

Published: 12/12/2022.

In response to numerous inquiries regarding the application of the General Data Protection Regulation and the Law on the Implementation of the General Data Protection Regulation (OG 42/18) in the context of video surveillance of common parts of the building where common waste containers are located for the purpose of processing personal data of tenants and third parties who dispose of waste in common containers without authorization, and in order to act in accordance with the obligations prescribed by the Decision of the City of Zagreb on the method of providing public municipal waste collection services in the area of the City of Zagreb (Official Gazette of the City of Zagreb No. 7 of February 28, 2022), the Agency for the Protection of Personal Data declares as follows:

Regulation (EU) 2016/679 of the European Parliament and of the Council of April 27, 2016 on the protection of individuals with regard to the processing of personal data and on the free movement of such data - The General Data Protection Regulation is fully binding and directly applicable in the Republic of Croatia from 25 May 2018. The General Data Protection Regulation foresees the specifications or limitations of its rules in the law of the Member States, and Member States may, to the extent necessary for compliance and in order for the national provisions to be comprehensible to the persons to whom they apply, include elements of the Regulation in their national law .

Following the above, on April 27, 2018, the Republic of Croatia adopted the Law on the Implementation of the General Regulation on Data Protection, which entered into force on May 25, 2018 (Official Gazette 42/2018, hereinafter: the Law). In the Republic of Croatia, the Law stipulates in more detail the conditions for the processing of personal data through the establishment of a video surveillance system.

Processing of personal data through the video surveillance system in accordance with the Law

First of all, it is necessary to clarify that video surveillance in the sense of Article 25 paragraph 1 of the Act refers to the collection and further processing of personal data, which includes the creation of a recording that forms or is intended to form part of the storage system.

In addition, it should be noted that the provisions of Article 25, Paragraph 2 of the Act prescribe the following: "Unless otherwise specified by another law, the provisions of this Act shall apply to the processing of personal data through the video surveillance system.", which points to its secondary application in the case of personal data processing through video surveillance systems. Furthermore, the provision of Article 26, paragraph 1 of the Act stipulates that the processing of personal

data through video surveillance can only be carried out for a purpose that is necessary and justified for the protection of persons and property, if the interests of the respondents do not prevail contrary to data processing through video surveillance. In this sense, we refer you to Guidelines 3/2019 of the European Data Protection Board on the processing of personal data via video devices, which elaborate in more detail the criteria for assessing the legality and necessity of setting up a video surveillance system.

Since in this particular case it is about video surveillance of residential buildings, the provisions of Article 31 of the Act are additionally applied. Namely, the provision of Article 31 stipulates that the establishment of video surveillance in residential or business-residential buildings requires the consent of the co-owners, who make up at least 2/3 of the co-owned parts. In addition, paragraph 2 of the same article stipulates that video surveillance can only include access to entrances and exits from residential buildings and common rooms in a residential building.

Pursuant to the provisions of Article 23, paragraph 1 of the Decision on the method of providing the public municipal waste collection service in the area of the City of Zagreb (Official Gazette of the City of Zagreb No. 7 of February 28, 2022; hereinafter: Decision of the City of Zagreb), a service user who does not fulfill his obligations or fulfills them improperly, he is obliged to pay a contractual penalty in an amount commensurate with the costs of removing the consequences of the actions described in the article in question, and a maximum of HRK 500.00 for users of the service from the category of household users, i.e. a maximum of HRK 1000.00 for users of the service from the category of user who is not a household, and for the procedures prescribed by the provision in question.

Pursuant to the provisions of Article 23, paragraph 4 of the Decision of the City of Zagreb, when several service users use a common container, the resulting obligation to pay a contractual penalty in the event that the responsibility of an individual user is not determined is borne by all service users who use the common container in accordance with the shares in the use of the container.

As a result of the above, the processing of personal data through the video surveillance system in the common areas of the residential building where the waste containers are located could be considered as processing of personal data for a purpose that is necessary and justified for the protection of the property of the co-owners of the residential building in accordance with the provisions of Article 26, paragraph 1 of the Law.

In this context, we emphasize that the installation of a video surveillance system does not require the collection of additional

consent, but the existence of the necessary consent of the co-owners and legitimate interest as a legal basis for the installation of such a system, which the co-owners are obliged to prove.

Legitimate interest can be proven by conducting a legitimate interest test (proportionality test), and you can find a copy of the form that guides you through the procedure here: <https://azop.hr/obrasci-predlosci/>

In addition, we note that in accordance with the provisions of Articles 28 and 29 of the Act, the video surveillance system must be protected from access by unauthorized persons, and responsible persons who have the right to access personal data may not use recordings contrary to the purpose established in the provisions of Article 26 of the Act.

Also, we point out that in accordance with the provisions of Article 27 of the Act, the processing manager or the processor is obliged to mark that the object or individual room in it (in this particular case, the common room where the waste containers are located) and the external surface of the object are under video surveillance, and the mark should be visible at the latest when entering the recording perimeter.

The notification should contain all relevant information in accordance with Article 13 of the General Regulation on Data Protection, and in particular a simple and comprehensible image along with the text providing the respondents with the following information; that the area is under video surveillance, information about the data controller and contact information through which the respondent can exercise his rights.

In particular, the video surveillance notice should contain the following information:

that the space is under video surveillance

information about the data controller

contact information through which the respondent can exercise his rights

purpose of processing

legal basis

the rights of the respondents and

information that complete information is available on the website or in another appropriate place within the Privacy Policy

We emphasize that when setting up a video surveillance system, it is necessary to take care that it does not affect the public area, given that Article 32 of the Act stipulates that the monitoring of public areas via video surveillance is allowed only by public authorities, legal entities with public powers and legal entities that perform public service, and only if it is prescribed by

law, if it is necessary for the execution of tasks and tasks of public authorities or for the protection of people's health and property.