

938-0419

Procedure No.: PS/00137/2019

RESOLUTION OF PUNISHMENT PROCEDURE

From the sanctioned procedure PS/00137/2019, instructed by the Spanish Agency for

Data Protection before the entity TITU S.C.P. (BLOMSBURY Nightclub) with NIF

0J55708713 (hereinafter, "the entity claimed"), by virtue of complaints filed

by Mrs. A.A.A. (hereinafter, "claimant 1"), by D. B.B.B. (hereinafter, "the

claimant 2") and by D^a C.C.C. (hereinafter, "claimant 3") and based on

the following:

BACKGROUND

FIRST: On 02/20/19, you had entry into this Agency in writing submitted by

claimant 1, in which she states, among others, that: "On 11/17/18 a

inspection at the BLOOMSBURY nightclub, in the town of Tarragona, by the

Guardia Urbana, verifying that there are three security cameras installed in

the doors of the premises. For this reason, as a neighbor of the premises I am affected in privacy.

A report from the Guàrdia Urbana XXXXXXXXXXXX is provided".

In the report made by the Urban Guard of Tarragona on 11/17/18, it is indicated,

among others: "At the request of the Guardia Urbana radio station motivated by

some complaints about noise nuisance from the commercially named establishment

"BLOOMSBURY", located at 24 Mayor Street, the cape with Tip 878 and the agents

with UPA Tips 603, 957 and 986, we inform that: That at 11:50 p.m. on the 17th

November 2018, the agents move in Riudecols street no. 6, where

An interview was conducted with the complainant, informing the agents of the

nuisance noise and vibrations of music that are perceived at home, the

which could be verified how they were noticed when listening to the music from the

road, coming from the BLOOMSBURY establishment. checked the resulting positive inconvenience, the agents meet with the person in charge of the establishment, communicating the agents the reason for the inspection, by the nuisances verified, so a function check was carried out of the limiting device (...)

It is reported that the agents observed the installation of some cameras, 3 specifically, two on the main façade focusing on the main sidewalk of the establishment, calle Mayor 24 and another in calle Riudecols on the rear façade of the establishment focusing on the emergency exit door. At the same time as in Inside this there are some recording cameras. that the establishment does not It has information posters of the existence of the video surveillance system. The The person in charge of the establishment is unaware of the regulations on this type of system. The agents informed him of the aspects established by the LOPD. The person in charge of establishment indicates that the placement of the cameras is to be able to protect acts of violent access controller of some people who are not allowed the entrance. The agents have observed the following infractions: (...) the cartels information about the existence of the video surveillance system and the lack of documentation of the installation company of the video surveillance system where it is stated registration in the general data protection register.

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SECOND: In view of the facts set forth in the claim and the documents provided, the General Subdirectorate for Data Inspection proceeded to carry out

actions for its clarification, under the investigative powers

granted to the control authorities in article 57.1 of Regulation (EU) 2016/679

(General Data Protection Regulation, RGPD). Thus, on 03/12/19,

directs an information request to the claimed company so that it proves that the

installation of the cameras is in accordance with data protection regulations.

THIRD: On 03/13/19, you had entry into this Agency in writing submitted by

claimant 2, in which he states, among others, that: "The BLOOMSBERRY nightclub

has several video surveillance cameras installed on its exterior facades without

billboards". Photos are attached.

FOURTH: On 03/27/19, this Agency received a new document

filed by claimant 1, in which she states, among others, that: "It is my

knowledge, as I have been informed by delivery of a photocopy of the report

inspection of the Urban Guard of Tarragona on 02/12/19, which from the

month of October 2017 "TITU S.C.P." as owner of the Discotheque

Bloomsbury, located on Calle Mayor 24 in Tarragona, has installed three security cameras

video surveillance irregularly and illegally, in breach of current regulations in the

current legislation. As indicated in the Urban Guard Report.

On 02/12/19 there was explicit knowledge of this situation of illegality

of long-term in the framework of a meeting held in the premises of the Guard

Urbana where I am informed that said Inspection Report was transferred to the

Department of Opening of Establishments of the Tarragona City Council for

that was part of File 841/17, which the City Council itself opened against the

Bloomsbury Nightclub (TITU SCP), in November 2017, for the reception of

countless complaints due to its operation; Also, I am informed that the

Tarragona Urban Guard has officially notified the infractions

administrative observed in its Inspection Report for the month of November

2018 before the AEPD.

As of the date this communication is written, 03/22/19, there is no record visual or documentary of the existence of the corresponding authorization for the installation and operation of the cameras as well as the posters information about the existence of the cameras or the registration in the General Registry Data Protection. In order to document the above. is provided the following documentation: a) Notification from the Tarragona City Council dated February 16, 2019. b) Photographs of the illegal cameras installed and in Operation since November 2017.

FIFTH: On 04/16/19 a letter is received at this Agency from claimant 3, indicating, among others, that: "In the Bloomsbury nightclub, both in the main entrance, how in the back where it has the emergency exit, it has cameras placed video surveillance without signaling and focusing on public roads. I know there are reports of the municipal police warning the property that the captured images are Personal data. On the other hand, they do not have the company documentation video surveillance system installer.

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SIXTH: According to the certificate issued by the State Post Office and Telegraphs, the requirement indicated in point "SECOND" was attempted to notify at calle Joan Fuster i Ortells, 14, 4,4,3; 43007 Tarragona, being returned to the origin with the review of "unknown", on 03/19/19.

SEVENTH: Consulted on 04/19/19, the Central Mercantile Registry, does NOT exist

any data referring to the entity TITU S.C.P.; neither to the denomination "Bloomsbury", nor to NIF 0J55708713.

EIGHTH: On 05/12/19, the Director of the Spanish Agency for the Protection of Data agreed to initiate a sanctioning procedure against the claimed entity, for alleged infringement of article 5 RGPD. Infraction typified in article 83.5 a) and considered very serious for prescription purposes in article 72.1.a) of the LOPDGDD, granting a hearing period of ten business days for formulate the allegations and present the evidence it deems appropriate.

NINTH: According to a certificate issued by the Postal Service, the notification of the opening of disciplinary proceedings, addressed to the BLOOMSBURY DISCOTHEQUE (TITU, SCP) at the address: C/ Mayor 24; 43003 of Tarragona, has been returned to origin, with the annotation of, "Unknown", on 05/20/19. Thus the things, with date 06/11/19, the publication, in the Single Edictal Board of the BOE, of the notification of the agreement to initiate the sanctioning procedure PS/00137/2019, before the impossibility of notification at home.

According to a certificate issued by the Postal Service, the notification addressed to the entity TITU, SCP (BLOOMSBURY DISCOTHEQUE) at c/ Joan Fuster i Ortells, 14, 4,4,3; 43007 Tarragona, has been returned to origin, with the annotation of, "Unknown", on 06/03/19. Thus, on 06/11/19, the publication, on the BOE's Single Edictal Board, of the notification of the start-up agreement of the sanctioning procedure PS/00137/2019, given the impossibility of notification in the domicile.

TENTH: The entity claimed has not submitted to this Agency any written or allegation, within the period granted for this purpose.

FOUNDATIONS OF LAW

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By virtue of the powers that article 58.2 of the RGPD recognizes to each authority of control, and as established in art. 47 of the Organic Law 3/2018, of 5 December, of Protection of Personal Data and guarantee of digital rights (in hereinafter LOPDGDD), the Director of the Spanish Agency for Data Protection is competent to resolve this procedure.

II

In the present case, a sanctioning procedure is initiated due to the existence of 3 video surveillance cameras installed, two on the main facade of the establishment BLOOMSBURY nightclub, in the town of Tarragona, focusing on the sidewalk main street, calle Mayor 24, and another on calle Riudecols, on the rear façade of the establishment focusing on the emergency exit door. According to a report from the C/ Jorge Juan, 6

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Urban Guard of Tarragona, there are also several security cameras inside security. The establishment does not have the informative posters of the existence of the video surveillance system or the documentation of the installation company of the cameras.

The installation of this type of device must obey some cause/reason plausible, which allows this Agency to assess the proportionality of the extent, especially if it comes into play with the rights/freedoms of third parties, in areas where it can travel freely.

As a general rule, capturing images for security purposes, by the public thoroughfare must be carried out by the Security FFCC, since they are responsible for

prevention of criminal acts and the guarantee of safety 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 inside, it may be necessary to ensure the purpose of security recording of a portion of the public highway. That is, cameras and camcorders installed with security purposes may not obtain images of public roads unless it is essential for said purpose, or it is impossible to avoid it due to the location of those. Therefore, the cameras could exceptionally capture a portion minimally necessary for the intended security purpose.

The art. 4 section 2 of Instruction 1/2006 (AEPD) provides the following: "Only shall consider the installation of cameras or video cameras admissible when the purpose monitoring cannot be obtained through other means that, without requiring efforts disproportionate, are less intrusive to people's privacy and to your right to personal data protection.

The facts described above suppose a violation of art. 5.1.c) RGPD, given that the cameras exercise excessive control over an area of free transit.

III

Article 83.5 of the RGPD provides that: "Infringements of the provisions following will be sanctioned, in accordance with section 2, with administrative fines EUR 20,000,000 maximum or, in the case of a company, an amount equivalent to a maximum of 4% of the total global annual turnover of the previous financial year, opting for the highest amount: a) the principles basic for the treatment, including the conditions for the consent in accordance with of articles 5, 6, 7 and 9.

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

article 83.2 of the RGD, and with recital 148 of the RGD 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 company facilities that require security and there is legitimacy for the installation and collection of images in these cases.

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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 DISCOTECA BLOOMSBURY (TITU, SCP) by infringement of Article 5 of the RGD, typified in Article 83.5 of the RGD, a sanction of warning.

SECOND: REQUEST the entity DISCOTECA BLOOMSBURY (TITU, SCP), to that, within a period of one month from this act of notification, proceed to modify the orientation of the cameras, ceasing to record the public thoroughfare, thus adjusting to the regulations in force. In addition, you must provide a photograph that you have on the poster approved video surveillance.

THIRD: NOTIFY this resolution to the DISCOTECA entity BLOOMSBURY (TITU, SCP).

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.

Sea Spain Marti

Director of the Spanish Data Protection Agency

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