

□ Procedure No.: PS/00337/2020

RESOLUTION OF PUNISHMENT PROCEDURE

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

FACTS

FIRST: IBERHOSTELERIA CCOO WORKS COMMITTEE (*hereinafter,
the claimant) on June 1, 2020 filed a claim with the Agency

Spanish Data Protection. The claim is directed against the entity

IBERHOSTELERÍA Y OCIO S.L. with NIF B33526062 (hereinafter, the claimed). The

The reasons on which the claim is based are succinctly the following:

“That in March 2019 they are installed on a trial basis at the San

Gregorio (Oviedo) about four video-surveillance cameras. These cameras are installed
without prior notice to the workers or their representatives and even less to the users
from the center”

“At the present date there are 16 video-surveillance cameras installed in said
Center and 10 at Colegio América without the workers having been notified di-
installation, nor has any information been provided to us”.

“We want to state that some of the cameras are in places
that are not strictly for the provision of services, nor are they related
with the services provided, not responding to objective criteria its installation ”

“These images are also viewed on a screen located at the entrance
of the premises to which all company personnel have access, as well as schoolchildren or
external visits.

Together with the claim, it provides a screen print photograph of the monitor of
video-surveillance that shows what is captured with the system in question.

SECOND: On 09/23/20, it was decided to admit the claim for processing, having far exceeded the response period granted by this Agency.

THIRD: On 11/03/20, a reply was received from the entity denounced stating the following in relation to the "facts" subject to transfer:

- Responsible for the installation: Iber-Hostelería y Ocio S.L.
- Number of cameras installed: 16 cameras.
- There are NO fictitious cameras under our responsibility.
- Image conservation period: 1 month.
- Labor control of workers: Information through personal contract ted.

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FOURTH: On December 18, 2020, the Director of the Spanish Agency for Data Protection agreed to initiate a sanctioning procedure against the defendant, with glo to the provisions of articles 63 and 64 of Law 39/2015, of October 1, of the Pro-Common Administrative Procedure of Public Administrations (hereinafter, LPA-CAP), for the alleged infringement of Article 13 of the RGPD, typified in Article 83.5 of the GDPR.

FIFTH: On 04/08/21, a “Resolution Proposal” is issued, confirming the proposed infringement (infraction 13 RGPD), without any response having been given about.

SIXTH: Attached as an annex is a list of documents in the process.

Of the actions carried out in this procedure and the documentation

in the file, the following have been accredited:

PROVEN FACTS

First. The facts are specified in the installation of a video-surveillance system

(16 cameras) without the workers being legally informed of the purpose

image capture.

Second. It is identified as the main person in charge of IberHostelería y Ocio S.L.

Third. No copy of the contracts with the informative clauses has been provided.

where the purpose (s) of the data processing is determined in your case.

Fourth. No documentary evidence has been provided to prove the installation of the billboards.

them in a visible area, indicating that it is a video-monitored area.

FOUNDATIONS OF LAW

Yo

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 re-

solve this procedure.

II

In the present case, the claim dated 06/01/20 is examined by me-

gave from which the following is transferred as the main fact:

“That in March 2019 they are installed on a trial basis at the San

Gregorio (Oviedo) about four video-surveillance cameras. These cameras are installed

without prior notice to the workers or their representatives and even less to the users

of the Center” (folio nº 1).

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The right to data protection is a recognized fundamental right

both in the EC (art. 18.4) and in the current Organic Law 3/2018 (December 5) LO-

PDGDD of protection of personal data and guarantee of digital rights.

“The fundamental right of natural persons to personal data protection

rights, protected by article 18.4 of the Constitution, will be exercised in accordance with the

established in Regulation (EU) 2016/679 and in this organic law” (art. 1 LO-

PDGDD).

Before making the decision to install any video camera system there is

to assess the following aspects to know if it is really necessary.

It must be a measure that can truly achieve the objective

There is no other more reasonable measure to achieve the same goal.

what we propose

vo.

☐ It is a measure proportional to the damage that we intend to avoid, that is, that

derived many more benefits for the general interest than harm on

property or privacy to be protected.

Article 22 section 4 of the LOPDGG (LO 3/2018) provides:

“The duty of information provided for in article 12 of the Regulation (EU)

2016/679 will be understood to be fulfilled by placing an informative device

in a sufficiently visible place 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 the

Articles 15 to 22 of Regulation (EU) 2016/679. It may also be included in the

informative site a connection code or internet address to this information.

In any case, the data controller must keep available

of those affected the information referred to in the aforementioned regulation.

The capturing of images must respond exclusively to the purpose of

preserve the safety of people and property, as well as of the facilities,

being always subject to the installation of these recording elements to the criteria

proportionality and necessity, and without in any case being able to make use of

images for purposes other than those for which their installation was authorized.

tion.

In no case will the capture of images be admitted for direct control or

indiscriminate of workers. In no case will the installation of systems

more audiovisual control in places of rest or recreation, such as

changing rooms, toilets, dining rooms and the like.

Article 89 of the LOPDGDD (LO 3/2018, December 5) provides the following:

“Employers will be able to treat the images obtained through systems

of cameras or video cameras for the exercise of the functions of control of the work

of public employees provided, respectively, in article 20.3 of the

Workers' Statute and in public function legislation, provided that these

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functions are exercised within its legal framework and with its inherent limits.

Employers must inform in advance, and expressly, clearly and

concisely, to public workers or employees and, where appropriate, to their representatives.

tes, about this measure.”

“In the event that the flagrant commission of an illegal act has been detected

by public workers or employees, it shall be understood that the duty to report has been fulfilled.

form when there is at least the device referred to in article 22.4 of

this organic law.

The use of a video surveillance system to carry out labor control tasks,

it is still a supervisory control system, which is why it is subject to the

requirements of the Workers' Statute, specifically, art. 64.5 of the ET, takes care

to assert:

“The works council shall have the right to issue a report, prior to

the execution by the employer of the decisions adopted by him, on the

following issues:

a) The implementation and review of organization and control systems for

work, time studies, establishment of bonus systems and

incentives and evaluation of jobs”

In short, the installation of a video surveillance system is not something that can be

done behind the backs of workers and representatives, but must have their co-

prior knowledge.

III

The obligation to inform interested persons of the circumstances relating to

to the treatment of your data falls on the person in charge of the Treatment.

Article 13 RGPD provides “When personal data is obtained from an interested party,

data relating to him, the data controller, at the time these are

obtain, will provide you with all the information indicated below:

a)

a)

b)

c)

the identity and contact details of the person in charge and, where appropriate, of their representative.

presenter;

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

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

legal treatment; d) when the treatment is based on article 6,

section 1, letter f), the legitimate interests of the person in charge or of a third party;

the recipients or categories of recipients of the personal data,

in your case;

a) 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

adequacy decision of the Commission, or, in the case of transfers

indicated in articles 46 or 47 or article 49, paragraph 1, second paragraph

second, reference to adequate or appropriate guarantees and means

to obtain a copy of these or to the fact that they have been lent (...)".

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IV

In accordance with the "evidence" available in this proceeding,

sanctioning procedure, it is considered that the respondent has not accredited the manner in which

has informed the workers and their representatives of the pre-

Presence of cameras in the facilities.

In this regard, clarify that the mere assertive allegation made by the de-

announced in the following terms "of course personalized contract for each worker", does not allow an in-depth analysis of compliance with the information measure. information, much less specify what is the informed purpose of data processing in your case.

Nor is it provided except for "error" or "forgetfulness" documentary evidence (eg photograph with date and time) of the visible place where the informative signs are installed, in-stating that it is a video-monitored area.

The known facts constitute an infraction, attributable to the defendant, for violation of the content of article 13 RGPD.

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The art. 83.5 RGPD provides the following: "Infringements of the following provisions will be sanctioned, in accordance with section 2, with administrative fines of 20 EUR 000,000 maximum or, in the case of a company, an equivalent amount. to a maximum of 4% of the total global annual turnover of the financial year above, opting for the highest amount:

b)

the rights of the interested parties under articles 12 to 22 (...)

SAW

Without prejudice to the provisions of article 83 of the RGPD, the aforementioned Regulation provides ne in your art. 58.2 b) 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 a sanction. tion by means of a fine, a warning may be imposed. You must, however, pay

Special attention is paid to the nature, seriousness and duration of the infraction, its character intentional ter, to the measures taken to alleviate the damages suffered, to the

degree of responsibility or any relevant prior violation, the manner in which the control authority has become aware of the infraction, to the fulfillment of measures ordered against the person in charge or in charge, adherence to codes of conduct and any other aggravating or mitigating circumstance.”

In the present case, the absence of previous infringements in the matter at hand, as well as the initial collaboration with this Agency, although re-

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agree that the manifestations must be clear enough to be able to verify tarnish the legality of the system.

The entity denounced must prove in legal form the legality of the cameras installed (16 in total), as well as that they comply with the current legality people; including proving the possession of informative form(s) available to the users of the Center (for example, you can make one as a guide, taking into account ta posted on the website of this body www.aepd.es Areas of action.

Video surveillance).

The way in which the workers were informed (vgr. contribution- tion of one or more anonymized contracts for analysis of the informative clause) and if the legal representatives were informed of this (vgr. documentary evidence).

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 IBERHOSTELERÍA Y OCIO S.L., with NIF B33526062, for

an infringement of Article 13 of the RGPD, typified in Article 83.5 of the RGPD, a

PENALTY sanction.

SECOND: ORDER the entity denounced-- IBERHOSTELERÍA Y OCIO S.L.—

so that in accordance with article 58.2 d) RGPD, so that within a period of UN

MONTH meets:

-Provision of the required documentation or, where appropriate, accredits in legal form-
information to the representatives of the workers or to them.

-Certifies the presence of an informative poster(s) in a visible area (photograph dated
and hour).

THIRD: NOTIFY this resolution to IBERHOSTELERÍA Y OCIO S.L. and

REPORT the result of the actions to the denouncing party COMMITTEE OF
IBERHOSTELERIA CCOO COMPANY.

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-

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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.

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 interested party

do states its intention to file a contentious-administrative appeal. Of being

In this case, the interested party must formally communicate this fact in writing

addressed to the Spanish Agency for Data Protection, presenting it through the Re-

Electronic registry of the Agency [<https://sedeagpd.gob.es/sede-electronica-web/>], or to

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

that proves the effective filing of the contentious-administrative appeal. If the

Agency was not aware of the filing of the contentious-administrative appeal

tive within two months from the day following the notification of this

resolution, would end the precautionary suspension.

Sea Spain Marti

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