

Procedure No.: PS/00384/2018

RESOLUTION OF PUNISHMENT PROCEDURE

Of the procedure instructed by the Spanish Agency for Data Protection before the entity THE FOX'S CAVE, by virtue of a claim filed by the CITY COUNCIL DE BILBAO - SECURITY AREA (hereinafter, the claimant) and based on the following:

BACKGROUND

FIRST: The claim filed by the claimant has an entry dated 12

June 2018 at the Spanish Data Protection Agency.

The claim is directed against THE FOX'S CAVE by verifying the members of the Security Forces and Bodies the presence of video-surveillance devices with presumed orientation towards the area of public roads, which may affect the rights of third parties without just cause.

SECOND: On 06/21/28, the claim is TRANSFERRED to the denounced entity, so that it alleges what in law it deems appropriate in relation to the "facts" complained of.

FOURTH: On 08/29/18 a letter is received from the entity denounced, giving response to the request request made by this body, in the following terms:

"In reference to the petition required regarding compliance with the Law of Data Protection I am attaching documentation. In it you can see the location of the four cameras available to the Local The Fox,s Cave, making special mention that the chambers named with numbers 3 and 4 do not they record in memory support, so they CANNOT be reproduced".

FOURTH: On December 3, 2018, the Director of the Spanish Agency for

Data Protection agreed to initiate a sanctioning procedure against the claimant, for the alleged infringement of article 6 of the RGPD, by having at least one device that obtains images of public/private space disproportionately, of in accordance with the provisions of articles 582 and 83.5 of the RGPD.

In view of everything that has been done, by the Spanish Protection Agency of Data in this procedure the following are considered proven facts,

PROVEN FACTS

FIRST: On 06/12/2018, this body received a claim sent by Bilbao City Council (Security Area) through which it transfers as main fact is the following:

“that outside the premises there is a camera duly marked and

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focused on the door, in addition to a second camera in the peephole focusing directly to the street and therefore, to any person who passes in front of it on the sidewalk or the cars that circulate on the road” (folio nº 1).

The complaint is corroborated by members of the Forces and Corps of State Security displaced to the scene of the events.

SECOND: The availability of an informative poster is verified, although it is not can verify the location of the same, as the denounced party did not specify it.

THIRD: It is identified as the main person in charge of The Fox system,s Dig.

FOURTH: It is proven that the establishment denounced The Fox,s Cave

It has an electronic peephole, which obtains images of both public space, as a private space, without specifying the cause/reason for the installation of it.

FIFTH: It has been proven that the exterior camera, although it is partially pixelated, allows to obtain images of a fairly wide strip of public sidewalk.

SIXTH: The reported establishment does not have a form(s) available to customers, who may require access and/or cancellation of data.

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 resolve this procedure.

II

Article 6.1 of the RGPD (Legality of the treatment) establishes the specific assumptions under which the treatment of the personal data of the users is considered lawful. interested.

In this case, from the documentation contained in the procedure, the existence of a video surveillance system made up of two cameras, one oriented towards the access door to the establishment and another of the "peephole" type with presumed orientation towards the public highway.

The treatment of images in public places can only be carried out -in your case and prior compliance with the legally enforceable requirements-, by the Forces and Security Forces, unless the exception established in article 4.3 operates of Instruction 1/2006, of November 8, of this Agency, which establishes: "the

cameras and video cameras installed in private spaces will not be able to obtain

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images of public spaces unless it is essential for the purpose of surveillance that is intended, or is impossible to avoid because of the location of those. In any case, any unnecessary data processing should be avoided.

for the intended purpose”

III

By virtue of the provisions of article 58.2 RGPD, the Spanish Agency for Data Protection, as a control authority, has a set of corrective powers, among which is the power to impose fines, in the event of an infringement of the provisions of the RGPD.

“sanction any person responsible or in charge of the treatment with a warning when the treatment operations have violated the provisions of this Regulation” (art. 58.2 b) RGPD).

Without prejudice to the provisions of article 83.5, sections a) and b), of the RGPD, in its art. 58.2 b) establishes the possibility of sanctioning with a warning, in relation to what stated in 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 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.”

IV

In the present case, we proceed to examine the claim dated 06/12/18 by by means of which the Bilbao City Council transfers the "facts" confirmed by the members of the Security Forces and Bodies displaced to the establishment in question.

“that outside the premises there is a camera duly marked and focused on the door, in addition to a second camera in the peephole focusing directly to the street and therefore, to any person who passes in front of it on the sidewalk or the cars that circulate on the road” (folio nº 1).

Article 77 section 5 of Law 39/2015 (October 1) LPAC provides the

Next:

“The documents formalized by the officials who are recognized as condition of authority and in which, observing the legal requirements corresponding the facts verified by those are gathered will prove of these unless proven otherwise” (*bold belongs to this body).

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The denounced entity is aware of the "facts" transferred by this agency, providing documentary evidence (photographs No. 1 to 6) in order to distort

the accusation and exercise their right to defence.

The reported entity has the mandatory information poster (providing documentary evidence) although the place where it is located cannot be specified, not to make any written allegation by the accused party.

In relation to the electronic peephole, article 1 section 1 "in fine provides:

"The references contained in this Instruction to video cameras and cameras are shall also be understood to be made by any analogous technical means and, in general, by any system that allows the treatments provided for in it.

After analyzing the images provided, it is verified in the investigation phase that the cameras obtain images of both the sidewalk and the building in front of the establishment.

It should be remembered that with this type of device it is not possible to obtain images of the public sidewalk, even less video-monitor private spaces of third parties, without justified cause.

It does not correspond so little to this organism, to carry out an arduous task interpretation, so that the allegations of the accused party must be those necessary to certify that the installed system complies with current legislation.

The characteristics of the devices must be explained in detail installed, as well as the cause/reason for their presence, especially in the case of having an "electronic peephole" or similar device.

Likewise, it is recalled that an informative form(s) must be available to available to customers who may require it and be duly ordered in a folder available to the acting authority that may require it.

Nothing prevents the control of access to the establishment, for reasons of security of the same, although this does not justify the installation of a system disproportionate to the purpose pursued, which is unknown as there has been no

any allegation in this regard by the accused party.

Article 4 section 2 of Instruction 1/2008 (AEPD) provides the following:

“Only the installation of cameras or video cameras will be considered admissible.

when the purpose of surveillance cannot be obtained by other means that, without

require disproportionate efforts, are less intrusive to the privacy of the

people and for their right to the protection of personal data”.

The presence of interior cameras justifies the protection of the

establishment, without any apparent reason for the installation of a peephole

electronic, which obtains images of public space (vgr, cars are observed

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parked) and even with it you can see the balconies of the building

located opposite the premises.

The protection of the door of the establishment can also be achieved

with the placement of an exterior fence, which makes it safer against

hypothetical theft.

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Based on the foregoing, it should be noted that the evidence provided is not

sufficient to decree the File of the present procedure, given that no

explains in detail the cause/reason for the presence of an electronic peephole.

The photographic evidence provided allows us to observe that

images of public space and that private space of third parties can be observed

(vgr. balconies located in the opposite building).

Thus, although partially pixelated, images are still obtained

disproportionate spaces of public space, perhaps recommending a change of orientation of the outer camera.

The denounced party must therefore proceed to explain the cause/reason for the presence of an external peephole, proceeding in case it is not necessary to the removal of the same, providing a photograph (with date and time that proves such end).

You must prepare a standard form (being able to take as a reference the models posted on the website of this body www.agpd.es), of which will have several copies in a folder ordered for this purpose, available to customers and/or acting forces.

It must have the mandatory information poster in a visible area (easily verifiable) by this body, providing photography with sufficient perspective to be able to specify that it is in the access area to the establishment and in inside the premises.

The pixelation should be adjusted, in its case of the external camera, so that only the necessary adjacent space is captured at the entrance to the establishment or in its defect, remove the outer camera, counting for the protection of the establishment only with the inner chambers.

All actions carried out must be minimally explained and accompanied by the necessary tests, to be able to explain that the system adjusts to current regulations, taking into account that the examiner of the same is a impartial observer, who must be able to understand what is explained to him and, what is shows without a doubt.

Remember, finally, that there has been a regulatory change, being the Law currently in force, the new Organic Law 3/2018, of December 5, of Protection of Personal Data and guarantee of digital rights, for which it would be

recommendable to adapt the informative posters to it.

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For all these reasons, it is considered correct to order the warning of the denounced, having to proceed in the exposed terms to adjust the system to the current legislation, having to meet the requirements of this body as soon as be feasible.

Therefore, in accordance with the applicable legislation and after assessing the facts set forth and the evidence provided

the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: PROCEED to WARN the entity --THE FOX'S CAVE --al

consider that the installed system is disproportionate to its purpose, so you must proceed in the following terms:

-Withdrawal of the electronic peephole from the door, ceasing to obtain images of the public thoroughfare and/or private space of third party(ies), by not accrediting the cause/reason for the installation of it.

-Correction, where appropriate, of the pixelation of the external camera, so that limited to the minimum adjacent area, where appropriate, to the access to the establishment or relocation of it.

-Contribution of sufficient proof of the placement of the poster(s) in a visible area, with photo contribution with date and time.

-Availability of information form available to customers of the establishment and/or acting authority.

SECOND: NOTIFY this resolution to THE FOX'S CAVE entity and,
according to art. 77.2 of the RGD, INFORM the claimant about the result of the
claim.

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. 114.1 c) of
the LPACAP, 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.

Sea Spain Marti

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