

□ File No.: EXP202204047

RESOLUTION OF PUNISHMENT PROCEDURE

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

BACKGROUND

FIRST: On 03/30/2022, the CIVIL GUARD - ***POSITION.1 (hereinafter, the
denouncing party) submitted a double Report-Denunciation of 03/24/2022 for a possible
Non-compliance with the provisions of the data protection regulations
staff by the entity WATYANA 786, S. L. with NIF B02731016 (in
hereafter, the accused party).

The following is indicated in the referral document:

“It is observed in the reviewed establishment, verifying the existence of at least
least 4 video surveillance cameras inside the establishment. In turn it
Check that you do not have any type of information sign that it is a zone
video surveillance and that the images are viewed on a TV monitor and that according to
The employee explains to the Agents that his boss can view the images remotely
through a mobile application.

[...]

At the same time, what could be a hard drive is observed where they could be
storing these images (...).”

The complaining party attaches a Photographic Report with 6 images of the location
cameras, hard drive and Wi-Fi device.

SECOND: The denounced party was sent a letter indicating the obligations that
had in terms of data protection and video surveillance, resulting in notification of the
09/14/2021, after the submission of the report from the CIVIL GUARD-***PUERTO.1 by the

same facts.

THIRD: On 06/07/2022, the Director of the Spanish Protection Agency of Data agreed to initiate a sanctioning procedure against the claimed party, for the alleged infringement of article 13 of the RGPD, typified in article 83.5.b) of the GDPR.

FOURTH: On 06/10/2022 the claimed party is notified through electronically the agreement to open this sanctioning procedure and you will be grants a hearing period of TEN WORKING DAYS to formulate the allegations and present the evidence it deems appropriate, in accordance with the prescribed in articles 73 and 76 of Law 39/2015, of October 1, of the Common Administrative Procedure of Public Administrations (hereinafter, LPACAP).

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FIFTH: After the period granted for the formulation of allegations to the agreement to initiate the procedure, it has been verified that no allegation has been received any by the claimed party.

Article 64.2.f) of the LPACAP - provision of which the respondent was informed in the agreement to open the procedure - establishes that if no allegations within the stipulated period on the content of the initiation agreement, when it contains a precise statement about the imputed responsibility, may be considered a resolution proposal.

In the present case, the agreement to initiate the disciplinary proceedings determined the

facts in which the imputation was specified, the infraction of the RGPD attributed to the claimed and the sanction that could be imposed. Therefore, taking into account that the party complained against has made no objections to the agreement to initiate the file and In accordance with the provisions of article 64.2.f) of the LPACAP, the aforementioned agreement of beginning is considered in the present case resolution proposal.

SIXTH: The agreement to initiate the procedure agreed in the third point of the part dispositive "INCORPORATE to the disciplinary file, for the purposes of evidence, the claims submitted by claimants and the information and documentation obtained by the Subdirector General for Data Inspection in the phase of information prior to the agreement for admission to processing of the claim".

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

In this proceeding, the following are considered proven facts:

PROVEN FACTS

FIRST: Installation by the accused of at least 4 security cameras video surveillance inside your establishment, located at *** ADDRESS.1, without have the mandatory informative poster of the video-monitored area.

SECOND: The Spanish Agency for Data Protection has notified the claimed the agreement to open this sanctioning procedure, but has not presented allegations or evidence that contradicts the facts denounced.

FOUNDATIONS OF LAW

Yo

In accordance with the powers that article 58.2 of Regulation (EU) 2016/679 (General Data Protection Regulation, hereinafter RGPD), grants each control authority and as established in articles 47 and 48.1 of the Law Organic 3/2018, of December 5, on the Protection of Personal Data and guarantee of digital rights (hereinafter, LOPDGDD), is competent to initiate and resolve

this procedure the Director of the Spanish Data Protection Agency.

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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

In accordance with the definition of "personal data" offered by article 4.1 of the RGPD, the image of a natural person is personal data. Thus, in accordance with the article 1.2 of the RGPD, the image of a natural person and its protection is subject to said Regulation.

Article 12.1 of the RGPD states that: “1. The data controller will take the appropriate measures to provide the interested party with all the information indicated in the articles 13 and 14”. In this sense, section 7 of the aforementioned precept indicates that: “The information to be provided to data subjects under Articles 13 and 14 may be processed in combination with standardized icons that allow to provide in an easily visible, intelligible, and clearly legible manner an adequate vision of set of planned treatment.

In parallel, article 22 of the LOPDGDD includes the specific rules for the data processing for video surveillance purposes and states the following:

"1. Natural or legal persons, public or private, may carry out the treatment

ment of images through camera systems or video cameras with the purpose

to preserve the safety of people and property, as well as its facilities.

2. Images of public roads may only be captured to the extent that it is im-

dispensable for the purpose mentioned in the previous section.

However, it will be possible to capture public roads to a greater extent

when necessary to guarantee the security of assets or strategic installations.

services or infrastructures linked to transport, without in any case being able to

put the capturing of images of the interior of a private home.

3. The data will be deleted within a maximum period of one month from its collection, except

when they had to be kept to prove the commission of acts that attend to

have against the integrity of people, goods or facilities. In this case, the images

must be made available to the competent authority within a maximum period of

seventy-two hours since the existence of the recording became known.

tion.

The blocking obligation provided for in art.

article 32 of this organic law.

4. The duty of information provided for in article 12 of Regulation (EU) 2016/679 is

understood to be fulfilled by placing an informative device in a sufficient place

ciently visible identifying, at least, the existence of the treatment, the identity

of the person in charge and the possibility of exercising the rights provided for in articles 15

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to 22 of Regulation (EU) 2016/679. It may also be included in the device information

I attach a connection code or internet address to this information.

In any case, the person in charge of the treatment must keep available to the affected the information referred to in the aforementioned regulation.

5. Under article 2.2.c) of Regulation (EU) 2016/679, it is considered excluded of its scope of application the treatment by a natural person of images that are regrettably capture the interior of your own home.

This exclusion does not cover processing carried out by a private security entity. given that she had been hired to guard a home and had access to the images.

6. The processing of personal data from the images and sounds obtained nests through the use of cameras and video cameras by the Forces and Corps Security and by the competent bodies for surveillance and control in the centers penitentiaries and for the control, regulation, surveillance and discipline of traffic, will be governed by the legislation transposing Directive (EU) 2016/680, when the treatment for purposes of prevention, investigation, detection or prosecution of violations criminal offenses or the execution of criminal sanctions, including protection and prevention against threats to public safety. Apart from these assumptions, said treatment will be governed by its specific legislation and additionally by the Regulations to (EU) 2016/679 and this organic law.

7. What is regulated in this article is understood without prejudice to the provisions of the Law 5/2014, of April 4, on Private Security and its development provisions.

8. The treatment by the employer of data obtained through camera systems cameras or video cameras is subject to the provisions of article 89 of this organic law.

In order for the data controller to comply with the obligation imposed by the article 12 of the RGPD, article 22 of the LOPDGDD requires that, at least, the existence treatment, the identity of the person in charge and the possibility of exercising the rights

rights provided for in articles 15 to 22 of the RGPD, is contained in a device whose design and location must be such that the affected party has a clear view of the information information available on the processing of your personal data and on where and how find the detailed information. However, it should be noted that the rest of the questions tions contemplated in article 13 of the RGPD “must be kept available to those affected”, that is, in a place that can be easily accessed by the interested party. In accordance with article 13 of the RGPD, the information that must be provided by the responsible for the treatment when the personal data is obtained from the interested party is the next:

"1. When personal data relating to him is obtained from an interested party, the person in charge treatment at the time these are obtained, will provide you with all the information information indicated below:

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a) The identity and contact details of the person in charge and, where appropriate, of their representative. presenter;

b)

c)

the contact details of the data protection officer, if any;

the purposes of the treatment to which the personal data is destined and the legal basis ca of treatment;

d) when the treatment is based on article 6, paragraph 1, letter f), the interests legitimate of the person in charge or of a third party;

and)

the recipients or categories of recipients of the personal data, in

Their case;

f) where appropriate, the intention of the controller to transfer personal data to a third country or international organization and the existence or absence of a decision adequacy assessment by the Commission, or, in the case of transfers indicated in articles 46 or 47 or article 49, paragraph 1, second paragraph, reference lack of adequate or appropriate safeguards and means of obtaining a copy of these or the fact that they have been loaned.

2. In addition to the information mentioned in section 1, the person responsible for the treatment will facilitate the interested party, at the moment in which the data is obtained personal, the following information necessary to guarantee data processing fair and transparent

a) the period during which the personal data will be kept or, when it is not possible, the criteria used to determine this period;

b)

the existence of the right to request from the data controller access to the personal data related to the interested party, and its rectification or deletion, or the limitation of its treatment, or to oppose the treatment, as well as the right to data portability;

c) when the treatment is based on article 6, paragraph 1, letter a), or the ar- Article 9, paragraph 2, letter a), the existence of the right to withdraw consent at any time, without affecting the legality of the treatment based on in the consent prior to its withdrawal;

d) the right to file a claim with a supervisory authority;

e) if the communication of personal data is a legal or contractual requirement, or a

necessary requirement to sign a contract, and if the interested party is obliged to provide personal data and is informed of the possible consequences not to provide such data;

F)

the existence of automated decisions, including profiling, to referred to in article 22, sections 1 and 4, and, at least in such cases, inform significant information about applied logic, as well as the importance and con-planned sequences of said treatment for the interested party.

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3. When the data controller plans further data processing

personal data for a purpose other than that for which they were collected, you will provide the interested party, prior to such further processing, information on that other purpose and any additional information relevant under paragraph 2.

4. The provisions of sections 1, 2 and 3 shall not apply when and in the to the extent that the interested party already has the information.”

III

In accordance with the foregoing, the processing of images through a system of video surveillance, to be in accordance with current regulations, must comply with the following requirements:

- Respect the principle of proportionality.
- When the system is connected to an alarm center, you 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 4

april.

-

Camcorders will not be able to capture images of people

are outside the private space where the security system is installed.

video surveillance, since the processing of images in public places only

can be carried out, unless there is government authorization, by the

Security Forces and Bodies. They cannot be captured or recorded

spaces owned by third parties without the consent of their owners, or, in their

case, 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 in

facades or inside, it may be necessary to guarantee the purpose of

security recording a portion of the public highway. That is, the cameras

and video cameras installed for security purposes will not be able to obtain images

of public roads unless it is essential for that purpose, or it is

impossible to avoid due to their location and extraordinarily

The minimum space for said purpose will also be collected. Therefore, the

cameras could exceptionally capture the minimally necessary portion

for its intended security purpose.

- The duty to inform those affected provided for in articles

12 and 13 of the RGPD and 22.4 of the LOPDGDD.

- The person in charge must keep a record of treatment activities

carried out under their responsibility, including the information to which

refers to article 30.1 of the RGPD.

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The installed cameras cannot obtain images of private spaces.

third party and/or public space without duly accredited justified cause, or

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may affect the privacy of passers-by who move freely through the

zone. It is not allowed, therefore, the placement of cameras towards the

private property of neighbors with the purpose of intimidating them or affecting their

private sphere without just cause.

- In no case will the use of surveillance practices be admitted beyond the

environment object of the installations and in particular, not being able to affect the

surrounding public spaces, adjoining buildings and vehicles other than those

access the guarded space.

In relation to the foregoing, to facilitate the consultation of interested parties, the Agency

Spanish Data Protection offers through its website

[<https://www.aepd.es>] access to data protection legislation

including the RGPD and the LOPDGDD (section “Reports and resolutions” /

“regulations”), to the Guide on the use of video cameras for security and other

purposes and the Guide for compliance with the duty to inform (both available

in the “Guides and tools” section).

It is also of interest in the event that low-level data processing is carried out.

risk, the free tool Facilita (in the “Guides and tools” section) that,

through specific questions, it allows to assess the situation of the person in charge

regarding the processing of personal data that it carries out and, where appropriate, generate

various documents, informative and contractual clauses, as well as an annex with indicative security measures considered minimal.

IV

In the present case, the accused party has not presented arguments or evidence that contradict the facts denounced within the period given for it.

In accordance with the evidence available and which has not been distorted during the sanctioning procedure, the accused party does not have Informative poster of the existence of a video surveillance system in your establishment, so it is considered that these facts violate the provisions of Article 13 of the RGPD, indicated in the legal basis II.

Thus, in accordance with the exposed facts, we find ourselves before a

Violation of the provisions of article 13 of the RGPD, by the accused. Of

In this way, your conduct violates the obligation imposed by article 13 of the RGPD,

Therefore, it could constitute an offense classified in article 83.5 b) of the

RGPD, precept that establishes: "Infringements of the following provisions are

will be sanctioned, in accordance with section 2, with administrative fines of 20,000,000

EUR maximum or, in the case of a company, an amount equivalent to 4%

of the total global annual turnover of the previous financial year, choosing

for the largest amount:

a)

b)

(...)

The rights of the interested parties under articles 12 to 22;

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(...)"

For the mere purposes of prescription, article 72.1.h) of the LOPDGDD qualifies as very serious "The omission of the duty to inform the affected party about the treatment of their personal data in accordance with the provisions of articles 13 and 14 of the Regulation (EU) 2016/679 and 12 of this Organic Law". The limitation period for offenses very serious cases provided for in Organic Law 3/2018 is three years.

v

The corrective powers available to the Spanish Agency for the Protection of Data, as a control authority, is established in article 58.2 of the RGPD. Among them they have the power to impose an administrative fine in accordance with article 83 of the RGPD (art. 58.2 i)), or the power to order the person responsible or in charge of the treatment that the treatment operations comply with the provisions of the GDPR, where applicable, in a certain way and within a specified term (art. 58.2 d)).

According to the provisions of article 83.2 of the RGPD, the measure provided for in article 58.2 d) of the aforementioned Regulation is compatible with the sanction consisting of a fine administrative.

The fine imposed must be, in each individual case, effective, proportionate and dissuasive, in accordance with article 83.1 of the RGPD. In order to determine the fine to be imposed, the provisions of article 83.2 of the GDPR, which indicates:

"two. Administrative fines will be imposed, depending on the circumstances of each individual case, in addition to or as a substitute for the measures contemplated in the Article 58, paragraph 2, letters a) to h) and j). When deciding to impose a fine

administration and its amount in each individual case will be duly taken into account:

- a) the nature, seriousness and duration of the offence, taking into account the nature, scope or purpose of the processing operation in question as well such as the number of interested parties affected and the level of damages that have suffered;
 - b) intentionality or negligence in the infringement;
 - c) any measure taken by the controller or processor to alleviate the damages suffered by the interested parties;
 - d) the degree of responsibility of the person in charge or of the person in charge of the treatment, taking into account the technical or organizational measures that they have applied under of articles 25 and 32;
 - e) any previous infringement committed by the person in charge or the person in charge of the treatment;
 - f) the degree of cooperation with the supervisory authority in order to remedy the infringement and mitigate the possible adverse effects of the infringement;
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- g) the categories of personal data affected by the infringement;
 - h) the way in which the supervisory authority became aware of the infringement, in particular whether the person in charge or the person in charge notified the infringement and, if so, in what measure;
 - i) when the measures indicated in article 58, section 2, have been ordered previously against the person in charge or the person in charge in question in relation to the same matter, compliance with said measures;

j) adherence to codes of conduct under article 40 or mechanisms of

certification approved in accordance with article 42,

k) any other aggravating or mitigating factor applicable to the circumstances of the case,

such as financial benefits obtained or losses avoided, directly or

indirectly, through the infringement.

For its part, in relation to letter k) of article 83.2 of the RGPD, the LOPDGDD, in

its article 76, "Sanctions and corrective measures", provides:

"1. The penalties provided for in sections 4, 5 and 6 of article 83 of the Regulation

(EU) 2016/679 will be applied taking into account the graduation criteria

established in section 2 of the aforementioned article.

2. In accordance with the provisions of article 83.2.k) of Regulation (EU) 2016/679

may also be taken into account:

a) The continuing nature of the offence.

b) The link between the activity of the offender and the performance of treatment of personal information.

c) The profits obtained as a result of committing the offence.

d) The possibility that the conduct of the affected party could have induced the commission of the offence.

e) The existence of a merger by absorption process subsequent to the commission of the infringement, which cannot be attributed to the absorbing entity.

f) Affectation of the rights of minors.

g) Have, when not mandatory, a data protection officer.

h) Submission by the person in charge or person in charge, on a voluntary basis, to alternative conflict resolution mechanisms, in those cases in which there are controversies between them and any interested party".

The balance of the circumstances contemplated, with respect to the infraction committed

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by violating the provisions of article 13, it allows setting as an initial assessment a fine of €400 (four hundred euros).

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 WATYANA 786, S. L., with NIF B02731016, for an infraction of article 13 of the RGPD, typified in article 83.5.b) of the RGPD, a fine of €400 (Four hundred euros).

SECOND: ORDER WATYANA 786, S. L., with NIF B02731016, which, by virtue of article 58.2.d) of the RGPD, within ten business days, adopt the following measures:

- Prove that you have proceeded to place the informative device in the video-monitored areas or to complete the information offered therein (you must identify, at least, the existence of a treatment, the identity of the responsible and the possibility of exercising the rights provided for in said precepts), locating this device in a sufficiently visible place, both in open and closed spaces.
 - Prove that you keep the information to which it refers available to those affected.
- refers to the aforementioned RGPD.

THIRD: NOTIFY this resolution to WATYANA 786, S. L., with NIF B02731016.

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

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 Department of Data Protection in the banking entity CAIXABANK, S.A.. In case

Otherwise, it will be collected in 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 LOPDGDD, this

Resolution will be made public once it has been notified to the interested parties.

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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.

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/], 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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