

Procedure No.: PS/00236/2019

938-0419

RESOLUTION OF PUNISHMENT PROCEDURE

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

FACTS

FIRST: MADRID MUNICIPAL POLICE (*hereinafter, the claimant) with
dated May 22, 2019 filed a claim with the Spanish Agency for
Data Protection, motivated by the processing of data carried out through
cameras of a video surveillance system whose owner is MALONEY'S SPORT BAR
SL with NIF B83002006 (hereinafter the claimed) installed in CALLE BRETÓN
OF THE BLACKSMITHS 61, MADRID.

The reasons on which the claim is based are "presence of a video-
vigilance" directed towards public space, without just cause (folio nº 1).

A copy of the Complaint Act is attached where the described facts are reflected
object of administrative infraction (Proof No. 1).

SECOND: In view of the reported facts, in accordance with the evidence
that is available, the Data Inspection of this Spanish Agency for the Protection of
Data considers that the treatment of personal data that is carried out by the
denounced through the chambers to which the complaint refers, does not meet the
conditions imposed by the regulations on data protection, for which reason the
opening of this sanctioning procedure.

THIRD: After consulting the database of this Agency, there is a procedure
prior with reference number PS/00044/2008 in which the entity was sanctioned
Maloney's Sport Bar with a sanction of €1000 (One Thousand Euros) for an infraction of the

article 6 LOPD, by having a video-surveillance camera system that monitored the public highway.

“Impose the entity MALONEY’S SPORTS BAR SL, for an infraction of the article 6 of the LOPD, typified as serious in article 44.3 d) of said regulation, a fine of €1,000 (one thousand euros) in accordance with the provisions of article 45.

2. 4. and 5 of the aforementioned Organic Law”

FOURTH: On September 12, 2019, the Director of the Spanish Agency of Data Protection agreed to initiate a sanctioning procedure against the claimed, for the alleged infringement of Article 5.1.c) of the RGPD, typified in Article 83.5 of the GDPR.

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

First. On 05/22/19, Official Letter of the Local Police is received in this Agency (Madrid) by means of which he transfers the following as the main event.

"presence of video-surveillance system" oriented towards public space, without justified cause (folio nº 1).

It is verified by the acting force that it is oriented towards space controlling the same without just cause, without having information in the inside of it.

Second. It is identified as the main person responsible for the infraction the Bar Maloney entity.

Third. Associated with this same entity, there is a previous procedure with reference number PS/00044/2008, where he was sanctioned for identical acts with a fine of €1,000 (Thousand Euros).

Fourth. By the entity denounced to date, no any allegation in relation to the camera in question.

FOUNDATIONS OF LAW

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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 initiate and resolve this procedure.

II

In the present case, we proceed to analyze the claim dated 05/22/19 by means of which the following is transferred as the main fact.

"presence of video-surveillance system" oriented towards public space, without justified cause (folio nº 1).

The facts described above may affect the content of the art.5.1 c) RGPD. "Personal data will be:

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

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It should be remembered that individuals can install video surveillance cameras although they assume the responsibilities that they comply with the provisions in force on the matter.

Space images cannot be obtained with this type of device.

public, affecting the right to privacy of pedestrians passing through the area without just cause, in the case of a measure disproportionate to the purpose of the installed system.

III

For information purposes only, it is worth remembering some of the requirements that must comply with the processing of images through a video surveillance system to comply with current regulations:

- 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 April 4.
- 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 places public can only be carried out, where appropriate, by the Forces and Bodies of Security. Nor can spaces owned by third parties be captured or recorded without the consent of their owners, or, as the case may be, of the persons who are find.
- 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 cited article, as in articles 13 and 14 of said rule, resulting from the application -by not contradicting the provisions of the aforementioned Regulation-, the manner provided in the Article 3 of Instruction 1/2006, of November 8, of the Spanish Agency for

Data Protection, on the Processing of Personal Data for the Purpose of Surveillance through Camera Systems or Video Cameras (Instruction 1/2006, of 8 of November, of the Spanish Data Protection Agency).

Specifically, it must:

1. Place at least one informative badge in the video-monitored areas located in a sufficiently visible place, both in open spaces and closed.

In accordance with the provisions of articles 13 and 14 of the Regulation (EU) 2016/679, of April 27, 2016, in the informative sign above mentioned must identify, at least, the existence of a treatment, the identity of the person in charge and the possibility of exercising the rights provided in these precepts.

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2. Keep the information to which it refers available to those affected the aforementioned Regulation (EU) 2016/679, of April 27, 2016.

IV

In accordance with the evidence available in this sanctioning procedure, and without prejudice to what results from the investigation, considers that the requested party has a video-surveillance device oriented into public space.

The known facts could constitute an infraction, attributable to the claimed, for violation of the content of art. 5.1 c) GDPR, cited above.

Article 83 section 5 of the RGPD provides the following: "Infringements of the following provisions will be sanctioned, in accordance with section 2, with fines administrative fees of EUR 20,000,000 maximum or, in the case of a company, of an amount equivalent to a maximum of 4% of the total annual turnover of the previous financial year, opting for the highest amount:

a) the basic principles for the treatment, including the conditions for the consent under articles 5, 6, 7 and 9;

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In accordance with the foregoing, there are accredited indications of the installation of a video-surveillance "device" that obtains images of public space, without cause justified, affecting the right to privacy of third parties, as stated in the force acting after the inspection of the establishment.

When motivating the sanction, the following aspects are taken into account:

-This is a device directed towards public space, affecting a number of pedestrians, being a measure disproportionate to the purpose pretended that it is none other than the security of the establishment (art. 83.2 a) RGPD).

-the intentionality or negligence of the infraction, which must be qualified as at least slightly, since the control of public space is not allowed, outside the legally established cases (art. 83.2b GDPR).

-Any previous infraction committed by the person in charge, when there is a sanction associated with the procedure with reference number PS/00044/2008 where She was already punished for the same facts. (art. 83.2 and RGPD).

For this reason, it is ordered to impose a pecuniary sanction encrypted in the amount of €6,000 (Six Thousand Euros), in the case of a sanction located on the lowest scale for this type of infraction according to the exposed facts, without prejudice to adopting the necessary measures to restore the situation to current legality.

The denounced party must explain the characteristics of the system, providing photograph (date and time) that proves what is captured with it, as well as that

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complies with all the legally established requirements for the installation of systems video surveillance.

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 the entity MALONEY'S SPORT BAR S.L., with NIF

B83002006, for an infringement of article 5.1.c) of the RGPD, typified in Article

83.5 of the RGPD, a fine of €6,000 (six thousand Euros), in accordance with the provisions in art.58.2 RGPD.

SECOND: NOTIFY this resolution to the entity MALONEY'S SPORT BAR S.L.

THIRD: 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, on Administrative Procedure

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

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

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

of December 17, 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 on behalf of the Agency

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

it will be collected during the executive period.

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

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

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

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

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

In accordance with the provisions of article 50 of the LOPDPGDD, 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.

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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-](https://sedeagpd.gob.es/sede-electronica-web/)

[web/](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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