

938-0419

Procedure No.: PS/00341/2018

RESOLUTION OF PUNISHMENT PROCEDURE

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

BACKGROUND

FIRST: Dated 05/17/2018, TWO CLAIMS are received from two members of the Ertzaintza whose data appear in the GENERAL ANNEX for alleged infringement of the data protection regulations against the METROPOLITAN GYM of c/ Masustegui 25 in Bilbao, for having a video surveillance camera on the facade of their establishment that captures not only the access door, but disproportionately the public thoroughfare, and the Images thus obtained have been transferred to the internal affairs unit, which in turn yields to the instructor of a disciplinary file. They add that, following a complaint from a citizen, the internal affairs unit observed that said camera existed and without "order judicial" or "criminal act sent a letter requesting the image" to the director of the Gym.

They attach:

- copy of the document requesting the images by the Internal Affairs Service of the Ertzaintza of 11/11/2016 in which it indicates that it is a police service whose functions include is to direct, coordinate and develop research regarding the behavior professional staff of the Ertzaintza to promote those susceptible to recognition and prevent those contrary to the law or professional ethics. I know specifies the date and time of the images requested by a possible action by of three agents that apparently could be picked up by the existing cameras in that gymnasium, c/ Masustegui 25 in Bilbao.

-copy of delivery of the images signed by the representative of the gym to

11/15/2016. It is indicated that the content delivered by the director of the gym is a pendrive with two separate video files.

-copy of a photograph of a video surveillance camera, located on the exterior facade focusing on the entire side of the sidewalk. Indicates that your data is in an image of the video, providing a photo in annex III that is produced on public roads around 5:50 p.m. hours of 10/28/2016. The image allows visualizing the entire width of the sidewalk only at the door of the gym but the side more than 20 meters taking the entire sidewalk more than three meters wide, and all of the two directions of traffic.

Four people appear on the sidewalk, the complainants indicating that they are two, they remain with other people on the sidewalk.

SECOND: The claims of claimants 1 and 2 (R1 and R2 hereinafter) were transferred, the R2 was sent a copy of the full complaint on 07/05/2018 so that the claimed know all its elements. The delivery contains the literal:

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“This Agency has received a communication in which it is shown the existence of a video surveillance installation of its ownership, which presents some deficiencies in compliance with the requirements set forth in the regulations for the protection of data, which can be consulted on the website www.aepd.es, through the section Areas of action (video surveillance).

So that the Agency can assess the actions carried out by you for the adequacy of the system to the aforementioned requirements, I require that, within the maximum period of one month from receipt of this notification, send to this Agency

detailed documentation that can prove that the aforementioned installation is in accordance with the data protection regulations and that, in particular, is duly marked and has been limited the capturing of images of adjoining land and houses or of any other foreign space, providing recent graphic documents duly dated. “

THIRD: A R 1, the AEPD informs you in writing of 06/20/2018 the receipt of your claim and that it has required the "claimed party so that within a month he informs the Agency of the actions carried out for the adequacy of the installation of video surveillance affected by the requirements set forth in the data protection regulations.”

The same information is provided to R2.

FOURTH: The claim regarding the transfer of the claim of R 1, indicates 07/04/2018, that since the location of the claim is not identified, said address must be provided. information, as they have 22 and are managed independently.

On 07/20/2018, the respondent indicates that they received a request for information on R1 on video surveillance system on 06/22/2018, but they have not identified the headquarters of the gym and having sent to the electronic headquarters clarification of which headquarters refers to the request without having answered, sends those from the Bilbao headquarters because "today that's how Has informed us". Send photographs of the Bilbao Begoña headquarters, showing:

- CAM 1-1 “club facade” located on the facade and placed next to a sign appears focusing on the public road, sidewalk, corresponding to the one that has been the object of complaint. It does not provide the images that result from said camera, though.

It also provides images of the gym at another address called ISOZAKI, which It has 16 cameras, highlighting

CAMERAS (reception) 7 parking entrance, and 13 garage exit in which you can see from excessively the public road, being able to see in the first any person who crosses the entrance space when the doors are open, and in 10 the same, with the width of the entire sidewalk.

Although it provides sketches with the cameras, none of them contain the number assigned

FIFTH: The claim, dated 07/27/2018, regarding R2 indicates that the director of the gym delivered the flash drive with a copy of a recording whose request was received by written, "because they try to collaborate with the security forces and bodies for the sake of what It is intended in its public function, protection of goods and people and security. Add that "the delivery of the recordings to discern the responsibility of some agents in some acts denounced by a citizen is sufficient reason to comply with said request."

In addition, "according to the new RGPD they are obliged to provide said images to the Forces and State Security Bodies without the need for authorization from the affected party."

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Indicates that the recording comes from a camera installed outside the Club, in the facade of a hotel -formerly HOLIDAY INN, currently Barceló- that records the entrances to the Club, but not "much of the public road" as stated. They detail that in the recording that is provided in the claim, you can see an inclination higher than the current one that has already been corrected and they recognize that if it collected images from the sidewalk, but that it responded in those times to a request for direction from the former hotel chain HOLIDAY INN for reasons of serious damage that occurred with some regularity in the facade or due to strikes by its staff, "a situation that did not end until the month of June 2018 when an agreement has been reached with all parties". Currently the camera has been positioned so that it fits the entrance of the Club.

Attached document 1 and 2, in 1 the camera is displayed on the facade with an angle more closed orientation, and in 2, the image, which, due to the place where it is installed focuses towards the door, being different the surface of space of the images that contributed by the complainants who collected more space from public roads, the entire part ahead of the sidewalk.

It accompanies photos of the camera of the facade METROPOLITAN Begoña CAM I-1 street club entrance.

They provide documents 3 to 6 that consist of photographs in which, according to the claimed, due to the incidents that occurred, caused the recording angle to be widened of the cameras with dissuasive character, seeing in the images stones on the ground.

They send the links that lead to press information about the events that motivated the positioning of the security camera on the facade at that time, in the case of news links from the years 2013 to March 2017, the last one.

SIXTH: In relation to R2, on 08/29/2018 the respondent was sent a written request for additional information indicating:

“In relation to the document sent in response to the request for information made by this Agency, you are informed that there are certain aspects that need to be clarified.

For this reason, within ten working days from the notification of the this request, you must complement the documentation initially sent by providing the next information:

- Photographs of the images recorded by each of the twelve cameras interiors installed in the Metropolitan Begoña gymnasium as shown in the monitoring system.

The respondent responds on 09/13/2018, 9:42, (3683-2018) about R2 providing several photographs.

In another writing of 09/13/2018, 9:48, there is a photo of an image of the outside in the that appears 2018/09/05 that is obtained with the exterior camera 1 attached to the object facade of the complaint, being able to see the public road in excess, reaching the entire sidewalk to the C/ Jorge Juan, 6

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half of the parking area for motorcycle use. This image is the same as the written on 07/27/2018.

SEVENTH: On 11/5/2018, R 1 is notified of the claim being processed.

EIGHTH: On 01/23/2019, the director of the AEPD agreed to start a sanctioning procedure against METROPOLITAN SPAIN SL for the infringement of article 5.1.c) of the RGPD, typified in article 83.5 of the RGPD.

For the purposes specified in the art. 64.2 b) of the LPACAP, in the initiation agreement, the proposed sanction was a warning, provided for in the RGPD, article 58.2.b), also adding:

a) REQUIRE the respondent to immediately comply with the following measures:

- Refocusing of camera 1 (Bilbao Begoña gym) outside in the direction of the facade that captures the least space necessary for surveillance purposes.
- Refocus or change of position of cameras 7 and 13 (gymnasium of Bilbao Isozaki).

b) the inclusion in the disciplinary file, for evidentiary purposes, of the claim filed by the claimant and their documentation, the documents obtained and generated by the Subdirector General for Data Inspection during the investigation phase, all of them part of the file.

NINTH: On 02/08/2019 the defendant states:

a) At the Bilbao Begoña headquarters, they have solved the issue satisfactorily, providing copy of the image that is now viewed, in which the public road is not seen.

b) At the ISOZAKI headquarters, they have readjusted the cameras that focused from the parking lot out, they provide focus reduction photo exclusively to the interior of camera 7 and copy of the image that is now viewed from camera 13 in which there is no public road.

TENTH: On 05/13/2018, a resolution proposal is issued, of the tenor:

“That the director of the Spanish Data Protection Agency declare that

METROPOLITAN SPAIN, SL, with NIF B62936737, has infringed article 5.1.c) of the RGD,

typified in Article 83.5 of the RGD, imposing a sanction of warning, of

in accordance with article 58.2. b of the GDPR.”

No complaints were received against it.

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

The following proven facts have been established:

1) The defendant manages several gyms, including the headquarters

Bilbao, c Masustegui 25, and the Bilbao ISOZAKI headquarters.

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2) In the Bilbao headquarters there is a camera attached to the facade, near the entrance door.

access, next to a poster, which appears focusing on the public road, corresponding

with which it has been the object of the claim that was accredited that in writing of the claimed

of 09/13/2018, 9:48, in the photo obtained on 09/2018/05 part of the road is taken in excess

public, reaching the entire sidewalk to the middle of the parking area for the use of

motorcycles. In pleadings to the agreement, the respondent states that he has resolved the issue and

credits it with the photo of the image that is provided, satisfying the excess of focus of the

public road.

3) At the Bilbao ISOZAKI headquarters, it was verified that at the time of opening this

procedure there were two cameras that focused excessively on public roads, camera 7

and 13, having stated in pleadings to the agreement the claimed one, the errors have been corrected.

excesses of collection of part of the public road in chamber 7 of ISOZAKI headquarters and correcting

the approaches of the other two cameras, providing photos of said images.

FOUNDATIONS OF LAW

Yo

The Director of the Spanish Agency for the Protection of Data, in accordance with the provisions of section 2 of article 56 in relation to section 1 f) of article 57, both of Regulation (EU) 2016/679 of the European Parliament and of the Council of 04/27/2016 regarding the protection of natural persons with regard to processing of personal data and the free circulation of these data (hereinafter, GDPR); and in article 47 of Organic Law 3/2018, of 5/12, on Data Protection Personal and guarantee of digital rights (hereinafter LOPDGDD).

II

Regarding the claim for the transfer of the images by the gym to the service of internal affairs of the Police, it must be indicated that it constitutes a transfer of data to a third, which requires either legal protection, or be listed by the petitioner associated with the exercise of a legal obligation, which in this case could be the complaint of a citizen.

II

Article 5.1.c of the RGPD establishes:

“Personal data will be:

“adequate, relevant and limited to what is necessary in relation to the purposes for which that are processed (“data minimization”);”

The defendant has a series of cameras to monitor its facilities, element that is allowed according to article article 22 of Organic Law 3/2018, of 5/12, Protection of Personal Data and guarantee of digital rights (hereinafter LOPDGDD) indicates: "Processing for video surveillance purposes

1. Natural or legal persons, public or private, may carry out the treatment of images through camera systems or video cameras in order to preserve the safety of people and goods, as well as its facilities.

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2. Images of public roads may only be captured to the extent that it is essential for the purpose mentioned in the previous section”

As a general rule, capturing images for security purposes, by the public thoroughfare must be carried out by the Security Forces and Bodies, since it corresponds to them the prevention of criminal acts and the guarantee of security in the aforementioned public thoroughfare, in accordance with what is regulated by Organic Law 4/1997, of 4/08, and its Regulation of developing. 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 guarantee the security purpose the recording of a portion of public road. That is, cameras and video cameras installed for the purpose of security will not be able to obtain images of public roads unless it is essential for said purpose, or it is impossible to avoid it due to their location. Therefore, cameras could exceptionally capture a portion minimally necessary to the intended security purpose.

Considering that the expectation of the installation of a camera that monitors the area of access door to the gym or the entrance-exit parking spaces is not that any citizen who circulates around the area can be captured by the mere fact of going through there, it is considered that in the present case it was excessively captured public thoroughfare with three chambers corresponding to two offices in Bilbao.

In the case of the gym, Bilbao Begoña headquarters, the camera that is located above the door input on one side, focused and collected excessive images on one long side in addition to the access door, and in image width it covered the entire sidewalk. Both ISOZAKI cameras mentioned allowed to view images that made possible the identification of people who pass through said space of public road being able in both

cases, refocus or readapt them to capture the minimum necessary space,

circumstance that has met the claim.

III

Article 83.5 a) of the RGPD, considers that the infringement of “the basic principles

for treatment, including the conditions for consent under articles

5, 6, 7 and 9” is punishable, in accordance with section 5 of the aforementioned article 83 of the

aforementioned Regulation, with administrative fines of a maximum of €20,000,000 or, in the case of

of a company, of an amount equivalent to a maximum of 4% of the turnover

global annual total of the previous financial year, 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 Regulation (EU) 2016/679,

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

in article 5 of Regulation (EU) 2016/679.”

IV

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By virtue of the provisions of article 58.2 RGPD, the Spanish Agency for

Data Protection, as a control authority, has a set of powers

corrective measures, among which is the power to impose fines, in the event that

there is an infringement of the provisions of the RGPD.

“sanction any person responsible or in charge of the treatment with a warning

when the treatment operations have violated the provisions of this

Regulation” (art. 58.2 b) RGPD).

The sanction to be imposed must be graded according to the criteria established

article 83.2 of the RGPD, and with recital 148 of the RGPD itself, which provides for the

possibility of punishing with a warning in certain circumstances.

In the present case, it has been taken into account for the application of the warning that these are gym facilities that require security and there is legitimacy for the installation and collection of images, being excesses of what the norm would allow, having been corrected

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 METROPOLITAN SPAIN, SL, with NIF B62936737, for a violation of Article 5 of the RGPD, typified in Article 83.5 of the RGPD, a sanction of warning.

SECOND: NOTIFY this resolution to METROPOLITAN SPAIN, SL. with the GENERAL ANNEX.

THIRD: 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 period of one month from the day

following the notification of this resolution or directly contentious appeal

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

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 two months from the day following the notification of this act,

according to the provisions of 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, it may be

precautionary suspension of the firm decision in administrative proceedings if the interested party expresses its intention to file a contentious-administrative appeal. If this is the case, the

The interested party must formally communicate this fact in writing addressed to the Agency Spanish Data Protection, presenting it through the Electronic Registry of the Agency [<https://sedeagpd.gob.es/sede-electronica-web/>], or through one of the remaining records provided for in art. 16.4 of the aforementioned Law 39/2015, of October 1.

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You must also transfer to the Agency the documentation that proves the filing effectiveness of the contentious-administrative appeal. If the Agency were not aware of the filing of the contentious-administrative appeal within two months from the day following the notification of this resolution, it would end the suspension precautionary

Sea Spain Marti

Director of the Spanish Data Protection Agency

CLAIMANT 1

GENERAL ANNEX

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A.A.A.

CLAIMANT 2

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