

□ File No.: EXP202105857

RESOLUTION OF PUNISHMENT PROCEDURE

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

BACKGROUND

FIRST: Dated December 13, 2021, entered this Agency

Spanish Data Protection a complaint filed by the CIVIL GUARD -

PUESTO DE VILLABLANCA (hereinafter, the complainant), through which he formulates

complaint against A.A.A. with NIF ***NIF.1 (hereinafter, the claimed one). the record

complaint, dated November 30, 2021, shows that the defendant

It has an installation of a video surveillance system, installed in

***ADDRESS.1, in which the cameras are directed towards the public thoroughfare and are not

duly signposted the mandatory informative posters of the video-monitored area.

The documents provided by the claimant are the following:

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Report made by the FFCCSE in which it is shown that these

same non-compliances were previously detected, denounced before

this Agency, and that they are aware of a letter from the AEPD in which it was communicated to the

Civil Guard that the defendant had been informed of his obligations regarding

regarding the protection of personal data without the now denounced having

proceeded to correct these non-compliances.

- Photo report

SECOND: Likewise, it should be stated that on September 30, 2020,

received in this Agency a complaint filed by the CIVIL GUARD - POSITION OF

VILLABLANCA for these same facts that gave rise to the processing of the file

of reference E/08325/2020. Within the framework of said file, a letter was sent to the denounced, duly notified on October 16, 2020, in which he was informed of the reception of the complaint in the Agency for some facts that would violate the data protection regulations, with regard to the treatment of images and where you could find out about the requirements to carry out carry out personal data processing through this type of device.

THIRD: On March 17, 2022, the Director of the Spanish Agency for Data Protection agreed to initiate a sanctioning procedure 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 the Public Administrations (in hereinafter, LPACAP), for the alleged infringement of article 5.1.c) and 13 of the Regulation (EU) 2016/679 (General Data Protection Regulation, hereinafter RGPD), typified in article 83.5 of the RGPD.

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2/6

FOURTH: Notification of the aforementioned start-up agreement in accordance with the established rules in the LPACAP, the respondent filed a pleadings brief in which, in

In short, it stated the following:

He begins by stating that he has not been aware of the initiation agreement until the day May 3, 2022 since a neighbor had picked it up since he sold that housing in December 2021.

Next, he explains the reasons that led him to install the cameras ("threat of squatters in the area"), and their dissuasive nature since they never

they were connected.

Finally, he reports that the cameras have been removed by the new owner to your indication.

FIFTH: On May 11, 2022, a resolution proposal was formulated, in which that the allegations presented were collected, responding to them and proposing the filing of the proceedings.

PROVEN FACTS

FIRST: The FFCCSE have revealed the existence of a system of video surveillance, installed at ***ADDRESS.1, in which the cameras are directed towards public roads and the mandatory signs are not properly marked video surveillance area news in November 2021.

SECOND: It is identified as the main responsible A.A.A. with NIF ***NIF.1, who acknowledges being responsible for the installation of the existing device in the date of complaint.

THIRD: There is no evidence that the video surveillance system subject to claim has processed any personal data given that the party claimed maintains that it has not come into operation.

FOURTH: According to the information provided by the respondent, the system of video surveillance has been dismantled in December 2021.

FOUNDATIONS OF LAW

Yo

In accordance with the powers that article 58.2 of the RGPD, grants to each authority of control and according to the provisions of articles 47 and 48.1 of Organic Law 3/2018, of December 5, Protection of Personal Data and guarantee of rights (hereinafter, LOPDGDD), is competent to initiate and resolve this procedure the Director of the Spanish Data Protection Agency.

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3/6

Likewise, article 63.2 of the LOPDGDD determines that: "The procedures processed by the Spanish Agency for Data Protection will be governed by the provisions in 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

Article 5.1 c) RGD provides that personal data will be "adequate, relevant and limited to what is necessary in relation to the purposes for which they are processed ("data minimization").

It should be remembered that individuals are responsible for ensuring that the systems installed comply with current legislation.

The cameras must be oriented towards the particular space, avoiding intimidating neighboring neighbors with this type of device, as well as control transit areas of them without just cause.

On the part of individuals, it is not possible to install imaging devices of public space, outside the cases allowed in the regulations, as this is exclusive jurisdiction of the State Security Forces and Bodies.

The treatment of images through a video surveillance system, to be

In accordance with current regulations, it must meet 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.

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.

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4/6

- 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.

- 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.

III

In the present case, it is appropriate to analyze the presumed illegality of a system of video surveillance located at ***ADDRESS.1.

The proven facts show the existence of a system of video surveillance that, according to the statements made by the claimed party, has never been operational, therefore not treating any image, and that it has already been unmounted.

In this regard, it should be noted that, in accordance with the provisions of article 28.7 of the LPACAP “The interested parties will be responsible for the veracity of the documents that present”.

The principle of the right to the presumption of innocence, recognized as a right

fundamental subjective in article 24 of the Spanish Constitution, prevents imposing an administrative sanction when proof of accrediting charge of the facts that motivate the imputation or of the intervention in the themselves of the alleged offender and applying the principle "in dubio pro reo" in case of doubt regarding a concrete and determined fact, which obliges in any case to resolve said doubt in the most favorable way for the interested party.

The aforementioned right to the presumption of innocence is also included in a expressed in article 53.2.b) of the LPACAP, which establishes that:

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5/6

"two. In addition to the rights provided for in the previous section, in the case of administrative procedures of a punitive nature, the alleged responsible will have the following rights:

[...]b) To the presumption of non-existence of administrative responsibility while the contrary is proven."

In relation to this principle, the Constitutional Court in its Judgment 76/1990, of 26 of April, considers that the right to the presumption of innocence entails: "that the sanction is based on acts or means of proof of charge or incriminating the reproached conduct; that the burden of proof corresponds to the person who accuses, without no one is obliged to prove their own innocence; and that any insufficiency in the result of the tests carried out, freely valued by the sanctioning body, must be translated into an acquittal pronouncement."

Based on all of the above, it can be concluded that it has not been proven that the facts

object of this procedure constitute an administrative infraction in the matter at hand. Well, on the one hand, it has been found that the video surveillance in question that did not capture images of identified natural persons or identifiable, thus not existing treatment of personal data; and on the other, this system has been dismantled.

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: ORDER the FILE of this procedure as there is no accredited the commission of the administrative infraction object of claim.

SECOND: NOTIFY this resolution to 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

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.

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6/6

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-](https://sedeagpd.gob.es/sede-electronica-web/)

[web/](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

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