

□ Procedure No.: PS/00295/2020

RESOLUTION OF PUNISHMENT PROCEDURE

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

FACTS

FIRST: COMMUNITY OF OWNERS ***ADDRESS.1 (hereinafter, the
claimant) dated June 28, 2020 filed a claim with the Agency

Spanish Data Protection. The claim is directed against LABORATORY

OCTOGÓN, S.L. with NIF B87807368 (hereinafter, the claimed). The reasons in which

The claim is based on the installation of video-surveillance cameras that could
capture space from third parties without just cause.

Along with the claim, provide documentary evidence (Doc. No. 1) that proves the
presence of the cameras, and they may be misdirected without cause
justified.

SECOND: On 07/03/20, the claim was TRANSFERRED to the
denounced entity, without any answer having been given in relation to the
facts subject to complaint.

THIRD: On December 17, 2020, the Director of the Spanish Agency
of Data Protection agreed to initiate sanctioning procedure to the claimed, with
in accordance with the provisions of articles 63 and 64 of Law 39/2015, of October 1, of the
Common Administrative Procedure of Public Administrations (hereinafter,
LPACAP), for the alleged infringement of Article 5.1.c) of the RGPD, typified in the
Article 83.5 of the RGPD.

FOURTH: On 01/18/21 a written statement is received from the respondent-
Octogón Laboratory- succinctly stating the following:

-That the person responsible for the installation is the one claimed.

-That it has an informative sign(s) indicating that it is a zone

video-surveillance.

-Access to images by this company only occurs if you jump

the alarm in case of intrusion of the facilities.

-Provides images of the withdrawal of the XX camera (Before and after), as well as

screen print after removal.

-A copy of the informative clause is provided to the employees of the defendant, in

matter of processing personal data.

FIFTH: Attached as an annex is a list of documents in the

procedure, remembering the right of access to the documentation of the File

administrative.

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

2/6

SIXTH: On 02/01/21, a “Resolution Proposal” is issued, which considers

accredited the infraction committed, by having an exterior camera oriented towards

space of third parties without just cause, violating the content of art. 5.1 c)

GDPR.

SEVENTH: On 02/26/21, a written statement of allegations was received regarding the "proposal for

Resolution” of the reported entity stating the following:

“The installation of the camera that provokes the sanction responds to the need

to provide documentary evidence to the trial *** TRIAL.1 in the Court of Instruction No.

02 of ***LOCALIDAD.1, under article 9, paragraph 2, section F. In said

cio (sentence is attached), the defendant for our part was sentenced by the threats and harassment suffered by our company, thanks to the documents provided two, including the appropriate images. The removal of said chamber was carried out in the first possible moment given that the confinement, and the closure of the activities essential, did not allow us to rent beforehand the necessary material, crane and PPE, to remove it according to the rules of work at height"

"That is why we ask for the review of the procedure in question and we hope We demand that the sanction be forgiven given the allegations presented here"

Of the actions carried out in this procedure and the documentation in the file, the following have been accredited:

PROVEN FACTS

. On 06/28/20, a claim was received by this body from the

First

claimant through which the following is transferred:

"Installation of video-surveillance cameras that could capture space of third parties without just cause" (folio nº 1).

Along with the claim, provide documentary evidence (Photograph No. 1) that proves the presence of the exterior cameras oriented towards the transit area without just cause.

Second. The entity -Laboratory- is identified as the main responsible Octagon-

. It is accredited that it has an informative poster at the access door

Third

main, indicating that it is a video-monitored area.

Evidence document No. 1. Informative poster photograph.

Fourth. The denounced entity has proceeded to withdraw the outer chamber-

identified XX that was the one that was oriented towards a zone of transit without cause justified, object of complaint for affecting the rights of third parties.

Fifth. The claimed entity provides a security document with a clause information to employees of the facilities.

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

3/6

FOUNDATIONS OF LAW

Yo

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

In the present case, we proceed to examine the claim dated by means of the which translates as the main fact the following:

“Installation of video-surveillance cameras that could capture space of third parties without just cause” (folio nº 1).

The art. 5.1 c) RGPD 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").

It should be remembered that individuals are responsible for ensuring that the systems installed felled comply with current legislation, proving that it complies with all the requirements demanded by the regulations in force.

The installation of this type of device must have the mandatory informative sign.

tive, indicating the purposes and responsible for the treatment, where appropriate, of the data of each personal character.

In any case, the cameras must be oriented towards the particular space, avoiding intimidate neighboring neighbors with this type of device, as well as control areas transit of the same without just cause.

With this type of device it is not possible to obtain image(s) of public space either. co, as this is the exclusive competence of the State Security Forces and Bodies ted.

It should be remembered that even in the case of a "simulated" camera, the same should preferably be oriented towards private space, since it is considered that this type of device can affect the privacy of third parties, that they are intimated by it in the belief of being the subject of permanent recording.

On the part of individuals, it is not possible to install devices for obtaining images of public space, outside the cases allowed in the regulations.

III

In accordance with the evidence available in this proceeding sanctioning party, it is considered that the defendant had a video-surveillance system cia, proving the poor orientation of one of the exterior cameras (D2).

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

4/6

The claimed party has proceeded to withdraw the outer chamber (referenced D2) in such a way that it has ceased to capture the transit area of third parties, which is

were affected by it, being the object of recording without just cause and in a disproportionate to the purpose of the system.

It should be noted that in the allegations to the Start Agreement dated 01/18/21 the reported omitted any reference to the "use" of the images obtained by the camera. mara object of complaint, not entering this body to analyze the value that the same but they have had in the judicial procedure mentioned by the claimed.

The above only confirms that the device in question was wrong oriented, having remained in such a situation until the opening of this proceeding. sanctioning procedure, being accredited the "processing of data of third parties".

The image of people (personal data) is protected, especially with respect to misuse that can be made of it through the use of certain possibilities that they offer some technologies that capture or treat the image.

The installed cameras must be oriented for security reasons towards the industrial warehouse owned by the claimant, avoiding the capture of a transit area site of third parties or exclusive of the same, so that they are intimidated by the same or as in the case at hand, your data is treated outside the cases permitted by the regulations: security of the premises and their belongings.

The rest of the issues put forward in a cursory manner, such as "illegal works" are not justify the orientation at will of the cameras, since there were less harmful means to verify the facts, as a guideline to inform the Police local office or take spot images with a mobile device.

The known facts constitute an infraction, attributable to the defendant, for violation of the content of art. 5.1 c) GDPR.

IV

The art. 83.5 RGD 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.

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

above, opting for the highest amount:

a)

basic principles for treatment, including conditions for con-

sentiment under articles 5, 6, 7 and 9;

When motivating the sanction, the following is taken into account:

-the nature of the infraction since a video-surveillance system has been installed,

affecting the right of third parties without just cause (art. 83.2 a) RGPD).

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

5/6

- The intentionality or initial negligence in the infraction, being oriented towards

cia public and/or private area of third parties without just cause (art. 83.2 b) RGPD).

- any measure taken by the controller or processor to

alleviate the damages suffered by the interested parties; (art. 83.2 c) RGPD).

For all these reasons, it is considered correct to impose a sanction encrypted in the amount

€1,000 (Thousand Euros), for the alleged infringement of art. 5.1 c) RGPD, sanction located

on the lower scale for this type of behavior; taking into account the withdrawal

after the notification of the Start Agreement of the outer camera that captured the area of

third-party traffic disproportionately.

The video-surveillance camera system should be limited to the industrial building of

the one claimed, avoiding the capture of common or transit areas of third parties.

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 LABORATORIO OCTOGÓN, S.L., with NIF B87807368, for an infringement of Article 5.1.c) of the RGPD, typified in Article 83.5 of the RGPD, a fine of €1,000 (one thousand Euros).

SECOND: NOTIFY this resolution to LABORATORIO OCTOGÓN, S.L.

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

Department of Data Protection at the banking entity CAIXABANK, S.A.. In case of

Otherwise, it will be collected during the executive period.

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

between the 1st and 15th of each month, both inclusive, the term to make the payment

will be until the 20th day of the following month or immediately after, and if

between the 16th and last day of each month, both inclusive, the payment term

It will be until the 5th of the second following month or immediately after.

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

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

6/6

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 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

Director of the Spanish Data Protection Agency

938-131120

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es