

□ Procedure No.: PS/00479/2019

938-051119

RESOLUTION OF PUNISHMENT PROCEDURE

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

FACTS

FIRST: VIGO CITY COUNCIL (*hereinafter, the claimant) dated 7

October 2019 filed a claim with the Spanish Agency for the Protection of
Data. The claim is directed against A.A.A. with NIF ***NIF.1 (hereinafter, the
reclaimed). The reasons on which the claim is based are "installation of various
cameras" without having the obligatory informative poster, oriented in a
disproportionate towards public roads.

In the Report dated 07/19/19 Local Police (Vigo) the following is reflected, for
part of the members of the local police transferred to the scene of the events:

"In turn, inside the premises there are two cameras, one above the door of the
entrance focusing towards the back of the premises and another at the back of the premises oriented towards
the front door."

"That both inside and outside does not present the informative poster
approved video-monitored area (...) qualifying that the interior of the premises is
also devoid of any type of poster".

Along with the claim, provide documentary evidence (Doc. 3) Part of the service that
manifests it by denouncing it by the acting authority.

SECOND: In view of the facts denounced in the claim and the documents
data provided by the claimant, the Subdirector General for Data Inspection pro-
vided to carry out preliminary investigation actions for the clarification

of the facts in question, by virtue of the powers of investigation granted to the control authorities in article 57.1 of Regulation (EU) 2016/679 (Regulation General Data Protection, hereinafter RGPD), and in accordance with the provisions ed in Title VII, Chapter I, Second Section, of Organic Law 3/2018, of 5 December, of Protection of Personal Data and guarantee of digital rights (in hereinafter LOPDGDD).

As a result of the research actions carried out, it is confirmed that the data controller is the claimed party.

THIRD: On 10/30/19, the Complaint filed was TRANSFERRED, without that any allegation has been made in this regard about the legality of the system denounced.

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FOURTH: On 01/15/20, the Start Agreement associated with the process is issued. sanctioning proceeding PS/00479/2019, for the alleged infringement of the content of art. 5.1 c) RGPD, being notified in a timely manner at the address provided by the Local Police of the town (seat of the establishment).

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

PROVEN FACTS

First. On 10/07/19, this body receives a complaint transferred by the City Council of Vigo, as a result of an inspection carried out by the Local Police in a state-local hotel establishment.

"installation of various cameras" without having the mandatory sign

informative, disproportionately oriented towards public roads.

Second. It is identified as the main responsible Mr. A.A.A.

Third. There is evidence of the absence of an informative poster in the visible informative area.

that it is a video-monitored area, as well as the main person responsible for the treatment

I lie.

Fourth. It is accredited according to the attached documentary evidence (Complaint 07/19/19) that

With the cameras of the premises, images of the exterior of the premises are obtained, affecting

disproportionately to public space.

"...as a screen above the entrance door where you can see the outside of the

local, understanding as exterior, the entrance of the same premises and the entire sidewalk, in addition

of the vehicles that are parked in front of it.

Fifth. It is accredited that the establishment does not have a form(s) available

position of customers who may require it.

FOUNDATIONS OF LAW

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By virtue of the powers that article 58.2 of the RGPD recognizes to each authori-

control, and according to the provisions of articles 47 and 48 of the LOPDGDD, the Di-

rector of the Spanish Agency for Data Protection is competent to initiate and

to solve this procedure.

II

In the present case, the claim dated 10/07/19 is examined by me-

gave from which the following is transferred as fact:

"installation of various cameras" without having the mandatory information poster

(folio no. 1).

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Individuals can install video-surveillance cameras, although they are responsible that they comply with current legislation.

With this type of device it is not possible to exercise control of the space adjacent to the establishment, and should preferably be oriented towards the access doors of the premises for security reasons.

The art. 5.1 c) RGD provides the following: The personal data will be: "adequate, relevant and limited to what is necessary in relation to the purposes for which they are processed ("data minimization").

To greater abundance in the Report sent, the absence of a cartel is verified. informative inside/outside the premises indicating that it is a video-vigilada and indicating the person responsible for processing the data obtained in your case.

Article 12 RGD provides the following: "The data controller will take the appropriate measures to provide the interested party with all the information indicated in the articles 13 and 14, as well as any communication under articles 15 to 22 and 34 regarding the treatment, in a concise, transparent, intelligible and easily accessible form, with clear and simple language, in particular any information directed specifically you to a child The information will be provided in writing or by other means, even if proceeds, by electronic means. When requested by the interested party, the information may It may be provided verbally as long as the identity of the interested party is proven by other media".

It should be remembered that individuals are responsible for ensuring that the systems most installed comply with current legislation.

The installation of this type of device must have the mandatory sign
informative, indicating the purposes and responsible for the treatment in your case of the data
of a personal nature.

Article 22 LOPDGG (LO 3/2018, December 5) provides the following:

“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.

A connection code or address may also be included in the information device.
from the internet to this information. In any case, the data controller must
Keep the information referred to in the aforementioned regulation available to those affected.
glament”.

The establishment must also have an informative form(s) available
position of customers who may require it, in order to exercise their rights in the
framework of the regulations in force.

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III

In accordance with the evidence available at this time,
sanctioning procedure, it is considered that the defendant has two
exterior cameras obtaining images of public space without just cause, the
which do not have an informative sign.

Article 77 section 5 of Law 39/2015 (October 1) provides: "Documents formalized by officials who are recognized as authorities and in which, observing the corresponding legal requirements, the facts verified by those will prove them unless it is proven trario".

The acting force confirms the "irregularity" of the system, as well as the tion of images of a large public space, without just cause, allowing the control of passers-by and residents of the town.

The known facts constitute an infraction, attributable to the claimant.

mado, for violation of art. 5.1 c) GDPR.

The known facts constitute an infraction, attributable to the claimant.

mado, for violation of article 12 RGPD.

The art. 83.5 RGPD provides the following: "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 equivalent amount.

equivalent to a maximum of 4% of the total global annual turnover of the fiscal year

previous financial statement, 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;

In the present case, when motivating the sanction, the following is taken into account:

following:

-the nature of the infraction, since it is affecting the rights of third parties

been intimidated by the installed device, obtaining images of public space

public without just cause (art. 83.2 a) RGPD).

-The intentionality or negligence of the conduct, lacking the mandatory character

informative telephone, indicating the person in charge and the purposes of the treatment (art. 83.2 b) GDPR).

So, based on the foregoing, taking into account the lack of infractions previous tions for the same or similar facts, as well as that it is a private individual who runs a small catering establishment that has not made

In this regard, an economic sanction is ordered at the lowest scale of this type of sanctions, encrypting the same in the amount of €3,000 (Three Thousand Euros).

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All this without prejudice to documentary evidence of compliance with the required measures, that is, the placement of an approved sign indicating the responsible for the treatment and the provision of informative form (s) inside of the establishment. You can obtain an indicative model on the website of this organization. ganismo www.aepd.es in the “Video-surveillance” Section.

All information must be arranged in an orderly manner and available to the authority that for reasons of inspection of the establishment may require it, making sure that the installed system complies with current legislation.

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 Don A.A.A., with NIF ***NIF.1, for an infraction of article 5.1 c) RGPD, by having a video surveillance camera system installed that obtains images of public space, an economic penalty of €3,000 (Three Thousand Euros),

fraction typified in article 83.5 a) RGPD, being punishable in accordance with article 58.2 GDPR.

SECOND: NOTIFY this resolution to Don A.A.A. and REPORT the result statement of these actions to the complainant entity CITY COUNCIL OF VIGO.

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, 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, it

will proceed to its collection in executive period.

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

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

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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-](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 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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