

□ File No.: EXP202204093

RESOLUTION OF SANCTIONING PROCEDURE

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

BACKGROUND

FIRST: On 03/30/2022, the CIVIL GUARD - POST ***LOCATION.1

(hereinafter, the complainant) sent the Report-Complaint of 03/26/2022 for a
possible breach of the provisions of the data protection regulations of
personal nature by the entity MAE WEST SYSTEMS, S.L. with NIF
B70497169 (hereinafter, the denounced party).

The letter of referral states the following:

"Agents of the PAFIF ***LOCATION.1, carry out an inspection on the sale of
of tobacco with surcharge in the local hostess Bar ***ESTABLECIMIENTO.1, located in
the ***ADDRESS.1, of the municipal term of ***LOCATION.1, it is verified that it has
recording cameras and that it does not have informative signs of a video-surveilled area
(...)."

SECOND: The denounced party was sent a letter on two occasions indicating the
obligations it had in terms of data protection and video surveillance, resulting
notified on 01/29/2018 and 11/26/2019, after the submission of two reports from the
CIVIL GUARD-POST ***LOCATION.2 for the same facts.

THIRD: On 06/07/2022, the Director of the Spanish Protection Agency
of Data agreed to initiate disciplinary proceedings against the claimed party, in accordance with
the provisions of articles 63 and 64 of Law 39/2015, of October 1, of
Common Administrative Procedure of Public Administrations (hereinafter,
LPACAP), for the alleged infringement of article 13 of the GDPR, typified in article

83.5.b) of the GDPR.

FOURTH: In compliance with the provision of article 14.2 of Law 39/2015, of 1 October, of the Common Administrative Procedure of Public Administrations (in hereinafter, LPACAP) the agreement to open this disciplinary proceeding shall be notified the complained party by electronic means.

The certificate issued by the Support service of the Electronic Notification Service and Authorized Electronic Address of the National Currency and Stamp Factory (in forward, FNMT), which is in the file, certifies that the AEPD made the notification available to the recipient on 06/07/2022 and that on 06/18/2022 produced the automatic rejection of the notification. However, on 08/04/2022 it turned out notified by postal mail, as stated in the notice issued by Correos.

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FIFTH: Notified of the aforementioned start-up agreement in accordance with the rules established in Law 39/2015, of October 1, on the Common Administrative Procedure of Public Administrations (hereinafter, LPACAP), the denounced party presented pleadings in which, in summary, he stated that:

“[...]

As evidenced by the photographs attached to this document, in this Of course, the deponent complies with the provisions of the applicable regulations, since there is an information device in a sufficiently visible place identifying the identity of the person in charge and the possibility of exercising the indicated rights (...).

The claimant does have the informative posters of the video-monitored area. so it

we credit not only with the photographs, but also with the attached document signed by the installation company, certifying that on June 24, 2017 the installed the video surveillance system at the Mae West Systems company address, S.L., including both the NVR recording cameras and the signage announcing said cameras. Therefore, no offense has been committed by the claimant.

[...]"

Attach the documentation mentioned above.

SIXTH: On 09/06/2022, the instructor of the procedure agreed to open a period of practice of evidence, taking as incorporated the Record-Complaint sent by the complaining party and its documentation, the allegations to the agreement of opening of this disciplinary procedure, presented by the entity denounced and the documentation that accompanies them.

SEVENTH: On 09/08/2022, a resolution proposal was formulated in which the proposed to penalize the denounced entity with a fine of €400, for the infringement of article 13 of the RGPD, for not having the informative signs of the area Video surveillance of all the necessary information. Also, the entity was ordered denounced that, within a period of ten business days from the date on which the resolution in which you so agree is notified, proceed to complete the badges.

EIGHTH: The proposed resolution was notified to the denounced entity on 10/10/2022. To this day, this Agency does not contain any response.

In view of all the proceedings, by the Spanish Agency for Data Protection

In this proceeding, the following are considered proven facts:

PROVEN FACTS

FIRST: Existence of a video surveillance system installed inside the Bar

***ESTABLISHMENT.1 belonging to the defendant, located at ***ADDRESS.1,

***LOCATION.1.

SECOND: It is identified as the main person responsible for the MAE installation

WEST SYSTEMS, S.L., with NIF B70497169.

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THIRD: There is evidence of the presence of two signs of "area monitored by security cameras" from the security company that installed the system, but did not

All the data required by the GDPR are included.

FOURTH: The Spanish Data Protection Agency has notified the entity the proposed resolution of this disciplinary procedure has been claimed, but It has not presented allegations or evidence that contradicts the facts denounced.

FUNDAMENTALS OF LAW

Yo

In accordance with the powers that article 58.2 of Regulation (EU) 2016/679

(General Data Protection Regulation, hereinafter GDPR), grants each

control authority and as established in articles 47 and 48.1 of the Law

Organic 3/2018, of December 5, Protection of Personal Data and guarantee of

digital rights (hereinafter, LOPDGDD), is competent to initiate and resolve

this procedure the Director of the Spanish Data Protection Agency.

Likewise, article 63.2 of the LOPDGDD determines that: "Procedures

processed by the Spanish Data Protection Agency will be governed by the provisions

in Regulation (EU) 2016/679, in this organic law, by the provisions

regulations dictated in its development and, insofar as they do not contradict them, with character

subsidiary, by the general rules on administrative procedures."

In accordance with the definition of "personal data" offered by article 4.1 of the GDPR, the image of a natural person is personal data. So, in accordance with the Article 1.2 of the GDPR, the image of a natural person and its protection is subject to said Regulation.

Article 12.1 of the GDPR states that: "1. The controller will take the appropriate measures to provide the interested party with all the information indicated in the articles 13 and 14". In this sense, section 7 of the aforementioned precept indicates that: "The information that must be provided to the interested parties under articles 13 and 14 may be processed in combination with standardized icons that allow providing easily visible, intelligible, and clearly legible an adequate vision of set of planned treatment.

In parallel, article 22 of the LOPDGDD includes the specific regulations for the data processing for video surveillance purposes and states the following:

"1. Natural or legal persons, public or private, may carry out the processing. image storage through camera or video camera systems for the purpose of to preserve the safety of people and property, as well as its facilities.

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2. Images of the public thoroughfare may only be captured to the extent that it is indispensable for the purpose mentioned in the previous section.

However, it will be possible to capture the public road in a greater extension when necessary to guarantee the security of assets or strategic facilities.

logical or infrastructure related to transport, without in any case being able to

put the capture of 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 should be kept to prove the commission of acts that attend to

have against the integrity of people, property or facilities. In such a case, the images

must be made available to the competent authority within a maximum period of

seventy-two hours after the existence of the recording became known.

tion.

The blocking obligation provided for in article 1 will not apply to these treatments.

article 32 of this organic law.

4. The duty of information provided for in article 12 of Regulation (EU) 2016/679 is

shall be understood to have been fulfilled by means of the placement of an informative device in a sufficiently

recently visible 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 articles 15

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

add a connection code 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.

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

within its scope of application the treatment by a natural person of images that are

regrettably capture the interior of your own home.

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

given that she had been hired to monitor a home and had access to the

images.

6. The processing of personal data from the images and sounds obtained

nests through the use of cameras and video cameras by the Forces and Bodies

of Security and by the competent bodies for surveillance and control in the centers
prisons and for the control, regulation, surveillance and discipline of traffic, will be governed
by the transposition legislation of Directive (EU) 2016/680, when the treatment
to have the purpose of prevention, investigation, detection or prosecution of infringements
criminal or execution of criminal sanctions, including protection and prevention
against threats to public safety. Apart from these assumptions, said
treatment will be governed by its specific legislation and additionally by the Regulations
to (UE) 2016/679 and the present organic law.

7. What is regulated in this article is understood without prejudice to the provisions of the Law
5/2014, of April 4, on Private Security and its development provisions.

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8. The treatment by the employer of data obtained through camera systems
cameras or video cameras is subject to the provisions of article 89 of this organic law.
In order for the data controller to comply with the obligation imposed by the
article 12 of the GDPR, article 22 of the LOPDGDD requires that, at least, the existence
treatment, the identity of the controller and the possibility of exercising the rights
rights provided for in articles 15 to 22 of the GDPR, is contained in a device whose
design and location should be such that the data subject has a clear view of the information
Information available on the processing of your personal data and on where and how
find the detailed information. However, it should be noted that the rest of the questions
tions contemplated in article 13 of the GDPR “must be kept available to
those affected”, that is, in a place that can be easily accessed by the interested party.

Pursuant to Article 13 of the GDPR, the information to be provided by the responsible for the treatment when the personal data is obtained from the interested party is the next:

"1. When personal data relating to him or her is obtained from an interested party, the person responsible of the treatment at the time they are obtained, will provide you with all the information mation indicated below:

a) The identity and contact details of the person in charge and, where appropriate, their re-presenter;

b)

c)

the contact details of the data protection officer, if applicable;

the purposes of the processing for which the personal data is intended and the legal basis treatment ca;

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

and)

recipients or categories of recipients of personal data, in

Their 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 decision adequacy decision of the Commission, or, in the case of transfers indicated given in articles 46 or 47 or article 49, paragraph 1, second paragraph, referring to reference to adequate or appropriate guarantees and to the means to obtain a copy of these or the fact that they have been provided.

2. In addition to the information mentioned in section 1, the person responsible for the treatment will provide the interested party, at the time the data is obtained

personal data, the following information necessary to guarantee data processing

fair and transparent

a) the period during which the personal data will be kept or, when it is not

possible, the criteria used to determine this term;

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b)

the existence of the right to request the data controller access to

personal data relating to the interested party, and its rectification or deletion, or the

limitation of your treatment, or to oppose the treatment, as well as the right

to data portability;

c) when the processing is based on article 6, paragraph 1, letter a), or art.

Article 9, paragraph 2, letter a), the existence of the right to withdraw consent.

at any time, without affecting the legality of the treatment based

in the consent prior to its withdrawal;

d) the right to file a claim with a control 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

not to provide such data;

F)

the existence of automated decisions, including profiling, to

referred to in article 22, paragraphs 1 and 4, and, at least in such cases, inform

significant information about applied logic, as well as the importance and con-planned sequences of said treatment for the interested party.

3. When the person responsible for the treatment plans the subsequent processing of data personal information for a purpose other than that for which it was collected, will provide the data subject, prior to said further processing, information about that other purpose and any additional information relevant under section 2.

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

II

In accordance with the evidence available in this disciplinary procedure, it is considered that the two posters installed outside of the premises of the accused, under the heading "area monitored by security cameras", they lack the mandatory information required by the GDPR. Well, analyzed the photographs provided by the defendant together with the allegations to the opening agreement, it was observed that the only data that the badges contain are the following:

-
-
-

"Responsible": Mae West Systems, S.L.

"You can exercise your rights before": empty.

"More information...": B.70497169

Thus, none of the posters includes all the information required by the regulations, having to inform about the identity of the person in charge, not only his name, but also address; the possibility of exercising the rights recognized in Articles 15 to 22 of the GDPR and through which channel, as well as where you can obtain the interested party the rest of the information required in accordance with the GDPR.

Therefore, the duty of information of those affected is not covered by the presence of the two badges placed outside the premises, as they are not completed duly. Therefore, this resolution proposal is made considering that there is a violation of article 13 of the GDPR.

For its part, this Agency is not aware that the denounced entity has presented arguments or evidence against the proposed resolution.

IV.

The corrective powers available to the Spanish Agency for the Protection of Data, as a control authority, are established in article 58.2 of the GDPR. Between them they have the power to impose an administrative fine in accordance with the article 83 of the GDPR (art. 58.2 i)), or the power to order the person responsible or processor that the processing operations comply with the provisions of the GDPR, where applicable, in a certain way and within a certain specified term (art. 58.2 d)).

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

The fine imposed must be, in each individual case, effective, proportionate and dissuasive, in accordance with article 83.1 of the GDPR. In order to determine the fine administrative procedure to be imposed, the provisions of article 83.2 of the GDPR, which indicates:

"2. Administrative fines will be imposed, depending on the circumstances of each

individual case, in addition to or in lieu of the measures contemplated in

Article 58, paragraph 2, letters a) to h) and j). When deciding to impose a fine

administration and its amount in each individual case shall be duly taken into account:

a) the nature, seriousness and duration of the offence, taking into account the

nature, scope or purpose of the processing operation in question, as well as

such as the number of interested parties affected and the level of damages that

have suffered;

b) intentionality or negligence in the infraction;

c) any measure taken by the controller or processor to

alleviate the damages and losses suffered by the interested parties;

d) the degree of responsibility of the controller or processor,

taking into account the technical or organizational measures that they have applied under

of articles 25 and 32;

e) any previous infringement committed by the controller or processor;

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f) the degree of cooperation with the supervisory authority in order to remedy the

infringement and mitigate the possible adverse effects of the infringement;

g) the categories of personal data affected by the infringement;

h) the way in which the supervisory authority became aware of the infringement, in

particular whether the person in charge or the person in charge notified the infringement and, if so, in what

extent;

- i) when the measures indicated in article 58, paragraph 2, have been ordered previously against the person in charge or the person in charge in relation to the same matter, compliance with said measures;
- j) adherence to codes of conduct under article 40 or to mechanisms of certification approved in accordance with article 42,
- k) any other aggravating or mitigating factor applicable to the circumstances of the case, such as financial benefits obtained or losses avoided, directly or indirectly, through the infringement”.

For its part, in relation to letter k) of article 83.2 of the GDPR, the LOPDGDD, in its article 76, "Sanctions and corrective measures", provides:

"1. The sanctions provided for in sections 4, 5 and 6 of article 83 of the Regulation (UE) 2016/679 will be applied taking into account the graduation criteria established in section 2 of said article.

2. In accordance with the provisions of article 83.2.k) of Regulation (EU) 2016/679 may also be taken into account:

- a) The continuing nature of the offence.
- b) The link between the activity of the offender and the performance of data processing. personal information.
- c) The benefits obtained as a consequence of the commission of the infraction.
- d) The possibility that the conduct of the affected party could have led to the commission of the offence.
- e) The existence of a merger by absorption process subsequent to the commission of the violation, which cannot be attributed to the absorbing entity.
- f) The affectation of the rights of minors.
- g) Have, when it is not mandatory, a data protection delegate.
- h) Submission by the person responsible or in charge, on a voluntary basis, to

alternative conflict resolution mechanisms, in those cases in which there are controversies between those and any interested party”.

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The balance of the circumstances contemplated, with respect to the infraction committed by violating the provisions of article 13 of the GDPR, it allows setting a fine of €400 (Four hundred euros).

Likewise, under the provisions of article 58.2 d) of the GDPR, you are ordered that, within ten working days from the date on which the resolution in which agreed to be notified, proceed to complete the information that appears in the informative posters of video-monitored area.

Therefore, in accordance with the applicable legislation and assessed the criteria of graduation of sanctions whose existence has been accredited,

the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: IMPOSE MAE WEST SYSTEMS, S.L., with NIF B70497169, for a infringement of article 13 of the GDPR, typified in article 83.5.b) of the GDPR, a fine of €400 (four hundred euros).

SECOND: ORDER MAE WEST SYSTEMS, S.L., with NIF B70497169 that, in under article 58.2.d) of the GDPR, within ten business days, adopt the following measures:

- Accredited having proceeded to the placement of the information device in the video-surveilled areas or to complete the information offered therein (must identify, at least, the existence of a treatment, the identity of the

person responsible and the possibility of exercising the rights provided for in said precepts), locating this device in a sufficiently visible place, both in open and closed spaces.

THIRD: NOTIFY this resolution to MAE WEST SYSTEMS, S.L., with NIF B70497169.

FOURTH: Warn the sanctioned party that he must enforce the sanction imposed

Once this resolution is enforceable, in accordance with the provisions of Article art. 98.1.b) of Law 39/2015, of October 1, on Administrative Procedure

Common of Public Administrations (hereinafter LPACAP), within the payment term

voluntary established in art. 68 of the General Collection Regulations, approved

by Royal Decree 939/2005, of July 29, in relation to art. 62 of Law 58/2003,

of December 17, by means of its income, indicating the NIF of the sanctioned and the number

of procedure that appears in the heading of this document, in the account

restricted number ES00 0000 0000 0000 0000 0000, open in the name of the Agency

Spanish Data Protection Agency at the bank CAIXABANK, S.A.. In the event

Otherwise, it will proceed to its collection in the executive period.

Once the notification has been received and once executed, if the execution date is

between the 1st and 15th of each month, both inclusive, the term to make the payment

voluntary will be until the 20th day of the following or immediately following business month, and if

between the 16th and the last day of each month, both inclusive, the payment term

It will be until the 5th of the second following or immediately following business month.

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

Resolution will be made public once the interested parties have been notified.

Against this resolution, which puts an end to the administrative process 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 reversal before the

Director of the Spanish Agency for Data Protection within a period of one month from

count 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 for in article 46.1 of the

referred Law.

Finally, it is noted 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

The interested party expresses his intention to file a contentious-administrative appeal.

If this is the case, the interested party must formally communicate this fact through

writing addressed to the Spanish Data Protection Agency, presenting it through

of the Electronic Registry of the Agency [[https://sedeagpd.gob.es/sede-electronica-](https://sedeagpd.gob.es/sede-electronica-web/)

web/], or through any of the other registries provided for in art. 16.4 of the

aforementioned Law 39/2015, of October 1. You must also transfer to the Agency the

documentation proving the effective filing of the contentious appeal-

administrative. If the Agency was not aware of the filing of the appeal

contentious-administrative proceedings within a period of two months from the day following the

Notification of this resolution would terminate the precautionary suspension.

Mar Spain Marti

Director of the Spanish Data Protection Agency

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