

□ Procedure No.: PS/00349/2020

RESOLUTION OF PUNISHMENT PROCEDURE

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

FACTS

FIRST: On May 5, 2020, it has an entry in the Spanish Agency for
Data Protection (AEPD) a letter sent by Don A.A.A. (*hereinafter the
claimant) through which he makes a claim against *** COMPANY.1, with NIF
***NIF.1 (hereinafter, the claimed one) for an alleged violation of the regulations of
protection of personal data related to the video surveillance system
that you have installed in your business premises.

The reason on which the claim is based is the existence of a camera of
video surveillance on the exterior wall of the building in which the premises of the
claimed -***DIRECCION.1- that "because of its angle, it allows to control the movements
of all the neighbors of the two buildings". The complainant adds that he does not know why
is placed there, what are the images going to be used for and that the aforementioned camera
it is not signposted.

Provide with your claim two photographs that provide the following information:

In one of them it is observed that, on the exterior wall of a red brick building,
located at the intersection with another wall with identical characteristics, there is a
white video surveillance camera. The camera is communicated through a
cable with a rectangular shaped device hanging on the wall above it and
from which comes, in turn, a connection to the electrical wiring. camera position
with respect to the ground is as follows: it is located above the windows of the ground floor
floor of the building, at a certain distance from them, at the height where the

air conditioner.

The second photo clearly shows that the camcorder is focused on the public road. In the photograph it can be seen that on the wall of the building in which it is located the video camera there are two entrance doors to two houses that are, each of them, flanked to the right and left by a window; two for living place. The camera is located on the wall of the facade of the house more close to the intersection with the other wall of the building. Next to the door of this housing, on the right side, there are two posters: one for "Termo Plac" and another for "**** COMPANY.1". On the left side there is a mailbox hanging.

The two photographs reveal that there is no sign reporting the existence of a video-monitored area.

SECOND: Prior to the acceptance of this claim for processing, in the framework of E/03899/2020, in accordance with the provisions of article 65.4 of the Law Organic 3/2018, of December 5, on the Protection of Personal Data and guarantee of digital rights (hereinafter, LOPDGDD), the AEPD transferred it to the claimed by addressing the postal notification to the name of B.B.B..

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The certificate issued by the S.E. Post Office and Telegraph that works in the file, "Certification of impossibility of delivery", records that the notification was "returned to origin due to surplus (not picked up at the office) on 08/13/2020", after two notification attempts would have been made, with an absent result, on dates 07/02/2020 and 07/03/2020.

The AEPD reiterated the notification to the defendant in August 2020 with the same result.

This is stated in the "Certification of impossibility of delivery" sent by the S.E.

Correos y Telégrafos, S.A., which is in the file, indicating that the

mail was returned to origin due to surplus on 08/18/2020, after it was

will make two notification attempts, with an absent result, on dates 08/07/2020 and

08/10/2020.

The Director of the AEPD agreed to admit this claim for processing on the date

01/10/2020. The agreement for admission to processing was notified to the claimant by

emails on 10/01/2020. The certificate issued by the FNMT that operates in the

The file proves that the notification was accepted by the claimant on the date

02/10/2020.

THIRD: On February 9, 2021, 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, Article 13 of the RGPD, typified in the

Article 83.5 of the RGPD.

FOURTH: On 02/22/21, a written statement is received from the respondent in

in relation to the facts described, proving that there is an informative poster on the façade

of the property and the proportionality of the images obtained with the system

installed.

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. The facts bring cause of the claim dated 05/05/20 through the

which is transferred the presence of a camera system that could be wrong

oriented towards public space.

Provide documentary evidence with your claim (photographs No. 1-2) that prove the

stated by the claimant.

Second. It is identified as the main responsible *** COMPANY.1 which does not denies being responsible for the images that are captured with the camera (s) in question.

Third. The presence of an informative poster on the facade indicating that it is a video-surveillance zone.

Fourth. Analyzed the photograph provided by the claimed screen print of

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the camera does not allow verifying excessive capture of public space, being the necessary for the protection of the facade of the property.

FOUNDATIONS OF LAW

Yo

By virtue of the powers that article 58.2 of Regulation (EU) 2016/679, of 27

April, of the European Parliament and of the Council, on the protection of natural persons

with regard to the processing of personal data and the free movement of

these data and by which Directive 95/46/CE (hereinafter, RGPD) is repealed, acknowledging

ce to 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 to initiate and resolve this procedure.

II

In accordance with the definition of “personal data” offered in article 4.1 of the

RGPD, the image of a natural person has the character of personal data. So that,

In accordance with article 1.2 of the RGPD, the image of a natural person must be of the protection provided by this Regulation.

The RGPD provides in its article 5, under the heading "Principles related to treatment":

"1. The personal data will be:

a) processed in a lawful, loyal and transparent manner in relation to the interested party ("lawfulness, loyalty and transparency»);

b) collected for specific, explicit and legitimate purposes, and will not be processed further.

riorly in a manner incompatible with said purposes; according to article 89,

paragraph 1, the further processing of personal data for archiving purposes in-

public interest, scientific and historical research purposes or statistical purposes are not considered will be incompatible with the original purposes ("purpose limitation");

c) adequate, pertinent and limited to what is necessary in relation to the purposes for which that are processed ("data minimization");

d) accurate and, if necessary, updated; All reasonable steps will be taken

ble to delete or rectify without delay the personal data that are ine-

accurate with respect to the purposes for which they are processed ("accuracy");

e) maintained in a way that allows the identification of the interested parties during

longer than necessary for the purposes of the processing of personal data; the

Personal data may be kept for longer periods provided that it is

processed exclusively for archival purposes in the public interest, research purposes

scientific or historical or statistical purposes, in accordance with Article 89, paragraph 1,

without prejudice to the application of the appropriate technical and organizational measures that

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This Regulation is imposed in order to protect the rights and freedoms of the interest

sado ("retention period limitation");

f) processed in such a way as to guarantee adequate security of the personal data.

personal data, including protection against unauthorized or unlawful processing and against

accidental loss, destruction or damage, through the application of technical measures or

appropriate organizational measures ("integrity and confidentiality").

2. The controller will be responsible for compliance with the provisions

in section 1 and able to demonstrate it ("proactive responsibility")."

The LOPDGDD dedicates article 22 to "Processing for video surveillance purposes" and

has:

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

ment of images through camera systems or video cameras with the purpose

to preserve the safety of people and property, as well as its facilities.

2. Images of public roads may only be captured to the extent that it is im-

dispensable for the purpose mentioned in the previous section.

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

when necessary to guarantee the security of assets or strategic installations.

services or infrastructures linked to transport, without in any case being able to

put the capturing 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 had to be kept to prove the commission of acts that attend to

have against the integrity of people, goods or facilities. In this case, the images

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

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

tion.

The blocking obligation provided for in article

ass 32 of this organic law.

4. The duty of information provided for in article 12 of Regulation (EU) 2015/679 is

understood to be fulfilled by placing an informative device in a sufficient place

ciently 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 device information

I attach 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

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

regretfully capture the interior of your own home.

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

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

images.

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

nesses through the use of cameras and video cameras by the Forces and Corps

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

penitentiaries and for the control, regulation, surveillance and discipline of traffic, will be governed

by the legislation transposing Directive (EU) 2016/680, when the treatment

for purposes of prevention, investigation, detection or prosecution of violations
criminal offenses or the 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 (EU) 2016/679 and this 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.

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.”

Among the principles that govern the processing of personal data, the article
Article 5.1.c) of the RGPD refers to the "minimization of data": "Personal data
will be: (...) c) adequate, pertinent and limited to what is necessary in relation to the financial
tions for which they are treated”.

This principle is intimately connected with the purpose pursued by the treatment.
to of data made. In turn, in accordance with article 22 of the LOPDGDD, the treatment
that is carried out by means of video camera systems in cases such as the one that
occupies must have the specific purpose of “preserving the safety of people and
property, as well as its facilities.

Consequently, the processing of personal data for video surveillance purposes
must be adjusted and proportionate to the purpose to which it is directed and be strictly
mind necessary to fulfill this purpose. Data processing should be restricted
that exceeds this purpose or proceed, where appropriate, to its deletion.

Consistent with the principle of data minimization, the LOPDGDD warns in its
Article 22.2 that "Images of public roads may only be captured to the extent
that is essential for the purpose mentioned in the previous section.” This,
because the treatment of images in public places can be carried out exclusively

mind - prior to compliance with the legally enforceable requirements - by the Forces and Security forces.

In order for the exception mentioned in article 22.2 of the LOPDGDD to apply- it will be necessary that there is no alternate location of the camcorder from the that images of public roads are not captured. In such a case, the data controller ment will adapt the use of the facility so that the impact on the rights of third parties (passers-by) is the minimum possible. The use of surveillance practices will not be allowed. lance beyond the environment object of the installation of the system without it being able to affect

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surrounding public spaces such as adjoining buildings and vehicles other than those who access the guarded space. The principle of “data minimization” should be respected both at the time of data collection and in the processing back of them.

It should also be added that the processing of data that is carried out through systems of video surveillance such as the one that is the subject of this claim, will only be lawful if is based on the legitimizing circumstance described in article 6.1.e) of the RGPD: “the Treatment is necessary for the fulfillment of a mission carried out in the public interest. public or in the exercise of public powers vested in the data controller.

Precept in which the RGPD again requires that the treatment carried out be limited to that which is necessary, in this case to fulfill a mission carried out in the interest public. This mission, by application of article 8.2. of the LOPDGDD in relation to the article 22 of the LOPDGDD, it can only be, in cases like the one we are examining,

to preserve the safety of people and property.

III

The processing of personal data is also presided over in the RGD by the principle of "transparency" (article 5.1.a). This principle is made effective through the obligation that the RGD imposes on the data controller to inform the owner of the data in the terms of articles 12, 13 and 14.

Article 12.1 of the RGD states: "1. The data controller will take the measures appropriate measures to provide the interested party with all the information indicated in articles 13 and 14". The RGD determines what information must be provided to the interested party regarding to the processing of your personal data and differentiates two assumptions for this purpose: that the Data is collected from the owner (article 13 RGD) or obtained from another source. you (article 14 RGD).

Article 13 of the RGD provides:

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

- a) the identity and contact details of the person in charge and, where appropriate, of their representative. tant;
- b) the contact details of the data protection delegate, if any;
- c) the purposes of the treatment to which the personal data is destined and the legal basis of the treatment;
- d) when the treatment is based on article 6, paragraph 1, letter f), the legitimate interests swindles of the person in charge or of a third party;
- e) the recipients or the categories of recipients of the personal data, in their case;

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

2. In addition to the information mentioned in section 1, the data controller will provide the interested party, at the time the personal data is obtained, them, the following information necessary to guarantee fair data processing and transparent:

- a) the period during which the personal data will be kept or, when this is not possible, ble, the criteria used to determine this term;
- b) the existence of the right to request from the data controller access to the personal data relating 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 portability of the data;
- c) when the treatment is based on article 6, paragraph 1, letter a), or article 9, paragraph 2, letter a), the existence of the right to withdraw consent in any any time, without affecting the legality of the treatment based on consent. lien prior to 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 re-

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 which referred to in article 22, sections 1 and 4, and, at least in such cases, significant information on applied logic, as well as the importance and anticipated consequences of said treatment for the interested party.

3. When the data controller plans the further processing of personal data for a purpose other than that for which they were collected, will provide the interested party, prior to such further processing, information about that other purpose and any additional relevant information pursuant to paragraph 2.

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

Regarding the means through which the data controller can offer the interested party the information that must be provided, article 12.7

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RGPD indicates: “The information that must be provided to the interested parties under the 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”.

Article 22.4 of the LOPDGDD, transcribed in the preceding Legal Basis, with the purpose that the duty can be fulfilled in a concise and understandable manner

to inform the interested party that article 12 of the RGPD imposes on the data controller and under the provisions of article 12.7 of the RGPD, articulates a system of layered information.

The first layer -which must refer, at least, to the existence of the treatment; to identity of the person in charge and the possibility of exercising the rights provided for in the articles 15 to 22 of the RGPD- will be contained in a device whose design and location must be such that the affected party has a clear view of the information available on about the processing of your personal data and about where and how to find the information detailed tion. It will not be necessary to specify the exact location of the viewing equipment. deo-surveillance, but, nevertheless, it should be very clear what is the scope or space room under video surveillance.

Second layer information needs to be readily available in one place accessible to the affected party, be it an information sheet at a reception, cashier, etc. ..., co-located in a visible public space or in a web address and must refer to the res- of the aspects that must be reported in accordance with article 13 of the GDPR.

IV

In summary, taking into consideration both what is stated in the preceding Fundamentals as the set of provisions that regulate this matter, so that the treatment of the image of natural persons through video surveillance systems cia be respectful of the current regulations on the protection of personal data must to meet these requirements:

- Data processing must be the minimum necessary to fulfill the purpose “preserve the safety of people and property, as well as its facilities” and provided in connection with such purpose.
- When the system is connected to an alarm center, it can only be

installed by a private security company that meets the requirements of article

5 of Law 5/2014, of April 4, on Private Security.

- The video cameras will not be able to capture images of people who are 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 Government authorization concurs, by the Security Forces and Bodies. Either spaces owned by third parties may be captured or recorded without the consent of their owners, or, where appropriate, of the people who are in them.

This rule admits some exceptions since, on occasions, for the protection of spaces private spaces in which cameras have been installed on the facades or inside, can if necessary, to guarantee the purpose of security, the recording of a portion of the public road. That is, cameras and video cameras installed for the purpose of

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security will not be able to obtain images of public roads unless it is essential possible for said purpose, or it is impossible to avoid it due to their location. Y, Extraordinarily, the minimum space for said purpose will also be collected. By Therefore, the cameras could exceptionally capture the portion of public space minimally necessary for the intended security purpose.

- The duty to inform those affected provided for in articles 12 and 13 of the RGPD and 22 of the LOPDGDD, in the terms already indicated.

- The data controller must keep a record of the activities of the data processors.

procedures carried out under their responsibility, including the information to which

which refers to article 30.1 of the RGPD.

- Installed cameras cannot get images from third-party proprietary space

and/or public space without duly accredited justified cause nor can they affect the

privacy of passers-by who move freely through the area. not allowed, for

Therefore, the placement of cameras towards the private property of neighbors with the purpose

to intimidate them or affect their privacy without just cause.

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

is the object of the installation, not being able to affect the surrounding public spaces,

adjoining buildings or vehicles other than those accessing the guarded space.

To facilitate consultation, the Spanish Data Protection Agency, through its

website [<https://www.aepd.es>], offers access to the legislation on protection

tion of personal data, including the RGPD and the LOPDGDD (section “Reports and

resolutions” / “regulations”); to the Guide on the use of video cameras for security and

other purposes and the Guide for compliance with the duty to inform (both available

available in the “Guides and tools” section).

It is also of interest in the event that low-level data processing is carried out.

risk, the free tool Facilita (in the “Guides and tools” section) that,

through specific questions, it allows to assess the situation of the person in charge

aspect of the processing of personal data that it carries out and, where appropriate, generate di-

verses documents, informative and contractual clauses, as well as an annex with

indicative security measures considered minimal.

v

The claim before us deals with two issues. It posits, on the one hand,

that the recording of images by the video camera installed by the defendant in the fa-

people from your premises exceed the permitted limits every time they are capturing the road

public. On the other hand, it deals with the absence of an informative sign for a video-monitored area

to provide the information that must be provided by the person responsible for the treatment.

The documentation in the file confirms that on the façade of the building where the defendant's premises are located -which is located on the ground floor and with access door to the public thoroughfare-, located above one of the windows that belong to the premises and at a certain distance from it, there is a video camera that, as you can see in the photo report, it is connected to the electrical network.

The respondent responds to this Agency in writing dated 02/22/21 providing documentary evidence that proves the presence of an informative poster indicating that

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It is a video-monitored area.

Item, provides documentary evidence (photograph No. 1) that allows you to examine what in your case it is captured with the camera, being the minimum essential for the measurement to serve goes to the intended purpose: security of the facilities.

It should be remembered that the mere visualization of the cameras does not determine that the same record space reserved for the privacy of people or public space, being able to they must be masked or capture what is necessary to protect the establishment (local) where they are installed.

The proliferation in recent times of acts of vandalism has given rise to the existence of this type of devices that fulfill a clear dissuasive function against acts poaching of an uncivil nature (e.g. graffiti, breaking windows or doors, spilling fluids, etc.)

The images obtained can play a crucial role in proving the alleged authorship of criminal acts against property (vgr. 263 CP) that would otherwise be continue to produce in the belief that there is no criminal reproach, and they must be made available to the competent authorities.

The presumption of innocence governs without exceptions in the sanctioning system and has to be respected in the imposition of any sanction, whether criminal or administrative (TCo 13/1981), since the exercise of the sanctioning right in any of its manifestations, is conditioned to the test game and to a procedure contradictory environment in which their own positions can be defended.

Pursuant to this principle, no penalty may be imposed on the basis of the guilt of the accused if there is no activity to prove the charge, which in the appreciation of the authorities or bodies called to resolve, destroy this presumption (TCo Auto 3-12-81).

SAW

In accordance with the foregoing, after analyzing the arguments and evidence provided, finds any irregularity in the installed system, which is why it is necessary to order file the present procedure.

It is recalled that at any time if it is deemed necessary, a face-to-face verification of the cameras by the Inspection of this Agency, which must comply at all times with the stated requirements.

Therefore, in accordance with the applicable legislation and after assessing the graduation criteria tion of the sanctions whose existence has been proven,

the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: ORDER the FILE of this procedure as there is no evidence gives the commission of any administrative infraction in the matter that concerns us.

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SECOND: NOTIFY this resolution to ***EMPRESA.1 and INFORM of the result of the performances to Don A.A.A.

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

resents may optionally file an appeal for reconsideration before the Director

of the Spanish Agency for Data Protection within a month from the date of

the day following the notification of this resolution or directly contentious appeal

before the Contentious-Administrative Chamber of the National High Court,

in accordance with the provisions of article 25 and section 5 of the additional provision

Final fourth of Law 29/1998, of July 13, regulating the Contentious Jurisdiction-

administrative, within a period of two months from the day following the notification

tion of this act, as provided for in article 46.1 of the aforementioned Law.

Sea Spain Marti

Director of the Spanish Data Protection Agency

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