

□ Procedure No.: PS/00212/2020

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 claimant), dated January 28, 2020, filed a claim with the Spanish Data Protection Agency. The claim is directed against OPENVET TOP, S.L., with NIF B98858426 (hereinafter, the claimed).

The reasons on which the claim is based are that the CPG Veterinary Clinical Center, whose person in charge is the claimed company, has video surveillance cameras without poster or information forms, it is not known who is responsible, and without having registered the file in the Spanish Agency for Data Protection.

Along with the claim, provide a photograph of the center against which the claim is filed. claim.

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).

The transfer was sent through Notific@ and was returned as "expired" on the day 03/03/2020; reiterating the transfer by certified mail and notified on the 5th of March 2020. No response to the request for information has been received.

THIRD: The claim was admitted for processing by means of a resolution of 14 November 2019.

FOURTH: On September 1, 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 13 of the RGPD, typified in Article 83.5 of the RGPD.

FIFTH: The initiation agreement was electronically notified to the respondent. This is how article 14.2 of Law 39/2015 of Common Administrative Procedure of the Public Administrations (LPACAP) according to which "In any case, they will be obliged to relate through electronic means with the Public Administrations to carry out any procedure of an administrative procedure, at least, the following subjects: a) Legal persons".

The Certificate issued by the Electronic Notification Service is in the file.

cas and Authorized Electronic Address of the FNMT-RCM, which records the sending of the initiation agreement, notification of the AEPD addressed to the claimed, through that means being the date of availability in the electronic office of the organization.

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

2/9

mo on 09/03/2020 and the automatic rejection date on 09/14/2020.

Article 43.2. of the LPACAP establishes that when notification by electronic means tronic systems is mandatory -as is the case in this case- "it is understood will be rejected when ten calendar days have elapsed since it was made available. tion of the notification without accessing its content." (The underlining is from the AEPD)

Add that articles 41.5 and 41.1, third paragraph, of the LPACAP say, respectively- mind:

"When the interested party or his representative rejects the notification of an ad-

administrative, it will be recorded in the file specifying the circumstances of the notification attempt and the means, considering the procedure completed and following the procedure ceding.” (The underlining is from the AEPD)

“Regardless of the means used, the notifications will be valid as long as they allow to have proof of its sending or making available, of the reception or access so by the interested party or his representative, their dates and times, the full content, and the true identity of the sender and the recipient thereof. accreditation of the notification made will be incorporated into the file”.

Thus, considering that the notification of the start agreement to the respondent is made acted electronically by legal imperative (article 14 LPACAP) and that the re-notice deadline after ten days, as provided in article 43.2 of the aforementioned law, the procedure was considered carried out and the procedure continued its course (former article 41.5 LPACAP)

SIXTH: In accordance with article 73.1 of the LPACAP, the term to formulate allegations to the Home Agreement is ten days computed from the day following the of the notification.

Article 64.2. LPACAP, indicates that the defendant will be informed of the right to formulate lar allegations, the "right to a hearing in the procedure and the deadlines for its exercise, as well as the indication that in case of not making allegations in the term foreseen on the content of the initiation agreement, it may be considered motion for a resolution when it contains a precise pronouncement on the imputed responsibility”. (The underlining is from the AEPD)

The agreement to initiate the sanctioning file that concerns us contained a pronouncement precise statement on the responsibility of the claimed entity: in the aforementioned agreement it was specified what was infringing conduct, the sanctioning type in which it was subsumed. ble, the modifying circumstances of the responsibility described and the sanction that

judgment of the AEPD proceeded to impose.

In consideration of the foregoing and in accordance with the provisions of article 64.2.f) of the LPACAP, the initiation agreement of PS/00212/2020 is considered Proposals Resolution card.

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

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

3/9

In this proceeding, the following are considered proven facts:

FACTS

FIRST: On January 28, 2020, a claim was received at the Agency

Spanish Data Protection, referring to the CPG Veterinary Clinical Center, whose responsible is OPENVET TOP, S.L., has video surveillance cameras without sign or informative forms, it is not known who is responsible, and without having registered the file in the Spanish Agency for Data Protection.

Along with the claim, provide a photograph of the center against which the claim is filed. claim, in which a camera is observed.

SECOND: No reply has been received from the respondent or in the transfer process nor later.

FOUNDATIONS OF LAW

Yo

By virtue of the powers that article 58.2 of Regulation (EU) 2016/679 (Regulation-General Data Protection Regulation, hereinafter RGPD), recognizes each Authori-Control Authority, 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), the Director of the Spanish Agency

Data Protection is competent to initiate and resolve this procedure.

Article 63.2 of the LOPDGDD determines that: «The procedures processed by the

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

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

regulations issued in its development and, as long as they do not contradict them, with a subsidiary, by the general rules on administrative procedures.»

II

The physical image of a person, in accordance with article 4.1 of the RGD, is a

personnel and their protection, therefore, is the subject of said Regulation. In article 4.2

of the RGD defines the concept of "treatment" of personal data.

Article 12.1 of the RGD states: "1. The data controller will take the measures

appropriate measures to provide the interested party with all the information indicated in articles 13

and 14" The RGD lists the categories of information that must be provided to an interested party.

resado in relation to the treatment of your personal data in the cases in which

they are collected from it (article 13) or obtained from another source (article 14).

12.7 indicates: "The information that must be provided to the interested parties by virtue of the

Articles 13 and 14 may be transmitted in combination with standardized icons that allow

to provide in an easily visible, intelligible and clearly legible form a

adequate overview of the planned treatment"

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

Article 22 of the LOPDGDD establishes the specificities of data processing for video surveillance purposes, indicating the following:

"1. Natural or legal persons, public or private, may carry out the processing of images through camera systems or video cameras with the purpose of preserving the safety of people and property, as well as their installations.

2. Images of public roads may only be captured to the extent that it is essential for the purpose mentioned in the previous section.

However, it will be possible to capture public roads to a greater extent when necessary to ensure the safety of goods or facilities strategic or infrastructure linked to transport, without in any case may involve capturing images of the interior of a private home.

3. 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 threaten the integrity of persons, property or facilities. In such a case, the Images must be made available to the competent authority within a period maximum of seventy-two hours from the knowledge of the existence of the recording.

The blocking obligation provided for in the article 32 of this organic law.

4. The duty of information provided for in article 12 of Regulation (EU) 2016/679 is understood fulfilled by placing an informative device instead sufficiently visible identifying, at least, the existence of the treatment, the identity of the person in charge and the possibility of exercising the rights foreseen in the Articles 15 to 22 of Regulation (EU) 2016/679. It may also be included in the informative device a connection code or internet address to this

information.

In any case, the person in charge of the treatment must keep available to the affected the information referred to in the aforementioned regulation.

5. Under article 2.2.c) of Regulation (EU) 2016/679, it is considered excluded of its scope of application the treatment by a natural person of images that just capture the inside of your own home.

This exclusion does not cover processing carried out by a security entity private that had been contracted for the surveillance of a home and had access to the images.

6. The processing of personal data from images and sounds obtained through the use of cameras and video cameras by the Forces and Security Bodies and by the competent bodies for surveillance and control in penitentiary centers and for the control, regulation, vigilance and discipline of the traffic, will be governed by the legislation transposing Directive (EU) 2016/680, when the treatment is for the purposes of prevention, investigation, detection or prosecution of criminal offenses or execution of criminal sanctions, including protection and prevention against threats to public safety. Outside

In these cases, said treatment will be governed by its specific legislation and

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

5/9

additionally by Regulation (EU) 2016/679 and this organic law.

7. What is regulated in this article is understood without prejudice to the provisions of the Law

5/2014, of April 4, on Private Security and its development provisions.

8. The treatment by the employer of data obtained through information systems

cameras or video cameras is subject to the provisions of article 89 of this law

organic.”

III

In order for the duty of information provided for in article 12 of the RGPD to be

complies in a concise and understandable manner for the affected party, the aforementioned article 22 of the

LOPDGDD foresees a system of “information by layers”.

It is recommended that the first layer or modality inserted in the warning icon

of video-surveillance area contains the most important information, the details of the

purpose of the treatment, the identity of the person in charge and a description of the

rights of the interested party, legal basis of the treatment and identification of the person in charge

of the treatment and form of contact. The importance of providing this information

in advance arises, in particular, from recital 39 of the RGPD, not being

necessary to specify the precise location of the surveillance equipment; nevertheless,

The context of the surveillance should be made clear.

Thus, in summary, on the sign or sign of the video-surveillance area, you must inform about

of:

- The existence of the treatment (video surveillance).

- The identity of the data controller or the video surveillance system, and the

address of it.

- The possibility of exercising the rights recognized in articles 15 to 22 of the

GDPR.

- Where to obtain more information about the processing of personal data.

Second layer information should be readily available in one place

accessible to the interested party, be it an information sheet at a reception, cashier, etc. either

placed in a visible public space, or refer to a web address with the rest of

the elements of article 13 of the RGPD.

Article 13 of the RGPD establishes the information that must be provided when the data personal data are obtained from the interested party, which is as follows:

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

a) the identity and contact details of the person in charge and, where appropriate, of their representative.

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

6/9

tant;

b) the contact details of the data protection delegate, if applicable;

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

d) when the treatment is based on article 6, paragraph 1, letter f), the legitimate interests swindles of the person in charge or of a third party;

e) the recipients or the categories of recipients of the personal data, in their case;

f) where appropriate, the intention of the controller to transfer personal data to a third party country or international organization and the existence or absence of a decision of adequacy

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

46 or 47 or article 49, section 1, second paragraph, reference to the adequate guarantees

adequate or appropriate and the means to obtain a copy of them or the fact of

that have been borrowed.

2. In addition to the information mentioned in section 1, the data controller will provide the interested party, at the time the personal data is obtained, them, the following information necessary to guarantee fair data processing and transparent:

- a) the period during which the personal data will be kept or, when this is not possible, the criteria used to determine this term;
- b) the existence of the right to request from the data controller access to the personal data relating 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 portability of the data;
- c) when the treatment is based on article 6, paragraph 1, letter a), or 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 consent.
lien prior to 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 providing
tar such data;
- f) the existence of automated decisions, including profiling, to which referred to in article 22, sections 1 and 4, and, at least in such cases, significant information
tive on applied logic, as well as the importance and anticipated consequences of
said treatment for the interested party.

3. When the data controller plans the further processing of personal data personal data for a purpose other than that for which they were collected, will provide the received, prior to such further processing, information about that other purpose and

any additional relevant information pursuant to paragraph 2.

4. The provisions of sections 1, 2 and 3 shall not apply when and to the extent measure in which the interested party already has the information.”

IV

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

7/9

The claim is specified in that the claimed entity does not have a cartel in the that the presence of the cameras and the identity of the person responsible be reported of the processing of the data, so that the interested persons can exercise the rights provided for in arts. 15 to 22 of the GDPR.

As proof of these statements, the claimant provided the evidence indicated- given in the "Background" section, first point, and first proven fact of this Resolution.

The corrective powers available to the Spanish Data Protection Agency

These, as a control authority, are established in article 58.2 of the RGPD. Among them are the power to sanction with a warning -article 58.2 b)-, the potes- possibility of imposing an administrative fine in accordance with article 83 of the RGPD -article 58.2 i)-, or the power to order the data controller or processor to treatment operations comply with the provisions of the RGPD, where appropriate, in a certain way and within a specified period -article 58. 2 d)-.

According to the provisions of article 83.2 of the RGPD, the measure provided for in article 58.2 d) of the aforementioned Regulation is compatible with the sanction consisting of an administrative fine. treat.

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-
be a disproportionate burden on a natural person, rather than sanction by
fine, a warning may be imposed. However, special attention must be paid
tion to the nature, seriousness and duration of the infringement, to its intentional nature, to
the measures taken to mitigate the damages and losses suffered, to the degree of responsibility
bility or any relevant prior violation, to the manner in which the enforcement authority
control has been aware of the infraction, to the fulfillment of ordered measures
against the person in charge or person in charge, adherence to codes of conduct and any
Any other aggravating or mitigating circumstance.

v

In accordance with the data contained in the complaint, it has been confirmed that
in the establishment of the defendant there was no such informative poster, and it was confirmed
considers that the exposed facts do not comply with the provisions of article 13 of the RGPD,
for what they could suppose the commission of individual infractions typified in the article
83.5 of the RGPD, which provides the following:

"Infractions of the following provisions will be sanctioned, in accordance with the
section 2, with administrative fines of a maximum of EUR 20,000,000 or, treating-
of a company, of an amount equivalent to a maximum of 4% of the volume of
Total annual global business of the previous financial year, opting for the one with the highest
amount:

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

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

lien pursuant to articles 5, 6, 7 and 9;

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

For the purposes of the limitation period for infractions, the infraction indicated on the previous paragraph is considered very serious and prescribes after three years, in accordance with article 72.1 of the LOPDGDD, which establishes that:

"Based on the provisions of article 83.5 of Regulation (EU) 2016/679, considered very serious and will prescribe after three years the infractions that suppose a substantial violation of the articles mentioned therein and, in particular, the following following:

h) The omission of the duty to inform the affected party about the processing of their data personal in accordance with the provisions of articles 13 and 14 of the Regulation (EU) 2016/679 and 12 of this Organic Law.”

SAW

In the present case, the following elements have been taken into account, in particular.

☐ That it is a micro-SME whose main activity is not linked

with the processing of personal data.

☐ That there is no recidivism, because the commission is not recorded, in the term

less than one year, of more than one infraction of the same nature.

For all these reasons, it is considered that the appropriate sanction to be imposed is a warning.

in accordance with the provisions of article 58.2 b) of the RGPD, in relation to

what is stated in Considering 148, cited above.

In accordance with the provisions of article 58.2 d) of the RGPD, according to which each autho-

control authority may “order the person responsible or in charge of processing that the

processing operations comply with the provisions of this Regulation,

where appropriate, in a certain manner and within a specified period [...].”

is required to adapt the data treatment that video surveillance of the

veterinary center to the requirements established in the RGPD, and specifically, to the placement

tion in a visible place of an informative device.

It is noted that not meeting the requirements of this body may be considered

classified as an administrative offense in accordance with the provisions of the RGPD, typified

as an infraction in its article 83.5 and 83.6, being able to motivate such conduct the opening

of a subsequent sanctioning administrative proceeding.

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 OPENVET TOP, S.L., with NIF B98858426, for an infringement

www.aepd.es

C/ Jorge Juan, 6

28001 – Madrid

sedeagpd.gob.es

9/9

of Article 13 of the RGPD, typified in Article 83.5 of the RGPD, a sanction of

warning).

SECOND: REQUEST OPENVET TOP, S.L., with NIF B98858426, so that according to

of art. 58.2 d) RGPD, and within one month from the notification of this

resolution:

-certify having proceeded to the placement of the informative device in the zones-

video-monitored rooms, locating this device in a sufficiently visible place, both in

open and closed spaces.

-certifies that it keeps available to those affected the information to which it refers to the aforementioned RGPD.

THIRD

: NOTIFY this resolution to OPENVET TOP, S.L.

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

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

C/ Jorge Juan, 6

28001 – Madrid

938-300320

www.aepd.es

sedeagpd.gob.es