

□ File No.: EXP202105947

RESOLUTION OF SANCTIONING PROCEDURE

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

BACKGROUND

FIRST: Don A.A.A. (*hereinafter, the complaining party) dated December 4
of 2021 filed a claim with the Spanish Agency for Data Protection. The
claim is directed against GONDOMAR CITY COUNCIL with NIF P3602100D
(hereinafter, the claimed party). The reasons on which the claim is based are the following:
following:

(...) installation of video surveillance cameras in a plurality of spaces, both
public highway, such as municipal offices, without having the pertinent authorizations.
instructions for it, nor adequately signaling them, not installing the precepts
you informative posters of video-monitored area. It also indicates that requested information
information on the enabling administrative files that should have been cured
approved by the corresponding Government Delegation, which authorized the installation of
cameras on public roads, without having received a response (...).

It provides images without date and time from unmarked cameras in different areas and de-
municipal pendencies and requests for information on administrative files
tives completed for the installation of the aforementioned cameras, oriented to public roads.

SECOND: In accordance with article 65.4 of Organic Law 3/2018, of 5
December, Protection of Personal Data and guarantee of digital rights (in
hereafter LOPDGDD), said claim was transferred to the party claimed on fe-
date 12/29/21, to proceed with its analysis and inform this Agency on the plan
within one month, of the actions carried out to adapt to the foreseen requirements.

cough in the data protection regulations.

The transfer, which was carried out in accordance with the regulations established in Law 39/2015, of October 1, of the Common Administrative Procedure of Public Administrations (hereinafter, LPACAP), by electronic notification stating as "Entregado" as recorded in the computer system of this Agency.

THIRD: On February 18, 2022, in accordance with article 65 of the LOPDGDD, the claim presented by the claimant party was admitted for processing.

FOURTH: On May 24, 2022, the Director of the Spanish Agency for Data Protection agreed to initiate disciplinary proceedings against the claimed party, in accordance with the provisions of articles 63 and 64 of Law 39/2015, of October 1, of the Common Administrative Procedure of Public Administrations (hereinafter

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te, LPACAP), for the alleged violation of Article 6 and 13 of the GDPR, typified in the Article 83.5 of the GDPR.

FIFTH: After consulting the database of this Agency on 08/08/22, no response received any response, nor has the slightest explanation been made in relation to the facts that are the subject of the claim.

SIXTH: On 08/20/22, the "Proposed Resolution" is issued, in which it is proposed

After analyzing the claim presented, warn the reviewed entity when it has obsolete signage, as well as for not reliably proving the legality of the system installed, infringement of articles 6 and 13 GDPR, being the same notified by postal for the appropriate purposes, appearing in the system as <Notified>.

Of the actions carried out in this procedure and of the documentation

in the file, the following have been accredited:

PROVEN FACTS

First. The facts bring cause of the claim dated 12/04/21 through the which the alleged irregularity in the installation of a set of cameras is transmitted of video-surveillance that lack in some cases the mandatory informative poster (s) about.

Second. It is accredited as the main person in charge of the Gondomar City Council with NIF P3602100D.

Third. There is evidence of the absence of informative poster(s) in some of the video surveillance systems that have been installed.

Room. No explanation has been given about the cause/reason for the installation of the video surveillance system(s), or if you have the proper authorization administration about it.

FUNDAMENTALS OF LAW

Yo

In accordance with the powers that article 58.2 of Regulation (EU) 2016/679 (Re-General Data Protection Regulation, hereinafter GDPR), grants each authority of control and as established in articles 47, 48.1, 64.2 and 68.1 of the Law Organic 3/2018, of December 5, Protection of Personal Data and guarantee of digital rights (hereinafter, LOPDGDD), is competent to initiate and resolve this procedure the Director of the Spanish Data Protection Agency.

Likewise, article 63.2 of the LOPDGDD determines that: "The procedures processed by the Spanish Data Protection Agency will be governed by the provisions of Regulation (EU) 2016/679, in this organic law, by the regulations comments dictated in its development and, insofar as they do not contradict them, with a sub-

sisidario, by the general rules on administrative procedures."

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II

In the present case, the claim dated 12/04/21 is examined by means of

of which the following facts are transferred to this body:

"That the City Council of Gondomar has several fixed video cameras installed in municipal buildings and facilities that capture images both on public roads as in indoor public spaces (attached photos of various facilities)"

"Since the Gondomar town hall does not provide me with access to the administrative files for the placement of the video cameras, written submission to the Government Sub-delegation in Pontevedra, to inform me if there are auto-Ordinations for the installation of video cameras in municipal buildings and facilities of Gondomar"

The facts are specified in two issues, the alleged lack of authorization administrative for the installation of cameras towards public space and the "deficient" informative signage of the presence of the cameras where mention is made of a repealed regulation or the person responsible for the treatment is not specified (vgr. it can exercise their rights before the Municipal Council).

Cameras installed in public spaces must have the corresponding informative signs indicating that it is a video-surveilled area, information command of the data controller and the way to exercise the corresponding rights pending within the framework of the current LOPDGDD—article 22--.

"The duty of information provided for in article 12 of Regulation (EU)

2016/679 will be understood to have been complied with by placing an informative device

in a sufficiently visible place identifying, at least, the existence of the treatment,

the identity of the person responsible and the possibility of exercising the rights provided for in the

Articles 15 to 22 of Regulation (EU) 2016/679. It may also be included in the

informative site a connection code or internet address to this information" (*the

bold belongs to this organization).

To install video surveillance cameras in a Town Hall, we must

appoint Organic Law 4/1997 of August 4, which regulates the use of video cameras.

gangs by the State Security Forces and Bodies in public places.

Already in its article 3.2 of Law 4/1997 it tells us the following:

"The fixed installations of video cameras by the Security Forces and Bodies

State and Local Corporations will be authorized by the Delegate

of the Government in the Autonomous Community in question, following a report from a Committee

session whose presidency will correspond to the President of the Superior Court of Justice of

the same community. The composition and functioning of the Commission, as well as the

participation of the municipalities in it, will be determined by regulation.

Likewise, the Spanish Agency for Data Protection (AEPD) has also

state in this regard in its resolution R/00818/2012, stating that "the treatment

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of images in public places can only be carried out by the Corps and Forces

of State Security, unless there is administrative authorization".

It must be taken into account that the installation and use of video surveillance systems
imply the processing of personal data, so it must be complied with
the precepts related to Organic Law 3/2018, December 5 (LOPDGD).

To do so, they must place, in the video-surveilled areas, at least one distinctive information
sign located in a sufficiently visible place, both in open and closed spaces.

For the purpose of the duty of information provided for in art. 13 GDPR.

The request made, where appropriate, by the Consistory (vgr. Mayor) must comply with
some strict requirements regarding the identification of the applicant, reasons that justify
said request, location, capture or not of sound, as well as the affiliation of the
responsible for the management and custody of the recordings and equipment used.

Article 1 of Organic Law 4/1997, of August 4, which regulates the
use of video cameras by the Security Forces and Corps in public places
and, has:

“This Law regulates the use by the Security Forces and Bodies
of camcorders to record images and sounds in public places, open or closed.
closed, and their subsequent treatment, in order to contribute to ensure the coexistence
and the eradication of violence and the peaceful use of roads and public spaces
military, as well as to prevent the commission of crimes, misdemeanors and infractions related
with public safety

According to article 3 point 1 of the Organic Law 4/1997, of August 4, for the
regulating the use of video cameras by the Security Forces and Corps
In public places

“The installation of video cameras or any similar technical means in the
terms of article 1.2 of this Law is subject to the authorization regime, which
It will be granted, where appropriate, following a report from a collegiate body chaired by a Ma-
nister registered and in whose composition the dependent members of the

Authorizing Administration”.

II

In accordance with the extensive evidence available in the present disciplinary proceeding, it is considered that the claimed party has several video surveillance cameras "without an a priori authorization for the installation of the themselves", arranging an obsolete and incomplete informative signage at the time of that citizens can exercise the rights recognized in the current legal framework current.

This body is no stranger to the breadth of the claim presented, although in the main strategic points of the town should proceed to reinstall informative sign(s) indicating that it is a video-surveilled area, adopting the Precise measures to regularize cameras that are misoriented or not properly signposted, adopting the appropriate measures in a reasonable time.

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With regard to the cameras that may be in significant building(s) (vgr. House Consistorial) remember that the current article 22 LOPDGDD (LO 3/2018), provides: "However, it will be possible to capture the public highway in an extension greater than superior when necessary to guarantee the security of assets or facilities strategic or infrastructure related to transport, without in any case may involve capturing images of the interior of a private home”.

Their installation must comply with the criteria set forth, and must be adapt to the regulations in force, so that they fulfill their function, but

At the same time, the rights of the citizenry are guaranteed.

They must be sufficiently informed in the terms of the

article 22 LOPDGDD, previously transcribed, in such a way that it is easy to

exercise legally recognized rights.

The known facts constitute an infringement, attributable to the party

claimed, for violation of the content of article 6.1 e) GDPR and 13 GDPR.

In the field of security, it has been considered that data processing

through video surveillance cameras for security purposes, apart from the fact that

could be considered a legitimate interest of the person in charge, it has been determined by the

authorities and courts that the main legal basis is the public interest.

"The treatment is necessary for the fulfillment of a mission carried out in

public interest or in the exercise of public powers vested in the controller

lien" (art. 6.1 e) GDPR).

In relation to the latter, the obligation to inform must be fulfilled through the

indication of the person responsible for data processing, contact details of the delegate

of data protection, where appropriate, the purposes of the treatment for which the

personal data and the legal basis of the treatment, etc.

The Spanish Agency for Data Protection (AEPD) has published a model of card

video surveillance notice phone, being able to access it at the address www.aep.es

"Video-surveillance area of action".

IV.

It should also be remembered that in the event that a City Council wishes to make an

Camera felling for traffic control, it is enough with the authorization of the Mayor.

day. The Law 18/1989, of July 25, of Base on Traffic, Circulation of Vehicles to

Motor and Road Safety gives power to the first mayors to do so. Furthermore, facing

use of such traffic control systems, the council must abide by what

marks the GDPR in terms of personal data management.

For some time now, we have seen the interest in installing video surveillance systems grow.

ance in public spaces, in order to improve security and protect the inte-

safety of people in the event of uncivil or criminal acts.

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For the installation and use of an image recording system in the

public spaces is required, according to art. 3 of Organic Law 4/1997, August 4,

of an authorization to be granted by the Government Delegate of each Autonomous Community

noma, following a report from a Commission chaired by the President of the Supreme Court

Superior of Justice of that Community, and whose resolution must be motivated and referred to in

each case to the specific public place in question and subject to all the conditions

and limitations of use are necessary.

Given the lack of response from the Consistory, it is recalled that, in the event

of having a Local Police, in case of finding the installation of the video cameras

of the properties under the surveillance of the local police, the applicable regime is established

established by RD 569/1999, April 16.

According to the Fifth Additional Provision. Facilities protection cameras

police.

However, what is established in section 1 and in the second paragraph of paragraph

Paragraph 2 of Article 2 of this Regulation, the police units that intend to

carry out fixed installations of video cameras, outside their buildings or

that are under their surveillance, exclusively for their protection, which

communicate, in advance, to the corresponding Government Delegation, together with
with a descriptive report.

If the Government Delegate, within seven days, does not make a statement
otherwise, the corresponding authorization will be understood as granted (...).

Within the current legal framework, remember the recent LO 7/2021, of May 26,
protection of personal data processed for the purposes of prevention, detection, investigation
investigation and prosecution of criminal offenses and execution of criminal sanctions.

The main purpose is for the data to be processed by these competent authorities.

so that the purposes foreseen are fulfilled at the same time as establishing the

higher standards of protection of fundamental rights and freedoms of

citizens, so as to comply with the provisions of article 8, paragraph 1, of the

Charter of Fundamental Rights of the European Union, as well as in article

16, paragraph 1, of the Treaty on the Functioning of the European Union and article 18.4

of the Constitution.

Likewise, in the case of installations of fixed devices, article 16 of the LO

7/2021, of May 26, on the protection of personal data processed for purposes of pre-

prevention, detection, investigation and prosecution of criminal and enforcement offences.

tion of criminal sanctions.

"1. On roads or public places where fixed video cameras are installed, the rest

The person responsible for the treatment must make an assessment of the aforementioned principle of proportion.

tionality in its double version of suitability and minimal intervention. Also, you must

carry out a risk analysis or data protection impact assessment

data related to the treatment that is intended to be carried out, depending on the level of damage

that can be derived for citizenship and the purpose pursued"

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5. Citizens will be clearly and permanently informed of the

existence of these fixed video cameras, without specifying their location, as well as

the authority responsible for the treatment before which you can exercise your rights" (*the

bold belongs to the AEPD).

V

The art. 83.5 GDPR provides the following: "Violations of the following provisions

These will be penalized, in accordance with section 2, with administrative fines of 20

000 000 EUR maximum or, in the case of a company, an equivalent amount

to a maximum of 4% of the overall annual total turnover of the financial year

previous year, opting for the one with the highest amount:

a) The basic principles for the treatment including the conditions for the

consent in accordance with articles 5,6,7 and 9 (...)".

the rights of the interested parties in accordance with articles 12 to 22;

b)

SAW

Article 83 "General conditions for the imposition of administrative fines" of the

GDPR in its section 7 establishes:

"Without prejudice to the corrective powers of the control authorities under art.

Article 58(2), each Member State may lay down rules on whether

of, and to what extent, imposing administrative fines on public authorities and bodies

public establishments established in that Member State."

Likewise, article 77 "Regime applicable to certain categories of liability"

responsible or responsible for the treatment" of the LOPDGDD provides the following:

"1. The regime established in this article will be applicable to the treatment of

who are responsible or in charge:

a) The constitutional bodies or those with constitutional relevance and the institutions of

the autonomous communities analogous to them.

b) The courts.

c) The General State Administration, the Administrations of the autonomous communities,

tonomas and entities that make up the Local Administration.

d) Public bodies and public law entities linked or dependent

you of the Public Administrations.

e) The independent administrative authorities.

f) The Bank of Spain.

g) Public law corporations when the purposes of the treatment relate to

related to the exercise of public law powers.

h) Public sector foundations.

i) Public Universities.

j) Consortiums.

k) The parliamentary groups of the Cortes Generales and the Legislative Assemblies

autonomous, as well as the political groups of the Local Corporations.

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2. When the managers or managers listed in section 1 commit

any of the offenses referred to in articles 72 to 74 of this organic law

only, the data protection authority that is competent will issue a resolution

sanctioning them with warning. The resolution will also establish the measures that should be adopted to cease the conduct or to correct the effects of the offense that was committed.

The resolution will be notified to the person in charge or in charge of the treatment, to the body of the that depends hierarchically, where appropriate, and to those affected who had the condition interested, if any.

(...)

3. Without prejudice to what is established in the previous section, the data protection authority data will also propose the initiation of disciplinary actions when there are enough evidence for it. In this case, the procedure and the sanctions to be applied will be those established in the legislation on the disciplinary or sanctioning regime that be applicable.

Likewise, when the infractions are attributable to authorities and executives, and the existence of technical reports or recommendations for treatment is accredited that had not been duly attended to, in the resolution in which the sanction will include a reprimand with the name of the responsible position and will order the publication in the corresponding Official State or regional Gazette. gives.

5. They will be communicated to the Ombudsman or, where appropriate, to similar institutions of the autonomous communities the actions carried out and the resolutions issued under this article.”

VII

The text of the resolution establishes which have been the infractions committed and the facts that have given rise to the violation of the data protection regulations from which it is clearly inferred what are the measures to be adopted, without prejudice to that the type of procedures, mechanisms or concrete instruments to implement

treat them corresponds to the sanctioned party, since it is the person responsible for the treatment who fully knows your organization and has to decide, based on personal responsibility active and risk-focused, how to comply with the GDPR and the LOPDGDD.

So that the cameras that fulfill a building protection function,

Significant deficiencies must be consistent with the security purpose of the same, but de-

having to be duly signposted in its main accesses; while others

where appropriate, they must be adjusted to a Safety Plan duly prepared and accounted for.

with the precise authorizations duly documented, adjusted to the measures

normatively established days.

The importance of the rights at stake is recalled, as well as the responsibility

of the main managers in the matter at hand, having to adopt the measures

precise corrective measures, after reviewing the main cameras installed, to

that these comply with current legislation, and must fulfill a function according to their

nature and be duly informed, and may be reviewed by the

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Inspection Service of this Agency in case it is considered necessary, being able to

non-cooperative conduct must be taken into account for future actions by

of this Agency.

Therefore, in accordance with the applicable legislation and assessed the graduation criteria

tion of the sanctions whose existence has been accredited,

the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: ADDRESS TO GONDOMAR TOWN HALL, with NIF P3602100D, for

an infringement of Articles 6.1 e) and 13 of the GDPR, typified in Article 83.5

letters a) and b) of the GDPR, a sanction of WARNING.

SECOND: NOTIFY this resolution to the entity CITY COUNCIL OF GONDOMAR.

THIRD: COMMUNICATE this resolution to the Ombudsman, in accordance with the provisions of article 77.5 of the LOPDGDD.

In accordance with the provisions of article 50 of the LOPDGDD, this

Resolution will be made public once the interested parties have been notified.

Against this resolution, which puts an end to the administrative process in accordance with art. 48.6 of the LOPDGDD, and in accordance with the provisions of article 123 of the LPACAP, the interested parties

Respondents may optionally file an appeal for reinstatement 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 Court,

in accordance with the provisions of article 25 and section 5 of the additional provision fourth clause of Law 29/1998, of July 13, regulating the Contentious Jurisdiction-administration, within a 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 noted that in accordance with the provisions of art. 90.3 a) of the LPACAP, may provisionally suspend the firm resolution in administrative proceedings if the interested party do states its intention to file a contentious-administrative appeal. If it is-

As the case may be, the interested party must formally communicate this fact in writing addressed to the Spanish Data Protection Agency, presenting it through the Re-Electronic registry of the Agency [<https://sedeagpd.gob.es/sede-electronica-web/>], or to through any of the other registries provided for in art. 16.4 of the aforementioned Law 39/2015, of October 1. You must also transfer the documentation to the Agency

proving the effective filing of the contentious-administrative appeal. if the Agency was not aware of the filing of the contentious-administrative appeal treatment within two months from the day following notification of this resolution, would terminate the precautionary suspension.

Mar Spain Marti

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