

□ Procedure No.: PS/00244/2020

RESOLUTION OF PUNISHMENT PROCEDURE

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

FACTS

FIRST: On January 27, 2020, it had entry in this Spanish Agency of
Data Protection a document presented by A.A.A. (hereinafter referred to as the claimant),
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
at ***ADDRESS.1, with indications of a possible breach of the provisions
in data protection regulations.

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

"The premises located at ***ADDRESS.1 has a video surveillance camera
unsigned installed on its facade in order to monitor its unfolded watchmen
dumped on public roads. The camera is arranged in such a way that it allows capturing
tion of images of the entire sidewalk during 24 hours, as well as streets
surrounding, roads, vehicles and even the adjoining square.

The facility is not signposted. There are no data available on the responsible
ble of the data nor is a contact address provided.

On the ***URL.1 website, a false or non-existent email address is offered
(***EMAIL.1). A pdf is attached with the email sent requesting the relocation and exercise
ARCO rights, as well as the response from the server certifying that no
exists."

Attach several photos of the installed camera from different perspectives,

as well as its possible capture angle.

SECOND: The Subdirector General for Data Inspection verifies that in the

The website of the claimed person shows the email account <***EMAIL.1> as the address of Contact.

THIRD: Prior to the acceptance of this claim for processing, the

Subdirector General for Data Inspection directed, on February 20, 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

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The electronic notification expired on March 3, 2020 due to lack of access to your

content and in the face of this situation, and in the face of this situation, the request for

information exceptionally via postal mail on March 3, 2020,

whose notification took place on March 10, 2020.

There is no response from the respondent.

THIRD: The claim was admitted for processing by resolution of August 7

of 2020.

FOURTH: On February 22, 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: On 04/14/21, the collaboration of the Security Forces and Corps is required.

State Security to certify the presence of the device and carry out the timely inquiries.

SIXTH: On 05/25/21 a report issued by the Local Police (Seville) is received noting the presence of three video-surveillance cameras on the façade of the establishment *** COMPANY.1 directed the three towards the sidewalk and entrance of the establishment, refusing the viewing of the same to the acting force.

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 01/27/20 through the which is transferred "the installation of a video surveillance system on the facade of a establishment site ***ADDRESS.1".

Second. It is identified as the main person in charge ***COMPANY.1 local located at ***ADDRESS.1.

Third. The presence of three cameras on the facade of the establishment reviewed with orientation towards the public sidewalk, which allows inferring an excessive uptake of the transit area affecting the rights of the passers-by

Fourth. The absence of an informative poster(s) indicating the responsible for the treatment adapted to the regulations in force.

Fifth. There is no evidence that the respondent has an informative form(s) to disposition of the clients of the establishment according to the regulations in force.

Sixth. No allegation has been made despite various requests for

this Agency, nor has the regularization of the system been accredited.

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FOUNDATIONS OF LAW

Yo

By virtue of the powers that article 58.2 of Regulation (EU) 2016/679

(General Data Protection Regulation, hereinafter RGPD), recognizes each

Control Authority, and according to the provisions of articles 47, 48.1, 64.2 and 68.1 of the

Organic Law 3/2018, of December 5, on the Protection of Personal Data and

guarantee of digital rights (hereinafter, LOPDGDD), the Director of the Agency

Spanish Data Protection is competent to initiate and resolve this

process.

Article 63.2 of the LOPDGDD determines that: «The procedures processed by the

Spanish Agency for Data Protection will be governed by the provisions of the

Regulation (EU) 2016/679, in this organic law, by the provisions

regulations issued in its development and, as long as they do not contradict them, with a

subsidiary, by the general rules on administrative procedures.»

II

The physical image of a person, in accordance with article 4.1 of the RGPD, is a

personnel and their protection, therefore, is the subject of said Regulation. In article 4.2

of the RGPD 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 RGPD.

III

Article 6.1 of the RGPD establishes the assumptions that allow the legalization of the treatment of personal data.

For its part, article 5.1.c) of the RGPD, regarding the principles of treatment, provides that personal data will be "adequate, relevant and limited to what is necessary in relation to the purposes for which they are processed ("minimization of data")." This article enshrines the principle of data minimization in the treatment of personal data. It assumes that said treatment is adjusted and proportional to the purpose to which it is directed, and the processing of data must be restricted excessive or proceed to suppress them.

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

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video-monitored areas, an informative badge located in a sufficiently visible, both in open and closed spaces, and using forms in the that the planned information is detailed, which the person in charge must make available of those interested.

The content and design of the informative label must comply with the provisions of the 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 to the compliance with the legally enforceable requirements-, by the Forces and Bodies of Security, unless the exception established in the aforementioned article 22 of the LOPDGDD for individuals or legal entities, 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 capture the accesses, doors or entrances, so that, even if the camera is inside the building, it is impossible not to record a minimum and essential of the public road, 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 beyond the environment be allowed. object of the installation, not being able to affect the surrounding public spaces, adjoining buildings and vehicles other than those accessing the guarded space.

IV

In accordance with the foregoing, the processing of images through a system of video surveillance, to be in accordance with current regulations, must comply with the following 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 contemplated 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.

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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 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 for said purpose, or it is impossible to avoid it due to the location of those and, extraordinarily, the minimum space for said purpose. Therefore, the cameras could exceptionally capture the portion minimally necessary for the intended security purpose.

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

Specifically, at least one badge must be placed in video-monitored areas.

informative located in a sufficiently visible place, both in open spaces and closed, which will identify, at least, the existence of a treatment, the identity of the person in charge and the possibility of exercising the rights foreseen in said precepts. Likewise, the information must be kept available to those affected. to which the aforementioned RGPD refers.

- The person in charge must keep a record of treatment activities carried out under its responsibility, including the information to which it makes reference 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 environment be admitted. object of the installation and in particular, not being able to affect public spaces surrounding buildings, adjoining buildings and vehicles other than those accessing the space guarded.

In relation to the above, to facilitate the consultation of interested parties, the Agency Spanish Data Protection offers through its website

[<https://www.aepd.es>] access to data protection legislation

including the RGPD and the LOPDGDD (section “Reports and resolutions” / “normative”), as well as 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 “Guides and tools” section).

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 documents, informative and contractual clauses, as well as an annex with measures guidelines considered minimum.

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The claim is based on the presumed illegality of the installation by the claimed of a video surveillance system, composed of a camera located in the facade of the ***EMPRESA.1 located at ***ADDRESS.1, which could capture images of public areas disproportionately.

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 in the “Facts” section, first point, of this agreement.

Thus, in the photographic images provided, a camera is observed without a sign informative in the front part of the establishment that due to its orientation could be substantially capturing the sidewalk and public road, exceeding the control of the access door and the essential minimum adjacent to the perimeter.

SAW

In accordance with the evidence available in this

sanctioning procedure, it is considered that the exposed facts do not comply with the established in articles 5.1.c) and 13 of the RGPD, for which they could suppose the commission of two offenses typified in article 83.5 of the RGPD, which provides the next:

“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;
- b) the rights of the interested parties according to articles 12 to 22; [...]”.

For the purposes of the limitation period for infringements, article 72.1 of the LOPDGDD, which establishes that:

“Based on the provisions of article 83.5 of Regulation (EU) 2016/679, considered very serious and will prescribe after three years the infractions that suppose a substantial violation of the articles mentioned therein and, in particular, the following:

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- a) The processing of personal data violating the principles and guarantees established 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.”

The presence of three cameras oriented towards the transit area has been confirmed.

public carrying out an excessive control of the public area, carrying out a treatment of

disproportionate third-party data, also lacking the mandatory poster (s)

informing that it is a video-surveillance zone, for which reason the

principle of presumption of innocence before the facts exposed by the acting force

moved to the scene.

7th

The corrective powers available to the Spanish Agency for the Protection of

Data, as a control authority, is established in article 58.2 of the RGPD. Among

they have 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 controller or processor

that the treatment operations comply with the provisions of the RGPD, when

appropriate, in a certain way 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 a fine

administrative.

Without prejudice to the provisions of article 83 of the RGPD, the aforementioned Regulation

has in its art. 58.2 b) the possibility of directing a warning, in relation to what

stated in Recital 148:

“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.”

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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 the commission is not recorded, in the term of one year, of more than one infraction of the same nature.

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For all these reasons, it is considered that the sanctions that would apply to each infraction are those of warning, in accordance with the provisions of article 58.2

b) of the RGPD, in relation to what is stated in Recital 148, cited above.

If the behavior described persists, the claimant after some time prudential period (two months) you can send a new claim to this AEPD with a photograph date and time that supports the new claim or transfer the facts to the Local Police (Seville) to draw up the corresponding Record-Inspection.

It is warned that not meeting the requirements of this organization may be considered 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 having assessed the criteria for graduation of sanctions whose existence has been proven,

the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: ADDRESS a warning to the entity ***EMPRESA.1, with NIF ***NIF.1, for an infringement of article 5.1.c) of the RGPD, as well as of article 13 of the RGPD, typified in article 83.5 of the RGPD.

SECOND: ORDER the claimed entity so that within ONE MONTH of in accordance with art. 58.2 d) RGPD proceed to adopt the following measures:

- ☐ Prove that you proceeded to withdraw the camera from the current place 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 foreseen in the articles 15 to 22 of the RGPD), locating this device in a sufficiently visible.
 - ☐ Prove that you keep the information to which it refers available to those affected.
- refers to the aforementioned RGPD.

THIRD: NOTIFY this resolution to the claimed entity

***COMPANY.1. and REPORT the result of the actions to Don A.A.A.

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

Interested parties may optionally file an appeal for reconsideration before the

Director of the Spanish Agency for Data Protection within a month from

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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
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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