

□ Procedure No.: PS/00145/2020

RESOLUTION OF PUNISHMENT PROCEDURE

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

BACKGROUND

FIRST: A.A.A. (hereinafter, the claimant) filed a claim on 05/07/2019

before the Spanish Agency for Data Protection. The claim is directed against

CITY COUNCIL OF ISTÁN with NIF P2906100I (hereinafter, the claimed). The motives

on which the claim is based are that the ***PUERTO.1 of the City Council of Istán requested the

***DATE.1 the images from the video surveillance cameras installed inside the

City Hall to trace their movements in the afternoon of the previous day (6:00 p.m. to 7:30 p.m.)

carried out when he was providing his services and accompanied by another

public employee.

The claimant also states that he is ***POST.2, has an email

sent by ***POST.1, of ***DATE.2, from which the use of the images is deduced.

camcorder genes to verify the content of your service part of the ***FE-

CH.3. Indicates that employees have not been informed of the eventual use of labor control.

ral of the video surveillance cameras.

Together with the claim, it provides as evidence:

E-mail sent by *** POSITION.1 of the City Council, ***DATE.2 "subject-

1)

to "police part XXXX indicating its content that "in the part of *** DATE. March 3

done by you does not correspond to what I directly observed when I found my

office this afternoon. I arrived at the Town Hall around 6:00 p.m., the police car was

contraba parked in front of City Hall, although from my office desk I can't

I can clearly see the people entering or leaving the Town Hall that afternoon at 6:10 p.m.

you leave the Plaza de Andalucía and return after two or 3 minutes accompanied by

BBB worker of that City Council and at the same time *** POSITION 3". "At 19:00 I had a call

each by the City Council a meeting that we finished around 20:45. once reviewed

In the service report you write that from 6:00 p.m. to 6:30 p.m. you were on Juan Avenue.

Carlos I, Marbella street, surrounding square, interior streets, police presence from 6:30 p.m.

7:00 p.m. break, from 7:00 p.m. to 7:30 p.m. City Hall office. It indicates that it "reviews the parts of

service every day and also that he thought that that day something had happened to Mr. B.-

B.B. but since nothing appeared in the part", "I asked the police officer the next morning to

vice to inform me about the recording of the people who had been the previous afternoon

ted at the Town Hall and the approximate schedule". "The policeman informs me about various per-

sonas..., and also from his partner, A.A.A. with B.B.B. who enter around 6:10 p.m.

and they leave the office at 19:20", emphasizing again that "it is not reflected in the

part of those circumstances. He asks the claimant if that meeting he had in his

office "was related to his police work or on union matters and if the response

position is related to his work because it is not reflected in the part."

two)

Copy of the written claim filed by the claimant on 04/05/2019, addressed to

give to the Town Hall. It states in the document that on other occasions the claimant has received

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given verbal orders to display images from the cameras. Recognize that the

***DATE.3 met with his partner in his office for a matter of consultation

and that this person is ***POSITION.3 at City Hall, and that ***POSITION.1

that afternoon he realized that the claimant was accompanied by said person. fi-

It is concluded by noting that the Data Protection regulations may have been infringed in the use of
lization in the workplace of surveillance cameras, as well as the absence of informa-
mation of said purpose.

SECOND: In view of the facts denounced in the claim and the documents
contributed, dated 06/26/2019, the claim is transferred to the City Council
requesting

On 07/09/2019, a letter is received from the respondent, answering:

- Identification of the person responsible for the installation, providing their NIF and contact telephone number.

Indicate the company and the CIF and the contact.

- Information provided on the existence of a video-monitored area through photographs of the
informative poster or posters in which it is possible to appreciate both its location and the
displayed data.

Provides images in which the informative literal of the posters is not appreciated if
reference is made to the LOPD, which is not applicable due to its derogation upon entry into
force of the LOPDGDD, 12/8/2018.

- If a third party has been commissioned to view and process the captured images
by the cameras, provide a copy of the signed contract.

Indicates that third parties have not been commissioned to view and process the images.
genes.

- Number, characteristics, scope of the cameras and places where they are installed, accre-
by photographing the captured images, just as they are displayed on the monitor.
tor or equivalent system.

He indicates that there are six, the model, four with a range of fifteen meters, two of up to
thirty meters placed, two in the garage, two in the reception, and one on the first floor

and in the second. Provide images of where they are placed, all in spaces interiors. It accompanies images of the visualization on the monitor of the spaces that dog.

- Indicate the term of conservation of the registered images.

Note that they are kept for 20 days

-“In the event that the person responsible for the installation is a company or a business, you must also:

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Provide a copy of the communications sent to employees or their representatives.

tes to inform of the purpose of the installation of the cameras.”

He did not reply to this question.

On 08/26/2019 the claim was admitted for processing.

THIRD: On 09/25/2019, it is requested in the phase of previous actions to the City Council-

I lie to report on:

1. Purpose of the video surveillance system installed in the City Council of Istán.

On 10/18/2019, a response was received, indicating that the system was established in

2013 with a subsidy from the rural development group, the purpose being to guarantee both

the safety of citizens attending the theater located on the ground floor of the building,

which shares the same general entrance as the rest of the municipal offices. The

function of this security system “is the surveillance of access to the Theater (ground floor) and

not the surveillance of the municipal dependencies that are found in the rest of the

floors of the building.

He reiterates that there are six cameras and the places where they are placed and the images
nes that are taken.

2. Report if the video surveillance system is used for the exercise of security functions.

control of workers or public employees provided, respectively, in the article

Article 20.3 of the Workers' Statute and in the public function legislation.

In his response, he states that it is to guarantee both the security of citizens

who attend the theater located on the ground floor of the building, which shares the same entrance

general than the rest of the municipal dependencies, like that of the rest of the municipal

councils, who during most of the hours of use of the Theater remain

closed to the public, the function of this security system being the surveillance of access

to the Theater (ground floor) and not the surveillance of the municipal dependencies that are

tran in the rest of the floors of the building.

3. Report if the video surveillance system has been used for labor control of employees.

two municipal public officials, specifically the local police officer No. XXXX of the

Istán Town Hall on ***DATE.3.

Indicates that although the current ***POST.1 has taken office on 06/15/2019, if in-

way that a part of the day's service is recorded in the City Council file ***FE-

CHA.1 reflecting that the previous ***POST.1 requests the agent ***AGENT.1 at 9:22 a.m.

“call from *** POSITION.1 to review surveillance and security cameras”, and provides a copy

from “local police service of ***DATE.1”. The part is signed by the policeman.

local company, indicates: “ ***DATE.1” the agent, and the time 9.22 subject “call ***POST.1

to review surveillance and security cameras”... a call is received from the *** POSITION.1

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for checking the surveillance and security cameras installed in the Town Hall.

exactly the verification was requested between 6:00 p.m. to 7:30 p.m.

***DATE. March 3, 2019." the check is made after the received call and more

Later, the information observed in the viewing of the cameras is given, which is communicated

to *** POSITION.1 that only known personnel of the City Council and Pro-

Civil protection as well as nothing that is strange from the point of view of the

security."

4. Provide a copy of the communications sent to the workers, public employees or

their representatives to inform them of the purpose of installing the cameras.

They indicate that all City Council workers were verbally informed of the

installation and purpose of these cameras and three informative signs were installed. Cons-

so in this writing photographs of the badges without the content being read by distance

of the photo. It is observed that it is a literal longer than that of the photos provided in the transfer.

do of the claim, composed of two blocks or paragraphs. If the two are compared

appreciates that the one provided first had less content, although the current one is not le-

gible.

5. Indicate the persons authorized to access the viewing of the captured images.

taken and recorded by the cameras, together with the details of the measures adopted to gain

Ensure that only authorized personnel access the recordings.

It is indicated that the display monitor is located in the police office itself

which is kept locked when there is no agent, the monitor is

permanently off and only three police officers clearly identified in this

written authorization to view the recordings (one of them is the claimant,

another, the agent ***AGENT.1.

These circumstances are reflected in the minutes of 05/22/2020.

FOURTH: On 06/17/2020, the director of the AEPD agrees:

“INITIATE PUNISHMENT PROCEDURE against the ISTÁN CITY COUNCIL, with NIF P2906100I, for the alleged infringement of article 5.1.a) of the RGD, in accordance with article 83.5.a and 58.2.b) of the RGD.”

The respondent makes no allegations.

In the start-up agreement it was stated: "If within the stipulated period I did not carry out allegations to this initial agreement, it may be considered a proposal for resolution, as established in article 64.2.f) of Law 39/2015, of 1/10, of the Common Administrative Procedure of Public Administrations (hereinafter, LPACAP).”

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PROVEN FACTS

1)

The claimant complains against ***PUESTO.1 of the Istán City Council because he requested, obtained and sent you on ***DATE.2/2029 a letter related to the loan tion of its services from which it can be deduced that it uses the video surveillance system of the City Council to examine the fulfillment of its part of services.

two)

According to the statements of the respondent, current *** POSITION.1 that takes possession on 06/15/2019, there is a part of the service (of which it provides a copy) of the Agent of Police, indicating that ***PUESTO.1 requests you by telephone, at 9:22 am, from ***FE-CHA.1 check the surveillance and security cameras, specifying the band of the images

genes between 6:00 p.m. to 7:30 p.m. ***DATE.3. The part states that "After the call, later the information observed in the viewing of the cameras is given" "what is communicated to ***POST.1 that only known personnel of the City Council and Civil Protection as well as nothing that is strange from the point of from a security perspective."

3)

The defendant has six chambers, financed in part with a grant of the rural development group for cultural facilities installed in 2013. All have been They are located in interior spaces of the building with a purpose, according to the memory of the sub-convention "of guaranteeing both the security of the citizens who attend the theater located on the ground floor, which shares the same general entrance as the rest of the dependencies. municipal authorities, surveillance of access to the Theater (ground floor) and not surveillance of the municipal dependencies that are in the rest of the floors of the building". the re-manifestly claimed, expanding the purpose, to "access control and security at the same to prevent and avoid the entry of outsiders with respect to the custody of documents mentation and/or possible damage or theft of goods". It also expressly indicates that the system subject "is not intended to control its employees in any case".

4)

The cameras are placed: two in the garage, two in the reception, and one on the first floor and on the second. Provide images of where they are placed, . accom-image of the monitor visualization of the spaces they cover.

From the visualization of the cameras, in relation to the facts, although it is not reported the space to which each image corresponds, can be seen:

a.

CH 3 has a wide internal view of the access to the dependencies, it is seen an access door to the public thoroughfare, the reception area, another image of the same Chamber.

mara has an image approach “zoom” and it is appreciated in more detail

zone.

b.

CH 2 shows a first floor, a common space with stairs and part of the

access floor approach.

c.

CH 4 a closer view of those stairs.

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d.

ca the CH2.

CH 1 looks like the elevator door of a floor above the one you focus on.

5)

The email that sent the ***PUESTO.1 to the claimant on ***FE-

CHA.2/2019 informs you that “in the part of *** DATE. March 3 made by you, no co-

responds to what I directly observed when I found my office this afternoon”, already

that around 6:10 p.m. he saw him enter with *** POSITION 3 of the B.B.B. in the co

The mail indicates that ***POST.1 had a meeting that he attended from 19 to 20, 45 and

by stating in the claimant's service report that "from 6:00 p.m. to 6:30 p.m. he was in

Juan Carlos I avenue, Marbella street, surrounding square, interior streets police presence

social from 6:30 p.m. to 7:00 p.m. rest, from 7:00 p.m.

na following the policeman on duty to inform me about the recording of the people

that the previous afternoon they had been at the Town Hall and the approximate time”.. “The policeman

company informs me about several people..., and also about his partner, A.A.A. with B.B.B.

who enter around 6:10 p.m. and leave the office at 7:20 p.m., stressing that "there is no

these circumstances are reflected in the part". It asks the ***POSITION.1 to the claim-

whether that meeting he had in his office "was related to his police work.

or on union matters and if the answer is related to your work because you do not

is reflected in the part."

6)

The claimant provided a copy of the written claim filed with the City Council

of 04/05/2019 exposing the facts and the violation of their right to data protection.

cough.

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 what is established in articles 47 and 48 of the LOPDGDD, the Director of

The Spanish Agency for Data Protection is competent to initiate and resolve

this procedure.

II

The RGPD indicates 5.1.a) of the RGPD that "Personal data will be:

a) processed in a lawful, loyal and transparent manner in relation to the interested party ("lawfulness, loyalty and transparency»);

c) adequate, pertinent and limited to what is necessary in relation to the purposes for which are processed ("data minimization");

If there is no legitimate basis for data processing, a

illicit data processing. The various legitimate bases are contained in article 6, which

entitled "Legality of the treatment", and that indicates:

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1. The processing will only be lawful if at least one of the following conditions is met:

nes.” mentioning those that serve that purpose.

The administration has powers for the smooth running of the organization and efficiency.

the provision of the police service, which may include, among others, the powers of

adopt the measures deemed appropriate to monitor the development of the relationship

labor tion. In this sense, when there is personal data, such as

in this case those collected through video surveillance, the implementation of control in order

to the verification of the compliance of employees with their obligations, respecting their dignity.

ity, go through assessing the legitimacy of its purposes, the need, suitability and proportionality

system in its implementation and the convenience of the participation of the representatives

so many of the employees. It must be assessed for the suitability of implantation of the system.

issue, among other extremes, if it is going to be implemented in the development of public security, if

will be applied to citizen security patrols that work on public roads, in all

cases, or in some, or to internal office work, as well as to be taken into account

other important issues such as the development of a protocol or internal regulations that

take into account the complete information on the purpose of the system insofar as

is related to that public security, as well as information to employees, content

denying their access rights, among other issues.

It follows that due to the lack of some content in the service part of the claim,

***POSITION.1 judged, and under its own will, decided to correlate the content

of the images to verify if the visit that accompanied the employee could relate-

with the provision of the entrusted service or with union matters, since the part

of service of the claimant did not contain any mention to that end.

In the same email, ***POST.1, which also does not request the visualization request

tion of images in writing, but verbally, makes use of images as the same

revealed in the email, linking the content of the performance of the

work activity of the claimant with the treatment of images carried out by the entity that

They have a different purpose, which is installation security, for a purpose that is not their own, which

It is different.

In this way, a follow-up of the work activity interested in the ***POSITION.1 is carried out.

using the purpose of collecting the images, different from the system by which it was im-

planted the system, verifying work performance with a technical means

that treats personal data not established for that purpose The consequences are for the

claimant the interference in his right to privacy that he also holds in the development

of their professional work, to know if their data is collected and for what purposes and destination, and about

which there were no rational expectations of different uses.

Article 4.7 of the RGPD indicates: “responsible for the treatment” or “responsible”: the

natural or legal person, public authority, service or other body which, alone or together with

others, determine the purposes and means of the treatment; if the law of the Union or of the

Member States determines the purposes and means of processing, the data controller

treatment or the specific criteria for their appointment may be established by the

Law of the Union or of the Member States;”

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In this case, the ***POSITION.1 above, acts in the performance of his duties and

as a representative of the City Council; therefore, the City Council is responsible for the

treatment as a legal person, and this regardless of whether the person-***POST.1-

It is not the one that currently holds that condition.

The Judgment of the Plenary of the TC 292/2000, of 11/30, indicates that "the fundamental right

to data protection seeks to guarantee that person a power of control over

about your personal data, about its use and destination, with the purpose of preventing its illicit traffic.

I quote and harmful to the dignity and rights of the affected." He adds that "this power of disposition

about the personal data itself nothing is worth if the affected party does not know what data is the

owned by third parties, who owns them, and for what purpose".

In this case, considering that the images that are treated with the video system

surveillance are aimed at the purpose of security and internal surveillance of the building's headquarters, not

of labor control and without connection with the performance of the work activity, have been used

for the verification related to the issue of the development of the service of the claiming agent-

te, violating the provisions of article 5.1.a) of the RGPD.

III

Article 83.5 a) of the RGPD, considers that the infringement of "the basic principles

for treatment, including the conditions for consent under the articles

5, 6, 7 and 9" is punishable, in accordance with section 5 of the aforementioned article 83

of the aforementioned Regulation, with administrative fines of a maximum of €20,000,000 or,

from a company, of an amount equivalent to a maximum of 4% of the volume of business

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

amount."

Article 83.7 of the RGPD indicates:

"Without prejudice to the corrective powers of the control authorities under the

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

and to what extent, imposing administrative fines on authorities and public bodies is

established in that Member State.

Article 58.2 of the RGPD indicates: "Each control authority will have all the following corrective powers indicated below:

b) sanction any person responsible or in charge of the treatment with a warning when the processing operations have violated the provisions of this Regulation-mint;

d) order the person in charge or in charge of the treatment that the operations of treatment comply with the provisions of this Regulation, where appropriate, in accordance with a specified manner and within a specified time.

The Spanish legal system has chosen not to sanction with a fine those public entities, as indicated in article 77.1. c) and 2. 4. 5. and 6. of the

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LOPDDGG:

"1. The regime established in this article will be applicable to the treatment of those who are responsible or in charge:

c) The General Administration of the State, the Administrations of the communities autonomous 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, the data protection authority that is competent will issue a resolution sanctioning to them with warning. The resolution will also establish the measures that appropriate to adopt so that the conduct ceases or the effects of the infraction are corrected.

would have committed

The resolution will be notified to the person in charge or in charge of the treatment, to the body of which depends hierarchically, where appropriate, and those affected who had the status of interested, if any.

4. The data protection authority must be notified of the resolutions that fall in relation to the measures and actions referred to in the sections previous.

5. They will be communicated to the Ombudsman or, where appropriate, to the analogous institutions of the autonomous communities the actions carried out and the resolutions issued to the protection of this article.

6. When the competent authority is the Spanish Data Protection Agency, this will publish on its website with due separation the resolutions referring to the entities of section 1 of this article, with express indication of the identity of the responsible or in charge of the treatment that had committed the infraction.”

Therefore, in accordance with the applicable legislation

the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: IMPOSE ISTAN CITY COUNCIL, with NIF P2906100I, for a infringement of Article 5.1.a) of the RGPD, typified in Article 83.5 of the RGPD, a warning sanction.

SECOND: NOTIFY this resolution to the ISTAN CITY COUNCIL.

THIRD

in accordance with the provisions of article 77.5 of the LOPDGDD.

: COMMUNICATE this resolution to the OMBUDSMAN, of

FOURTH: 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.

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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 period of one month from the day following the notification of this resolution or directly contentious appeal

before the Contentious-Administrative Chamber of the National High Court, with 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 two months from the day following the notification of this act, according to the provisions of 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, it may be provisionally suspend the firm resolution in administrative proceedings if the interested party states its intention to file a contentious-administrative appeal. If this is the

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 Registry

Electronic Agency [<https://sedeagpd.gob.es/sede-electronica-web/>], or through

any of the other records provided for in art. 16.4 of the aforementioned Law 39/2015, of 1

october. You must also transfer to the Agency the documentation that accredits the

effective filing of the contentious-administrative appeal. If the Agency did not have

knowledge of the filing of the contentious-administrative appeal within two

months from the day following the notification of this resolution, I would consider

The precautionary suspension has ended.

Sea Spain Marti

Director of the Spanish Data Protection Agency

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