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CNPD

National Data Protection Commission

OPINION/2021/141

## I. Order

1. By order of the Assistant Secretary of State and Internal Administration, on October 25, 2021, an opinion was requested from the National Data Protection Commission (CNPD) on the request for authorization to use a video surveillance system during the event Web Summit 2021, which will take place in Lisbon, between the 1st and 4th of November, submitted by the Public Security Police (PSP).

2. The CNPD considers the request under the terms of paragraph 2 of article 3 of Law no. 1/2005, of 10 January, amended and republished by Law no. 9/2012, of 23 February ( hereinafter, Law No. 1/2005), which regulates the use of video cameras by security forces and services in public places of common use, for capturing and recording images and sound and their subsequent processing.

3. The request is accompanied by a document containing the grounds for the request, hereinafter referred to as "Fundamentals", as well as a set of documents relating to the components of the system, which consist of their description, for commercial purposes, presented by the trading companies.

4. Since the request was not accompanied by an impact assessment on data protection (AIPD), which would always be justified, under the terms of Article 29(1) of Law No. 59/2019 , of 8 August, and because the commercial description of the components of the video surveillance system refers to the use of artificial intelligence technologies, the CNPD requested on 27 October, the indication of time and place for the purpose of filling ex officio the non-compliance with that legal duty, verifying the technical characteristics and evaluating the measures that may have already been taken to prevent the risks arising from its use.

5. The aforementioned verification took place on October 28, and this opinion is supported, in addition to the elements arising from the documentation referred to above, in point 3, in the inspection report carried out by the CNPD services.

## II. appreciation

i. Object of the opinion to be issued under the terms of article 3 of Law No. 1/2005, of 10 January

6. Pursuant to paragraph 2 of article 3 of Law no. 1/2005, the CNPD's opinion is limited to pronouncing on the compliance of the request with the rules regarding the security of the processing of the collected data, as well as as well as about the special security measures to be implemented, adequate to guarantee entry controls on the premises, data carriers, insertion, use, access, transmission, introduction and

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transport and, as well as the verification of compliance with the information duty and before whom the rights of access and rectification can be exercised.

7. Pursuant to the provisions of the same legal precept and paragraphs 4, 6 and 7 of article 7 of that law, the CNPD's opinion is also subject to respect for the prohibition of installing fixed cameras in areas that, despite being located in public places, are, by their nature, intended to be used in guarding or the use of video cameras when the capture of images and sounds covers the interior of an inhabited house or building or its dependence, or when this capture affects , directly and immediately, the privacy of people, or results in the recording of conversations of a private nature.

8. The CNPD must also verify that all persons appearing in recordings obtained in accordance with this law are guaranteed the rights of access and elimination, with the exceptions provided for by law.

9. Pursuant to paragraph 7 of article 3 of the same law, the CNPD may also formulate recommendations with a view to ensuring the purposes set out in the law, subjecting the issuance of a totally positive opinion to the verification of the completeness of the fulfillment of its obligations. recommendations.

ii. Video Surveillance Cameras

10. The installation and use of a video surveillance system in the city of Lisbon, specifically «in Parque das Nações, close to the Altice Arena Pavilion» (cf. point II of the Justification), composed of 14 cameras, implies a processing of personal data susceptible to significantly affect the private life of people who circulate or are in the public space surrounding the pavilion, as well as people who are inside the existing buildings.

11. Strangely, the documentation presented only contains images of the location of 10 of the 14 cameras, as well as images of the area captured by them (cf. point II of the Justification), describing the places of incidence of the other 4 cameras as "Accreditation Area » 1,2,3, and 4.

12. In addition, the Rationale is silent on the adoption of measures to mitigate the impact on privacy. Only the areas of windows and doors of buildings that appear in the images identified as the object of incidents from cameras 2 to 5, 7 and 10 are marked with a shading, which seems to indicate the intention to apply filters or masks to protect the privacy of who is inside the buildings. Moreover, among the characteristics attributed to the components of the system, reference is made to the possibility of applying «privacy masks».

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13. As part of the on-site verification carried out by the CNPD, it was found that the cameras already installed (six) had privacy masks applied in the camera's software, which prevented the visualization of spaces where the privacy of citizens must be respected.

14. The CNPD thus considers that the limits contained in paragraphs 4, 6 and 7 of article 7 of Law no. more specific and up to date.

15. Still on the subject of cameras, the IP address of a camera was identified and remote access was attempted, in the browser, from the operator's workstation. Both from the computer and from the server, it was possible to access the camera, whose access account is the default one provided by the manufacturer (Service), but the password was changed. This password is not known to the person responsible for the treatment (PSP), but only to the private security company responsible, as stated in the Justification (cf. point VII), for the implementation/installation of the video surveillance system<sup>1</sup>.

16. It was also found that these accesses, which make it possible to control the cameras, are not kept in the audit record, thus harming the auditability of data processing.

iii. control room

17. According to the Groundwork, the place for viewing the images "will be located in a room in the Altice Arena pavilion, with restricted access and only accessible by Public Security Police officers". As part of the verification carried out by the CNPD, it was found that the control room, where the monitors for viewing the images are installed, does not have any logical security system that guarantees and allows controlling who accesses it.

18. When directly questioned on the matter, the PSP elements who accompanied the CNPD clarified that the control room, outside of the event's hours, will be locked.

19. Regarding the exclusivity of access by PSP agents stated in the Justification, the CNPD clarified that the control room will be shared with the National Civil Protection Authority, the National Institute of Medical Emergency, the technicians of the company that rented the system<sup>2</sup> and the "Web Summit organization". In fact, the latter, either through company technicians or through members of the event's organization, were present in the room during the CNPD's intervention.

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20. In the same room, there are the technological infrastructure assets of the system, in terms of client, server and communications, i.e., personal computer, the server of the video surveillance system and a switch for communication with the cameras. This equipment, despite having segregated networks, was shared with the equipment of whoever was, or will be, in

that room.

21. Therefore, adequate measures are not implemented to guarantee the security of the system and the inviolability and integrity of the processing of personal data resulting from the use of the system.

#### iv. Management of system access and audit logs

22. By analyzing the access configured on the operators' computer to enter the system, it was found that the only user created had administration privileges (\Administrator) and, therefore, with full access to the management of the video surveillance system.

23. It was found, therefore, that the technicians do not have nominal users to access the system, before sharing passwords.

24. It was also found that this user's password was recorded and was not requested when opening the application.

25. Thus, the four PSP elements that will operate the system access this user, making it impossible to identify those responsible for the actions in the audit records, in clear breach of article 4 of Ordinance No. 372/2012, of 16 November (Ordinance).

26. Moreover, with operators having this privilege, it is not possible to guarantee compliance with subparagraph b) of article 3 of the Ordinance, as any user can access all recorded images.

27. Article 3(c) of the aforementioned Ordinance is also not being complied with. Indeed, operators who view and monitor the system have to authenticate themselves on the National Internal Security Network, which in this case is impossible.

28. Therefore, the essential requirements to guarantee the auditability of the processing of personal data resulting from the use of the video surveillance system are not met.

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#### v. server

29. It was found that the server does not have the synchronization with the legal time configured, nor does it maintain automatic synchronization with the other equipment in the system, namely the computer and the cameras. However, this fact does not guarantee the reliability of the evidence collected through the images in a possible criminal process.

30. This fact violates Article 4(2)(c) of the Decree.

31. Regarding the existing software on the server, it was observed that NOS mobile broadband and remote access software were installed, and measures to prevent its use were not adopted. As the CNPD has emphasized in previous opinions, it is recommended that the system not be connected to the Internet, for reasons of the system's own security.

saw. Artificial Intelligence in the video surveillance system

32. Nothing is stated in the Justification regarding the technical characteristics of the components of the video surveillance system, referring to Annex I, where, as mentioned above, are the descriptions for commercial purposes made available by the companies that supply this type of equipment, where highlighted the use of artificial intelligence technologies.

33. Thus, the CNPD was unaware of whether the ability to integrate artificial intelligence indicated in the company descriptions was active. The functionality was not found and it was stated that the license for that software module had not been acquired, so there is nothing to recommend on this point.

vii. subcontracting

34. As mentioned above, it is stated in the Grounds (see point VII) that '[t]he implementation/installation of the system will be guaranteed by the private security company [...]'.

35. Given that the installation of the video surveillance system is directly related to information security and the system's ability to fulfill the intended purposes, it is important to emphasize that this obligation falls on the data controller, regardless of who the owner is. of video cameras and other equipment that make up the system.

36. Establishing Law no. 1/2005, in paragraph 2 of article 2, that the data controller is the security force with jurisdiction in the catchment area or the requesting security service, any subcontracting in company of the installation of the equipment has to be formalized, contractually, with the PSP.

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3v.

37. As part of the verification carried out by the CNPD on the spot, a legal document was requested that reflected the subcontracting relationship that the implementation or installation of the video surveillance system in a public space by a third party necessarily implies. The CNPD has been informed that there is no contract or other type of legal act between the company Strong Sharon, Soluções de Software, and PSP; in fact, strictly speaking, the contractual relationship seems to be established between that company and the organizer of the Web Summit - and, regarding the latter, the only documentation presented was the price proposal of the company selected by the organizer. There is also no legal act in which the organizer of this event and PSP are parties or subscribers.

38. It is unnecessary here to recall what was described above, in points 15,22 and 23, which demonstrates that the private security company is the one who effectively controls the equipment that makes up the video surveillance system.

39. The absence of any legal act that defines the obligations to which it must or must be bound towards the PSP, the third party or third parties that are making available and that will install the video surveillance system, grossly violates the provisions of article 23. of Law No. 59/2019, of 8 August, this fact being incomprehensible for so much time elapsed since the entry into force of this diploma.

40. The CNPD does not fail to point out its strangeness at the fact that the PSP is using a video surveillance system installed by a third party, on behalf of another third party - all private entities - in the public space, without any specific legal framework or, at least, without a legal act that clearly defines the obligations of each of the actors.

41. It should be added that in the aforementioned price proposal document presented by the company to the organizer of the Web Summit, reference is made to the rental of a drone equipped with a video camera connected to the video surveillance system. Nothing has been stated in the Grounds regarding the use of an unmanned aircraft, the CNPD, even so, makes it clear that there is no legal basis for capturing images through this equipment in the public space.

#### viii. Right to information

42. Regarding the guarantee of the right to information on the processing of personal data, the Grounds for the request refer to compliance with the disclosure of the information indicated in Ordinance No. 373/2012, of 16 November (cf. point VI of the Rationale). Taking into account the new legal data protection regime, and as the CNPD has already had the opportunity to

explain in previous opinions on the

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installation of video surveillance systems by security services and forces, the CNPD recommends that, on the PSP website, the other information prescribed in article 14 of Law no.

### III. Conclusion

43. It is not within the competence that is legally attributed to it to comment on the concrete grounds for the installation and use of the video surveillance system during the Web Summit 2021 event, which will take place in Lisbon, between the 1st and 4th of November, the CNPD, with the arguments set out above, recommends that all irregularities and discrepancies with the applicable legal regime identified above be taken into account, in particular highlighting:

The. Failure to comply with the requirements defined in Ordinance No. 372/2012, of 16 November, regarding the security of the video surveillance system, and in particular the integrity and inviolability of the processing of personal data resulting from its use;

B. Failure to adopt measures that guarantee the auditability of the processing of personal data and the reliability of the evidence eventually collected, as required by the same Ordinance;

ç. 0 failure to comply with the provisions of article 23 of Law No. 59/2019, of 8 August, since no legal act was presented, despite being requested, defining the obligations to which it must or must be bound by the PSP the third party or third parties that actually control the components of the video surveillance system.

Lisbon, October 29, 2021

Filipa Calvão (President, who reported)

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