

□ Procedure No.: PS/00377/2021

RESOLUTION OF PUNISHMENT PROCEDURE

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

FACTS

FIRST: Mrs. A.A.A. (*hereinafter, the complaining party) dated April 17,

2021 filed a claim with the Spanish Data Protection Agency. The

claim is directed against CITY COUNCIL OF ***LOCALITY.1 with CIF

P4626100D (hereinafter the claimed party). The reasons on which the

claim are the following, as stated in your letter,

“On March 12, video surveillance cameras were installed in the City Hall.

***LOCALIDAD.1(Valencia). These cameras were installed at the entrance of the

City Hall and at the counter, from where employees and citizens are recorded.

damages that enter the municipal dependencies (...)

On several occasions I showed my disagreement to the mayor and the secretary

about these aspects. I called the Government Delegation to check if it had been

granted authorization for its installation in accordance with the provisions of Decree

596/1999 and Organic Law 4/1997, and that authorization did not exist, but the thing is that not even

whatever had been requested”.

“I have not been informed of the installation of the system (...) I can only think

that I was recorded without prior notice of the start of the camera, that's why

they are aware of my private conversations held in those rooms

(...)”.

Along with the claim, provide documentary evidence (photograph No. 1) that

certifies the presence of a cartel although it is not completed in its essential aspects.

SECOND: In accordance with article 65.4 of Organic Law 3/2018, of 5

December, of Protection of Personal Data and guarantee of digital rights (in hereinafter LOPDGDD), said claim was transferred to the claimed party in fecha ***DATE.1, to proceed with its analysis and inform this Agency in the period of one month, of the actions carried out to adapt to the prerequisites seen in the data protection regulations.

No response to this letter has been received to date from this Agency, nor No explanation has been given to this effect.

THIRD: On July 19, 2021, the Director of the Spanish Agency for Protection of Data protection agreed to admit for processing the claim presented by the claimant party. keep.

FOURTH: On September 7, 2021, the Director of the Spanish Agency for Protection of Data Protection agreed to initiate a sanctioning procedure against the claimant, for the

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

2/9

alleged infringement of Article 5.1.c) of the RGPD, typified in Article 83.5 of the GDPR.

FIFTH: In accordance with article 73.1 of the LPCAP, the term to formulate allegations to the Home Agreement is ten days computed from the day following the of the notification.

Article 64.2. LPACAP, indicates that the defendant will be informed of the right to formulate allegations, the "right to be heard in the procedure and the deadlines for its exercise, as well as the indication that in case of not making allegations in

the term established on the content of the initiation agreement, it may be considered motion for a resolution when it contains a precise pronouncement about the imputed responsibility. (The underlining is from the AEPD)

The agreement to initiate the sanctioning file in question contained a precise pronouncement on the responsibility of the claimed entity: in the aforementioned agreement specified what was infringing conduct, the sanctioning type in which it was subsumable, the circumstances of the responsibility described and the sanction that in the judgment of the AEPD proceeded to impose.

In consideration of the foregoing and in accordance with the provisions of article 64.2.f) of the LPACAP, the initiation agreement of PS/00375/2021 is considered

Resolution Proposal: Once the initiation agreement was notified, the one claimed at the time of the

This resolution has not submitted a brief of arguments, so it is

application of what is stated in article 64 of Law 39/2015, of October 1, of the

Common Administrative Procedure of Public Administrations, which in its

section f) establishes that in the event of not making allegations within the stipulated period

on the content of the initiation agreement, it may be considered a proposal for

resolution when it contains a precise statement about the responsibility

imputed, reason why a Resolution is issued.

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

In this proceeding, the following are considered proven facts:

First. The facts bring cause of the claim dated 04/17/21 through the

which is transferred to this AEPD the following:

“On March 12, video surveillance cameras were installed in the City Hall.

***LOCALIDAD.1(Valencia). These cameras were installed at the entrance of the

City Hall and at the counter, from where employees and citizens are recorded.

damages that enter the municipal dependencies (...)

On several occasions I showed my disagreement to the mayor and the secretary about these aspects. I called the Government Delegation to check if it had been granted authorization for its installation in accordance with the provisions of Decree 596/1999 and Organic Law 4/1997, and that authorization did not exist, but the thing is that not even whatever had been requested”.

“I have not been informed of the installation of the system (...) I can only think that I was recorded without prior notice of the start of the camera, that's why

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

3/9

they are aware of my private conversations held in those rooms

(...)”—folio nº 1--.

Second. The City Council entity of

***LOCATION.1.

Third. It is accredited that the installed video-surveillance system is not duly informing, suffering from irregularities, such as the fact of mentioning a repealed regulation or not indicating the data controller.

Bedroom. There is evidence of the presence of a video-surveillance device in the area of entrance to the property, without any argument as to whether it can obtain audio of the area where it is installed.

FOUNDATIONS OF LAW

I

By virtue of the powers that article 58.2 of the RGPD recognizes to each authority of control, and according to the provisions of articles 47 and 48 of the LOPDGDD, the Director

of the Spanish Agency for Data Protection is competent to initiate and to resolve this procedure.

II

On 04/17/21, this Agency received a claim from the epigraphed person through from which the following is transferred as the main fact:

“On March 12, video surveillance cameras were installed in the City Hall.

***LOCALIDAD.1(Valencia). These cameras were installed at the entrance of the City Hall and at the counter, from where employees and citizens are taxed.

damages that enter the municipal dependencies (...)

On several occasions I showed my disagreement to the mayor and the secretary about these aspects. I called the Government Delegation to check if it had been granted authorization for its installation in accordance with the provisions of Decree 596/1999 and Organic Law 4/1997, and that authorization did not exist, but the thing is that not even whatever had been requested”.

The initial facts were concretized in the presence of video-vide devices surveillance that could record the conversations (audio/video) inside the demunicipal disputes, without the system being duly informed to that effect.

The recording of personal conversations both in the company and in community units of owners (as), supposes an invasion of the privacy of the user, therefore which is strictly prohibited, with the exception of authorization prior judicial and the recordings are made by the competent persons to make- in "exceptional" situations.

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

The cameras installed must be limited to the purpose pursued with the same
moreover, the legal representatives of public employees must be informed
of such aspects, as well as having the corresponding signage that informs that
It is a video-monitored area.

The Spanish Agency for Data Protection refers to how they should treat
be captured and the images of the security cameras in your guide on video surveillance
lance, emphasizing that there must be a relationship of proportionality between the purpose
pursued (in this case security) and the way in which the data are captured and
data.

Access to the recordings of the security cameras is only allowed to the
owner of the company, the contracted security company or the personnel in charge of
such effect, as stipulated in the LOPDGDD.

Surveillance equipment at work and viewing and storage rooms
of images must be located in rooms with restricted access to personnel
authorized.

The recording of the conversations of public employees can suppose
a violation of art. 5.1 c) RGPD, since obtaining the conversations is excessive.
private relations of the same, without prejudice to the affectation to the privacy of these in
your conversations whatever their nature or context.

The cameras must adhere to their function protection of access security
to the municipal dependencies, without them being able to be geared towards
permanently to their workstations (eg computer monitor), nor allow the
audio recording of the private conversations of the same of the em-
Employed in auxiliary tasks of entry and documentary registration.

The installed signs denote that they are incomplete in terms of

the required information, which implies an affectation to art.-13 RGPD.

Reporting on video surveillance according to RGPD is an obligation contained in this legislative framework.

An informative device must be available in a visible area (eg.

access) indicating that it is a video-monitored area, it must indicate

car:

☐

☐

☐

the existence of the treatment.

the identity of the person responsible.

possibility of exercising the rights provided for in articles 15 to 22

of Regulation (EU) 2016/679.

The image of a person to the extent that it identifies or can identify the

It constitutes personal data, which may be processed

for various purposes.

Article 22 section 4 of the LOPDGDD provides the following:

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

5/9

“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 site a connection code or internet address to this information (...)."

III

In accordance with the evidence available in this proceeding sanctioning party, it is considered that the claimed party has proceeded to install a system of video-surveillance cameras, which are provided with "audio", lacking the same informative badges duly homologated to the regulations in force.

The documentary evidence provided makes it possible to verify the "irregularities" of the poster in the access area, as well as the presence of a web-cam confirms the presence of a device at the reception desk with the possibility of audio (video) without being informed about the purpose(s) thereof.

It is recalled that any labor control measure must be put into knowledge of the legal representatives of the group of public employees of the cited entity, must be aware of the purpose (s) of the images that are obtain with it, weighing in any case the preservation of the privacy of conversations that could take place during working hours without further Additional considerations.

The known facts constitute an infraction, attributable to the party claimed, for violation of the content of articles 5.1 c) and 13 RGPD, above-mind described.

IV

The facts described suppose an administrative infraction(s) typified in the article 83.5 letters a) and b) RGPD.

"The infractions of the following dispositions will be sanctioned, in accordance with the section 2, with administrative fines of a maximum of EUR 20,000,000 or, treating-

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

Total annual global business of the previous financial year, opting for the one with the highest 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;

v

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

6/9

Without prejudice to the provisions of article 83 of the RGPD, the aforementioned Regulation provides

ne in your art. 58.2 b) the following:

“2 Each control authority will have all the following corrective powers in-

listed below:

(...)

b) send a warning to any person responsible or in charge of the treatment

when the treatment operations have violated the provisions of this

Regulation;”

Likewise, article 77 of the LOPDGDD provides the following:

“Regime applicable to certain categories of persons responsible or in charge of the

treatment.

1. The regime established in this article will be applicable to the treatment of

who are responsible or in charge:

a) The constitutional bodies or those with constitutional relevance and the institutions of

autonomous communities analogous to them.

b) The jurisdictional bodies.

c) The General State Administration, the Administrations of the autonomous communities
tónomas and the entities that make up the Local Administration.

d) Public bodies and public law entities linked or dependent
of the Public Administrations.

e) The independent administrative authorities.

f) The Bank of Spain. g) Public law corporations when the purposes
from the treatment are related to the exercise of powers of public law.

h) Public sector foundations.

i) Public Universities.

j) The consortiums.

k) The parliamentary groups of the Cortes Generales and the Legislative Assemblies
autonomous, as well as the political groups of the Local Corporations.

2. When those responsible or in charge listed in section 1 committed
any of the infractions referred to in articles 72 to 74 of this organic law
ca, the competent data protection authority will issue a sanction resolution
mentioning them with warning. The resolution will also establish the
measures to be taken to stop the conduct or correct the effects of the
offense that had been committed.

The resolution will be notified to the person in charge or in charge of the treatment, to the body of the
that depends hierarchically, where appropriate, and to those affected who had the condition
interested party, if any.

3. Without prejudice to what is established in the previous section, the data protection authority
data will also propose the initiation of disciplinary actions when there are in-

Enough words for it. In this case, the procedure and the sanctions to be applied

will be those established in the legislation on disciplinary or sanctioning regime that result of application.

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

7/9

Likewise, when the infractions are attributable to authorities and managers, and proves the existence of technical reports or recommendations for the treatment that had not been duly attended to, in the resolution imposing the

The sanction will include a reprimand with the name of the responsible position and will order the publication in the corresponding Official State or Autonomous Gazette.

4. The data protection authority must be notified of the resolutions that fall in relation to the measures and actions referred to in the sections previous.

5. They will be communicated to the Ombudsman or, where appropriate, to similar institutions of the autonomous communities the actions carried out and the resolutions issued under this article.

6. When the competent authority is the Spanish Data Protection Agency, this will publish on its website with due separation the resolutions referring to the entities of section 1 of this article, with express indication of the identity of the person in charge or in charge of the treatment that had committed the infraction.

When the competence corresponds to a regional data protection authority,

It will be, in terms of the publicity of these resolutions, to what your specific regulations.”

In accordance with art. 58.2 d) RGPD the complained party must clarify

everything related to the installed system, as well as documentary evidence (vgr.

photograph date and time) that has an informative badge (s) approved to the norm

in force, without prejudice to the allegations that it deems necessary to make, such as

measures adopted to inform the legal representatives of the employees

of the City Council or to them about the installed video-surveillance system.

It is recalled that this body can travel to the scene of the events

effects of carrying out the inquiries it deems necessary, being able to demand compliance

implementation of the measures widely indicated in order to protect the legality

current.

The rest of the issues exceed the competence framework of this Agency,

applying this Resolution to the issues accredited within the framework of the protection

of data.

Therefore, in accordance with the applicable legislation and after assessing the graduation criteria

tion of the sanctions whose existence has been proven,

the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: IMPOSE TO TOWN HALL OF ***LOCALITY.1, with CIF P4626100D,

for an infringement of Article 5.1.c) of the RGPD and 13 RGPD, typified in Article

83.5 a) and b) of the RGPD, a sanction of WARNING.

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

8/9

SECOND: ORDER the claimed entity CITY COUNCIL OF ***LOCALI-

DAD.1 so that within a month from the notification of this procedural act,

gives:

-Place informative badge duly approved to the current RGPD in

the main entrances of the Town Hall.

-Inform all public employees of the measures adopted in

particularly those related to the purpose(s) of the treatment.

-Certify the reorientation of the entrance camera so that it is

adhere to the security function of the Town Hall, avoiding capturing the traffic area

under the employees exclusively, deactivating, where appropriate, the option

audio of it.

THIRD: NOTIFY this resolution to the entity denounced TOWN HALL-

LIE OF ***LOCALITY.1.

BEDROOM

in accordance with the provisions of article 77.5 of the LOPDGDD.

: COMMUNICATE this resolution to the Ombudsman,

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

resents may optionally file an appeal for reconsideration before the Director

of the Spanish Agency for Data Protection within a month from the date of

the day following the notification of this resolution or directly contentious appeal

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

in accordance with the provisions of article 25 and section 5 of the additional provision

Final fourth of Law 29/1998, of July 13, regulating the Contentious Jurisdiction-

administrative, within a period of two months from the day following the notification

tion of this act, as provided for 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 interested party do states its intention to file a contentious-administrative appeal. Of being

In this case, the interested party must formally communicate this fact in writing addressed to the Spanish Agency for Data Protection, presenting it through the Re-Electronic registry of the Agency [<https://sedeagpd.gob.es/sede-electronica-web/>], or to 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 that proves the effective filing of the contentious-administrative appeal. If the Agency was not aware of the filing of the contentious-administrative appeal tive within two months from the day following the notification of this resolution, would end the precautionary suspension.

Sea Spain Marti

C/ Jorge Juan, 6

28001 – Madrid

938-131120

www.aepd.es

sedeagpd.gob.es

9/9

Director of the Spanish Data Protection Agency

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es