

□ Procedure No.: PS/00243/2020

## RESOLUTION OF PUNISHMENT PROCEDURE

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

### FACTS

FIRST: On February 11, 2020, it had entry in this Spanish Agency  
of Data Protection a document presented by A.A.A. (hereinafter, the claimant)  
te), through which he makes a claim against \*\*\*EMPRESA.1 with NIF \*\*\*NIF.1 (in  
hereinafter, the claimed), for the installation of a video surveillance system installed  
in \*\*\*ADDRESS.1 with \*\*\*ADDRESS.2, there being indications of a possible breach  
compliance with the provisions of the data protection regulations.

The reasons that support the claim and, where appropriate, the documents provided  
by the claimant are the following:

"The establishment (...) has installed two (2) video surveillance cameras not se-  
marked on the side façade (\*\*\*) DIRECTION.2) and on the main façade (\*\*\*) DIREC-  
TION.1).

These unmarked cameras excessively and unnecessarily capture both lanes  
public, the transit of people and vehicles, as well as facades of third parties with a  
front or side frame.

The building has a single access in \*\*\*ADDRESS.1, which leads to a large  
private entrance hall that allows the installation of video surveillance equipment  
without the need to frame and record the street.

The camera at \*\*\*ADDRESS.2 does not protect any entrance and records access to said  
street in all its width as well as the perpendicular intersection with \*\*\*ADDRESS.1 to  
complete.

The framing and viewing angle of the camera in \*\*\*DIRECTION.1 (75°-130° depending on model) allows the recording of the entire street from a certain distance from the point of origin.

click.

Given the lack of data on the person in charge, I have contacted the person in charge by telephone.

reception at \*\*\*TELEFONO.1, where they refused to provide me with the data

of the person in charge or their telephone number or contact email. I was sent to the address

\*\*\*EMAIL.1 that appears on its website \*\*\*URL.1 as the only option, despite claims

tell him in the same conversation that I did not receive a response to the emails sent to

that address.

Following your instructions, I have sent you an email again requesting the exercise of the

ARCO rights, the data of the person in charge of the camera and the reorientation of the same

ma. I have not got an answer. Attachment pdf.

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When consulting the public records, it is evident that the company name \*\*\*EMPRESA.1

appears with 2 different CIF/NIF numbers (\*\*\*NIF.1 and \*\*\*NIF.2) but with the same

my tax address (...). With the same fiscal address appears the company \*\*\*EMPRE-

SA.2 with CIF nº \*\*\*NIF.3. (Images attached in the pdf, below my email to

the company)

[...]"

Attach four photographic images of the two cameras installed, taken

from different angles and indicating the possible capture angle.

SECOND: Prior to admitting this claim for processing, the

Subdirector General for Data Inspection directed, on March 5, 2020, a request for information to the respondent in which he was informed that the Agency of Data Protection had been aware of the existence of security cameras video surveillance located at the address indicated in the first event that could be violating the data protection regulations and in which it was requested that, in the period of 1 month, the conformity of the aforementioned installation with the aforementioned normative

The electronic notification expired on March 17, 2020 due to not accessing the claimed to its content and in view of this situation, the request for information was reiterated exceptionally via postal mail on March 23, 2020. The Notification of this reiteration took place on June 4, 2020.

There is no response from the respondent.

THIRD: The claim was admitted for processing by resolution of August 4 of 2020.

FOURTH: On February 16, 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 5.1.c) of the RGPD, Article 13 of the RGPD, typified in the Article 83.5 of the RGPD.

FIFTH: The database of this AEPD consulted on 07/15/21 does not contain no allegation, nor corrective measure has been adopted for this purpose.

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. The claim brings cause of the presence of two video-surveillance cameras located in \*\*\*ADDRESS.1, with presumed orientation towards public space without con- have proper signage.

Documentary evidence is provided (Annex I) that proves what is asserted by the claim.

keeping with the capture of the angle of the cameras, which allows us to deduce the capture of public transit area disproportionately.

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Second. The cameras are associated with the establishment \*\*\*EMPRESA.1 which does not has made any allegation in this regard in this proceeding.

Third. There is evidence of the presence of two chambers whose orientation according to the evidence provided allows deducing an incorrect orientation affecting the area of public transit in an unjustified manner.

Fourth. There is evidence of the absence of an informative poster(s) in the visible area when it is a video-monitored area.

Fifth. No contribution has been made of the screen print of what in your case is captured with the aforementioned cameras.

## 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 Authority-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 Data Protection Agency shall be governed by the provisions of the Regulations to (EU) 2016/679, in this organic law, by the regulatory provisions dictated in its development and, as long as they do not contradict them, on a subsidiary basis, 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 personal data. and its protection, therefore, is the subject of said Regulation. In article 4.2 of the GDPR defines the concept of "treatment" of personal data.

It is, therefore, pertinent to analyze whether the processing of personal data (image of the natural persons) carried out through the reported video surveillance system is in accordance with the provisions of the RGD.

## III

Article 6.1 of the RGD establishes the assumptions that allow the treatment to be considered lawful. processing of personal data.

For its part, article 5.1.c) of the RGD, regarding the principles of treatment, provides states that personal data will be "adequate, relevant and limited to what is necessary" ary in relation to the purposes for which they are processed ("data minimization").” East

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article enshrines the principle of data minimization in data processing personal. It assumes that said treatment is adjusted and proportional to the purpose to be which is addressed, and the treatment of excessive or excessive data must be restricted. yield to the suppression of these.

The relevance in the processing of the data must occur both in the field of collection of the data as well as in the subsequent treatment that is carried out on them.

Article 13, sections 1 and 2, of the RGPD, establishes the information that must be provided to the interested party at the time of collecting their data. In the case of treatments of personal data for surveillance purposes through camera systems or video-cameras, the duty of information can be fulfilled by placing, in the areas video-surveillance, of an informative badge located in a sufficiently visible place, both in open and closed spaces, and using forms in which

The information provided is detailed, which the person in charge must make available to the interested.

The content and design of the informative badge must comply with the provisions of article 22.4 of the LOPDGDD.

On the other hand, in accordance with the provisions of article 22 of the LOPDGDD, referred to specifically to "Processing for video surveillance purposes", the processing of images in public places can only be made -if applicable and prior compliance-compliance with the legally enforceable requirements-, by the Security Forces and Bodies unless the exception established in the aforementioned article 22 of the LOPDGDD for natural or legal persons, public or private, respecting the conditions required in said article.

On some occasions, the protection of private spaces is only possible if the cameras are located in spaces such as facades. Sometimes it is also necessary to capture the accesses, doors or entrances, so that, even if the camera is inside the building, it is impossible not to record a minimal and essential part of public roads, which is inevitably captured.

For this exception on the protection of private spaces to be applicable,

There must be an alternative installation possibility. In these cases, the responsible

of the treatment carried out through cameras will adapt the use of the installation, so that the impact on the rights of third parties (passers-by) is the minimum possible.

In no case will the use of surveillance practices be admitted beyond the objective environment.

of the installation, not being able to affect the surrounding public spaces, buildings adjoining vehicles and vehicles other than those accessing the guarded space.

#### IV

In accordance with the foregoing, the processing of images through a system video surveillance, to be in accordance with current regulations, must meet the requirements following sites:

- Respect the principle of proportionality.

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- When the system is connected to an alarm center, it can only be installed by a private security company that meets the requirements contemplated two in article 5 of Law 5/2014 on Private Security, of April 4.

- The video cameras will not be able to capture images of people who are outside the private space where the video surveillance system is installed, since the treatment of images in public places can only be carried out, unless Government authorization concurs, by the Security Forces and Bodies. Either spaces owned by third parties may be captured or recorded without the consent of their owners, or, where appropriate, of the people who are in them.

This rule admits some exceptions since, on some occasions, for the protection of private spaces, where cameras have been installed on facades or inside,

it may be necessary to guarantee the security purpose the recording of a portion of the public road. That is, cameras and video cameras installed for the purpose of security will not be able to obtain images of public roads unless it is essential possible for said purpose, or it is impossible to avoid it due to their location and Extraordinarily, the minimum space for said purpose will also be collected. By Therefore, the cameras could exceptionally capture the minimally necessary portion ary for its intended security purpose.

- The duty to inform those affected provided for in articles 12 and 13 of the RGPD and 22.4 of the LOPDGDD.

Specifically, at least one indicia must be placed in video-monitored areas. located in a sufficiently visible place, both in open spaces and closed, which will identify, at least, the existence of a treatment, the identity responsibility of the person in charge and the possibility of exercising the rights foreseen in said pre-concepts. Likewise, the information must be kept available to those affected. the one referred to in the aforementioned RGPD.

- The person in charge must keep a record of the activities of the treatments carried out. two under its responsibility in which the information to which it refers is included. cia article 30.1 of the RGPD.

- Installed cameras cannot get images from third-party proprietary space and/or public space without duly accredited justified cause, nor can they affect the privacy of passers-by who move freely through the area. not allowed, for Therefore, the placement of cameras towards the private property of neighbors with the purpose to intimidate them or affect their privacy without just cause.

- In no case will the use of surveillance practices beyond the obtained environment be admitted. object of the installation and in particular, not being able to affect the surrounding public spaces. contiguous buildings and vehicles other than those accessing the surveillance space.



side.

In relation to the above, to facilitate the consultation of interested parties, the Agencia Es-Data Protection panola offers through its website [<https://www.aepd.es>]

access to the legislation on the protection of personal data, including the

RGPD and the LOPDGDD (section “Reports and resolutions” / “regulations”), as well as

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the Guide on the use of video cameras for security and other purposes, as well as the

Guide for compliance with the duty to inform (both available in the section

“Guides and tools”).

It is also of interest, in the event of carrying out low-risk data processing, the

facilitates free tool (in the “Guides and tools” section), which through

specific questions, allows to assess the situation of the person in charge with respect to the

treatment of personal data that it carries out, and where appropriate, generate various do-

documents, informative and contractual clauses, as well as an annex with measures of

guideline security considered minimum.

v

The claim is based on the presumed illegality of the installation by the claimed

of a video surveillance system, made up of two cameras located on the facades

main and side walls of the property located at \*\*\*ADDRESS.1 with \*\*\*ADDRESS.2, which

could disproportionately capture images of public areas.

In addition, the claimant warns that the reviewed property does not have a sign 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 “Facts” section, first point, of this agreement.

Thus, in the photographic images it is observed that the street camera \*\*\*DIRECCION.1, due to its orientation, could be capable of capturing beyond access to building and the minimum of sidewalk adjacent to the perimeter. In the same way, the camera of \*\*\*ADDRESS.2 could capture a substantial portion of the pedestrian street exceeding giving the minimum adjacent to the perimeter. There is no informative sign in this regard indicating that it is a video-monitored area.

SAW

In accordance with the evidence available in this proceeding, penalty, it is considered that the exposed facts do not comply with what is established in articles 5.1.c) and 13 of the RGPD, for what they could suppose the commission of paths offenses typified in article 83.5 of the RGPD, which provides the following:

“The infractions of the following dispositions 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:

- 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; [...]”.

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For the purposes of the limitation period for infractions, article 72.1 of the LO-PDGDD, which establishes that:

“Based on the provisions of article 83.5 of Regulation (EU) 2016/679, it is con-

They are considered very serious and the infractions that suppose a substantial violation of the articles mentioned therein and, in particular, the following following:

- a) The processing of personal data violating the principles and guarantees established two in article 5 of Regulation (EU) 2016/679. [...]
- 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.”

7th

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 issue a warning -article 58.2 b)-, the power to impose an administrative fine in accordance with article 83 of the RGPD -article 58.2 i)-, or the power to order the person in charge or in charge of the treatment that the operations ns of treatment comply with the provisions of the RGPD, where appropriate, of a certain manner 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 a warning, in relation to what is indicated

in Recital 148:

“In the event of a minor infraction, 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 attention to the nature, seriousness and duration of the infraction, to its intentional nature to the measures taken to mitigate the damages suffered, to the degree of responsibility or any relevant prior violation, to the manner in which the authority of control has been aware of the infraction, to the fulfillment of or-sentenced against the person responsible or in charge, adherence to codes of conduct and any other aggravating or mitigating circumstance.”

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In the present case, it has been taken into account, in particular, that it is a small company and that there is no recidivism, because there is no record of the commission of more than an offense of the same nature.

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For all these reasons, it is considered that the sanction that should 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.

All this without prejudice to proving compliance with the necessary measures to prove the legality of the system in the terms set forth, for which it may make use of the means of evidence necessary for such purposes.

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 of the sanctions whose existence has been proven,

the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: ADDRESS a warning to the entity \*\*\*EMPRESA.1, for an infraction of article 5.1.c) of the RGPD and article 13 of the RGPD, typified in Article 83.5 of the GDPR.

SECOND: ORDER the claimed entity so that within ONE month from the notification of this administrative act, proceed to prove compliance of the following measures:

- ☐ Prove that you proceeded to remove the cameras from the current locations or to its reorientation.
  - ☐ Prove that you have proceeded to place the appropriate information device in the video-monitored areas (at least the existence of a treatment, the identity of the person in charge and the possibility of exercising the rights provided in the articles Articles 15 to 22 of the RGPD), placing this device in a sufficiently visible place.
  - ☐ Prove that you keep the information referred to at the disposal of those affected.
- refers to the aforementioned RGPD.

THIRD: NOTIFY this resolution to \*\*\*COMPANY.1.

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

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

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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.

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