

938-0419

Procedure No.: PS/00416/2018

RESOLUTION OF PUNISHMENT PROCEDURE

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

BACKGROUND

FIRST: On October 23, 2018, it is registered at the Agency

Spanish Data Protection written by the LOCAL POLICE OF ARACENA, (in

hereinafter, the claimant), attaching a report made, dated September 18

of 2018, by the agents of the Local Police Corps of said locality who

During the service carried out on that day, they verified the installation of a security camera.

video surveillance on the balcony of the house located at c/ ***DIRECCION.1 (Huelva),

occupied by Mr. A.A.A., (hereinafter, the claimed).

The report provided, in which the N.I.P. of the acting agents,

contains a print of a photograph showing the exact location of the aforementioned

camera, which according to the acting agents was "oriented towards the public highway and

therefore obtaining images of it".

SECOND: Upon receipt of the letter dated October 23, 2018, the

Subdirector General for Data Inspection proceeded to send, dated 5

November 2018, written to the respondent addressed to c/ ***DIRECCION.1 (Huelva),

indicating that the installation of the video surveillance camera previously outlined

would violate the data protection regulations, with regard to the treatment of

images.

As stated in the "Delivery Impossibility Certification" issued by the

Post and Telegraph State Society, S.A. in the file, the aforementioned

shipment has been returned to this Agency on November 21, 2018 by "Surplus" in the post office, since it was not removed from it due to its recipient, in this case the claimed, after leaving notice in the mailbox to the have been "Absent" at said address during the delivery attempts made on November 12 and 13, 2018.

On November 26, 2018, it is registered at the Agency Spanish Data Protection written by the LOCAL POLICE OF ARACENA attaching a new report made, dated November 19, 2018, by the agents of the Local Police Corps of said locality with the N.I.P. which is cited in same, and in which it consists:

"That while they were carrying out the work of the service, it is observed two people who are manipulating wiring on public roads, specifically at the entrance of the address ***ADDRESS.1.

That upon noticing the presence of the agents, the two people begin pick up various tools and wires by quickly heading inside the living place.

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

That when the agents worry about the facts, for being able to deal with some type of electric power fraud or similar, the inhabitant of the A.A.A. home, begins to tell the agents the following:

- "I am recording you, be careful, I am recording you".
- "I have you under surveillance, I understand technology and I have you recorded and I know to spare when you pass by here".

That before these words, it is verified that there is indeed a video camera installed on the balcony of the house directed towards the street and therefore recording everyone who walks down the street.”

THIRD: Consulted on January 14, 2019, the application that manages the history of sanctions and previous warnings in terms of protection of data, it is verified that the claimed party does not have records prior to those that have given rise to this sanctioning procedure.

FOURTH: On January 22, 2019, the Director of the Spanish Agency for Data Protection, agreed to initiate a sanctioning procedure of WARNING to the one claimed in accordance with the provisions of article 58.2.b) of the Regulation (EU) 2016/679 of the European Parliament and of the Council of April 27, 2016, regarding to the protection of natural persons with regard to data processing personal information and the free circulation of these data (General Protection Regulation of Data, (hereinafter RGPD), for the alleged infringement of article 5.1.c) of the aforementioned Regulation, typified in article 83.5.a) of the RGPD, and classified as very serious to effects of prescription in article 72.1.a) of Organic Law 3/2018, of 5 December, of Protection of Personal Data and guarantee of digital rights, (in forward, LOPDGDD).

Likewise, in said initial agreement, in accordance with the provisions of article 58.2.d) of the RGPD, the claimed party was required so that within the period indicated certify before this Agency the performance of certain actions and the adoption of certain measures in order to correct the irregular situation object of claim. Among these measures was the submission of graphic documentation recent, and duly dated, that would allow verifying the withdrawal of the aforementioned camera of the reviewed place or its reorientation towards private spaces to stop capture public thoroughfare or any other space other than the one claimed, proceeding, in its

case, to modify the place of installation of the camera to avoid collecting images of the public road. In this regard, the respondent was informed that, if it were impossible to another location to ensure its intended security purpose, the camera should oriented to capture the minimum portion of public road necessary to control the access to your home or its façade, which will also be accredited in the manner reviewed; Justification was also required for any other measure that would allow prove compliance with the data protection regulations in terms of video surveillance;

FIFTH: Attempted notification of said start-up agreement through the Company State Post and Telegraph, S.A. at the address where the house is located reviewed by the claimant, the claimant was absent in the delivery attempts practiced at 1:43 p.m. on January 31, 2019 and at 4:44 p.m.

February 5, 2019, leaving Notice in the mailbox on this second attempt. With date February 13, 2019 said shipment was returned to origin by Surplus (Not withdrawn in office), as stated in the Certificate issued by said Company.

3/11

In view of which, and in accordance with the provisions of articles 44, 45 and 46 of Law 39/2015, of October 1, of the Common Administrative Procedure of the Public Administrations, (hereinafter, LPACAP), the notification of said act will be made through an announcement published in the "Official State Gazette" No. 48, of date February 25, 2019.

There is no evidence that the defendant has appeared within the period indicated in the outlined announcement nor that, after the same, has exercised its right to formulate allegations and propose the evidence that it considers pertinent within the period granted for such purposes in the aforementioned start-up agreement, so that in accordance with the article 64.2.f) of the LPACAP, a resolution is issued.

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

of Data in this procedure the following are considered proven facts,

FACTS

First: On September 18, 2018, agents of the Local Police Corps

of Aracena issued "Service Report Exp:XXX/XX" which states: "That

while they were carrying out surveillance tasks for the population, when passing through the street

*** ADDRESS.1, the agents can observe how on the balcony of the

*** ADDRESS.1 of said street is installed a video camera oriented

towards the public thoroughfare and therefore obtaining images of it"

Second: In the aforementioned report, where the acting agents are identified

with their respective N.I.P., it is indicated "That the owner of the house turns out to be Mr.

A.A.A.."

The report also includes a printout of a photograph showing the

exact location of the aforementioned video surveillance camera.

Third: On November 19, 2018, the agents of the Police Corps

Local of Aracena that identify themselves with their N.I.P. in the "Service Report Exp.

YYY/YY" issued on the same date, state the following:

That while they were carrying out the work of the service, it is observed

two people who are manipulating wiring in the public way,

specifically at the entrance of the address ***ADDRESS.1.

That upon noticing the presence of the agents, the two people begin

pick up various tools and wires by quickly heading inside the

living place.

That when the agents worry about the facts, for being able to deal with some

type of electric power fraud or similar, the inhabitant of the A.A.A. home,

begins to tell the agents the following:

-“I am recording you, be careful that I am recording you”.

-“I have you under surveillance, I understand technology and I have you recorded and I know to spare when you pass by here”.

That before these words, it is verified that indeed there is a video camera installed on the balcony of the house directed towards the street and by both recording everyone who walks down the street.“

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

FOUNDATIONS OF LAW

Yo

By virtue of the powers that articles 55.1, 56.2 and sections b) and d) of the Article 58.2 of the RGPD recognize each control authority, and as established in articles 47 and 48.1 of the LOPDGDD, the Director of the Spanish Agency of Data Protection is competent to resolve this procedure.

Article 63.2 of the LOPDGDD indicates: "The procedures processed by the Spanish Agency for Data Protection will be governed by the provisions of the Regulation (EU) 2016/679, in this organic law, by the provisions regulations issued in its development and, as long as they do not contradict them, with a subsidiary, by the general rules on administrative procedures."

II

Article 64.2.f) of Law 39/2015, of October 1, on the Procedure Common Administrative Law of Public Administrations, of October 2, 2015, in hereinafter LPACAP, provides that:

“The initiation agreement must contain at least: (...)

f) Indication of the right to formulate allegations and to the hearing in the procedure and the deadlines for its exercise, as well as an indication that, in the event of not making allegations within the stipulated period on the content of the resolution of initiation, it may be considered a resolution proposal when it contains a precise pronouncement about the imputed responsibility.” (the underlined corresponds to the AEPD).

In the present case, such prescriptions have been observed, since in the initial agreement warned of the provisions of article 64.2.f) of the LPACAP, it was specified the alleged infraction committed together with its corresponding typification, the sanction of warning to be imposed, if applicable, was determined in accordance with the criteria taken into account based on the evidence obtained on that date and indicated certain measures in accordance with the provisions of article 58.2.d) of the GDPR.

In consideration of the foregoing and in accordance with the provisions of the Article 64.2.f) of the LPACAP, the agreement to initiate this proceeding sanctioning is considered a Resolution Proposal, since it contained a precise pronouncement on the imputed responsibility and, after notification in the manner described in the fifth factual record, the respondent has not formulated allegations to the same within the period granted for such purposes.

III

The capturing of images of natural persons identified or identifiable through through video surveillance cameras, or other capture systems, with the purpose of guaranteeing the safety of people, goods and facilities constitutes a

5/11

processing of personal data that, in accordance with the provisions of article 6.1.e) of the RGPD, finds its legitimacy in the fulfillment of a mission of

public interest.

The treatment of images through a video surveillance system to be

In accordance with current data protection regulations, you must respect the principles of limitation of the purpose and minimization of data collected by the sections b) and c) of article 5.1 of the RGPD.

In this case, it is elucidated whether the processing of images for the purpose of video surveillance carried out by the defendant could exceed the private sphere of his living place. Please note that video surveillance cameras installed for of security in private spaces cannot capture images of public spaces, since in accordance with the Organic Law 4/1997, of August 4, by which regulates the use of video cameras by the Security Forces and Bodies, and their Development Regulation, approved by Royal Decree 596/1999, of April 16, capturing images of public roads for security purposes must be carried out by the Security Forces and Bodies.

Just as the person responsible for processing for video surveillance purposes does not can capture private spaces owned by third parties without the consent of their holders or, as the case may be, of the people who are in them, cannot treat images of the public road for security purposes as it is a treatment reserved for the Security Forces and Bodies.

Therefore, the data controller for video surveillance purposes must take the necessary measures so that the cameras are oriented towards your property private. However, on some occasions the protection of private spaces, it is only possible if the cameras on the facades or inside capture a portion of the road public minimum and essential to fulfill the purpose of security as it is impossible to avoid it due to the situation of the cameras.

Sometimes it is necessary to capture accesses, doors or entrances, so that

it is inevitable not to record the area of the public road that is captured. By what is exception is applicable, there should be no possibility of alternative installation, it must be taken into account that:

- The person responsible for processing the data carried out through cameras and/or video cameras will adapt the use of the installation, so that the impact on the rights of pedestrians is the minimum possible.
- 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 any case, any unnecessary data processing should be avoided in order to the purpose pursued.

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

IV

However, in this case, the content of the reports issued by the acting agents with dates September 18 and November 19, 2018 and of the photograph incorporated into the first of said reports in the proceeding, evidence that the defendant, responsible for the treatment of images of analyzed video surveillance, captures images of public roads through the security camera video surveillance installed on the balcony of his home that has precisely targeted in that direction.

This circumstance is ratified not only by the photographic image incorporated into the "Service report" evacuated on September 18, 2018, but

also for the statements made by the respondent on the 19th of

November 2018 to the acting agents of the Local Police of Aracena at the

tell them that they were being recorded, what happened when they were

service next to the home of the claimed.

In short, the aforementioned device captures public road spaces in the form of

disproportionate and unnecessary in relation to the purpose of security of spaces

to which the installation of the video surveillance system must respond in

question.

In relation to said reports, it is pointed out that article 77.5 of the Law

39/2015, of October 1, of the Common Administrative Procedure of the

Public Administrations, under the heading "Means and trial period", provides the

next: "5. The documents formalized by the officials who are recognized

the condition of authority and in which, observing the legal requirements

corresponding the facts verified by those are gathered will prove of

unless proven otherwise".

Therefore, the defendant is responsible for the violation of the provisions

in article 5.1.c) of the RGPD, which establishes, regarding the "Principles related to the

treatment", the following:

"1. The personal data will be:

c) adequate, relevant and limited to what is necessary in relation to the purposes

for which they are processed ("data minimization");

For its part, article 22 of the LOPDGDD, under the heading "Treatments with

video surveillance purposes", it establishes in its sections 1 and 2 that:

"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.

7/11

However, it will be possible to capture the public road in an extension superior when necessary to guarantee the security of goods or strategic installations or infrastructures linked to transport, without In no case may it involve capturing images of the interior of a home private."

Consequently, of the set of evidence items available in the procedure, it is considered that the treatment of video surveillance images of which the claimed person is responsible violates the principle of data minimization contained in article 5.1.c) of the RGPD, given that through the camera located on the balcony of the house located at c/ ***DIRECCION.1 is pick up images of the surrounding public thoroughfare and of the people passing by or found in that public space, which are also recorded by the person claimed, and whose collection exceeds the minimum and necessary space that is estimated can be object of focus in order to protect the facade of the house or control the area of access to it.

Therefore, said processing of personal data on public roads, in addition to result in the exclusive competence of the Security Forces and Bodies, it is inappropriate and excessive by capturing, disproportionately, images of the natural persons who are in it, when said information is unnecessary to fulfill the intended security purpose of video surveillance regarding the people, goods and facilities of the private space in question.

Sections b), d) and i) of article 58.2 of the RGD provide the following:

“2 Each supervisory authority shall have all of the following powers

corrections listed below:

(...)

b) sanction any person responsible or in charge of the treatment with

warning when the processing operations have violated the provisions of

this Regulation;”

(...)

“d) order the person responsible or in charge of the treatment that the operations of

treatment comply with the provisions of this Regulation, where appropriate,

in a specified manner and within a specified period;”

“i) impose an administrative fine in accordance with article 83, in addition to or in

instead of the measures mentioned in this paragraph, depending on the circumstances

of each particular case;

Article 83 of the RGD, under the heading “General conditions for the

imposition of administrative fines”, in sections 2 and 5.a), states that:

“two. Administrative fines will be imposed, depending on the circumstances

of each individual case, in addition to or as a substitute for the measures contemplated

in article 58, paragraph 2, letters a) to h) and j). (...)

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

5. Violations of the following provisions will 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)

basic principles for treatment, including conditions for consent under articles 5, 6, 7 and 9; “.

For its part, article 72.1.a) of the LOPDGDD establishes that:

“1. Based on the provisions of article 83.5 of the Regulation (EU) 2016/679, are considered very serious and infringements will expire after three years. that suppose a substantial violation of the articles mentioned in that and, in particularly the following:

a)

The processing of personal data violating the principles and guarantees established in article 5 of Regulation (EU) 2016/679.”

Without prejudice to the provisions of article 83.5, sections a) and b), of the RGPD, Article 58.2.b) provides for the possibility of sanctioning with a warning. In relation

With this possibility, Considering 148 of the aforementioned Regulation provides that: "In case of a minor offence, or if the fine likely to be imposed constituted a disproportionate burden on a natural person, rather than sanction by fine, a warning may be imposed. However, special attention must be paid attention to the nature, seriousness and duration of the infringement, to its intentional, to the measures taken to alleviate the damages suffered, to the degree liability or any relevant prior violation, to the manner in which the control authority has become aware of the infraction, compliance with measures ordered against the person in charge or in charge, adherence to codes of conduct and any other aggravating or mitigating circumstance.”

In accordance with what was reasoned in previous Fundamentals of Law, it has

The violation of the principle of data minimization by the user has been proven.

reclaimed. Said conduct constitutes an infringement of the provisions of article 5.1.c)

of the RGPD in its relationship with the provisions of article 22.1 and 2 of the LOPDGDD,

typified in article 83.5.a) of the RGPD and classified as very serious for the purposes of

prescription in article 72.1.a) of the LOPDGDD, from whose commission results

responsible the claimed in his capacity as responsible for the treatment of

video surveillance derived from capturing images of public roads through the

camera installed on the balcony of the aforementioned dwelling

By virtue of the powers that articles 55.1, 56.2 and 58.2.b) of the RGPD

recognize each control authority, and according to the provisions of article 47 of

LOPDGDD, the Director of the Spanish Data Protection Agency is

competent to resolve this procedure with a sanction of warning.

For this, the following circumstances are taken into account: the lack of

connection of the claimant with the processing of personal data;

absence of intent and profit in the offending conduct, given that,

Without prejudice to the violation of the aforementioned principle of data minimization, the

9/11

treatment of video surveillance images carried out responded, in principle, to

security of people, goods and facilities, also considering that the

administrative fine that could be imposed in accordance with the provisions of article

83.5.a) of the RGPD would constitute a disproportionate burden for the claimed party, in addition

that he is not aware of the commission of any previous infraction in terms of

Data Protection.

Confirmed the infraction described, and not being proven in the procedure

sanctioning party than the defendant, once the agreement to start the same has been notified

through its publication in the Official State Gazette, has adopted any measure to cease the excessive and disproportionate data processing of images of the public thoroughfare that he has been taking through the camera of video surveillance located on the balcony of the house mentioned in the police reports, considers it appropriate to apply the provisions of the aforementioned article 58.2.d) of the RGPD, to which is ordered to the claimed, in his capacity as data controller analyzed, carry out the actions and measures indicated in the dispositive of the resolution so that the treatment operations are adjusted to the provided in article 5.1.c) of the RGPD in its relationship with the provisions of article 22.1 and 2 of the LOPDGDD.

These actions and measures, ordered to adjust the operations of the treatment as provided in the RGPD, they must be adopted by the claimed in the period of ONE MONTH, computed from the date on which this resolution is notified penalty, and its compliance must be proven within the same period by the claimed through the provision of graphic documentation or any other means of proof valid in law that allows verifying compliance with the same by the reclaimed.

At the same time, it is observed that section 6 of article 83 of the RGPD, states that "6. Failure to comply with the resolutions of the control authority to pursuant to article 58, section 2, shall be sanctioned in accordance with section 2 of the this article with administrative fines of EUR 20,000,000 maximum 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."

Article 72.1.m) provides that: "1. According to what the article establishes 83.5 of Regulation (EU) 2016/679 are considered very serious and will prescribe to

three years the infractions that suppose a substantial violation of the articles

mentioned therein and, in particular, the following: (...)

m) Failure to comply with the resolutions issued by the authority of competent data protection in exercise of the powers conferred by article 58.2 of Regulation (EU) 2016/679.”

Therefore, in accordance with the applicable legislation and valued the concurrent circumstances in the present case,

The Director of the Spanish Data Protection Agency RESOLVES:

FIRST: IMPOSE Mr. A.A.A., with NIF ***NIF.1 in accordance with the provisions in article 58.2.b) of the RGPD, a sanction of WARNING for an infringement

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

of article 5.1.c) of the RGPD in its relationship with the provisions of article 22.1. and 2 of the LOPDGDD, typified in article 83.5.a) of the RGPD

SECOND: TO ORDER Mr. A.A.A., in accordance with the provisions of article 58.2.d) of the RGPD, that within ONE MONTH, counting from the notification of this resolution, provide documentation to this Agency that allows proving the adoption of the following measures aimed at complying with the protection regulations video surveillance data.

- Remission of recent graphic documentation, and duly dated, that allows verifying the removal of the aforementioned camera from the aforementioned place or verify its reorientation towards private spaces to stop capturing public roads or any other non-private space of the claimed, proceeding, where appropriate, to modify the place of the installation of the camera to avoid collecting images of public roads.

- If another location is impossible to guarantee the security purpose

intended, the camera should be oriented to capture the minimum portion of public road necessary to control access to the home or its façade area, which will also be credited in the manner outlined above.

- Justify the implementation of any other measure that allows to prove the compliance with data protection regulations regarding video surveillance.

THIRD: NOTIFY this resolution to Don A.A.A.

FOURTH: In accordance with the provisions of article 50 of the LOPDPGDD, 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

LOPDPGDD, 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 month from

counting 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,

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 by

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

Electronic Register of the Agency [<https://sedeagpd.gob.es/sede-electronica->

web/], or through any of the other registers 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 within a period of two months from the day following the
notification of this resolution would end the precautionary suspension.

11/11

Sea Spain Marti

Director of the Spanish Data Protection Agency

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es