

938-0419

Procedure No.: PS/00150/2019

RESOLUTION OF PUNISHMENT PROCEDURE

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

FACTS

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

On March 11, 2019, he filed a claim with the Spanish Agency for

Data Protection, motivated by the processing of data carried out through

cameras of a video surveillance system whose owner is A.A.A. with NIF ***NIF.1 (in
forward the one claimed) installed in ***ADDRESS.1.

Inspection Act is sent (Barcelona City Council) with number LA-71915

where the Agents of the authority displaced to the property located in

***ADDRESS.1 proceed to verify various complaints originating from it, by

be a property where presumably activities of a nature are carried out
sexual.

Documentary evidence is provided (Photographs Annex I) that allow verifying the
installation of video-surveillance cameras inside the rooms of the
property, without just cause.

SECOND: In view of the reported facts, in accordance with the evidence

that is available at this procedural moment, the Data Inspection of this

Spanish Agency for Data Protection considers that the processing of personal data
personal information that is carried out by the accused through the cameras to which
refers to the complaint, does not meet the conditions imposed by the regulations on
data protection, so it is appropriate to open this procedure

sanctioning

THIRD: On April 8, 2019, the Director of the Spanish Agency for

Data Protection agreed to initiate a sanctioning procedure against the claimant, for the alleged infringement of Article 5.1c) of the RGPD, typified in Article 83.5 of the GDPR.

FOURTH: When the database of this organization was consulted on 07/16/19, notes that no allegation has been made to the "facts" transferred by this Agency.

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

In this proceeding, the following are considered proven facts:

FACTS

First. On 03/11/19, this Agency received a claim from the City Council

of Barcelona, by means of which the following is transferred as the main fact:

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“Installation of video-surveillance cameras inside a building where sexual activities are carried out, lacking an informative poster” (Denunciation Act attached).

Second. It is identified as the main responsible for the installation of the system

Mr. A.A.A., with DNI ***NIF.1.

Third. Documentary evidence is provided (Photographs Annex I) that allow verifying the installation of two video-surveillance cameras inside the building, without cause justified.

-Camera 1 installed at the entrance of the property, so that it captures the area

corridor, controlling the entrances/exits of the building.

-Camera 2, located in the dining area, viewing an area of recreation of the employees of the property.

Fourth. There is no informative poster in the denounced dwelling, nor has anyone been informed the employees of the same about their rights within the framework of the data protection of personal character.

Fifth. The establishment does not have a form available to customers who may require it to exercise their rights within the framework of data protection.

Sixth. The defendant lacks any license to carry out activities in the property, lacking civil liability insurance.

Seventh. According to a statement by the Acting Force, the property is intended for the practice of sexual activities, counting from a total of three rooms (Act LA71915-Barcelona City Council).

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 art. 47 of the Organic Law 3/2018, of 5 December, of Protection of Personal Data and guarantee of digital rights (in hereinafter LOPDGDD), the Director of the Spanish Agency for Data Protection is competent to initiate and resolve this procedure.

II

In the present case, it is known as a result of the Minutes (complaint) transferred to this body by the City Council (Barcelona) on 03/11/19 of the existence of a video-surveillance system inside a private home, being the same installed inside the property, where the employees of the same develop their professional activity.

The conduct described involves an infringement of the right to privacy of the housemaids, who are permanently controlled in spaces reserved without any justified cause.

With this type of device, "personal data is processed" by being able to obtain the images of the employees, which also does not show that they have been informed in any legal way, affecting areas reserved for your privacy as evidenced by the fact that the cameras are inside the rooms of the property.

Article 4 of the GDPR defines "personal data" as any information about an identified or identifiable natural person ("the data subject"). and will be considered identifiable natural person any person whose identity can be determined, directly or indirectly, in particular by means of an identifier, such as a name, an identification number, location data, an online identifier, or one or various elements of the physical, physiological, genetic, psychic, economic, cultural or social status of that person.

Article 5 section 1 letter c) RGPD provides: "Personal data they will be:

c) adequate, relevant and limited to what is necessary in relation to the purposes for which they are processed ("data minimization").

Video surveillance cameras are designed to control the security of the property (vgr. against possible theft), but they are not designed to control the employees, to the point of exercising control over aspects of their personal privacy.

Without prejudice to the "type" of activity carried out in the property, it does not admit discussion the recognition and protection of the fundamental rights of employees of the property, as is the case of their personal image and respect for the

leisure and/or recreation areas.

Article 18 CE (1978) provides: "The right to honor, to personal and family intimacy and in one's own image".

So that the conduct, apart from being reprehensible from the point of view ethical, deserves an analysis from the point of view of administrative law sanctioning, by affecting the personal data of the same, without just cause and without no legal information about it.

The evidence provided by the State Security Forces and Bodies displaced to the scene of the "facts" are overwhelming, in the sense that they point to carrying out acts of sexual exploitation on the women of the home, not counting with any activity license and affecting various fundamental rights, among them the protection of personal data, by exercising control of their image through the installed system.

The art. 77 section 5 of Law 39/2015 (October 1) provides: "The documents formalized by officials who are recognized as authorities and in

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which, observing the corresponding legal requirements, collect the facts verified by those will prove them unless proven otherwise".

There is no evidence that there is an informative poster at the entrance of the property informing that it is a video-monitored area, so that the capture of the inputs/outputs of it.

Nor have the "employees" been informed of the purpose of the treatment of your personal data, exercising control over them and

of people who enter the property, without just cause.

III

Article 58.1.a) and e) and 2.i) of the RGPD indicates:

1 Each supervisory authority will have all investigative powers

listed below:

a) order the person in charge and the person in charge of the treatment and, where appropriate, the representative of the person in charge or the person in charge, who provide any information

that it requires for the performance of its functions;

e) obtain from the person in charge and the person in charge of the treatment access to all the data personal and to all the information necessary for the exercise of their functions;

2. Each supervisory authority will have all of the following corrective powers

listed below:

d) order the person in charge or in charge of the treatment that the operations of treatment comply with the provisions of this Regulation, where appropriate, in a certain way and within a specified period;

i) impose an administrative fine in accordance with article 83, in addition to or in instead of the measures mentioned in this paragraph, depending on the circumstances of each particular case; (...)”

IV

In accordance with the evidence available in this

sanctioning procedure, it is considered that the accused has proceeded to place

various cameras (two according to documentary evidence-Report Complaint Annex I) inside

of the property, with a purpose of excessive control, in spaces prohibited for this

type of devices.

Through them you can control the activity developed in the

property, controlling the employees of the same, who are video-monitored throughout

time, without respecting their rights in the matter.

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Through this type of device you cannot deprive of rights fundamental to the "employees" who carry out an activity in the property, being controlled without just cause at their entrances/exits and in the free relaxation inside it.

The known facts constitute an infraction, attributable to the claimed, for violation of article 5 RGPD, previously outlined.

Article 83 section 5 of the RGPD provides the following:

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

a) the basic principles for the treatment, including the conditions for the consent under articles 5, 6, 7 and 9;

When motivating the initial sanction, the following is taken into account:

☐ The installation of the cameras is in a reserved area (inside the property) with a clear purpose of controlling the employees who carry out their activity inside the property – art. 83.2 a) GDPR--.

☐ It is worth talking about intentionality in obtaining the images, since

It does not require further explanation that this type of device is not designed for a control of reserved areas, without information any has been provided to the employees of the home—art. 83.2

b) GDPR--.

It is taken into account when grading the sanction, that it is an individual, whose

level of income has not been able to be specified exactly, as well as the absence of previous administrative infraction in the matter verified by this Agency, Although the conduct described is considered serious enough to attempt against essential rights of female employees, so that a sanction of a without prejudice to immediately accrediting the adoption of those measures that suppose an immediate cessation of the described infraction (eg withdrawal of the camera/s).

This body assumes that the accused may have images (personal data) in the recordings obtained from inside the property, which affect to rights of third parties, who have not given their consent for it, nor have they been informed of the purpose of the treatment, which justifies that together with the sanction economic, the immediate elimination of the same must be accredited.

The foregoing justifies ordering the imposition of an economic sanction encrypted in the amount of €20,000 (Twenty Thousand Euros), as they are devices that affect essentially to the privacy of the employees who access the interior of the same, disproportionately, with a clear purpose of surveillance, regardless of affecting

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areas reserved for the privacy of these and without any information to the regard.

IV

Among the corrective powers contemplated in article 58 of the RGPD, in its section 2 d) it is established that each control authority may “order the person in charge or in charge of the treatment that the treatment operations comply with the

provisions of this Regulation, where appropriate, in a certain way and within a specified period...”. The imposition of this measure is compatible with the sanction consisting of an administrative fine, as provided in art. 83.2 of the GDPR.

Article 72.1 a) LOPDGDD (LO 3/2018, December 5) provides the following, qualifies as very serious, the following behavior

“The processing of personal data violating the principles and guarantees established in article 5 of Regulation (EU) 2016/679.

The foregoing, without prejudice to the fact that, as a result of this procedure, requires the immediate removal of the device(s) in question, providing evidence documentary (photograph with date and time) that accredits such extreme before this organism, based on the provisions of art. 58.2 d) RGPD, as well as any other measure that is deemed appropriate to adapt the irregular situation to the regulations for the protection of personal information.

Therefore, in accordance with the applicable legislation and having assessed the criteria for graduation of sanctions whose existence has been proven,

the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: IMPOSE Don A.A.A., with NIF ***NIF.1, for an infraction of article 5.1 c) of the RGPD, typified in Article 83.5 a) of the RGPD, a fine of €20,000 (Twenty Thousand Euros).

SECOND: REQUIRE the immediate removal of any type of safety device(s) recording of the interior of the property, having to reliably prove before this Agency the measure adopted, as well as proceed to the elimination of any image that in his case he could keep in the recordings made, granting him the period of ONE MONTH from the day following the notification of this act administrative.

THIRD: NOTIFY this resolution to Don A.A.A.

FOURTH: Warn the sanctioned party that he must make the imposed sanction effective once

Once this resolution is enforceable, in accordance with the provisions of the

art. 98.1.b) of Law 39/2015, of October 1, on Administrative Procedure

Common Public Administrations (hereinafter LPACAP), within the payment term

voluntary established in art. 68 of the General Collection Regulations, approved

by Royal Decree 939/2005, of July 29, in relation to art. 62 of Law 58/2003,

of December 17, through its entry, indicating the NIF of the sanctioned and the number

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of procedure that appears in the heading of this document, in the account

restricted number ES00 0000 0000 0000 0000 0000, opened on behalf of the Agency

Spanish Data Protection at Banco CAIXABANK, S.A. Otherwise,

it will be collected during the executive period.

Received the notification and once executed, if the date of execution is

between the 1st and 15th of each month, both inclusive, the term to make the payment

voluntary will be until the 20th day of the following month or immediately after, and if

between the 16th and last day of each month, both inclusive, the payment term

It will be until the 5th of the second following month or immediately after.

In accordance with the provisions of article 50 of the LOPDPGDD, 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

LOPDPGDD, 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.

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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