

Procedure No.: PS/00375/2018

RESOLUTION OF PUNISHMENT PROCEDURE

Of the procedure instructed by the Spanish Agency for Data Protection before
TODOFUNDICION, S.L., by virtue of a claim filed by A.A.A. and based on
the following:

BACKGROUND

FIRST: On 07/31/2018, the Spanish Agency for the Protection of
Written data from D. A.A.A. (hereinafter the claimant), in which he denounces
TODOFUNDICION, S.L. (hereinafter TODOFUNDICION), through which
manifests the existence of a panoramic video surveillance camera with zoom and vision
at the entrance to the same capturing images of people who circulate along the road
public, violating the right to privacy.

Along with your written complaint, you provide photographs of the location of the camera.

SECOND: TODOFUNDICION was required by this Agency on 09/16/2018 and
09/20/2018 in the scope of file E/05848/2018 the documentation that
certify that the installation of the camera was in accordance with the protection regulations
of data and that it was duly signposted.

TODOFUNDICION has not alleged or provided any documentation in relation to
the requirements formulated by the Data Inspection.

THIRD: On 12/03/2018, the Director of the Spanish Protection Agency
of Data agreed to initiate a sanctioning procedure for the presumed infraction of the
article 5.1 c) of the RGPD, in accordance with the provisions of article 58.2 of the
same norm, considering that the sanction that could correspond would be
WARNING, without prejudice to what may result from the investigation.

FOURTH: TODOFUNDICION notified of the start-up agreement, has not submitted a written

of any allegation, so in accordance with articles 64.2.f) of the Law

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

Public Administrations (LPACAP), a resolution is issued.

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

accredited the following:

PROVEN FACTS

FIRST: On 07/31/2018 the claimant files a document denouncing

TODOFUNDICION, for the installation on the facade of the premises of the aforementioned company

a panoramic video surveillance camera capturing images of people

circulate on public roads without any sign notifying them of their existence,

violating the regulations on data protection and intrusive of the right to

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personal privacy; provides photographs in which the place where the

the camera is located.

SECOND: TODOFUNDICION, nor to the requirements made by the Service of

Inspection on dates 09/16/2018 and 09/20/2018, nor to the notification of the agreement of

initiation of this proceeding, has presented any allegation in relation to the

facts imputed to him.

FOUNDATIONS OF LAW

Yo

By virtue of the powers that article 58.2 of the RGPD recognizes to each

control authority, and as established in art. 47 of the Organic Law 3/2018, of

December 5, Protection of Personal Data and guarantee of rights

(hereinafter LOPDGDD), the Director of the Spanish Agency for

Data Protection is competent to resolve this procedure.

It is necessary to point out some of the requirements that the treatment of images through a video surveillance system to be in accordance with the regulations in force:

II

- 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 4

april.

- The video cameras will not be able to capture images of the people who

are outside the private space since the treatment of images in

public places can only be carried out, where appropriate, by the Forces and

Security forces. Spaces cannot be captured or recorded either.

property of third parties without the consent of their owners, or, where appropriate, of

the people who are in them.

- The duty to inform those affected provided for in article

12 of the RGPD 2016/679, of April 27, 2016, in the terms referred to both

in the aforementioned article, as well as in articles 13 and 14 of said regulation, resulting

of application -by not contradicting the provisions of the aforementioned Regulation-, the

manner provided for in article 3 of Instruction 1/2006, of November 8, of

the Spanish Agency for Data Protection, on Data Processing

Personal for Surveillance Purposes through Camera Systems or

Video cameras (Instruction 1/2006, of November 8, of the Spanish Agency

Data Protection).

Specifically, it must:

1. Place at least one informative badge in the video-monitored areas

located in a sufficiently visible place, both in open and closed spaces.

In accordance with the provisions of articles 13 and 14 of Regulation (EU) 2016/679,

of April 27, 2016, in the aforementioned informative badge, you must

identify, at least, the existence of a treatment, the identity of the person in charge and

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the possibility of exercising the rights provided for in said precepts.

2. Keep available to those affected the information referred to in the

cited Regulation (EU) 2016/679, of April 27, 2016.

TODOFUNDICION is charged with the violation of article 5 RGPD, Principles

regarding the treatment, which provides the following:

III

"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");

Also the new Organic Law 3/2018, of December 5, on the Protection of

Personal data and guarantee of digital rights (LOPDGDD), in its article 22,

Treatment for video surveillance purposes, in its sections 2 and 4, establishes that:

(...)

"two. 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 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.

(...)

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".

The facts denounced are specified in the installation outside the establishment where the merchant develops its activity of a panoramic camera of video surveillance that captures images of the public road without there being any sign that warns of its existence, violating the regulations on data protection and intrusive of the right to privacy of individuals.

It should be noted that TODOFUNDICION has not responded to the requirements formulated by the Data Inspection in the actions phase

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previous and that having notified the initiation agreement has not presented a writ of allegations.

IV

Article 83.5 a) of the RGPD, considers that the infringement of “the principles basic for the treatment, including the conditions for the consent in accordance with of articles 5, 6, 7 and 9” is punishable, in accordance with section 5 of the mentioned article 83 of the aforementioned Regulation, with administrative fines of €20,000,000 maximum or, in the case of a company, an equivalent amount at a maximum of 4% of the total global annual turnover of the financial year above, opting for the highest amount.

The LOPDGDD in its article 72 indicates: “Infringements considered very serious:

1. Based on the provisions of article 83.5 of the Regulation (EU)

2016/679 are considered very serious and the infractions 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”

However, article 58.2 of the RGPD provides the following: “Each authority of control will have all the following corrective powers indicated below:

continuation:

(...)

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

warning when the processing operations have violated the provisions of

this Regulation;

(...)”

Therefore, the RGPD, without prejudice to the provisions of its article 83, contemplates

in its article 58.2 b) the possibility of going to the warning to correct the

processing of personal data that do not meet your expectations. About

when it is appropriate to opt for one or the other route, the application of article 83 of the RGPD

or the warning measure of article 58.2.b), the rule itself in its Considering

148 of Regulation 2016/679 which establishes the following:

“In the event of a minor offence, or if the fine likely to be imposed

would constitute a disproportionate burden for a natural person, rather than

sanction by means of a fine, a warning may be imposed. must however

Special attention should be paid to the nature, seriousness and duration of the infringement, its

intentional nature, to the measures taken to alleviate the damages suffered,

the degree of liability or any relevant prior violation, the manner in which

that the control authority has been aware of the infraction, compliance

of measures ordered against the person responsible or in charge, adherence to codes of

conduct and any other aggravating or mitigating circumstance.”

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It should be noted that, after the requirements made by the Service of

Inspection the party complained against has not responded to them.

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At the same time, the initiation agreement was notified on 12/03/2018 and

After the period granted to formulate allegations, I did not present any written document.

At this point, it is necessary to inform TODOFUNDICION that meeting the Agency's requirements may constitute a very serious infringement. serious in accordance with the provisions of article 72 of the LOPDGDD, which states: "1. Based on the provisions of article 83.5 of the Regulation (EU) 2016/679 are considered very serious and the infractions that suppose a substantial violation of the articles mentioned in that and, in particularly the following:

(...)

ñ) Failure to facilitate access by data protection authority personnel competent to personal data, information, premises, equipment and means of treatment that are required by the data protection authority for the exercise of its investigative powers.

o) The resistance or obstruction of the exercise of the inspection function by the competent data protection authority.

(...)"

On the contrary, it can be considered as mitigating liability. the degree of cooperation and collaboration with the corresponding authority with the purpose of remedying the infraction and reducing the adverse effects that the Violation of data protection regulations may entail.

For all these reasons, TODOFUNDICION is told that if the facts are not corrected revealed in the claim that is the cause of this procedure and then inform this AEPD of the measures adopted, it could proceed to the exercise of possible actions before the person in charge of the treatment in order to effectively apply the appropriate measures to guarantee and not

compromise the confidentiality of personal data and the right to

people's privacy.

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 TODOFUNDICION, S.L., with NIF B14997571, for a

infringement of article 5.1 c) of the RGPD, sanctioned in accordance with the provisions of the

article 83.5 of the aforementioned RGPD and, described as very serious in article 72.1 a) of the

LOPDGDD, a penalty of WARNING in accordance with the provisions of the

article 58.2.b) of the RGPD.

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SECOND: NOTIFY this resolution to TODOFUNDICION, S.L., and

according to art. 77.2 of the RGPD, INFORM the claimant, D. AAA, of the result of

the claim.

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.

114.1 c) of the LPACAP, 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-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.

Sea Spain Marti

Director of the Spanish Data Protection Agency

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