

□ File No.: EXP202103891

RESOLUTION OF PUNISHMENT PROCEDURE

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

BACKGROUND

FIRST: Don A.A.A. (*hereinafter, the complaining party) dated October 25, 2021 filed a claim with the Spanish Data Protection Agency. the re-claim is directed against CITY COUNCIL OF ***LOCALIDAD.1 with CIF P2804400F (hereinafter the claimed part). The grounds on which the claim is based are the following:

“...in the Plaza de la Constitución in the town of ***LOCALIDAD.1, in Madrid, a dome camera is installed that would capture images of the public road ca, for which the claimed Local Administration would be responsible, and which lacks signaling by means of informative posters of the video-monitored area” (folio nº 1). It provides an image of the location of the camera (Documentary Annex I).

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 fe-date 10/28/21, to proceed with its analysis and inform this Agency on the period of one month, of the actions carried out to adapt to the foreseen requirements cough in the data protection regulations.

No response has been received from the respondent.

THIRD: On December 22, 2021, in accordance with article 65 of the LOPDGDD, the claim presented by the claimant was admitted for processing.

FOURTH: On March 8, 2022, the Director of the Spanish Agency for

Data Protection agreed to initiate a sanctioning procedure against the claimed party, for the alleged infringement of Article 13 of the RGD, typified in Article 83.5 of the GDPR.

FIFTH: Consulting the computer system of this Agency on 04/19/22, it contains that the notification has been made electronically to the claimed entity stating as "Delivered", although no allegation has been made in this regard in relation to the facts object of the claim.

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

In this proceeding, the following are considered proven facts:

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

2/7

PROVEN FACTS

First. The facts are the cause of the claim dated 10/25/21 through the which translates the following:

“...in the Plaza de la Constitución in the town of ***LOCALIDAD.1, in Madrid, a dome camera is installed that would capture images of the public road ca, for which the claimed Local Administration would be responsible, and which lacks signaling by means of informative posters of the video-monitored area” (folio nº 1).

Second. It is accredited as the main responsible City Council of ***LOCALIDAD.1, who has not clarified the device object of the claim.

Third. The presence of a video-surveillance device is accredited, as a dome camera with the possibility of obtaining images of the entire public square thereby affecting the rights of third parties.

Fourth. There has been no clarification of the facts, no explanation

document has been produced for this purpose by the respondent.

FOUNDATIONS OF LAW

Yo

In accordance with the powers that article 58.2 of Regulation (EU) 2016/679 (Re-

General Data Protection Regulation, hereinafter RGPD), grants each authori-

control and as established in articles 47, 48.1, 64.2 and 68.1 of the Law

Organic 3/2018, of December 5, on the Protection of Personal Data and guarantee of

digital rights (hereinafter, LOPDGDD), is competent to initiate and resolve

this procedure the Director of the Spanish Data Protection Agency.

Likewise, article 63.2 of the LOPDGDD determines that: "The formal procedures

ted by the Spanish Agency for Data Protection will be governed by the provisions of

Regulation (EU) 2016/679, in this organic law, by the regulatory provisions

dictated in its development and, as long as they do not contradict them, with a sub-

sidiario, by the general rules on administrative procedures."

II

Before going into the substance of the matter, remember that in the Initiation Agreement of the pre-

present procedure it was mentioned that, in the case of not making any allegation to the

itself, this could be considered a "resolution proposal".

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

3/7

Article 64.2.f) of Law 39/2015, of October 1, on Administrative Procedure

Common Public Administrations (hereinafter LPACAP) -provision of which

the party claimed was informed in the agreement to open the proceeding- established that if allegations are not made within the stipulated period on the content of the agreement, initiation document, when it contains a precise statement about the response imputed responsibility, may be considered a resolution proposal. In the present In this case, the agreement to initiate the sanctioning file determined the facts in which that the imputation was specified, the infraction of the RGPD attributed to the claimed one and the sanction that could be imposed. Therefore, taking into consideration that the claimant mada has not formulated allegations to the agreement of beginning of the file and in attention to established in article 64.2.f) of the LPACAP, the aforementioned initial agreement is considered in the present case proposed resolution.

III

In the present case, we proceed to examine the claim presented in this Agency.

ence through which the presence "camera in the town square without be duly informed" (folio No. 1).

The installation of this type of device must have the mandatory sign (es) in-training, indicating the purposes and responsible for the treatment in your case of the data of personal character.

Municipalities, like any other public entity, are obliged to comply with implementation of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016, on the protection of natural persons with regard to trade processing of personal data and the free circulation of these data -RGPD-.

City councils are responsible for the processing of personal data that they maintain.

nejen, understanding the data controller as the "individual or legal entity, authorized public entity, service or other body that, alone or jointly with others, determines the purposes and means of treatment.

Article 13 RGPD establishes the obligation to inform the interested parties

of the person in charge of the treatment, purpose of the treatment and way of exercising the rights regulated rights art. 12-22 RGPD, as well as in its case of the "term of conservation of personal data".

Article 22.4 of the LOPDGDD provides that:

"The duty of information provided for in article 12 of the Regulation (EU) 2016/679 will be understood to be fulfilled by placing a computerized device in a sufficiently visible place identifying, at least, the existence of the treatment to, the identity of the person in charge and the possibility of exercising the rights foreseen in Articles 15 to 22 of Regulation (EU) 2016/679. It may also be included in the

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

4/7

informative device a connection code or internet address to this information tion".

The installation of devices--video-surveillance systems-- must be reported to the together with neighbors (as) of the locality by means of the corresponding informatic posters indicating that it is a "video-monitored area", as well as making available to the same the information referred to in article 13 of the RGPD, without prejudice to report it by other means (v.gr. Electronic Office of the City Council, etc.)

The data must be collected for specific, explicit and legitimate purposes, and not subsequently disposed of in a manner incompatible with those purposes. That is, the data collected for a specific purpose may not be used for a purpose other than that initially authorized do.

The art. 16 section 5 Organic Law 7/2021, of May 26, on the protection of

personal data processed for the purposes of prevention, detection, investigation and prosecution

filing of criminal offenses and execution of criminal sanctions.

“Citizens will be informed in a clear and permanent manner of the existence

possession of these fixed video cameras, without specifying their location, as well as the

authority responsible for the treatment before which you can exercise your rights”

The RGPD introduces as mandatory in the field of Public Administrations the

figure of the Delegate (a) of Data Protection -DPD-, for which the city councils

must proceed to their appointment and communicate their appointment to the AEPD for their information.

Inclusion in the Public Registry of Data Protection Delegates

IV

In accordance with the "evidence" available in this proceeding,

sanctioning procedure, it is considered that the claimed party has installed a camera type

dome in a public area without informing the neighbors of the locality.

The documentary evidence provided (Annex I) allows verifying the presence of

a “dome” camera at the top of a mast focused on an area of character

public, without the proper signaling of it having been accredited, indicating that

It is a "video-monitored" area.

The known facts constitute an infraction, attributable to the party

claimed, for violation of the content of article 13 RGPD, which has not made

any clarification on the cause (s) of the installation of the reviewed device.

v

The art. 83.5 RGPD provides the following: “Infringements of the following provisions

will be sanctioned, in accordance with section 2, with administrative fines of 20

EUR 000,000 maximum or, in the case of a company, an equivalent amount.

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

5/7

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

above, opting for the highest amount:

b) the rights of the interested parties pursuant to articles 12 to 22 (...).

In the present case, the nature of Public Administration is taken into account.

of the accused, as well as the absence of an initial response to the transfer of the

rights object of the claim, to impose in any case a sanction of Warning

which bears the burden of proving the measures adopted within the framework of the act.

current RGPD to this body.

SAW

Article 83 "General conditions for the imposition of administrative fines" of the

RGPD in its section 7 establishes:

"Without prejudice to the corrective powers of the control authorities by virtue of art.

Article 58(2), each Member State may lay down rules on whether

of, and to what extent, impose administrative fines on authorities and public bodies

public authorities established in that Member State."

Likewise, article 77 "Regime applicable to certain categories of liability"

responsible or in charge of the treatment" of the LOPDGDD provides the following:

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

who are responsible or in charge:

c) The General State Administration, the Administrations of the communities

autonomous entities and the entities that make up the Local Administration.

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

nica, the competent data protection authority will issue a resolution sanctioning them with a 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.

(...)

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."

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

7th

6/7

Among the corrective powers contemplated in article 58 of the RGPD, in its section 2

d) it is established that each control authority may "order the person in charge or of the treatment that the treatment operations comply with the provisions of this Regulation, where appropriate, in a certain way and within a specified period...". The imposition of this measure is compatible with the sanction consisting of an administrative fine, as provided in art. 83.2 of the GDPR.

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: ADDRESS the entity CITY COUNCIL OF ***LOCALITY.1, with CIF P2804400F, for an infringement of Article 13 of the RGPD, typified in Article 83.5 of the RGPD, a sanction of WARNING.

SECOND: NOTIFY this resolution to the entity CITY COUNCIL OF ***LOCATION.1.

THIRD. ORDER in accordance with article 58 RGPD, which within the term of ONE MONTH from the notification of this act, the claimed entity proceeds to accreditate the legality of the system:

- Contribution of informative poster(s) indicating that it is a video area-guarded, by photograph with date and time.
- Determination of the cause (s) for the installation of the device in question.
- Availability of form(s) available to the residents of the locality-to be able to exercise the legally recognized rights.

FOURTH:

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

resorts 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

www.aepd.es

C/ Jorge Juan, 6

28001 – Madrid

sedeagpd.gob.es

7/7

do states its intention to file a contentious-administrative appeal. If it is-

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

Director of the Spanish Data Protection Agency

938-100322

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es