).

It is also of interest, in case of carrying out data processing of low risk, the free tool Facilita (in the “Guides and tools” section), which, through specific questions, it allows to assess the situation of the person in charge regarding the processing of personal data that it carries out, and where appropriate, generate various documents, informative and contractual clauses, as well as an annex with indicative security measures considered minimal.

v

In the present case, the claim is due to the fact that the respondent, in his condition of responsible for the commercial establishment, does not have posters to through which the presence of video surveillance cameras is reported and about the identity of the data controller, so that people Interested parties can exercise the rights provided for in articles 15 to 22 of the RGPD.

As proof of these statements, the claimant provided the evidence indicated in the “Facts” section, first point, of this agreement and that has already been object for facts similar to those of the present claim of a file E/05334/2017, although it must be noted that there is no acknowledgment of what was sent.

The corrective powers of the Spanish Protection Agency of Data, as a control authority, are established in article 58.2 of the RGPD.

Among them are the power to sanction with a warning - article 58.2.b)-, 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 in charge or in charge of the treatment that the treatment operations comply with the provisions of the GDPR, when applicable, in a certain way and within a certain period specified -article 58. 2 d)-.

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According to the provisions of article 83.2 of the RGPD, the measure provided for in the Article 58.2 d) of the aforementioned Regulation is compatible with the sanction consisting of administrative fine.

Without prejudice to the provisions of article 83 of the RGPD, the aforementioned Regulation has in its art. 58.2 b) the possibility of sanctioning with a warning, in relation with what is stated in Considering 148: "In the event of a minor infraction, or if the fine likely to be imposed would constitute a disproportionate burden on a natural person, instead of sanctioning by means of a fine, a warning. However, special attention must be paid to the nature, gravity and duration of the infringement, its intentional nature, the measures taken to mitigate the damages and losses suffered, to the degree of responsibility or to any pertinent previous infraction, to the way in which the control authority has had knowledge of the infraction, compliance with measures ordered against the responsible or in charge, adherence to codes of conduct and any other aggravating or mitigating circumstance.

SAW

In accordance with the evidence that is available and that has been accredited in the sanctioning procedure, the defendant has installed cameras of video surveillance without the necessary badge or informative poster, for which reason considers that these facts violate the provisions of article 13 of the RGPD, which supposes the commission of infractions typified in article 83.5 of the RGPD, which provides the following:

"Infringements of the following provisions shall be sanctioned, in accordance

with paragraph 2, with administrative fines of a maximum of EUR 20,000,000 or, in the case of a company, an amount equivalent to a maximum of 4% of the global total annual turnover of the previous financial year, opting for the largest 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;

[...].”

For the purposes of the limitation period for infractions, the infraction indicated

in the previous paragraph is considered very serious and prescribes after three years, in accordance with Article 72.1 of the LOPDGDD, which establishes that:

"According to the provisions of article 83.5 of Regulation (EU) 2016/679

are considered very serious and will prescribe after three years the infractions that suppose

a substantial violation of the articles mentioned therein and, in particular, the following:

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 the Regulation (EU) 2016/679.

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

(...)»

For its part, article 74 of the aforementioned LOPDGDD provides:

«They are considered minor and the remaining infractions of merely formal character of the articles mentioned in sections 4 and 5 of the Article 83 of Regulation (EU) 2016/679 and, in particular, the following:

a) Failure to comply with the principle of transparency of information or the right to information of the affected party for not providing all the required information by articles 13 and 14 of Regulation (EU) 2016/679.

(...)»

In the present case, it is considered that the appropriate sanction to be imposed is the warning, in accordance with the provisions of article 58.2 b) of the RGPD, in relation to what is stated in Considering 148, cited above.

7th

In addition, the following have been taken into account, in particular:

items.

☐ That it is a micro-SME whose main activity is not linked to the processing of personal data.

☐ That there is no recidivism, because the commission is not recorded, in the term of one year, of more than one infraction of the same nature.

viii

However, as already indicated in the initial agreement and in accordance with the established in the aforementioned article 58.2 d) of the RGPD, according to which each authority of control may "order the person responsible or in charge of processing that the

processing operations comply with the provisions of this Regulation,

where appropriate, in a certain manner and within a specified period [...].”

The respondent is required to take the following steps:

- Certify having proceeded to the placement of the informative device in the

video-monitored areas, locating this device in a sufficiently visible place.

- Prove that you keep the information available to those affected.

refers to the aforementioned GDPR in accordance with article 13 of the GDPR.

It is warned that not meeting the requirements of this organization may be

considered as an administrative offense in accordance with the provisions of the RGD,

typified as an infraction in its article 83.5 and 83.6, being able to motivate such conduct the

opening of a subsequent sanctioning administrative proceeding.

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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 A.A.A., with NIF ***NIF.1, for an infraction of article 13

of the RGD, typified in article 83.5.h) of the RGD, a sanction of warning.

SECOND: REQUEST A.A.A., with NIF ***NIF.1, so that within one month

From the notification of this resolution, certify:

- Having proceeded to place the informative device in the areas

video surveillance, locating this device in a sufficiently visible place.

- That it keeps the information to which it refers available to those affected

the aforementioned RGPD in accordance with article 13 of the RGPD.

THIRD

: NOTIFY this resolution to A.A.A., with NIF ***NIF.1.

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

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

LPACAP, the firm resolution may be provisionally suspended in administrative proceedings

if the interested party expresses his intention to file a contentious appeal-

administrative. If this is the case, the interested party must formally communicate this

made by writing to the Spanish Agency for Data Protection,

introducing him to

the agency

[<https://sedeagpd.gob.es/sede-electronica-web/>], or through any of the other

records provided for in art. 16.4 of the aforementioned Law 39/2015, of October 1. Also

must transfer to the Agency the documentation that proves the effective filing

of the contentious-administrative appeal. If the Agency were not aware of the filing of the contentious-administrative appeal within two months from the day following the notification of this resolution, it would end the precautionary suspension.

Electronic Registration of
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