

□ Procedure No.: PS/00155/2020

RESOLUTION OF PUNISHMENT PROCEDURE

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

BACKGROUND

FIRST: CIUDAD REAL CITY COUNCIL (*hereinafter, the claimant) with

On December 16, 2019, he filed a claim with the Spanish Agency for

Data Protection. The claim is directed against A.A.A. with NIF ***NIF.1 (in

later, the claimed one). The grounds on which the claim is based are "absence of
information poster" in the establishment called *** ESTABLISHMENT.1

Record-Complaint of the Local Police (Doc. No. 1) dated 12/07/19 is provided that
confirms the presence of two cameras, without the establishment

*** ESTABLISHMENT.1 there is an informative poster in a visible area, indicating
It is a video-monitored area.

SECOND: On 01/31/20 and 03/04/20, TRANSFER of the

claim to the denounced party so that it could express what in law it deems
timely, without any allegation having been made in this regard.

THIRD: On July 17, 2020, the Director of the Spanish Agency for

Data Protection agreed to initiate a sanctioning procedure against the claimant, for the
alleged infringement of article 13 of Regulation (EU) 2016/679 (Regulation
General Data Protection, hereinafter RGPD), typified in article 83.5 of the
GDPR.

FOURTH: Formal notification of the initiation agreement through the publication of
announcement on the Edictal Board of the Official State Gazette dated August 24,
2020 in accordance with the provisions of article 44 of Law 39/2015, of 1

October, of the Common Administrative Procedure of the Public Administrations (in hereinafter, LPCAP) the respondent has not submitted a brief of allegations, so it is of application what is indicated in article 64 of the aforementioned rule, which in its section f) establishes that in the event of not making allegations within the period established on the content of the initiation agreement, it may be considered a proposal for resolution when it contains a precise statement about the responsibility imputed, reason why a Resolution is issued.

In view of everything that has been done, by the Spanish Data Protection Agency

In this proceeding, the following are considered proven facts:

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FACTS

FIRST: The establishment called *** ESTABLISHMENT.1 located in

***ADDRESS.1, with a café-concert license, has a system of

video surveillance, according to the record drawn up by the Ciudad Real Local Police on

December 7, 2019.

SECOND: The mentioned system does not have an informative device of its

existence

THIRD: The respondent is the owner of the establishment.

FOUNDATIONS OF LAW

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By virtue of the powers that article 58.2 of the RGPD recognizes to each authority of

control, and as established in arts. 47 and 48.1 of the Organic Law 3/2018, of 5

December, Protection of Personal Data and guarantee of digital rights

(hereinafter, LOPDGDD), the Director of the Spanish Agency for the Protection of

Data is competent to resolve this procedure.

II

The defendant is charged with the commission of an infraction for violation of article 13 of the

RGPD that provides:

"1. When personal data relating to him is obtained from an interested party, the

responsible for the treatment, at the time these are obtained, will provide

all the information indicated below:

a) the identity and contact details of the person in charge and, where appropriate, of their representative;

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

c) the purposes of the treatment to which the personal data is destined and the legal basis of the treatment;

d) when the treatment is based on article 6, paragraph 1, letter f), the interests legitimate of the person in charge or of a third party;

e) the recipients or the categories of recipients of the personal data, in their case;

f) where appropriate, the intention of the controller to transfer personal data to a third party

country or international organization and the existence or absence of a decision to

adequacy of the Commission, or, in the case of transfers indicated in the

Articles 46 or 47 or Article 49, paragraph 1, second paragraph, reference to the

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adequate or appropriate warranties and the means to obtain a copy of these or to the fact that they have been borrowed.

2. In addition to the information mentioned in section 1, the person responsible for the treatment will facilitate the interested party, at the moment in which the data is obtained personal, the following information necessary to guarantee data processing fair and transparent

- a) the period during which the personal data will be kept or, when it is not possible, the criteria used to determine this period;
- b) the existence of the right to request from the data controller access to the personal data relating to the interested party, and its rectification or deletion, or the limitation of its treatment, or to oppose the treatment, as well as the right to portability of the data;
- c) when the treatment is based on article 6, paragraph 1, letter a), or article 9, paragraph 2, letter a), the existence of the right to withdraw consent in any time, without affecting the legality of the treatment based on the consent prior to its withdrawal;
- d) the right to file a claim with a supervisory authority;
- e) if the communication of personal data is a legal or contractual requirement, or a necessary requirement to sign a contract, and if the interested party is obliged to provide personal data and is informed of the possible consequences of not provide such data;
- f) the existence of automated decisions, including profiling, to which referred to in article 22, sections 1 and 4, and, at least in such cases, information about applied logic, as well as the importance and consequences provisions of said treatment for the interested party.

3. When the controller plans the further processing of data

personal data for a purpose other than that for which they were collected, you will provide the interested party, prior to such further processing, information on that other purpose and any additional information relevant under paragraph 2.

4. The provisions of sections 1, 2 and 3 shall not apply when and in the to the extent that the interested party already has the information.”

The indicated infraction is typified in article 83.5 of the RGPD, which provides the

Next:

"Infractions of the following provisions will be sanctioned, in accordance with the 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:

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

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The LOPDGDD, in its article 72, under the heading "Infringements considered very serious" provides:

"1. 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:

[...] h) The omission of the duty to inform the affected party about the treatment of their

personal data in accordance with the provisions of articles 13 and 14 of the Regulation (EU) 2016/679 and 12 of this organic law.”

III

In the present case, it is appropriate to analyze the absence of an informative device of the video surveillance system installed in the PIS-PAS establishment.

The facts proven in this sanctioning procedure show that the video surveillance system installed in the PIS-PAS establishment lacks informative device that informs of its existence.

Article 13 of the RGPD—in compliance with the duty of information contained in the preceding article 12 of the same legal text- regulates the information that must be provided when the personal data is obtained from the interested party, a situation that occurs in cases in which images are captured by a system of video surveillance. In this sense, article 22.4 of the LOPDGDD establishes that "The duty of information provided for in article 12 of Regulation (EU) 2016/679 is understood fulfilled by placing an informative device instead sufficiently visible identifying, at least, the existence of the treatment, the identity of the person in charge and the possibility of exercising the rights foreseen in the Articles 15 to 22 of Regulation (EU) 2016/679. It may also be included in the informative device a connection code or internet address to this information". Therefore, an informative poster must be placed that at least informs of the treatment that is carried out, the identity of the person in charge and the possibility and manner of exercise the rights recognized in articles 15 to 22 of the RGPD; without prejudice to that the rest of the information must be kept available to those affected stipulated by article 13 of the RGPD.

IV

Without prejudice to the provisions of article 83.5 of the RGPD, art. 58.2 b) provides the

possibility of sanctioning with a warning, in relation to what is indicated in the

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

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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.”

In the present case, when deciding the sanction to be imposed, they have taken into account

In particular, consider the following elements.

- ☐ That it is a small establishment whose owner is a natural person.
- ☐ That there is no recidivism, because there is no evidence of the commission of previous infractions.

For all these reasons, it is considered that the sanction that should be imposed is

WARNING, in accordance with the provisions of article 58.2 b) of the RGPD, in

in relation to what is stated in Considering 148, cited above.

Therefore, in accordance with the applicable legislation and having assessed the criteria for

graduation of the sanctions whose existence has been proven, the Director of the

Spanish Data Protection Agency RESOLVES:

FIRST: IMPOSE A.A.A., with NIF ***NIF.1, for an infraction of article 13 of the RGPD, typified in article 83.5 of the aforementioned standard, a warning sanction.

Likewise, within ONE MONTH from the notification of this act, you must prove the following:

☐ That it has proceeded to place the informative device in the areas video-monitored (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), locating this device in a sufficiently visible place and that has put available to customers who may require the appropriate form.

SECOND: NOTIFY this resolution to A.A.A. and REPORT the result of the actions to the CIUDAD REAL CITY COUNCIL.

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.

Finally, it is pointed out 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 The interested party expresses his intention to file a contentious-administrative appeal.

If this is the case, the interested party must formally communicate this fact by writing addressed to the Spanish Agency for Data Protection, presenting it through Electronic Register of the Agency [<https://sedeagpd.gob.es/sede-electronica-web/>], or through any of the other registers provided for in art. 16.4 of the aforementioned Law 39/2015, of October 1. You must also transfer to the Agency the documentation proving 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 end the precautionary suspension.

Sea Spain Marti

Director of the Spanish Data Protection Agency

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