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National Data Protection Commission

OPINION/2022/18

I. Order

1. By order of the Assistant Secretary of State and Internal Administration, on December 3, 2021, an opinion was requested from the National Data Protection Commission (CNPD) on the request for authorization to install and use a video surveillance system in the city do Porto, submitted by the Public Security Police (PSP).

2. The request was submitted under the terms of paragraph 2 of article 3 of Law no. 1/2005, of 10 January, amended and republished by Law no. 9/2012, of 23 February, which regulates the use of video cameras by security forces and services in public places of common use, for capturing and recording images and sound and their subsequent processing.

3. The request is accompanied by a document containing the grounds for the request and the system's technical information, hereinafter referred to as "Rationale", as well as the data protection impact assessment (AIPD).

II. appreciation

i. Object of the opinion to be issued pursuant to article 5 of Law No. 95/2021, of 29 December

4. Although the request was made under Law No. 1/2005, of 10 January, as, in the meantime, this was revoked by Law No. 95/2021, of 29 December, which regulates the use and access by security forces and services and by the National Emergency and Civil Protection Authority to video surveillance systems for capturing, recording and processing image and sound (hereinafter, Law No. 95/2021), the CNPD appreciates the present treatment of personal data under the new legal regime.

5. Thus, under the terms of paragraph 3 of article 5 of Law no. 95/2021, the opinion of the CNPD is limited to the pronouncement on the compliance of the request with the rules regarding the security of the processing of the data collected and with the provisions of paragraphs 4 to 6 of article 4 and articles 16, 18 to 20 and 22 of the same legal instrument.

6. In accordance with the provisions of these articles, the CNPD's opinion is also subject to respect for the prohibition of installation and use of fixed or portable cameras in areas that, despite being located in public places, are, by their nature,

intended to be used in guarding and also the use of video cameras when the capture of images and sounds covers the interior of a house or inhabited building or its dependence or of hotels and similar establishments, and when this capture affects, directly and immediately, the sphere the reserve of intimate and private life.

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7. The collection and subsequent processing of personal data is also subject to the CNPD's opinion, especially when carried out through an analytical management system of the captured data, by application of technical criteria, as well as respect for the conditions and limits of conservation of the recordings.

8. The CNPD must also verify that all persons appearing in recordings obtained in accordance with the aforementioned law are guaranteed the rights of information, access and elimination, with the exceptions provided for by law.

ii. The purposes of the treatment resulting from video surveillance in the city of Porto

9. Notwithstanding that, under the terms of the powers defined in Law no. 95/2021, it is not up to the CNPD to pronounce on the proportionality of the use of video surveillance systems in public places of common use, this competence already exists when cameras installed in areas that, by their nature, are intended to be used as guards, or when they capture images and sound from inside the inhabited house or building or its dependence or from hotels and similar establishments, or when the capture of images or sound affects, in a direct and immediate way, the sphere of the reserve of intimate and private life (cf. paragraphs 4 to 6 of article 4 of Law No. 95/2021).

10. This is a data processing resulting from the installation and use of 79 fixed cameras in the city of Porto, more specifically «in the main streets of downtown Porto» (cf. Annex A of the Justification), based on the index crime in that area (although the

elements presented show a decrease in the period considered).

11. As stated, the processing of personal data aims to protect people and goods, public or publicly accessible, and to prevent the practice of acts qualified by law as crimes, in places where there is a reasonable risk of its occurrence, thus corresponding to the purposes set out in paragraph 1(d) of article 3 of Law no. 95/2021 (cf. pages 3-4 of the Grounds).

12. It is also declared that “[t]he cameras that will be installed will only record images, not having any capture/recording of sound in this system” (cf. page 4 of the Justification and Annex B, where, regarding the characteristics of the equipment, the measure adopted to guarantee that there is no sound capture is specified).

13. The areas where the cameras will be installed, in the downtown area, include buildings intended for housing, as well as hotel units and buildings with similar purposes (cf. Annex A of the Justification).

14. In this regard, it is stated in the application that “[...] all cameras will have masks/filters in all buildings and areas in order to guarantee the privacy of people living in areas directly covered by the lens.

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of the cameras», specifying that «dazzling masks» will be installed «[...] in all areas that do not correspond to public roads, building windows above the public road. Which remain unchanged during zoom operations” (cf. Annex B of the Justification). In the IAPD accompanying the request, it is added that “[when the mere orientation of the cameras is not sufficient to guarantee that private areas and the bathing area are not filmed, digital recording blocking zones will be created through the programming of the camera's own software’.

15. Notwithstanding the foregoing, the images presented in Annex A of the Justification, which identify the location of the cameras, as well as the probable angles of the cameras, do not allow an accurate assessment of the planned application of the aforementioned masks, impairing the conclusion on the respect for the limits defined in paragraphs 4 to 6 of article 5 of Law no. 95/2021.

15. In fact, despite the fact that the resolution of the frames does not allow assessing whether the application of the masks -

which correspond, in the frames, to the blurring of the image - covers all the windows and balconies of the buildings, considering the elements contained in Annexes A and B it appears that the controller does not intend to apply masks to building doors. However, privacy does not have to be safeguarded only inside the house, but also when accessing it (because information on who is received or with whom one enters the house itself is, directly, information relating to private life and which deserves reservation), This is why it is understood that the areas covered by the placement of masks have to be reviewed, in order to ensure compliance with the provisions not only of paragraph 5 but also of paragraph 6 of article 5 of Law no. 95/2021.

17. Furthermore, it is recalled that Article 5(5) of the aforementioned law now requires that privacy be respected not only in residential buildings, but also 'in hotels and similar establishments', so that in all windows and doors of buildings intended for housing, hotels or similar purposes must be blinded.

18. In short, the CNPD recommends reviewing the areas to be subject to the application of obfuscation masks, in accordance with the provisions of paragraphs 5 and 6 of article 5 of Law No. 95/2021, in order to to cover the windows and doors of buildings intended for housing and for hotel or similar activity, under penalty of affecting the privacy of private life and of directly affecting the reservation of private life.

iii. The use of artificial intelligence to analyze personal data in real time -"data analytics"

19. It is also intended, according to the Justification accompanying the request, the analysis of images using Artificial Intelligence technology. Indeed, in Annex B of the Justification, when

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present the technical characteristics of the equipment is briefly mentioned: «Video Analítics: image processing for automatic

alerts, configurable by the system operators, but without facial recognition or automatic reading capability (criteria defined in Annex F, point 13)».

20. However, what is described in point 13 of Annex F does not correspond to criteria for analyzing personal data, but rather to functionalities of the software to be used.

21. In fact, in point a) of point 13 of Annex F it is stated explicitly that the «definition of criteria or analysis standards» will be the responsibility of the «responsible for the processing and conservation of data from the Porto video surveillance system» - being certain that the PSP is responsible for the processing for the purposes of Law no. completely omitted as to the criteria for the use of this technology.

22. It is true, however, that Article 16 of Law No 95/2021 admits that, '[for the purposes set out in Article 3, the processing of data may be based on an analytical management system of the captured data, by application of technical criteria, according to the purposes for which the systems are intended]'. However, it should be noted that, as stated in paragraph 2 of the same article, "[for the purposes of the provisions of the previous number, the capture and processing of biometric data is not allowed."

23. These criteria - which the national legislator called "technical" - have significant relevance in assessing the proportionality of this specific operation of processing personal data, as they are likely to have an impact on citizens' rights, freedoms and guarantees. It should, therefore, be subject to a specific consideration of its suitability and necessity in view of the purposes specifically aimed at with its use, by the person who defines them (the controller), as well as by the body that, in the procedure authorizing authority, exercises the authority to authorize the processing and by the body with explicit advisory competence in this matter (the CNPD).

24. It is incumbent upon the CNPD to issue an opinion on the concrete application of the technology provided for in article 16 of Law No. 95/2021, under the terms of paragraph 3 of article 5 of the same diploma, a pronouncement that is essential for the the Government member with authorizing competence can assess the proportionality of the processing of personal data resulting from the use of the video surveillance system and, therefore, also from this specific processing operation, in accordance with the provisions of paragraphs 1 to 3 of article 4 95/2021, for this purpose, it would be essential to identify and explain (reason) the criteria that will guide the application of the functionalities described in point 13 of Annex F. This is not the case.

25. However, in the aforementioned point 13 of Annex F, the specific purpose of the use of technology is only stated 'the prevention of: general crime, accentuated in crimes against persons and property; and gives

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violent and serious crime", and two safeguards or limits are established: "system operators do not have the capacity to define or change the criteria or standards of analysis" and "under no circumstances can criteria be defined/authorized that can define a profile that leads to discrimination or that violates what is defined in article 6 of Law No. 59/2019 of 8 August».

26. Simply, such safeguards are not sufficient to ensure that the transaction does not involve, for example, the processing of biometric data (prohibited directly by paragraph 2 of article 16 of Law No. 95/2021), being certain that the fact of declaring that the technology 'does not have facial recognition or automatic reading capability' (cf. Annex B) does not mean or does not guarantee that other biometric data will not be processed.

27. In short, it is essential to present the criteria for analyzing the data, otherwise it will not be possible to assess whether this treatment respects the different limits and conditions provided for by law and the Constitution of the Portuguese Republic. It is also essential that the source code, which will be used in this system, be auditable, otherwise the function and supervisory powers legally assigned to the CNPD will be deprived.

28. Thus, given the omission, in the request, in the Grounds and in the AIPD, of identifying the criteria underlying the use of the data analytics management system, the CNPD is unable to verify whether the legal and constitutional conditions and limits to this use, nor does the body with authorizing competence have sufficient elements to assess its proportionality. The CNPD recommends, for all these reasons, that this use is not, for the time being, subject to authorization.

iv. Video surveillance system security

29. From the point of view of the security of the video surveillance system, aspects that are not addressed are highlighted and reinforcement measures are recommended to address some of the system's shortcomings.

30. Starting with the physical installation of the system, although the height at which the cameras will be placed and other

aspects related to their safety are mentioned, it is not specified where the telecommunications cabinets with the switch and PoE power supply are expected to be located { power on ethernet). The CNPD is therefore limited to recommending that the solution to be adopted includes intrusion alarms also in the communication cabinets where the cameras will be connected, it being essential that they are not located on the floor or at a height that makes them easily accessible. and that, preferably, all cables are underground.

31. Annex G refers to redundancy and high availability mechanisms, specifying in Annex B that there will be a dedicated rack to support the infrastructure of several systems, including backup. Gives

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information provided seems to result that the backup infrastructure will be in the same physical location as the main infrastructure, which, if confirmed, does not seem to be an adequate solution.

32. Although the availability of data in relation to storage failures is foreseen, via backup storage, there is no explicit provision for data recovery in the event of accidental deletion. It is recommended that the backup system ensure data availability within the defined time window, which is 30 days.

33. As for the cameras, they are described in a generic way, in Annex B, and the protocols with which the cameras are compatible are not indicated. In view of this omission, the CNPD is limited to recommending the deactivation of all protocols that are not essential for the functioning of the system.

34. As for the cameras, it is also stated that they have “a high level of security, with 3-level passwords for accessing the system” (cf. Annex B). The CNPD recalls that, if the default password that comes from the factory is not changed, the system is compromised from the beginning and recommends the adoption of a password management policy in the chambers, and a

single password should not be used for all equipment. .

35. The communication and data processing process is described, indicating two locations for viewing the images: the PSP viewing room, located in the Porto Fire Brigade Battalion, and the Porto Command and Control Center of the Metropolitan Command of PSP Porto. It is important to highlight here that it is now declared to ensure «the total separation of data for the CGI [Integrated Management Center] and its distribution in different physical spaces, both at the logical and physical level of networks and services», stating that the entire system will be operated exclusively by PSP police officers (cf. Annex B) and access to the aforementioned PSP viewing room is restricted to police officers duly accredited for the purpose (cf. Annex F). Restricted access is also declared with regard to the location where the Porto Command and Control Center's viewing screens are installed, defining for both locations the indispensability of authorization and monitoring of non-accredited persons.

36. The CNPD notes as very positive the autonomy, within the Integrated Management Center, of the place for viewing the images, as well as of the other equipment of this video surveillance system, and the planned measures aimed at guaranteeing restricted access to accredited agents of the PSP .

37. Still in relation to security measures, two notes: the first, to recommend that the authentication mechanisms - access to the viewing room and access to the system - have a personal and non-transferable character (e.g., the two authentication factors must be unique, for each PSP agent); the second, to underline that the extraction of images must be a privileged access functionality, therefore, not recognized by all operators with permission to view the images.

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38. We take advantage of the previous reference to highlight that, with regard to the extraction of images, in addition to what is specified in point 11 of Annex F, the CNPD recommends determining that, in the context of the collection of images, mechanisms that enable the export in digital format, digitally signed, that attest to the veracity of its content are contemplated. Encryption mechanisms must also be mentioned if the export is intended to be protected with an access password or other security factor.

v. Auditability of the processing of personal data

39. Since the registration of all interventions carried out at the level of local systems is foreseen, regulating the conditions for executing the maintenance of the system, under direct supervision and monitoring by the PSP, as responsible for the processing of personal data, the CNPD is limited to reinforce the importance of support services, support and maintenance services for the video surveillance system being provided physically on site, remote access not being admissible as it may compromise security.

40. However, for the purpose of auditing the processing of personal data, it is still essential to define the time for keeping records of interventions and operations in the video surveillance system. Thus, the CNPD recommends the provision of a record retention policy for audit purposes, defining the period of time until its disposal, as well as the forecast of key indicators for audit reports in the context of security monitoring. accesses and operations performed.

III. Conclusion

41. The CNPD, with the arguments set out above and under the competence conferred by Law no. No. 95/2021:

The. Emphasizes that obfuscation masks to guarantee privacy must be applied to all windows and doors - and not just windows - of buildings intended for housing and hotel or similar activities, under penalty of violation of paragraphs 5 and 6 of article 5 of that legal diploma;

B. Recommends not authorizing the use of the data analytics management system, due to the impossibility of verifying compliance with the legal and constitutional conditions and limits to its use, as well as evaluating the proportionality of this use, in view of the omission (in the request and in the elements that instruct it, particularly in the assessment of the impact on data protection) to identify the respective underlying criteria; and

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ç. It also recommends the adoption of measures capable of guaranteeing the security of the system and the auditability of the processing of personal data, as indicated above, in points 30 to 40.

Approved at the March 2, 2022 meeting

Filipa Calvão (President)