

□ Procedure No.: PS/00028/2021

RESOLUTION OF PUNISHMENT PROCEDURE

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

FACTS

FIRST: Don A.A.A. (*hereinafter, the claimant) dated October 4, 2019

filed a claim with the Spanish Data Protection Agency. The

claim is directed against the MINISTRY OF DEFENSE with NIF S2801407D (in

later, the claimed one). The grounds on which the claim is based are

succinctly the following:

“The cameras capture the parking of the surrounding houses, taking

license plates with more than five meters of separation from its fence that limits the field of

said residence, in such a way that the workers of the residence with access to the

camera screens or recordings know what time I arrive, when I leave and

they record my license plate and the movements of my vehicle and myself” (folio nº 1).

Together with the claim, it provides documentary evidence (Annex I) that proves the

presence of a device that could obtain image(s) of the area of

parking of the claimant's vehicle.

SECOND: In view of the facts denounced in the claim and the documents

data provided by the claimant, the Subdirector General for Data Inspection pro-

vided to carry out preliminary investigation actions for the clarification

of the facts in question, by virtue of the powers of investigation granted to the

control authorities in article 57.1 of Regulation (EU) 2016/679 (Regulation

General Data Protection, hereinafter RGPD), and in accordance with the provisions

ed in Title VII, Chapter I, Second Section, of Organic Law 3/2018, of 5

December, of Protection of Personal Data and guarantee of digital rights (in hereinafter LOPDGDD).

As a result of the research actions carried out, it is found that the responsible for the treatment is the claimed.

The result of the previous investigation action is reflected in the file te with reference number E/12131/2019.

THIRD: On October 29, 2019, the claim is transferred to the Ministry of Defense requesting clarification on the causes that have motivated the claim.

FOURTH: Dated December 30, 2019, without having received a written statement tions of the aforementioned Ministry, the Spanish Data Protection Agency agreed to reach to carry out these investigative actions in relation to the facts re-
cried out.

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FIFTH: On January 13, 2020, it is received in this Agency, with number registration number 001176/2020, reply sent by the Ministry of Defense stating
Considering that after the analysis of the system, two improvable aspects have been detected that could be cause for claim: one, related to the degree of compliance with the duty to inform and transparency, materialized in some deficiency of the billboard; Y
another, relative to the orientation of some of the external chambers.

Regarding the obligation to inform the interested party of the video-monitored area, there are posters both outside the Residence and inside, detecting that some

Some of them referred to the previous data protection regulations, so

that the installation has been instructed to correct it. They provide fo-

topographic of a total of 9 informative posters and the situation of these.

It is verified that the video-surveillance area is reported by means of posters in all the

entrances to the enclosure and other places of the perimeter and in the common areas of the interior of

the residence, indicating the person responsible for the treatment and where the interest should be directed.

sado to exercise the rights contained in the RGPD.

They also inform this Agency that regarding the capture of images by the

video surveillance cameras, have proceeded to modify their orientation in order to

in order to minimize the uptake of areas beyond the perimeter of the Residence and avoid

above all, the visualization of windows of the adjoining houses (facades

East and West sides). In this sense, they provide screen printing of the images

captured by the sixteen video surveillance cameras as seen on the monitor

display. The reorientation of cameras 2 and 7 installed in the

Lateral East façade and chambers 4 and 5 on the Lateral West façade.

In relation to the capture of the claimed video surveillance camera (camera No. 2

located on the Lateral East façade) it can be seen that it no longer captures the windows of the

adjoining house but the Avenida ***AVENIDA.1 is still partially visible

that is between the Residence and the adjoining houses and where the

parking indicated in the claim.

SIXTH: On February 9, 2021, the Director of the Spanish Agency for Pro-

Data Protection agreed to initiate a sanctioning procedure against the defendant, in accordance with

the provisions of articles 63 and 64 of Law 39/2015, of October 1, on the Procedure

Common Administrative Procedure of Public Administrations (hereinafter, LPA-

CAP), for the alleged infringement of Article 5.1.c) of the RGPD, typified in Article

83.5 of the GDPR.

SEVENTH: Having been notified of the aforementioned initiation agreement, the respondent submitted a written pleadings in which, in summary, it stated the following:

-Responsible for the installation of the 4th General Sub-inspection Army Land (ET),

***ADDRESS.1 (**TOWN.1).

-It is only planned to allow the display of the images, as intended

In the law (...).

-As already indicated, the change of the

posters, adapting the text with reference to the new regulations.

-There are 9 informative posters in the installation about the existence of a

video-surveillance.

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EIGHTH: Attached as an annex is a list of documents in the procedure, remembering full accessibility to the file if required.

NINTH: On 03/08/21, a “Resolution Proposal” is issued, which declares the commission of the infringement of article 5.1 c) RGPD, by having it reported of several cameras oriented excessively towards the public area, making a “data processing” of third parties without just cause.

TENTH: On 03/22/21, this Agency received a written response to the “Resolution proposal” arguing the following:

Nullity of the procedure due to defenselessness.

It is not until February 15, 2021, in the document signed on that date, that the AEPD notified the Agreement to Start the sanctioning procedure, which is

proof of the author's complaint and the acts allegedly sanctioned, without other mention to the transcription of the appointment of part that is included in the brief of the allegedly irregular acts.

The art. 53.2 Law 39/2015, (October 1) enshrines the rights of the alleged responsible for the sanctioning procedure in accordance with the provisions of the article 24 CE.

In conclusion of what has been exposed so far and with express invocation of the provided in art. 47 point 1 a) and e) of the aforementioned Law 39/15 we request the File of the performances.

About the substance of the matter. It turns out that from what has been done up to now, accredited that the area in which the events occurred is about some houses that are characterized by military groups, given that these areas are qualified currently in the PGOU of 2019 as "zones-housing-military".

Therefore, the data controller has the legitimacy to carry it out. under art. 6.1 E) RGPD, as it is necessary for the fulfillment of a mission carried out in the public interest in the exercise of public powers vested in the responsible for the treatment finding its legality in the regulations previously cited.

I REQUEST: On behalf of the MDEF that I hold, that prior to the timely verifications that in Law proceed and taking into account the allegations (...) the Archive of these proceedings is decreed"

Of the actions carried out in this procedure and the documentation in the file, the following have been accredited:

PROVEN FACTS

First. On 10/04/20 a claim was received against the entity-Ministry of Defense-sa-transmitting as main fact:

“The cameras capture the parking of the surrounding houses, taking license plates with more than five meters of separation from its fence that limits the field of said residence, in such a way that the workers of the residence with access to the camera screens or recordings know what time I arrive, when I leave and they record my license plate and the movements of my vehicle and myself” (folio nº 1).

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Second. It is proven that the video-surveillance system is associated with the Ministry Defense theory (AGE).

Third. It is proven that the Ministry of Defense (denounced) did not have billboards in legal form, showing certain "deficiencies" that are being corrected. swimming.

Fourth. The purpose of the denounced system is the security of the Department of Justice. hospital, building and staff, being responsible for the effective control of the system the Second Chief of Staff of the Army Land (ET).

Fifth. Of the set of cameras installed (16 in total) it was found that four excessive uptake, proceeding to correct the angle of the same or pro-yielding to the “masking” of the images.

In Annex II (Proof Documentation) the before and after of the angle is verified. corrected gut.

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 according to the provisions of articles 47 and 48 of the LOPDGDD, the Director of the Spanish Agency for Data Protection is competent to initiate and to resolve this procedure.

II

Before going into the substance of the matter, it is convenient to examine the request for Nullity of the present procedure wielding helplessness.

Article 62 of Law 39/2015 of 81 October) provides: "A complaint is understood as the act by which any person, in compliance or not with a legal obligation, informs an administrative body of the existence of a certain fact that could justify the ex officio initiation of an administrative procedure".

Having consulted the database of this body, there is no evidence that the accused exercised her right (art. 53.1 "in fine" Law 39/2015) "to access and obtain a copy of the documents contained in the aforementioned procedures.

Therefore, it is not possible to wield "defenselessness" when it has not exercised in time and form their legally recognized rights.

As stated in the pleadings brief dated 03/22/21 in the Agreement of Initiation of this Agency it is already expressly mentioned that the procedure begins by Complaint of the claimant, being clear the "facts" that were imputed to him and over whom he has had the opportunity to allege what has been considered appropriate. Furthermore, it does not specify what the defenselessness produced consists of, making a generic argument, when the reality is that it has been allowed

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argue everything necessary to prove the legality of the camera system object-
to denounce

Therefore, it is not considered that there is any cause for nullity, reason
for which it is appropriate to reject the request in this regard.

III

In the present case, we proceed to examine the claim of date of entry into
this Agency 10/04/19 through which the following is transferred as the main event:
following:

“The cameras capture the parking of the surrounding houses, taking
license plates with more than five meters of separation from its fence that limits the field of
said residence, in such a way that the workers of the residence with access to the
camera screens or recordings know what time I arrive, when I leave and
they record my license plate and the movements of my vehicle and myself” (folio nº 1).

The facts are therefore specified in the proportionality of obtaining images
through video-surveillance cameras, considering "excessive" the object perimeter
uptake.

Article 22 section 2 of the LOPDGDD provides the following:

“Images of public roads may only be captured to the extent that it is
essential for the purpose mentioned in the previous section. However, it will be
It is possible to capture the public road in a greater extension when it is necessary.
ary to guarantee the security of strategic assets or facilities or infrastructure
structures linked to transport, without in any case implying the capture
of images of the interior of a private home”

The arguments put forward initially were considered insufficient to establish

create the File of the claim presented, as the system continues to affect the claimant's parking area, without a reasoned explanation having been made in this regard, subsisting the "facts" object of complaint.

Video surveillance, as a solution to a security problem, must be a adequate, pertinent and not excessive measure in relation to the purpose pursued and that justifies the installation of surveillance cameras. Also, the proportionality requires that the end of security cannot be achieved through other alternative means. native, less intrusive for the fundamental rights of users.

Through the use of image and sound recording systems and their post-better treatment, the level of protection of goods and services is substantially increased. people's freedoms.

IV

In accordance with the evidence available in this proceeding sanctioning party, it is considered that the defendant has a video camera system

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deo-surveillance whose capturing of images had been "excessive", seriously affecting this way to rights of third parties.

Specifically, some of the exterior cameras were oriented towards the of public transit and adjacent buildings, exercising excessive control of di-many areas without just cause.

The known facts constitute an infraction, attributable to the claimant.

mado, for violation of the content of art. 5.1 c) GDPR.

Article 58 section 2 of the RGPD provides the following: Each authority of

control will have all the following corrective powers indicated 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;

The behavior described is subsumable in the offending type of art. 83.5 a) GDPR,

which prescribes 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, alternatively,

being from a company, of an amount equivalent to a maximum of 4% of the volume

overall annual total turnover of the previous financial year, opting for the

greater amount:

a)

the basic principles for the treatment, including the conditions for the

consent under articles 5, 6, 7 and 9;

Article 77 section 1 LOPDGDD provides:

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“The regime established in this article will be applicable to treatments

of which they are responsible or entrusted:

c) The General Administration of the State, the Administrations of the communities

autonomous units and the entities that make up the Local Administration.

2. When the persons in charge or persons in charge listed in section 1

had any of the infractions referred to in articles 72 to 74 of this law

organic, the data protection authority that is competent will issue resolutions

tion sanctioning them with a warning. The resolution will establish thus-

same the measures that should be adopted to stop the conduct or correct the

effects of the infraction that had been committed.

The resolution will be notified to the person in charge or in charge of the treatment, to the gain of which it depends hierarchically, in his case, and to those affected who had the condition of interested party, if applicable (...)"

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4. The resolutions must be communicated to the data protection authority.

tions that fall in relation to the measures and actions referred to in the previous sections.

5. They will be communicated to the Ombudsman or, where appropriate, to the institutions analogous of the autonomous communities the actions carried out and the resolutions tions issued under this article.

SAW

For the party denounced, as a result of this procedure, it has proceeded to correct the "deficiencies" of the system, showing an attitude of full collaboration with this organism.

We have proceeded to correct the "irregularities" consisting of a collection excessive perimeter zones, which could affect the rights of neighbors adjoining, preserving their privacy.

Orders have been given to update the signage to the regulations in force, that is, taking the measures pending compliance to date.

On this aspect, it should be emphasized that no documentary evidence has been provided. that proves the effective change of the signage adapting it to the RGPD.

Remember in any case that with the current regulations (RGPD) a greater uptake of adjacent areas of public buildings, to avoid vandalism and incardinated in the security of state institutions.

“However, it will be possible to capture the public road in a superior when necessary to guarantee the security of goods or facilities strategic (...)” -art. 22 LOPDGDD--.

The data processing (registration) of the cars that park in an adjoining area is an issue embedded in the security of the complex, and may be of interest for this reason the control of the same, without being considered a priori excessive, that they remain recorded within the periods established in the regulations.

It should be remembered that cameras improve public safety because they have a discrete reducing subjective insecurity, allow early reaction to emergencies of a diverse nature, as well as helping to pursue activities of a criminal.

Notwithstanding the foregoing, it is necessary to verify the commission of the infraction described, since the corrections have occurred after the notification of the Agreement of Initiation of this sanctioning procedure, although it is not necessary to impose any corrective measure(s) having been diligently adopted by the Ministry outlined, except in relation to the corrections of the signage of the complex.

Remember that if you proceed to modify the angle of the cameras, as long as it is necessary to preserve the security of the installation for the sake of

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greater protection of the building and personnel at your service, you must notify this body with reference to the procedure number in question.

For the reasons stated, it is appropriate to reject the request for Archive of the this proceeding, since some of the exterior chambers "dealt with data" in excess of public area (eg capture of the entire Avenue); it has not been accredited despite the time elapsed the change of the signage in the terms widely recommended and finally, the "reminders" made by the procedure instructor may not be used at this stage of the procedure to claim the Archive of the same.

Therefore, in accordance with the applicable legislation and after assessing the graduation criteria tion of the sanctions whose existence has been proven, the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: IMPOSE the MINISTRY OF DEFENSE, with NIF S2801407D, for an in-section of Article 5.1.c) of the RGPD, typified in Article 83.5 of the RGPD, a sanction tion of WARNING.

SECOND: NOTIFY this resolution to the MINISTRY OF DEFENSE.

THIRD

in accordance with the provisions of article 77.5 of the LOPDGDD.

: COMMUNICATE this resolution to the Ombudsman,

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. 48.6 of the LOPDGDD, and in accordance with the provisions of article 123 of the LPACAP, the resents may optionally file an appeal for reconsideration before the Director of the Spanish Agency for Data Protection within a month from the date of

the day following the notification of this resolution or directly contentious appeal
before the Contentious-Administrative Chamber of the National High Court,
in accordance with the provisions of article 25 and section 5 of the additional provision
Final fourth of Law 29/1998, of July 13, regulating the Contentious Jurisdiction-
administrative, within a period of two months from the day following the notification
tion of this act, as provided for in article 46.1 of the aforementioned Law.

Sea Spain Marti

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