

□ Procedure No.: PS/00011/2021

RESOLUTION OF PUNISHMENT PROCEDURE

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

BACKGROUND

FIRST: On September 27, 2019, he entered this Agency

Spanish Data Protection, a document presented by A.A.A. (hereinafter the claimant), through which he makes a claim against FRUTAS DELICIOUS

ILYAS, S.L. with NIF B99469819 (hereinafter, the claimed one), for the installation of a video surveillance system installed at ***ADDRESS.1, with signs of a possible breach of the provisions of the data protection regulations of personal character.

The reasons underlying the claim are that on the facade of the greengrocer there is a video surveillance camera without a sign indicating it and presumably recording images of the street. There is also no information sign for exercise rights.

Together with the claim, it provides a photograph in which a camera appears in the facade of the establishment that, due to its location, could be capturing images of public roads.

SECOND: Prior to the acceptance of this claim for processing, it is transferred the claimed, in accordance with the provisions of article 65.4 of the Law Organic 3/2018, of December 5, on the Protection of Personal Data and guarantee of digital rights (hereinafter, LOPDGDD), being received on 21 July 2020.

The respondent replied by providing a copy of the Report on Adaptation to the Regulations

General Data Protection prepared by the camera installation company.

In said Report, in Annex G, it is stated that in the establishment there are several cameras installed, and the existence of a simulated camera outside is indicated.

However, it does not provide any photograph that allows verifying that it has a poster informative of the existence of said cameras.

THIRD: On January 15, 2021, the Director of the Spanish Agency for Data Protection agreed to initiate a sanctioning procedure against the claimant, for the alleged infringement of Article 13 of the RGPD, typified in Article 83.5 of the RGPD.

FOURTH: On February 9, 2021, allegations to the initiation agreement formulated by the respondent in which it is clear that

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

2/5

It has an informative poster, and that it is from before the new regulations, providing a photograph of the same.

Likewise, it communicates that, given that the camera that was on the façade was simulated, has proceeded to its withdrawal upon learning of the procedure sanctioning officer instructed by this Agency, to avoid confusion.

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

In this proceeding, the following are considered proven facts:

FACTS

FIRST: Installation of a camera on the exterior facade of the premises of the claimed located at ***ADDRESS.1.

SECOND: The person in charge of the devices is FRUTAS DELICIOUS ILYAS, S.L.

with NIF B99469819.

THIRD: The respondent declares in the pleadings brief to the initial agreement that the exterior camera is simulated, and that, in addition, has an informative poster of the existence of cameras in accordance with the data protection regulations previous, before the current one came into force, providing photographs in which you can see the said poster.

However, since the camera was simulated, he proceeded to remove it, to avoid confusions.

FOUNDATIONS OF LAW

Yo

By virtue of the powers that article 58.2 of the RGPD recognizes to each authority of control, and as established in arts. 47 and 48.1 of the LOPDGDD, the Director of The Spanish Agency for Data Protection is competent to resolve this process.

II

The defendant is imputed the commission of an infraction for violation of article 13 of the RGPD, which states that

"1. When personal data relating to him is obtained from an interested party, the responsible for the treatment, at the time these are obtained, will provide all the information indicated below:

- a) the identity and contact details of the person in charge and, where appropriate, of their representative;
- b) the contact details of the data protection delegate, if applicable;

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

c) the purposes of the treatment to which the personal data is destined and the basis

legal treatment;

d) when the treatment is based on article 6, paragraph 1, letter f), the

legitimate interests of the person in charge or of a third party;

e) the recipients or categories of recipients of the personal data,

in your case;

f) where appropriate, the intention of the controller to transfer personal data to a

third country or international organization and the existence or absence of a decision to

adequacy of the Commission, or, in the case of transfers indicated in the

Articles 46 or 47 or Article 49, paragraph 1, second paragraph, reference to the

adequate or appropriate warranties and the means to obtain a copy of these or

to the fact that they have been borrowed.

2. In addition to the information mentioned in section 1, the person responsible for the

treatment will facilitate the interested party, at the moment in which the data is obtained

personal, the following information necessary to guarantee data processing

fair and transparent

a) the period during which the personal data will be kept or, when not

possible, the criteria used to determine this period;

b) the existence of the right to request from the data controller access

to the personal data related to the interested party, and its rectification or deletion, or the

limitation of its treatment, or to oppose the treatment, as well as the right to

data portability;

c) when the treatment is based on article 6, paragraph 1, letter a), or the

Article 9, paragraph 2, letter a), the existence of the right to withdraw consent in

any time, without affecting the legality of the treatment based on the

consent prior to its withdrawal;

d) the right to file a claim with a supervisory authority;

e) if the communication of personal data is a legal or contractual requirement, or

a necessary requirement to sign a contract, and if the interested party is obliged to

provide personal data and is informed of the possible consequences of

not provide such data;

f) the existence of automated decisions, including profiling, to

referred to in article 22, sections 1 and 4, and, at least in such cases, information

about applied logic, as well as the importance and consequences

provisions of said treatment for the interested party.

3. When the person in charge of the treatment projects the subsequent treatment of

personal data for a purpose other than that for which it was collected,

will provide the interested party, prior to said further treatment, information

for that other purpose and any additional information relevant to the meaning of paragraph 2.

4. The provisions of sections 1, 2 and 3 shall not apply when and in

to the extent that the interested party already has the information.”

This infringement is typified in Article 83.5 of the RGPD, which considers as such:

“The infractions of the following dispositions will be sanctioned, in accordance with the

paragraph 2, with administrative fines of a maximum of EUR 20,000,000 or,

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

4/5

in the case of a company, an amount equivalent to a maximum of 4% of the

global total annual turnover of the previous financial year, opting for

the largest amount:

a) the basic principles for the treatment, including the conditions for the

consent under articles 5, 6, 7 and 9;

b) the rights of the interested parties according to articles 12 to 22; [...].”

III

In the present case, it is appropriate to analyze the presumed illegality of the lack of cartel

informative of the existence of a video surveillance zone by a camera placed in the

property located at ***ADDRESS.1.

The proven facts show that there was an informative poster of the

existence of a video surveillance camera outside the property. Likewise, of

agreement with the allegations of the respondent in his reply to the agreement to start

this procedure, given that the camera was simulated, he proceeded to remove it to

avoid confusions.

IV

Based on the foregoing, it can be concluded that the defendant has a cartel

informative of the existence of cameras, so that it is not possible to speak of conduct

infringing within the scope of the regulatory framework of data protection,

reason for which the present procedure is filed.

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: ORDER the FILE of this procedure as there is no

accredited administrative infraction.

SECOND: NOTIFY this resolution to FRUTAS DELICIOUS ILYAS, S.L.

with NIF B99469819.

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.

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

5/5

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

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

938-131120

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es