

□ Procedure No.: PS/00460/2019

938-051119

RESOLUTION OF PUNISHMENT PROCEDURE

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

FACTS

FIRST: Don A.A.A. and Mrs. B.B.B. (hereinafter, the claimant) on the 26th of
September 2019 filed a claim with the Spanish Protection Agency
of data. The claim is directed against ENSO SUSHI, S.L with NIF B30841951 (in
later, the claimed one).

The reasons on which the claim is based are "On 09/24/2019 I received some
photographs of some images via whatsapp, in which I and I are recognized
companion inside the restaurant, from the video surveillance cameras
of the ENSO SUSHI restaurant. I do not know the total number of people who have
these images and what has been their diffusion" (folio nº 1).

Along with the claim, provide documentary evidence that proves receipt in
your mobile from the captured images, obtained from the video-surveillance system.

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 12/11/19, this Agency received a response from the denounced, which alleges the following:

“In relation to points 6, 7 and 8 of the request, it is necessary to inform this body that my client has complied at all times with the provisions in force in matter of data protection, and that no type of non-compliance can be attributed to it. lie, for the reasons that will be argued.

First, on September 21, 2019, a couple left without paying a dinner in said restaurant, amounting to €71.20, leaving the establishment
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lie without any of the employees being able to prevent it. Once verified by staff that the couple had left the establishment without paying the corresponding billed tooth, the data controller contacted the security company, to make a viewing of the images of the cameras, in order to identify to the people who had committed said infraction, in defense of the legitimate interests Cattle of my represented.

However, contacted with this lady on two occasions, the same re-knows that he left without paying the account and recognizes the debt against my client and yet he states that he will not pay the amount. The next news we have is the call of a man who claims to be the partner of this lady, who only professes

re insults and threats to my principal, if we contact your partner again. I have-
cho, it should be noted that, to date, said couple has not proceeded to pay the
debt (...)"

It should be noted that, regarding the employees of my sponsored, all of them
maintain a confidentiality agreement with the company regarding the data of
personal character, information or circumstances related to the people whose data
known, as can be seen in Document No. 7.

As we have proven, the content of said group was in all
confidential moment and protected by the LOPD, with which, in any case, it would be possible to impu-
charge any type of breach of said Law to the employee who had extracted
images out of the professional-confidential environment into a social-desired environment.
protected".

FOURTH: On January 22, 2020, the Director of the Spanish Agency for
Data Protection agreed to initiate a sanctioning procedure against the claimant, for the
alleged infringement of Article 5.1.c) of the RGD, typified in Article 83.5 of the
GDPR.

FIFTH: On 02/06/20, this Agency received a written statement of allegations from the
reported entity ENZO SUSHI, stating the following:

"We reiterate that, in accordance with the provisions of art. 6.1.f) of the RGD,
the legitimate interest existing in the actions perpetrated by my representative is evident.
sit-in that have given rise to this proceeding, in which the facts have culminated
do with the filing of a complaint with the Civil Guard of Cabo de Palos, for a
crime of fraud whose investigation has been carried out, whose hearing has been scheduled
for next March 2, 2020, as evidenced by summons from the
Court that is provided as DOCUMENT No. 1, and whose responsibility has been re-
known when the denouncer himself warned of this procedure that he recognizes himself

himself and his partner leaving the establishment without paying the bill.

In this contact with the complainant, the complainant acknowledged that they had dined and who had left without paying, but never gave any payment solution, and did not not only that, but we even get to receive from those denounced only insults coughs and threats without, to date, the couple having even proceeded to pay the debt.

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This company has put all the diligence required to comply with the provisions all in this precept. The images have been kept exclusively for accreditation. prevent the commission of criminal acts in order to protect the interests of the business, to whose same purpose was contacted with the employees and the images were poured into that group. After the diners were identified and contacted in order to solve the conflict in a friendly way, the objective was not achieved and a formal complaint had to be filed. cases days later.

Consequently, this party disagrees that the claim filed by the complainants cians-denounced provide rational indications of the existence of an infraction in matter of data protection against my client, nor that the investigative phase has proven it, as well as disagrees with the consequent opening of this procedure sanctioning party, in the terms established in art. 65.2 LOPD, since the images were used for identification (...)."

Exposed the foregoing, REQUESTS: that, considering this es-

letter of allegations to the Agreement to initiate the sanctioning procedure together with

your documents, the sanctioning procedure is admitted and, consequently, filed.

nor without responsibilities for my client, insofar as it does not provide evidence

rationale of the existence of an infringement against this merchant nor has it been proven,

since the existence of a legitimate interest and the fulfillment of the

the LOPDGDD by this company”.

SIXTH: On 02/13/20, this Agency issued a Resolution proposal to

PS/00460/2019 considered proven the infringement of art. 5.1 c) RGPD, having obtained

nested frames of the video-surveillance system that were treated outside the su-

permitted positions, proposing in response to the circumstances of the case a sanction

Warning for the appropriate legal effects.

SEVENTH: The database of this Agency consulted on 03/05/20 does not contain

any allegation in this regard by the entity denounced.

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

of Data in this procedure the following are considered proven facts,

FACTS

First. On 09/26/19, this Agency receives a claim from the denouncers-

tes, transferring as the main fact the following:

“the reception on your mobile phone of your image through the application of

WhatsApp without just cause” (folio No. 1).

Second. The company ENSO SUSHI is identified as the main responsible party,

which has a video-surveillance system inside the premises for security reasons.

facility security.

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Third. The access to the images of the system to obtain photographs is accredited.

more of it, in order to identify a couple, who left the establishment without paying the drinks.

Fourth. The images that appear on the mobile of the accused, are transferred by an employee of the establishment, where in the provided Whatsapp is identified like Javier Barba, apparently a "friend" of the couple.

"Let you know that they have denounced you and they are looking for you for a simpa"

Fifth. It is proven that the facts have been transferred to the Court before the ne-couple to pay the required debt (Instruction Court No. 3 Cartagena)

Trial on Minor Crime No. 000443/2019, pending judicial pronouncement.
cial.

FOUNDATIONS OF LAW

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By virtue of the powers that article 58.2 of the RGPD recognizes to each authority-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 solve this procedure.

II

In the present case, the claim dated 09/26/19 is examined by me-of which the main fact is transferred to the reception on his mobile phone, of his image through the Whatsapp application, according to the complainant without just cause.

"On 09/24/2019 I receive some photographs of some images via whatsapp, in which I and my companion are recognized inside the restaurant, from-video surveillance cameras of the ENSO SUSHI restaurant. I don't know the

total number of people who have these images and what has been their diffusion" (folio

No. 1).

The facts described above may imply an infringement of the content.

do of art. 5.1 c) GDPR. 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").

Article 22 LOPDGDD (LO 3/2018, December 5) provides the following: "The

data will be deleted within a maximum period of one month from its capture, except

when they had to be kept to prove the commission of acts that violate

against the integrity of persons, property or facilities. In such a case, the images of

must be made available to the competent authority within a maximum period of

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seventy-two hours since the existence of the recording became known.

tion".

The treatment of images through a camera system has as

main purpose is to preserve assets and ensure the safety of people,

giving in the exposed case to be a means of proof for the identification of the

alleged perpetrators of a criminal act.

The dissemination made to the group of employees of the company, is considered

disproportionate, given that only the person in charge of the system can block the

archiving (conservation) of the images and as indicated in the regulations, having

to report the events to the local security forces and bodies.

authority or Investigating Judge closest to the scene of the events, for an alleged Crime of fraud (art. 248 CP).

It is not the task of all the company's employees to have at their disposal the images obtained from the video-surveillance camera system, and there may be obtained the same result if it had acted more confidentially than solely for the identification of customers who left the establishment. unpaid and in any case leaving the timely investigative work to the Armed Forces. forces and State Security Bodies.

All this without prejudice to the specific conduct of the employee who proceeded to send the images to the complainant's phone, which were also unnecessary from face of a presumed payment of the invoice generated in the establishment, being responsible responsibility of the employer, if applicable, the analysis and adoption of timely measures.

So there is evidence of inadequate treatment of the images obtained.

system, since it was totally unnecessary to make them available.

more to the alleged perpetrators of the criminal act described, deviating from the purpose for which the installation of this type of device is conceived, deviating from the same way of what is established in the Law, which is clear as to the way of proceeding.

The arguments of the representative of the accused are dismissed, since nothing prevents the conservation of the images, through their timely recording, and trying to a friendly solution with the alleged offenders, being able in case of refusal of

These must be provided to the competent authority, after the 72-hour deadline has elapsed. established by the Legislation in force as a means of proof admissible in law.

III

In accordance with the evidence available in this proceeding, sanctioning procedure, it is considered that the defendant (a) proceeded to obtain images from the video-surveillance system, making them available to employees,

without taking any action.

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

mado, for violation of the content of article 5.1 c) RGPD.

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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;

IV

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

ne in your art. 58.2 b) the possibility of sanctioning with a warning, in relation to what

stated in Recital 148:

“In the event of a minor offence, or if the fine likely to be imposed

would constitute a disproportionate burden for a natural person, rather than a sanction.

tion by means of a fine, a warning may be imposed. You must, however, pay

Special attention is paid to the nature, seriousness and duration of the infraction, its character

intentional ter, to the measures taken to alleviate the damages suffered, to the

degree of responsibility or any relevant prior violation, the manner in which

the control authority has become aware of the infraction, to the fulfillment of

measures ordered against the person in charge or in charge, adherence to codes of conduct and any other aggravating or mitigating circumstance.”

In the present case, it is taken into account that the defendant acts based on the belief of a “legitimate interest”, given that the images correspond to a similar Ha, he left the establishment without paying for the drink, which caused the spread of the images in a closed group to proceed with their identification, the immediate collaboration with this body and the absence of previous infractions, all reasons them that justify a warning sanction.

Therefore, this Agency proceeds to assess the facts described in its fair measure, taking into account the situation of victim of the accused, as well as the aforementioned belief that he was acting in accordance with a legitimate interest, to impose a simple WARNING, orienting it for future situations about the way to act, that is, conservation of the images (documentary evidence), in his case ne-friendly negotiation with possible offenders in order to avoid a costly trial and in last instance transfer of the same, attaching it with the corresponding Complaint before the Security Forces and Bodies closest to the place of the events or to the Nearest Court of Instruction.

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 ENSO SUSHI, S.L, with NIF B30841951, for an infraction of article 5.1.c) of the RGPD, typified in Article 83.5 of the RGPD, a sanction of WARNING, in accordance with the provisions of article 58.2 RGPD.

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SECOND: NOTIFY this resolution to ENSO SUSHI, S.L.

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

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.

Sea Spain Marti

Director of the Spanish Data Protection Agency

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