

Procedure No.: PS/00342/2018

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

BACKGROUND

FIRST: Dated 05/19/2018, you have entered this Agency (AEPD) in writing from A.A.A.
(hereinafter the claimant) reporting that the gym MKS SANTURTZI 16 SL, WITH
CIF: B-95866364, with address at calle las Viñas Nº16, bajo, in SANTURTZI, VIZCAYA, (in
forward the claimed) has video surveillance cameras installed and denounces a possible
infringement of the RGPD, motivated by the inadequacy of the information poster of the system
video surveillance of the gym. Indicates that the sign is in the reception area, but only
The literal "area monitored by cameras" appears.

Provide a photograph of the poster, located in a reception area, in the lower corner
right, containing only the literal "video surveillance area".

SECOND: In view of the facts denounced, in accordance with the evidence of
that is available, the Data Inspection of this AEPD initiated the investigation actions
following:

1) On 06/26/2018, the inspection service sent a letter to the claimant
with the verbatim:

"This Agency has received a communication in which it is shown
the existence of a video surveillance installation of its ownership, which presents some
deficiencies in compliance with the requirements set forth in the regulations for the protection of
data, which can be consulted on the website www.aepd.es, through the section
Areas of action (video surveillance).

So that the Agency can assess the actions carried out by you
for the adequacy of the system to the aforementioned requirements, I require that, within the maximum period

of one month from receipt of this notification, send to this Agency

detailed documentation that can prove that the aforementioned installation is in accordance with the data protection regulations and that, in particular, is duly marked and has been limited the capturing of images of adjoining land and houses or of any other foreign space, providing recent graphic documents duly dated.

In view of all the documentation provided, the Agency may carry out the actions that are appropriate, in application of the powers of investigation and corrective measures established in article 57 of the RGPD. “

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

The shipment made by the telematic notification system notific@ was refused (no accessed within ten days)

2) On 07/05/2018, the request is reiterated, this time delivered by post

On 08/03/2018, the respondent indicates that they have the system contracted with SECURITAS DIRECT and states that it provides a copy of the contract although what it provides are two copies of the “Data processing agreement” with SECURITAS DIRECT of 07/19/2018. Declares that:

“The camera we have does not record to the outside and is only activated if the camera is triggered. alarm by collecting only images from our entrance without collecting those from the outside”. Does not make reference nor does it provide any point about the informative poster, nor does it provide a photograph of when the alarm is triggered to see the visual field it covers and assess whether it collects space own or excessive public space, or where the camera is placed.

In the "data processing agreement" it is stated that the claimed party has contracted security services provided by SECURITAS DIRECT, if you indicate the service that is about.

The contract indicates that the purpose of the agreement is to regulate the relative aspects to data protection between SECURITAS DIRECT (SC) and the client, differentiating different scenarios based on:

a) If SC does not access and/or manage images or recordings of the security system of the client, with the prohibition for the personnel of SC of access to the data when being responsibility of the client, being this the person in charge of the treatment.

b) In the event that SC accesses or manages images or recordings of the customer security- Depending on the different modalities that can provide SC, the status of responsible and responsible would vary. So:

b.1-“Treatment and images by CS obtained on the occasion of a jump from alarm”, SC would proceed to verify it by video, being the only purpose of verifying the reality to communicate to the police service corresponding, “holding SC necessarily the position of responsible for the treatment”, without the treatment carried out through the alarm receiving center is considered intrusion illegitimate

b.2- Service outside of what is the verification of alarm jumps as activity of photo request made by the client, is assumed by the client, being responsible for the treatment of the video surveillance file generated and in this case SC assumes the position of manager of treatment limited to storage and making available to the means for the client to access the images obtained by the security system

3/15

Obligations for SC include:

- that the video verification process can only

begin when the alarm signal has been viewed by a operator of the alarm center, so SC will not access the images obtained unless the alarm signal occurs, or when the client expressly authorizes said visualization.

-Locate informative signs that contain the warning legend of video-monitored area and express mention of the person in charge before whom they can exercise rights.

-The client will have at the disposal of the interested parties printed in which the information provided for in article 14 of the RGPD is detailed.

-In exceptions to the application of data protection regulations, section 3 indicates that the treatment of images and/or sound that can be done through security systems with connection to alarm center in a home or equivalent space, although not generate obligations for the client in terms of data protection generation of a file that can contain data information of personal character would inexorably cause SC to be responsible for the same.

A second page of the document "data processing agreement" refers to the security measures to be applied by the person in charge of treatment.

On 08/28/2018, the Inspection service sends the claimant the following 3)

written:

"In relation to the brief sent in response to the request for information carried out by this Agency, you are informed that there are certain aspects that are necessary clarify.

For this reason, within ten business days from the notification of this application, you must complement the documentation initially sent by providing the

Next information:

- Photographs of the sign indicating the video-monitored area in which it is possible to see both its location and the data recorded therein.
- Copy of the informative form available to the interested parties in which they are provided with the information from the video surveillance system.
- Photographs and details of the installed cameras, indicating their exact location and sample of the images they record.”

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

On 09/26/2018, a document from the respondent has been entered indicating "In relation to the letter sent by you in which you again requested information about the security cameras, and after speaking with you, I inform you again from the location of the cameras: The cameras only take pictures and trigger if someone walks through the front door when the alarm is armed, this it can only happen when the gym is closed, in no case does it capture images of the outside of the center, since the cameras only focus on the lobby.”

It has not provided photographs of the space in which the cameras and the contract are located with SECURITAS DIRECT does not certify that the service provided is exclusively for alarm center.

THIRD: According to the available data, it has been confirmed that in the establishment of the claimed figure at least one, camera, without stating the poster information of the video surveillance system with all the requirements, and without the claimed

certify that you only have one camera installed and that it works exclusively when close the installation and the photo you can capture when it is shot is of your establishment or minimum part of public road if necessary. On 01/23/2019 it was agreed by the director of the AEPD the initiation of a sanctioning procedure against MKS SANTURTZI 16 SL for the infringement of article 12 of the RGPD, in relation to 3 of Instruction 1/2006, of 8/11, of the AEPD, typified in article 83.5.b) of the RGPD indicating as sanction proposal of warning

FOURTH: The shipment was made through the "notifica" platform, part of the Service of Electronic Notifications (SNE) and Authorized Electronic Address, (DEH) in accordance with Order PRE/878/2010 and Royal Decree 769/2017, of 07/28 for the Support service of the Electronic Notification Service and Authorized Electronic Address, including a certificate which means that:

-“Through said service the notification was sent:

Reference: 59990475c4adccfe48a0

Acting Administration: Spanish Data Protection Agency (AEPD)

Holder: - B95866364

Subject: "WRITTEN"

with the following result:

Availability date: 01/25/2019 10:54:24

Automatic rejection date: 02/05/2019 00:00:00

Automatic rejection generally occurs after ten days have elapsed.

from its availability for access according to paragraph 2, article 43, of Law 39/2015, of 1/10, of the Common Administrative Procedure of the Administrations Public (LPCAP). And in a particular way, after the term established by the Administration acting in accordance with the specific legal regulations that apply.”

The LPCAP adds in its article 14 "

electronically with the Public Administrations “

Right and obligation to interact

2. In any case, they will be obliged to interact through electronic means with the

Public Administrations to carry out any process of a procedure

administrative, at least the following subjects:

5/15

a) Legal persons.”

And it is specified in article 41 "General conditions for the practice of

notifications “1. Notifications will preferably be made by electronic means

and, in any case, when the interested party is obliged to receive them by this means.

Notwithstanding the foregoing, the Administrations may make notifications by

non-electronic means in the following cases:

a) When the notification is made on the occasion of the spontaneous appearance of the interested party or his representative at the registration assistance offices and request communication or personal notification at that time.

b) When, in order to ensure the effectiveness of the administrative action, it is necessary practice notification by direct delivery of a public employee of the Administration notifier.

Regardless of the means used, notifications will be valid as long as

allow to have proof of its sending or making available, of the reception or access by

the interested party or his representative, their dates and times, the full content, and the

reliable identity of the sender and recipient thereof. The accreditation of the

notification made will be incorporated into the file.”

As a consequence, the notification of the agreement is understood to have been produced with all the legal effects.

Although the initial agreement indicated that "if within the stipulated period it does not carry out

allegations to this initial agreement, it may be considered a proposal for resolution, as established in article 64.2.f) of Law 39/2015, of October 1, of the Common Administrative Procedure of Public Administrations (hereinafter, LPACAP).”, it is considered appropriate to submit this proposal to adjust the treatment to the proceeding.

FIFTH: The Instructor issues a resolution proposal with the literal: That by the director of the Spanish Data Protection Agency declared that MKS SANTURTZI 16 SL, has infringed article 12 of the RGPD, typified in Article 83.5 b) of the RGPD, imposing a sanction of warning, in accordance with article 58.2. b of the RGPD, and must rectify the described infraction.

Faced with said proposal, the respondent indicates: "... a letter is received from the respondent in which it indicates "after receiving your notification ... where you request us again information regarding the complaint", although what he sent was the resolution proposal, states:

- 1) The only cameras that exist are those of the alarm system contracted with DIRECT SECURITIES They only take pictures in case the alarm is triggered and detect the presence of intruders inside the premises. The photographs he takes are towards inside the premises. There are only two cameras placed at the two entrances, one at each access. They send a copy of photos of the two entrances looking at the cameras of detection inside focusing on the inside, a sign outside the company of security of alarm system in which it indicates notification to police.
- 2) They have withdrawn the poster whose only objective was its dissuasive character.

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

3) Provide a copy of the "service installation" contract with SECURITAS DIRECT. In the same figure a sketch of the placement of two chambers, gym entrance and consultation and a gym mg of 04/27/2012. In the general conditions of service it is indicated that the object of the contract is the installation, maintenance and operation of alarm center. The services that are contracted are those of the article 5.1 of the private security law 23/1992 of 07/30, specifically those of letter e) and f), and the service of letter g) is excluded. It is specified that the contract includes the installation and maintenance service, the connection service to central alarm receiver when it jumps to alarm. In section 5 of obligations of SC figure the f that points. "In your case, the activation of the services linked to the video surveillance system or elements will occur through any element detection installed to the client, SC will process the technical alarm signal and will record the images and/or sounds received in local mode, as established in the applicable private security and data protection regulations." Between the obligations of the client appears in point g: "will facilitate the placement and visible maintenance of the deterrents delivered by SC for the provision of the service".

There is a privacy policy section in point 14, point C Treatment of images and sounds obtained through the security system when the equipment incorporate photo detection systems, assuming:

A) When verifying an alarm jump by SC. It is indicated that SC through the CRA will capture and record images through installed security devices in the places object of protection of the client, in accordance with article 48 of the private security regulation, that is, verifying with all the means at your disposal reach the received alarms and once said verification has been exhausted, if proceeding, will transmit said images and/or sounds obtained on the occasion of the jump

of alarm treated to the police authority. "The client can only have access to the information about any incident or the recording made on the occasion of a alarm jump, sending written request".

B) In customer obligations regarding image capture devices and sounds for video surveillance purposes, it is indicated in point D that "of the treatment of images and/or sounds indicated in point 14.C- can be derived responsibility and obligations towards the client as data controller in accordance with the provisions of the LOPD. The following obligations should be listed regarding data protection:

Locate informative signs that suit the informative legend LOPD, zone video surveillance and express mention of the identification of the person in charge before whom can exercise rights. The client will have at the disposal of the interested parties forms in which the information of article 5.1 of the LOPD is detailed.

PROVEN FACTS

7/15

1) On 05/19/2018, it is claimed that the MKS SANTURTZI 16 SL gym has video surveillance cameras installed and an informative poster on data protection that does not conforms to current regulations, since according to the photo it provides, it is in an area of reception with the only notice "area monitored by cameras".

It is not proven that the defendant has a video surveillance system but rather a electronic intrusion detection system connected to an alarm receiving center, contracted with SC, with remote access to the image in case of triggering the alarm. The system is connects when the gym closes and its purpose is the security of the facilities.

The respondent indicates before the initiation agreement, that it has a system contracted with SECURITAS DIRECT and provides a copy of the "data processing agreement" in the contract with SC contains the section "data processing agreement" in which the claimed contracted

security services provided by SECURITAS DIRECT, and it is stated that its purpose is regulate aspects related to data protection between SECURITAS DIRECT (SC) and the client, differentiating different scenarios, contemplating the case that SC accesses or manage images or recordings of the client's security system - in which SC would proceed to verify it by video, the sole purpose being to verify the reality to communicate to the corresponding police service, "holding SC necessarily the position of data controller", without the treatment carried out through the alarm receiving center is considered illegitimate interference. It is also indicated that are obligations for SC:

- that the video verification process can only begin when the alarm signal has been viewed by a operator of the alarm center, so SC will not access the images obtained unless the alarm signal occurs, or when the client expressly authorizes said visualization.
- Locate informative signs that contain the warning legend of video-monitored area and express mention of the person in charge before whom they can exercise rights.
- The client will have at the disposal of the interested parties printed in which the information provided for in article 14 of the RGPD is detailed.

A second page of the document "data processing agreement" refers to the security measures to be applied by the person in charge of treatment.

Before the start agreement, the defendant did not provide accreditation of the specific system installed, the cameras it had, where they were oriented and in what space they were placed.

2) In allegations of the proposal, the respondent provides an installation sheet for two cameras

by SC, and general conditions of contract for photo detection system of entry and alarm reception center (ARC). The respondent states that the two chambers only capture images and are triggered if someone walks through the front door when the alarm

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

is connected, which is when the center is closed, adding that in no case does it capture images of the exterior of the center, since the cameras only focus on the hall.

3) In allegations to the proposal, it is proven that the claimed one has two chambers that apparently they are not video surveillance, but photo detection, and are located in the interior of two entrances to the premises of the defendant, one of them the gym that was object of the claim where the poster was located. The system is only triggered, when detects someone inside the space that focuses or where the cameras point lower.

4) The respondent states that they have withdrawn the poster whose sole objective was their deterrent character.

5)

In the copy of the “service installation” contract with SECURITAS DIRECT that contributed by the claimed in allegations to the proposal there is a sketch of the placement of two chambers, gym entrance and consultation and a gym mg of 04/27/2012. In the general conditions of the service it is indicated that the object of the contract is the installation, maintenance and operation of central alarm. The contracted services are of article 5.1 of the private security law 23/1992 of 07/30, specifically those of the letter e) and f), and the service of letter g) is excluded. It is specified that the contract includes the installation and maintenance service, the connection service to central

alarm receiver when it jumps to alarm. In section 5 of SC obligations

figure the f that points. "In your case, the activation of the services linked to the system or

video surveillance elements will occur through any detection element

installed to the client. SC will process the technical alarm signal and will record the images and/or

sounds received in local mode, as established in the security regulations

privacy and applicable data protection."

When verifying an alarm jump by SC. It is indicated that SC through the

CRA will capture and record images through security devices installed in the

places subject to customer protection, in accordance with article 48 of the regulation

of private security, that is, verifying with all the means at its disposal the alarms

received and once said verification has been exhausted, if appropriate, it will transmit said

images and/or sounds obtained on the occasion of the jump of alarm treated to the authority

police. "The client may only have access to information on any incident or

to the recording made on the occasion of an alarm jump, sending a written request".

6) The respondent has contributed in allegations to the proposal photographs of the space

where the cameras are located inside and focusing towards the interior of two entrances, one

of them coincides with that of the claim.

FOUNDATIONS OF LAW

9/15

Yo

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

European Parliament and of the Council of 04/27/2016 on the protection of people

regarding the processing of personal data and the free circulation of these

data (hereinafter GDPR); recognizes each control authority, and as established

in art. 47 of Organic Law 3/2018, of 5/12, on the Protection of Personal Data and

guarantee of digital rights (hereinafter LOPDGDD), the director of the AEPD is

competent to initiate and resolve this procedure.

II

According to the available data, it has been recorded that in the gym of the claimed one there is a video detection device that at a given moment is capable of capturing images containing personal data, that is, according to the GDPR definition, article 4.1: "any information about an identified natural person or identifiable ("the interested party"); An identifiable natural person shall be deemed to be any person whose identity can be determined, directly or indirectly, in particular by means of a identifier, such as a name, an identification number, location, an online identifier or one or more elements of physical identity, physiological, genetic, psychic, economic, cultural or social of said person; In the case of video detection when someone breaks into the installation, although images are captured permanently, if there is a possibility that if accessed, take images that identify or make identifiable the person, on which they have to apply the legal guarantees of the RGD, security measures, information or exercise of rights, purpose, etc.

In accordance with Instruction 1/2006, of 8/11, of the Spanish Protection Agency Data, on the processing of personal data for surveillance purposes through camera or video camera systems, article 1, states:

"1. This Instruction applies to the processing of personal data from images of identified or identifiable natural persons, for surveillance purposes through surveillance systems cameras and camcorders.

The treatment object of this Instruction includes the recording, capturing, transmission, conservation, and storage of images, including their reproduction or broadcast in time real, as well as the treatment that results from the personal data related to them.

A person is considered identifiable when his identity can be determined

through the treatments referred to in this Instruction, without this requiring disproportionate deadlines or activities.

The references contained in this Instruction to video cameras and cameras will be understood also made to any analogous technical means and, in general, to any system that allow the treatments provided for in it.”

As long as they meet the rest of the requirements, they could collect personal data.

personnel, in addition to the classic closed-circuit television camera systems, the

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

use of any fixed or mobile electronic system or element if it is capable of capturing data from images, for example, portable cameras, webcams, or infrared cameras.

III

Law 5/2014, of 4/04 on Private Security indicates:

Article 5. Private security activities

"1. The following constitute private security activities:

f) The installation and maintenance of devices, equipment, devices and systems of security connected to alarm reception centers or control centers or video surveillance.

g) The operation of exchanges for the connection, reception, verification and, where appropriate, response and transmission of alarm signals, as well as monitoring of any signs of auxiliary devices for the safety of people, property movable or immovable or compliance with imposed measures, and communication to the Competent Security Forces and Bodies in these cases.”

Article 32. Security guards and their specialty

"1. The security guards will perform the following functions:

f) Carry out, in relation to the operation of alarm receiving centers, the provision of personal verification services and response to alarm signals that Occur.

In addition, they may also perform the functions of reception, non-personal verification and transmission to the Security Forces and Bodies that article 47.1 recognizes to the security operators."

Article 42. Video surveillance services.

"1. Video surveillance services consist of the exercise of surveillance through camera or video camera systems, fixed or mobile, capable of capturing and recording images and sounds, including any technical means or system that allows the same treatments what are you.

When the purpose of these services is to prevent infractions and avoid damage to the persons or goods object of protection or prevent unauthorized access, will be provided necessarily by security guards or, where appropriate, by rural guards.

The use of cameras or video cameras whose main purpose is to check the status of installations or goods, the control of access to car parks and garages, or the activities carried out developed from the control centers and other points, zones or areas of the highways of Toll. These functions may be performed by personnel other than private security personnel.

2. 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 assumptions and in the terms and conditions provided for in its specific regulations, prior administrative authorization by the competent body in each case. Its use in interior of the homes will require the consent of the owner.

3. Video surveillance cameras that are part of mandatory security measures

or reception systems, verification and, where appropriate, response and transmission of alarms, they will not require administrative authorization for their installation, employment or use.

4. The recordings made by video surveillance systems may not be used for use other than its intended use. When they are related to criminal acts or acts that affect citizen security, will be provided, on their own initiative or at your request, to the competent Security Forces and Bodies, respecting the criteria of conservation and custody of the same for their valid contribution as evidence or proof in police or judicial investigations.

5. The monitoring, recording, processing and recording of images and sounds by video surveillance systems will be subject to the provisions of the regulations on protection of personal data, and especially to the principles of proportionality, suitability and minimal intervention.

6. In matters not provided for in this law and in its implementing regulations, the provisions provided in the regulations on video surveillance by the Forces and Bodies of Security."

Article 46. Installation and maintenance services

"1. Installation and maintenance services for apparatus, equipment, devices and security systems connected to alarm receiving centers, control centers or of video surveillance, will consist of the execution, by accredited technicians, of all those installation and maintenance operations of such devices, equipment, devices or systems, which are necessary for its proper functioning and proper compliance of its purpose, prior preparation, by accredited engineers, of the mandatory project of installation, whose characteristics will be determined by regulation.

2. These systems must undergo preventive reviews with the frequency and form to be determined by regulation."

Article 47. Alarm management services

"1. The alarm management services, in charge of security operators, will consist of in the reception, non-personal verification and, where appropriate, transmission of the signals of alarm, related to the security and protection of people and goods to the Forces and Bodies competent security.

2. The alarm response services will be provided by security guards or, in your case, by rural guards, and may include the following services:

a) The deposit and custody of the keys of the buildings or objects where they are installed the security systems connected to the alarm center and, where appropriate, their transfer to the place from which the verified alarm signal originates or the remote opening controlled from the alarm center.

b) The movement of security guards or rural guards in order to proceed to personal verification of the received alarm.

c) Facilitate access to police or emergency services when circumstances require it, either through remote openings controlled from the alarm center or with the means and access devices available.

3. When the services refer to the analysis and monitoring of security events

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

of information and communications, will be subject to the specifications that regulations are determined. The warning signals related to these events must be brought, when appropriate, to the attention of the competent body, by the user himself or by the company with which he has contracted the security."

Order INT/316/2011, dated 02/01, on the operation of alarm systems in

the field of private security indicates:

Article 1. Material scope.

"1. Only authorized security companies may carry out security operations.

installation and maintenance of security and alarm devices, devices or systems,

when they intend to connect to an alarm center or the so-called centers

control or video surveillance that includes the first paragraph of article 39 of the

Private Security Regulation.

2. In accordance with the provisions of article 46 of the Security Regulations

Private, to connect appliances, devices or security systems to central

alarms or control centers, it will be necessary that the installation has been carried out by a

security company registered in the corresponding Registry and conforms to the provisions of

Articles 40, 42 and 43 of the aforementioned Regulation and the provisions of this Order.

Article 8. Video verification.

"1. To consider an alarm validly verified by this technical method, the

video subsystem must be activated by means of an intrusion detector or a video

sensor, being necessary that the video coverage is equal to or greater than that of the detector or

associated detectors.

2. The video verification process can only start when the video signal is

alarm has been viewed by the operator of the alarm center. Started the

verification, the system must record a minimum of one image of the exact moment of the

alarm and two images after it, in a time window of five seconds, of

form that allows to identify the cause that has originated this.

3. The recording systems used for this type of verification will not allow

obtain images of the supervised place, if an alarm has not previously occurred,

unless there is express authorization from the user or the rule requires a recording

permanent."

The service provided by security companies and its implications in terms of data protection, in this case for the installation and/or maintenance of the equipment and intrusion detection systems with the use of equipment or access to images.

These are security companies that provide combined central alarm services and video surveillance so that when the alarm is activated, the images by security company personnel.

13/15

The RGPD defines "in charge of the treatment" or "in charge" as the natural person or legal entity, authority, service or other body that processes personal data on behalf of the responsible for the treatment. And "responsible for the treatment" or "responsible" is the person physical or legal entity, authority, service or other body that, alone or jointly with others, determines the purposes and means of the treatment. In the present case, the personal data obtained by the security company by signing the contract of the information provided by the user are not processed "on behalf of" the user, but said personal data is used to establish a direct legal relationship between the security company and the user. The security company uses personal data for the establishment and fulfillment of the provision to which it is obliged by means of the aforementioned service lease contract. Ultimately, the security company determines the purposes and means of data processing. said personal data for the provision of the service to which it is obliged. In the fulfillment of the provision to which the company undertakes security through the service lease contract does not act "on behalf of" user, but rather provides the promised security service, which constitutes the object security company's own social security." We are not, therefore, regarding said personal data, before a person in charge of the treatment. This means that the company of security will have all the obligations of the person in charge of the treatment in

relation to the personal data that it deals with for the provision of the security service to the users of this. Among them, that personal data is processed only for the specific, explicit, illegitimate purposes for which they were collected (art. 5.1.b) RGPD), and not for purposes incompatible with them, and to inform through the poster of the zone of video surveillance, without the use of the exterior sign because it does not refer to personal data.

v

Article 12.1 of the RGPD states: "The data controller will take the appropriate measures to provide the interested party with all the information indicated in articles 13 and 14" The RGPD lists the categories of information that must be provided to a data subject in relation to the processing of your personal data in the cases in which they are collected of the same (article 13) or obtained from another source (article 14).

12.7 indicates: "The information that must be provided to the interested parties by virtue of Articles 13 and 14 may be transmitted in combination with standardized icons that allow to provide in an easily visible, intelligible and clearly legible form a adequate overview of the planned treatment".

So that not all the information is contained in the data processing notice of the informative video surveillance poster, can be done in layers. The design and layout of the first layer of the privacy statement or notice must be such that the interested party have a clear view of the information available on the processing of your data where and how you can find such detailed information within the layers of the privacy statement or notice. It is recommended that the first layer or modality inserted in the video surveillance area warning icon contains the most detailed information important, the details of the purpose of the treatment, the identity of the person in charge and a

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

description of the rights of the interested party, legal basis of the treatment and identification of the responsible for the treatment and contact form. The importance of providing this information in advance arises, in particular, from recital 39 of the RGPD, not being necessary to specify the precise location of the surveillance equipment; however, you must make the context of surveillance clear.

Second layer information should be readily available in one place accessible to the interested party, be it an information sheet at a reception, cashier, etc. or placed in a visible public space, or refer to a web address with the rest of the elements of article 13 of the RGPD.

In this sense, it is accredited that the aforementioned poster does not appear at the entrance of the gym, regardless of the fact that images are only taken when it is closed.

In this sense, one of the requirements that the processing of images must meet through a video surveillance system or photo detection in this case, to be in accordance with current regulations is to inform, in accordance with article 12 of the RGPD in accordance with article 3 of Instruction 1/2006, of 8/11 of the AEPD, on the processing of personal data for surveillance purposes through camera systems or camcorders, BOE 12/12/2006, which specifies:

Those responsible who have video surveillance systems must comply with the duty of information provided for in article 5 of Organic Law 15/1999, of 12/13. to such purpose, they must:

- a) Place, in video-monitored areas, at least one informative sign located in a place sufficiently visible, both in open and closed spaces and
- b) Have at the disposal of the interested parties printed in which the information provided for in article 5.1 of Organic Law 15/1999.

The content and design of the informative badge will comply with the provisions of the Annex

of this Instruction.”

According to the data in the file, it has been confirmed that in the establishment of the claimed one there are at least two chambers capable of shooting and capturing an image of a person, without the system's informative poster appearing with all the requirements. Being the system implemented in terms of character data personnel, responsible for the treatment, the security company would be in charge of implement the interior sign with the warnings of the video-monitored areas, so that the defendant bears no responsibility in this regard.

Article 58.2 of the RGPD provides the following: "Each control authority will have of all the following corrective powers indicated below:

“...d) order the person in charge or in charge of the treatment that the operations of treatment comply with the provisions of this Regulation, where appropriate, in accordance with a specified manner and within a specified time.

In this sense, it is considered appropriate to notify said entity of the obligation.

15/15

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: DECLARE, in accordance with the provisions of article 90.1 of the LPCAP the non-existence of infringement by MKS SANTURTZI 16 SL, of the infringement of article 12 of the RGPD, typified in article 83.5 of the RGPD.

SECOND: NOTIFY this resolution to MKS SANTURTZI 16 SL.

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

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 period of one month from the day following the notification of this resolution or directly contentious appeal before the Contentious-Administrative Chamber of the National High Court, with in accordance with the provisions of article 25 and section 5 of the fourth additional provision of Law 29/1998, of 13/07, regulating the Contentious-administrative Jurisdiction, in the period of two months from the day following the notification of this act, as provided for in article 46.1 of the aforementioned Law.

Finally, it is pointed out that in accordance with the provisions of art. 90.3 a) of the LPACAP, it may be precautionary suspension of the firm decision in administrative proceedings if the interested party expresses its intention to file a contentious-administrative appeal. If this is the case, the

The interested party must formally communicate this fact in writing addressed to the Agency

Spanish Data Protection, presenting it through the Electronic Registry of the

Agency [<https://sedeagpd.gob.es/sede-electronica-web/>], or through one of the

remaining records provided for in art. 16.4 of the aforementioned LPCAP. You will also need to transfer

the Agency the documentation that proves the effective filing of the contentious appeal-

administrative. If the Agency was not aware of the filing of the appeal

contentious-administrative within a period of two months from the day following the notification

of this resolution, would terminate the precautionary suspension.

Sea Spain Marti

Director of the Spanish Data Protection Agency

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es