

Procedure No.: PS/00190/2019

938-0419

## RESOLUTION OF PUNISHMENT PROCEDURE

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

### BACKGROUND

FIRST: D.A.A.A. (hereinafter, the claimant) dated February 7, 2019

filed a claim with the Spanish Data Protection Agency. The

claim is directed against ALMACEN BAILY S.L. with NIF B57863433 (hereinafter, the claimed). The reasons on which the claim is based are due to data processing carried out through cameras of a video surveillance system whose owner is the claimed installed at \*\*\*ADDRESS.1.

SECOND: On March 7 and March 29, 2019, the transfer of the

the claim to the defendant, so that he could allege what in law he deems appropriate in relation to the denounced cameras, stating as notified and delivered by the Correos service on April 1 this year.

THIRD: Subsequently, on April 5, this Agency receives a letter of allegations of the respondent stating the following:

“The person in charge of the installation is Almacén Baily, S.L. \*\*\*ADDRESS.1 NIF B57863433 Contact phone \*\*\*TELEPHONE.1”.

Two photographs of the two informative posters that appear in the establishment. In both photographs it can be seen that the informative posters are located, one outside the establishment and the other just at its entrance, and shows the data related to the person responsible for the installation of the video surveillance to which the interested parties can go to exercise their rights in

data protection matters (document no. 1. b and document no. 1.c).

A third party has not been entrusted with the visualization and treatment of images captured by video surveillance cameras, so these tasks are performed by the responsible for the installation of the same who is the one who signs this document.

Document no. 2 is provided as the installation manual for the security cameras.

video surveillance the images captured by the 49 cameras installed in the establishment.

The first two images of the monitor that can be seen in the document n.3.a correspond to the establishment's car park. to the cameras captured by these two images have had an image lock or selector applied to them

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of area so that they cannot capture adjoining houses or other space outside the Entity Amacen Baily S.L.”

FOURTH: On June 24, 2019, the Director of the Spanish Agency for

Data Protection agreed to initiate a sanctioning procedure against the claimed,

for the alleged infringement of Article 5 letter c) of the RGPD, typified in the

Article 83.5 section a) of the RGPD, by having cameras that obtain

images of the adjoining space and described as very serious, in connection with article 58.2 of the RGPD.

FIFTH: On July 26 of this year, this Agency received a letter from

allegations of the denounced entity ALMACEN BAILY S.L. manifesting

the next:

“That at no time ALMACEN BAILY S.L. has intended to violate the legislation on private security and protection of data capturing images of public space. I just wanted to take images of the car park that constitutes a private space of the establishment.

That, in response to the requirement of the Spanish Agency for the Protection of Data, two video surveillance cameras installed in the entrance of the establishment that captured images of the car park

That, in order to prove said withdrawal, two photographs of the moment prior to the uninstallation of the cameras and two other photographs of the moment after its withdrawal (document n.1 and document n.2). these tickets they show the entrance of the shopping center and the monitor in which the images captured by several cameras of the establishment.”

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: On February 7, 2019, this Agency received a claim for means of which the following is transferred as the main "fact":

The processing of data carried out through cameras of a video surveillance whose owner is the claimed installed in \*\*\*ADDRESS.1.

Second: It is accredited that the person responsible for the installation is the entity ALMACEN BAILY S.L. with NIF B57863433.

Third: It is accredited that the entity ALMACEN BAILY S.L., has various Informative posters in the perimeter area of the establishment informing the customers and third parties that it is a video-monitored area.

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Fourth: The entity denounced has proceeded to withdraw the two chambers of video surveillance installed at the entrance of the establishment that captured parking pictures.

That, in order to prove said withdrawal, two photographs of the moment prior to the uninstallation of the cameras and two other photographs of the time after his withdrawal. These tickets show the center entrance commercial and the monitor on which the images captured by various establishment cameras.

## FOUNDATIONS OF LAW

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

II

On February 7, 2019, this Agency received a claim from the claimant by means of which the treatment of data made through cameras of a video surveillance system whose owner is the reclaimed.

Document no. 2 is provided as the installation manual for the security cameras. video surveillance the images captured by the 49 cameras installed in the establishment.

The first two images of the monitor that can be seen in the document n.3.a correspond to the establishment's car park.

Security cameras installed in shopping centers cannot obtain images of public space, having to be limited to the surroundings of the center business in any case.

Security cameras installed in private spaces will not be able to obtain images of public spaces, the security function of public spaces corresponds exclusively to the State Security Forces and Bodies, not to Private Security Companies.

The treatment of images in public places can only be carried out -in your case and prior compliance with the legally enforceable requirements-, by the Forces and Security Forces, unless the exception established in article 4.3 operates of Instruction 1/2006, of November 8, of this Agency, which establishes: "the cameras and video cameras installed in private spaces will not be able to obtain images of public spaces unless it is essential for the purpose of

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surveillance that is intended, or is impossible to avoid because of the location of those. In any case, any unnecessary data processing should be avoided.

for the intended purpose”

The Private Security Law, in its Article 42 on Security Services

Video surveillance establishes:

“Cameras or video cameras may not be used for private security purposes

to take images and sounds of roads and public spaces or public access except in the cases and under the terms and conditions provided for in its specific regulations, prior administrative authorization by the competent body in each case.

The known facts could constitute an infraction, attributable to the claimed, for violation of article 5 RGPD, by adopting a measure not allowed legally and be obtaining images for control purposes outside of cases allowed.

The one claimed in his pleadings brief dated July 26, 2019 states that it has proceeded to withdraw the two video surveillance cameras installed at the entrance of the establishment that captured images of the car park, providing two photographs of the moment prior to the uninstallation of the cameras and two other photographs of the moment after his withdrawal. These show the entrance of the shopping center and the monitor in which the images captured by several cameras of the establishment.

It should be noted that the system had the mandatory informative posters in a visible area at the access doors to the shopping center establishment.

Remember the duty to have form(s) available to the "clients" of the establishment who may need it in case of exercising the rights recognized in current regulations, in the cases provided.

III

Article 83 section 5 of the RGPD provides the following:

"Infractions of the following provisions will be sanctioned, in accordance with paragraph 2, with administrative fines of a maximum of EUR 20,000,000 or, 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; (...)"

Without prejudice to the provisions of article 83 of the RGPD, the aforementioned Regulation has in its art. 58.2 b) the possibility of sanctioning with a warning, in relation with what is stated in Considering 148:

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"In the event of a minor offence, or if the fine likely to be imposed would constitute a disproportionate burden for a natural person, rather than sanction by means of a fine, a warning may be imposed. must however Special attention should be paid to the nature, seriousness and duration of the infringement, its intentional nature, to the measures taken to alleviate the damages suffered, the degree of liability or any relevant prior violation, the manner in which that the control authority has been aware of the infraction, compliance of measures ordered against the person responsible or in charge, adherence to codes of conduct and any other aggravating or mitigating circumstance."

In the present case, it is taken into account that the respondent has proceeded to the removal of two video surveillance cameras installed at the entrance of the establishment that captured images of the car park, which has posters informative, collaborating at all times with this body.

IV

Based on the evidence provided, it can be concluded that the entity reported had cameras that were obtaining images of the area of the

parking, although on the occasion of this procedure we have proceeded to removal of video surveillance cameras installed at the entrance of the establishment that captured images of the parking lot, which are adjusted to the day of the date to the current legality.

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: PROCEED to WARN the reported entity ALMACEN BAILY S.L.

with NIF B57863433 for the infringement of the content of article 5 letter c) RGPD, by

having installed cameras that obtained images of the parking area.

SECOND: NOTIFY this resolution to the entity denounced ALMACEN

BAILY S.L.

In accordance with the provisions of article 50 of the LOPDPGDD, 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

LOPDPGDD, 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

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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

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