

□ Procedure No.: PS/00373/2019

938-051119

RESOLUTION OF PUNISHMENT PROCEDURE

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

BACKGROUND

FIRST: Dated September 20, 2019, entered this Agency

Spanish Department of Data Protection, a document presented by the General Directorate of
the Civil Guard - ***PUESTO.1 (hereinafter, the claimant), through which
makes a claim against Mrs. A.A.A. with NIF ***NIF.1 (hereinafter, the claimed one),
for the installation of a video surveillance system installed in ***ADDRESS.1,

There are indications of a possible breach of the provisions of the regulations of
Data Protection.

The reasons that support the claim and, where appropriate, the documents
provided by the claimant are the following:

They present a new claim against the owner of a property that has
with cameras oriented to the public road and lacking an information poster. was the subject of
a Warning (A/00456/2017) with measures, which it appears that it has not adopted.

In the first complaint, they attached a record drawn up by the General Directorate
of the Civil Guard - *** POSITION.1, belonging to the Forces and Corps of
Security and photographic report that confirms "(...) that the video camera(s)

It is located outside the house recording the public road and passers-by.

There is evidence of the absence of authorization from the Ministry of the Interior for the placement of
the same. There is a lack of informative posters about the presence of
camcorders (...).

The warning was resolved as follows:

1. NOTICE (A/00456/2017) Mrs. A.A.A. in accordance with the provisions of art.

Article 45.6 of Organic Law 15/1999, of December 13, on the Protection of

Personal Data, in relation to the complaint for infringement of the

article 6.1 of the LOPD, typified as serious in article 44.3.b) of the aforementioned

Organic Law.

2. REQUEST Ms. A.A.A. in accordance with the provisions of section 6 of the

article 45 of Law 15/1999 so that within a month from this act

of notification:

COMPLY with the provisions of article 6.1 of the LOPD. in con-

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decree, the defendant is urged to justify the withdrawal of the outer chamber

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that is oriented towards a public road, or its relocation or reorientation

so that you cannot capture disproportionate images of the

public road. You can prove the adoption of these measures, by means of

gave, for example, photographs that show the removal of the camera

camera or photographs that show what the camera captures once it is

has relocated or reoriented.

THIRD: On January 9, 2020, 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, typified in Article 83.5 of the

GDPR. The initiation agreement was collected by the respondent on January 14, 2020, as stated in the acknowledgment of receipt issued by the Post Office.

FOURTH: Once the initiation agreement has been notified, the claim at the time of this resolution has not submitted a brief of allegations, so what is indicated is applicable in article 64 of Law 39/2015, of October 1, on Administrative Procedure Common of the Public Administrations, which in its section f) establishes that in case of not making allegations within the stipulated period on the content of the initial agreement, it may be considered a resolution proposal when it contains a precise statement about the imputed responsibility, so we proceed to dictate Resolution.

In view of everything that has been done, by the Spanish Protection Agency Data in this procedure are considered proven facts the following

FACTS

FIRST: The Spanish Agency for Data Protection warned the person claimed by having the cameras oriented in such a way that they captured disproportionate images and lacking an information poster, after processing procedure A/00456/2017.

SECOND: In the aforementioned warning procedure, it was required to within a month to justify the withdrawal of the outer chamber that is oriented towards public roads, or its relocation or reorientation so that it cannot capture disproportionate images of public roads. Being able to prove the adoption of These measures, through, for example, photographs that show the removal of the camera or photographs showing what the camera captures once it has been relocated or reoriented.

THIRD: On September 20, 2019, he entered this Agency

Spanish Department of Data Protection, a document presented by the General Directorate of

the Civil Guard - ***PUESTO.1, through which he makes a claim against the claimed, for the installation of a video surveillance system installed in ***ADDRESS.1, there being indications of a possible breach of the provisions of data protection regulations. They add that it has not adopted the measures required in the previous notice.

FOURTH: The respondent received the agreement to initiate this procedure and no received allegations about it.

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FOUNDATIONS OF LAW

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By virtue of the powers that article 58.2 of the RGPD recognizes to each authority control, and as established in arts. 47 and 48.1 of the LOPDGDD, the Directorate of the Spanish Agency for Data Protection is competent to resolve this process.

II

Article 6.1 of the RGPD establishes the assumptions that allow it to be considered lawful the processing of personal data.

For its part, article 5.1.c) of the RGPD, regarding the principles of processing to, provides that the personal data will be "adequate, pertinent and limited to what is necessary in relation to the purposes for which they are processed ("minimization of data")." This article enshrines the principle of data minimization in the treatment

of personal data. It assumes that said treatment is adjusted and proportional to the purpose to which it is directed, and the processing of excessive data must be restricted. you or proceed to delete them.

The relevance in the treatment of the data must occur both in the the collection of the data as well as in the subsequent treatment that is carried out on the same. mos.

Article 13, sections 1 and 2, of the RGPD, establishes the information that must be be provided to the interested party at the time of data collection. In the case of processing of personal data for surveillance purposes through camera systems or video cameras, the duty of information can be fulfilled by placing, in video-monitored areas, of an informative badge located in a place sufficiently visible, both in open and closed spaces, and using forms in the that the planned information is detailed, which the person in charge must make available of those interested.

On the other hand, in accordance with the provisions of article 22 of the LOPDGDD, re-referring specifically to "Processing for video surveillance purposes", the processing of images in public places can only be carried out -if applicable and prior compliance compliance with the legally enforceable requirements-, by the Security Forces and Bodies unless the exception established in the aforementioned article 22 of the LO-PDGDD for natural or legal persons, public or private, respecting the con-conditions required in said article.

On some occasions, the protection of private spaces is only possible if the cameras are located in spaces such as facades. Sometimes it is also necessary ary to capture the accesses, doors or entrances, so that, although the camera is

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inside the building, it is impossible not to record a minimal and important part dispensable from the public road, which is inevitably captured.

In order for this exception on the protection of private spaces to apply, cable, there shall be no alternative installation possibility. In these cases, the responsible for the treatment carried out through cameras will adapt the use of the so that the impact on the rights of third parties (passers-by) is minimal. no possible. In no case will the use of surveillance practices be admitted beyond the environment object of the installation, not being able to affect the surrounding public spaces. contiguous buildings and vehicles other than those accessing the guarded space.

III

In accordance with the above, the treatment of images through a system subject of video surveillance, to be in accordance with current regulations, you must comply with the following requirements:

- 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 established in article 5 of Law 5/2014 on Private Security, of April 4.
- The video cameras will not be able to capture images of the people who are outside the private space where the video surveillance system is installed.

since the treatment of images in public places can only be carried out, unless there is government authorization, by the Security Forces and Bodies.

Nor can spaces owned by third parties 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 some occasions, for the protection of private spaces, where cameras have been installed on facades or in the inside, it may be necessary to ensure the security purpose the recording of a portion of the public road. That is, cameras and camcorders installed with security officers will not be able to obtain images of public roads unless it is indispensable for said purpose, or it is impossible to avoid it due to the location of those and, extraordinarily, the minimum space for said financing will also be collected. Therefore, the cameras could exceptionally capture the minimum portion-mind necessary for the intended security purpose.

- The duty to inform those affected provided for in the articles must be complied with. 12 and 13 of the RGPD.

Specifically, at least one distinction must be placed in video-monitored areas. informative display located in a sufficiently visible place, both in open spaces as closed, which will identify, at least, the existence of a treatment, the identity of the person in charge and the possibility of exercising the rights foreseen in said precepts. Likewise, the information must be kept available to those affected. to which the aforementioned RGPD refers.

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- The person in charge must keep a record of treatment activities carried out under its responsibility, including the information to which it makes reference article 30.1 of the RGPD.

- The installed cameras cannot obtain images from private space of

third party and/or public space without duly accredited justified cause, nor can affect the privacy of passers-by who move freely through the area. It's not per-mitigated, therefore, the placement of cameras towards the private property of neighbors with the purpose of intimidating them or affecting their private sphere without just cause.

- In no case will the use of surveillance practices beyond the en-object of the installation and in particular, not being able to affect the public spaces surrounding spaces, adjoining buildings and vehicles other than those accessing the space. guarded man

IV

The claim is based on the illegality of the installation by the claimed of a video surveillance system, since the video camera is outside the the house recording the public thoroughfare and passers-by. It includes the absence of authorization from the Ministry of the Interior for the placement of the same. It consists of non-existence of informative posters in accordance with the current regulations for the protection of data on the presence of video cameras located outside the home, pro-claimed property, located at ***ADDRESS.1, which would capture images of public areas public disproportionately; without the claimant having argued otherwise.

In addition, the claimant warns that the property reviewed does not have a sign in which the presence of the cameras and the identity of the res-ponsible for data processing, so that interested persons can exercise cite the rights provided for in arts. 15 to 22 of the GDPR.

In accordance with the foregoing, this Agency considers that the regulation has been breached. data protection requirement due to the existence of video surveillance cameras installed outside the home of the respondent, located at ***ADDRESS.1 which capture images of public thoroughfares in excess, as well as the absence of the necessary distinctive I am informative.

The corrective powers of the Spanish Protection Agency

of Data, as a control authority, are established in article 58.2 of the RGPD. In-

Among them are the power to sanction with a warning -article 58.2 b)-,

the power to impose an administrative fine in accordance with article 83 of the RGPD

-article 58.2 i)-, or the power to order the controller or processor

that the treatment operations comply with the provisions of the RGPD, when

appropriate, in a certain way and within a specified period -article 58. 2

d)-.

It is considered that the exposed facts fail to comply with the provisions of article

5.1.c) of the RGPD, for which they could suppose the commission of an infraction typified in

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Article 83.5 of the RGPD, which provides the following:

“Infractions of the following provisions will be sanctioned, in accordance

with paragraph 2, with administrative fines of a maximum of EUR 20,000,000 or, alternatively,

being from a company, of an amount equivalent to a maximum of 4% of the volume

overall annual total turnover of the previous financial year, opting for the

higher amount:

a) the basic principles for the treatment, including the conditions for the

consent under articles 5, 6, 7 and 9;

b) the rights of the interested parties according to articles 12 to 22; [...]”.

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

in the previous paragraph are considered very serious and prescribe after three years, with conform to article 72.1 of the LOPDGDD, which establishes that:

“Based on the provisions of article 83.5 of Regulation (EU) 2016/679

are considered very serious and will prescribe after three years the infractions that suppose a substantial violation of the articles mentioned therein and, in particular, the following:

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

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

SAW

Based on the facts set forth, it is considered that it is appropriate to impute to the claimed for the alleged infringement. The penalty that should be imposed is administrative fine, since it has been previously issued a warning and has not complied with the corrective measures that were imposed.

The fine imposed must be, in each individual case, effective, proportionate nothing and dissuasive, in accordance with the provisions of article 83.1 of the RGPD. So, It is appropriate to graduate the sanction to be imposed in accordance with the criteria established by art. article 83.2 of the RGPD, and with the provisions of article 76 of the LOPDGDD, regarding the section k) of the aforementioned article 83.2 RGPD:

In the assessment, the following were considered as aggravating factors:

- The defendant has acted with a serious lack of diligence.
- The respondent has not adopted any measure to correct the effects of the infraction, despite having been required by the AEPD and not having legitimacy to the treatment carried out or that offers reasonable indications that the treatment was legal.

I quote, he continued capturing images of public roads.

In the assessment, the following were considered mitigating factors:

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- The defendant is an individual.

-The merely local scope of the data processing carried out by the claim-gives.

-The damage caused to those affected by the processing of their data does not become significant.

-There is no obvious link between the processing of personal data personnel and the activity carried out by the claimed person.

-As mitigating circumstances to be assessed in order to graduate the sanction tion, taking into account the limited catchment space, the absence of benefits had, as well as the fact of being a natural person.

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 Doña A.A.A., with NIF ***NIF.1, for an infraction of the articles 5.1.c) and 13 of the RGPD, typified in Article 83.5 of the RGPD, a fine of €1,000 (one thousand euros).

SECOND: TO REQUEST Doña A.A.A. so that within ONE MONTH from the notification of this act, prove compliance with the following measures:

-That he has redirected the video surveillance cameras to the minimum

essential for their purpose and do not record public roads.

-Proof of having an approved information poster, adapted to the regulations in force.

THIRD

: NOTIFY this resolution to Mrs. A.A.A.

FOURTH: Warn the sanctioned party that he must make the imposed sanction effective once

Once this resolution is enforceable, in accordance with the provisions of the

art. 98.1.b) of Law 39/2015, of October 1, of the Administrative Procedure Co-

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

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, through its entry, 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, opened in the name of the Spanish Agency

Data Protection Policy at Banco CAIXABANK, S.A. Otherwise,

will yield to its collection in the executive period.

Received the notification and once executed, if the date of execution is

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is between the 1st and 15th of each month, both inclusive, the term to carry out the

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

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

payment will be until the 5th of the second following month or immediately after.

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

This Resolution will be made public once it has been notified to the interested parties.

Against this resolution, which puts an end to the administrative procedure in accordance with art.

48.6 of the LOPDGDD, and in accordance with the provisions of article 123 of the LPA-

CAP, the interested parties may optionally file an appeal for reconsideration before

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

counting from the day following the notification of this resolution or directly

contentious-administrative case before the Contentious-administrative Chamber of the Au-

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 Jurisdiction

Contentious-administrative diction, within a period of two months from the day following

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 LPA-

CAP, the firm resolution may be provisionally suspended 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 city

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

certifying the effective filing of the contentious-administrative appeal. Yes

the Agency was not aware of the filing of the contentious-administrative appeal

nistrative within two months from the day following the notification of the pre-

This resolution would end the precautionary suspension.

Sea Spain Marti

Director of the Spanish Data Protection Agency

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