

□ Procedure No.: PS/00444/2020

RESOLUTION OF PUNISHMENT PROCEDURE

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

FACTS

FIRST: On October 27, 2020, it was entered in the Spanish Agency for Data Protection (AEPD) a letter sent by the CITY COUNCIL of ***LOCA-LIDAD.1 (hereinafter, the claimant) with which he attaches the Record of complaint raised- issued by the Local Police on 10/09/2020 regarding the fact that the video surveillance system installed in the Cafeteria-Bar “***BAR.1”, which is allegedly the owner of Mr. A.A.A., with NIF ***NIF.1 (hereinafter, the claimed one), does not comply with the protection regulations tion of personal data.

In the Act of complaint, the acting Local Police officers state that on the occasion of the inspection dated 10/09/2020 at 2:30 a.m. at the premises of the Cafeteria-bar “***BAR.1”, located at ***ADDRESS.1, ***LOCATION.1, verified the existence of a "video surveillance camera located in one of the corners of the bitacle destined for the consumption of clients and entrance of the premises, which is connected to the electrical network and its objective aimed at the bar of the premises". They also state “That there is a sign on the wall announcing that it is a video surveillance zone without further data”.

A photographic report is attached to the Report of the complaint that includes images of the video camera installed in the premises and the poster located in it that informs of the capture tion of images through the video surveillance system.

SECOND: Within the framework of file E/9558/2020 and, in accordance with the provisions in article 65 of Organic Law 3/2018, of December 5, on Data Protection

Personal Rights and Guarantees of Digital Rights (LOPDGDD), the Director of the

AEPD agreed to admit this claim for processing on 11/27/2020.

The agreement for admission to processing was notified to the claimant by electronic means. The certificate issued by the FNMT that is in the file certifies that the notification was accepted by the claimant on 11/30/2020.

THIRD: On February 9, 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 05/09/21 a written statement is received from the claimed argument-
ted the following in relation to the facts subject to transfer:

“That the cameras installed in the premises located in ***LOCATION.1, ***ADDRESS.1, commercially known as Bar ***BAR.1 have the corresponding inscription

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registration in the General Registry of Data Protection, with registration codes ***CÓ-
I SAY.1 and ***CODE.2.

Registration made on 06-04-2014 by the entity ***ENTITY.1 of which I am

Sole Administrator and who is the owner of the activity carried out, since I am

owner only of a hairdressing business located at a different address according to evidence

Dito with AEAT certificate.

The complaint was filed by mistake in my name by the Local Police of ***LOCALI-
DAD.1 because the activity license is in my name, and there is a record of
change of ownership in the City Council of ***LOCATION.1”.

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 facts bring cause of the claim dated 10/27/20 through the which is transferred by the Local Police (Town Hall *** LOCALITY.1) that the system of video surveillance installed in the Cafeteria-Bar ****BAR.1", of which he is the pre-Suddenly D. A.A.A., with NIF ***NIF.1 (hereinafter, the claimed), does not comply with the protection of personal data.

Second. The presence of an informative poster is accredited, which does not conform to the current legislation by only informing that it is a video-monitored area, without further Additional data.

Third. It is proven that the defendant—Mr. A.A.A.—is not responsible for the installation of the cameras, nor the person in charge that they have a device informative, as there has been a change of ownership in the activity of the establishment. I lie.

FOUNDATIONS OF LAW

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By virtue of the powers that article 58.2 of Regulation (EU) 2016/679, of 27 April, of the European Parliament and of the Council, on the protection of natural persons with regard to the processing of personal data and the free movement of these data and by which Directive 95/46/CE (hereinafter, RGPD) is repealed, acknowledging ce to each control authority and according to the provisions of articles 47, 48.1, 64.2 and 68.1 of the LOPDGDD, the Director of the Spanish Data Protection Agency 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

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the general rules on administrative procedures.”

II

In accordance with the definition of "personal data" offered by article 4.1 of the RGPD, the

image of a natural person has the character of personal data. So, according to

article 1.2 of the RGPD, the image of a natural person must be subject to the protection

tion dispensed by this Regulation

Article 12.1 of the RGPD 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 RGPD determines what information must be provided to the interested party regarding

to the processing of your personal data and differentiates two assumptions for this purpose: that the

Data is collected from the owner (article 13 RGPD) or obtained from another source.

you (article 14 RGPD).

Article 13 of the RGPD provides:

"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.

tant;

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

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 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:

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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 re-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.”

Regarding the way in which the data controller can provide the data subject with the information that must be provided, article 12.7 RGPD indi-

ca: “The information that must be provided to interested parties by virtue of articles 13 and 14 may be transmitted in combination with standardized icons that allow pro- provide in an easily visible, intelligible, and clearly legible form an adequate vi- sion of set of the planned treatment”.

At the same time, article 22 of the LOPDGDD –“Processing for video surveillance purposes”

lancia”- contains specific regulations on the matter and provides the following:

"1. Natural or legal persons, public or private, may carry out the treatment of images through camera systems or video cameras with the purpose to preserve the safety of people and property, as well as its facilities.

2. Images of public roads may only be captured to the extent that it is im-

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dispensable for the purpose mentioned in the previous section. However, it will be

It is possible to capture the public road in a greater extension when it is necessary.

ary to guarantee the security of strategic assets or facilities or infrastructure

structures linked to transport, without in any case implying the capture

of images of the interior of a private home.

3. The data will be deleted within a maximum period of one month from its collection, except

when they had to be kept to prove the commission of acts that attend to

have against the integrity of people, goods or facilities. In this case, the images

must be made available to the competent authority within a maximum period of

seventy-two hours since the existence of the recording became known.

tion. The blocking obligation provided for in

article 32 of this organic law.

4. The duty of information provided for in article 12 of Regulation (EU) 2016/679 is

understood to be fulfilled by placing an informative device in a sufficient place

ciently visible identifying, at least, the existence of the treatment, the identity

of the person in charge and the possibility of exercising the rights provided for in articles 15 to 22 of Regulation (EU) 2016/679. Information may also be included in the device I have a connection code or internet address to this information. In any case, the responsible for the treatment must keep available to those 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 are regrettably capture the interior of your own home.

This exclusion does not cover processing carried out by a private security entity. given that she had been hired to guard a home and had access to the images.

6. The processing of personal data from the images and sounds obtained nests through the use of cameras and video cameras by the Forces and Corps Security and by the competent bodies for surveillance and control in the centers penitentiaries and for the control, regulation, surveillance and discipline of traffic, will be governed by the legislation transposing Directive (EU) 2016/680, when the treatment for purposes of prevention, investigation, detection or prosecution of violations criminal offenses or the execution of criminal sanctions, including protection and prevention against threats to public safety. Apart from these assumptions, said treatment will be governed by its specific legislation and additionally by the Regulations to (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 camera systems cameras or video cameras is subject to the provisions of article 89 of this organic law.”

In order to be able to fulfill in a concise and understandable way the

duty to inform the interested party imposed on the data controller by article

12 of the RGD, article 22.4 of the LOPDGDD provides for an information system by layers.

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The first layer, which must refer, at least, to the existence of the treatment; to identity of the person in charge and the possibility of exercising the rights provided for in the articles 15 to 22 of the RGD, will be contained in a device whose design and location must be such that the affected party has a clear view of the information available on about the processing of your personal data and about where and how to find the information detailed tion. The importance of providing this information in advance arises, in particular, of recital 39 of the RGD. It is not necessary to specify the location exact description of the video surveillance equipment, but it should still look good clear the context of surveillance.

Second layer information needs to be readily available in one place accessible to the affected party, be it an information sheet at a reception, cashier, etc. ..., co-located in a visible public space or in a web address and must refer to the res- of the aspects that must be reported in accordance with article 13 of the GDPR.

III

In summary, taking into consideration what was stated in the preceding Rationale, so that the treatment of the image of natural persons through video systems surveillance is respectful of current regulations on data protection.

personal cough must meet these requirements:

- Respect the principle of proportionality.

- When the system is connected to an alarm center, it can only be

installed by a private security company that meets the requirements of article

5 of Law 5/2014, of April 4, on Private Security.

- 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 occasions, for the protection of spaces

private spaces in which cameras have been installed on the facades or inside, can

if necessary, to guarantee the purpose of security, the recording of a por-

tion 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

ble for said purpose or it is impossible to avoid it due to their location. Y,

Extraordinarily, the minimum space for said purpose will also be collected. By

Therefore, the cameras could exceptionally capture the portion of public space

minimally necessary for the intended security purpose.

- The duty to inform those affected provided for in articles 12 and 13 of the RGPD and 22

of the LOPDGDD, in the terms already indicated.

- The data controller must keep a record of the activities of the data processors.

procedures carried out under their responsibility, including the information to which

which refers to 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

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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 be admitted beyond the environment that is the object of the installation, not being able to affect the surrounding public spaces, adjoining buildings or vehicles other than those accessing the guarded space.

To facilitate consultation, the Spanish Data Protection Agency, through its website [<https://www.aepd.es>], offers access to the legislation on protection of personal data, including the RGPD and the LOPDGDD (section “Reports and resolutions” / “regulations”); to the Guide on the use of video cameras for security and other purposes and the Guide for compliance with the duty to inform (both available available in the “Guides and tools” section).

It is also of interest in the event that low-level data processing is carried out.

risk, the free tool Facilita (in the “Guides and tools” section) that,

through specific questions, it allows to assess the situation of the person in charge

aspect of the processing of personal data that it carries out and, where appropriate, generate di-

verses documents, informative and contractual clauses, as well as an annex with

indicative security measures considered minimal.

IV

The infringement of the data protection regulations attributed to the respondent that motivates

the opening of this sanctioning file is specified in the fact that the billboard installed in the hotel establishment of which he is the owner, announcing the existence of a video-monitored area, lacks the information that, mandatory, must contain in accordance with articles 12 and 13 RGPD in relation to article 22 LOPDGDD.

In the Report of the complaint sent to this Agency by the claimant, the officials of The Local Police recorded that in the Cafeteria-Bar ***BAR.1 there was a video surveillance camera connected to the electrical network and a poster informing of the existence of a video surveillance area, without any other information being included in it.

tion.

The photographic report in the file, provided by the claimant, reveals that data processing was carried out in the aforementioned hotel establishment personal by capturing images by video surveillance and that the poster that reported the existence of an area subject to capturing images not offered the information that under the RGPD is obliged to provide, since it is not included included in it the identity data of the data controller; nor your data

Contact; nor was it informed of the possibility of exercising the rights that the RGPD recognizes the interested parties in articles 15 to 22.

As stated in Basis II of this agreement, the data controller

ment - the defendant, in his capacity as owner of the establishment, is obliged to inform the interested parties, at the time of collecting their personal data, in the terms detailed in article 13 of the RGPD. It is also explained in that Funda-

that the joint application of articles 12.7 RGPD and 22.4 LOPDGDD allows that the information detailed in article 13 RGPD be provided through a device

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tive or poster located in a place of easy visibility in which the existence of video surveillance cameras, the name of the controller and the possibility to exercise before him the rights recognized to the interested parties by articles 15 to 22 of the GDPR.

As for the rest of the information mentioned in article 13 RGPD and that the person in charge is also obliged to provide the interested parties, it will be enough have it available in a place easily accessible to them, such as a information sheet at a reception or at the cashier, placed in a conspicuous space or on a web address.

Thus, the evidence available at this stage of the procedure sanctioning constitute solid indications that the defendant violated the obligation that It is imposed by article 13 of the RGPD, so such conduct could constitute an infringement typified in article 83.5.b) of the RGPD.

Notwithstanding the foregoing, the defendant identified by the local Police of the town in brief of allegations dated 05/09/21 warns about the existence of an error in the identification of the person responsible for the alleged infringement, which is wrongly attributed mind to his person, there being a change of ownership in the commercial activity of the investigated establishment.

He argues that the activity license was initially in his name, although the same mo does not run the hotel establishment "bar ***BAR.1" as there has been a modification of the activity, with the current owners being responsible for the "irregularities" that the camera system could present, whose existence is unknown.

The presumption of innocence governs without exceptions in the sanctioning system and has to be respected in the imposition of any sanction, whether criminal or administrative

(TCo 13/1981), since the exercise of the sanctioning right in any of its manifestations, is conditioned to the test game and to a procedure contradictory environment in which their own positions can be defended. Pursuant to this principle, no penalty may be imposed on the basis of the guilt of the accused if there is no activity to prove the charge, which in the appreciation of the authorities or bodies called to resolve, destroy this presumption (TCo Auto 3-12-81).

v

According to the above, taking into account the arguments put forward by the claimed it is considered that it is not responsible for the installation of the maras devoid of informative posters in legal form, which is why it is appropriate to order file the present procedure.

The complaining party, once the alleged real author of the infringement is confirmed described may resubmit the Complaint to this AEPD for the purposes of processing initiation of the corresponding procedure against the presumed author of the facts crits.

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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: ORDER the FILE of this procedure as there is no evidence do the presumed infringer of the denounced infraction.

SECOND: NOTIFY this resolution to A.A.A. and REPORT the result

of the actions to the CITY COUNCIL of ***LOCATION.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

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.

Sea Spain Marti

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