

National Data Protection Commission

OPINION/2021/110

I. Order

1. By order of the Assistant Secretary of State and Internal Administration, an opinion was requested from the National Data Protection Commission (CNPd) on the request for authorization for the installation and use of a video surveillance system in the city of Figueira da Foz, submitted by the Public Security Police (PSP).
2. The CNPD considers the request under the terms of paragraph 2 of article 3 of Law no. 1/2005, of 10 January, amended and republished by Law no. 9/2012, of 23 February (hereinafter, Law No. 1/2005), which regulates the use of video cameras by security forces and services in public places of common use, for capturing and recording images and sound and their subsequent processing.
3. The request is accompanied by a document containing the reasons for the request and the technical information of the system, hereinafter referred to as “Rationale”, as well as the impact assessment on data protection (AIPD).
4. At the request of the CNPD, additional clarifications were provided regarding some aspects of the system that were missing or incomplete in the text of the Justification.

II. appreciation

- i. Object of the opinion to be issued under the terms of article 3 of Law No. 1/2005, of 10 January
5. Pursuant to paragraph 2 of article 3 of Law no. 1/2005, the CNPD's opinion is limited to pronouncement on the compliance of the request with the rules regarding the security of the treatment of the collected data, as well as as well as about the special security measures to be implemented, adequate to guarantee entry controls on the premises, data carriers, insertion, use, access, transmission, introduction and transport and, as well as verification of compliance with the duty of information and before whom the rights of access and rectification can be exercised.
6. Pursuant to the provisions of the same legal precept and paragraphs 4, 6 and 7 of article 7 of that law, the CNPD's opinion

is also subject to respect for the prohibition of installing fixed cameras in areas that, despite being located in public places, are, by their nature, intended to be used in guarding or the use of video cameras when the capture of images and sounds covers the interior of an inhabited house or building or its dependence, or when this capture affects , directly and immediately, the privacy of people, or results in the recording of conversations of a private nature.

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PAR/2021/41

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7. The CNPD must also verify that all persons appearing in recordings obtained in accordance with this law are guaranteed the rights of access and elimination, with the exceptions provided for by law.

8. Pursuant to paragraph 7 of article 3 of the same legal instrument, the CNPD may also formulate recommendations with a view to ensuring the purposes set out in the law, subjecting the issuance of a totally positive opinion to the verification of the completeness of the fulfillment of its recommendations.

ii. The purposes of the treatment resulting from Video Surveillance in public places of use in the city of Figueira da Foz

9. Notwithstanding that, under the terms of the legal powers defined in Law no. 1/2005, it is not up to the CNPD to pronounce on the proportionality of the use of video surveillance systems in public places of common use, this competence already exists when it comes to cameras are installed in areas that are, by their nature, intended to be used for guarding or capturing images or sound that directly and immediately affect people's privacy, or result in the recording of conversations of a private nature (cf. paragraphs 4 and 7 of article 7 of Law no. 1/2005).

10. Now, the installation and use of a video surveillance system in the city of Figueira da Foz, specifically «in the central area of the city of Figueira da Foz, commonly known as Bairro Novo», implies a processing of personal data capable of significantly affecting the private life of the people who circulate or find themselves there.

11. At issue is the installation and use of 12 cameras in an area that is considered, in the application, as '[...] of predominantly

commercial occupation (restaurants, bars, as well as nightclubs) with low residential occupancy at the level of fixed residents , however, several hotels and guesthouses are located in this area and surroundings, which during the summer and festive season [...] are crowded with tourists and the public», (cf. point 2.a. of the accompanying Justification the request).

12. Of the 12 cameras, 3 have PTZ functions (Pan, Tilt and Zoom), which means the ability to capture, in all directions and with great acuity, images of people and vehicles, in addition to the possibility of capturing sound for all cameras - declaring, moreover, that all cameras will capture and record sound (cf. point 3. of the Justification).

13. It should also be noted that the capture and recording of images and sound is, according to the request, limited in time: it will take place between 6 pm and 8 am the following day, being limited to the following periods:

The. From the Friday before Mardi Gras until Ash Wednesday:

PAR/2021/41

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National Data Protection Commission

B. June 1st to September 15th;

ç. From the 15th to the 31st of December;

d. From January 1st to the first working day of the year;

and. From the Friday before Good Friday to the Monday after Easter Sunday,

f. Without prejudice to the previous periods, on Fridays and Saturdays and on the eve of national or local holidays. (cf. point 3. of the Justification).

14. It is recalled that the processing of data has, as stated, the purpose of protecting people and goods, public and private, and preventing the practice of facts qualified by law as crimes, in places where there is a reasonable risk of its occurrence, under the terms of subparagraph c) of no. of article 2 of Law no. 1/2005.

15. The Rationale foresees the adoption of measures aimed at safeguarding the privacy of people inside buildings, through the application of image filters, which substantially mitigates the impact on the rights of these people. These filters or masks are represented in Annex A of the Justification, and in Annex B it is clarified that all cameras are compatible «[...] with compression and image quality settings and have privacy mask zones as well as being compatible with individually configurable 3D privacy

masks»,«[...] which will be dynamically adjusted based on the current zoom factor, and the operator will not be able to display the protected contents».

16. As for the capture and recording of sound, the CNPD does not find any specific basis in the entire request and respective grounds, nor in the AIPD that accompanies it.

17. It is insisted that the capture and recording of sound, in the vicinity of housing, but also in public spaces, has a great impact on privacy, and should not occur unless it is demonstrated that it is essential for the purpose pursued with this treatment of data - which is clearly not the case here.

18. Furthermore, sound recording in the context described above appears to be, in any case, disproportionate, as it does not even prove adequate for the purpose of protecting people and property, let alone preventing any crime. Furthermore, taking into account the areas covered by the video surveillance system and the periods in which it is intended to be used, the risk of recording private conversations is evidently high, which is expressly prohibited in Article 7(7), in fine, of Law No. 1/2005.

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PAR/2021/41

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19. The CNPD therefore believes that there is no basis that legitimizes the recording of sound in public space (in the immediate vicinity of buildings intended for housing), under penalty of violation of paragraph 7 of article 7 of Law no. 1/2005, and recommends that special consideration be given to authorizing the permanent recording of sound, as the need for such processing of personal data for the intended purpose has not been demonstrated. Even the occasional sound recording, to be authorized, must be framed by precise guidelines, and cannot be dependent on the subjective criteria of the agent who is currently operating the system.

iii. subcontracting

20. Regarding the installation and maintenance of the video surveillance system, because it is directly related to information

security and the system's ability to fulfill the intended purposes, it is important to emphasize that this obligation falls on the data controller, regardless of whether who owns the video cameras and other equipment that make up the system.

21. Establishing Law no. 1/2005, in paragraph 2 of article 2, that the data controller is the security force with jurisdiction in the catchment area or the requesting security service, any subcontracting in company to ensure the maintenance or replacement of equipment must be formalized, contractually, with the PSP. It is not excluded that the PSP subcontracts the Municipality of Figueira da Foz, which may subcontract companies, under the terms regulated in article 23 of Law No. 59/2019, of 8 August. What cannot be a reversal of roles, leaving the PSP without the domain or control of the processing of personal data that the video surveillance system performs.

22. It is therefore important that a contract or agreement be signed that specifically regulates this subcontracting relationship, binding the Municipality under the terms of that legal rule - which in the specific case does not seem to occur, since the text of the protocol attached to the Rationale is insufficient from this perspective.

23. Considering also that, according to the additional clarifications provided, the transmission of the cameras will be "through a dedicated fiber optic structure, operating exclusively with the system, from the place where the cameras will be mounted to the District Command facilities Coimbra da PSP", specifically, "using a dedicated fiber optic structure", it will be difficult for the Municipality of Figueira da Foz, even as a subcontractor, to assume such a task, given the territorial limits of its attributions, at that the use of more subcontractors by the PSP is likely.

24. Specifically with regard to subcontracting, it is recalled that under the terms of the same article 23, they depend on the prior authorization of the person in charge.

PAR/2021/41

3

National Data Protection Commission

iv. Capability of the video surveillance system for facial recognition and citizen tracking

25. In Annex B, Avigilon is indicated as the manufacturer of the components of the video surveillance system, as well as the Control Center software. This software brings numerous Artificial Intelligence (AI) functionality. Namely, facial recognition technology to identify persons of interest based on one or more watch lists and also a mechanism to examine hours of recorded video with ease to quickly locate a person or vehicle of interest. In the additional clarifications, it was stated that 'such

capabilities will not be used and will be turned off.

26. It should be noted, however, that the functionalities, even if turned off, remain available in the aforementioned software and, therefore, are susceptible to activation at least through the administrator profile. Bearing in mind the impact of their use on citizens' privacy, it is important to ensure that they will not be activated. It is therefore recommended that, in any authorizing decision on the installation and use of this video surveillance system, the activation of AI features that allow facial recognition and tracking of citizens is expressly prohibited.

v. Video surveillance system security

27. From the point of view of the security of the video surveillance system, regarding the physical installation of the cameras, the additional clarifications include that "the cameras will be affixed to the facades of existing buildings in the indicated places, inserted in specific boxes for this purpose, which provide anti-vandalism protection". A mechanism of an "anti-tampering" nature is not mentioned in the boxes, with alerts. Thus, it is recommended that intrusion alarms be considered in the communication cabinets where the cameras will be connected.

28. It is also essential to ensure that communications distribution cabinets - therefore installed in public spaces - are not accessible to anyone, especially due to the risk of acts of vandalism or intentional attacks on the system, such as turning off cameras to prevent filming of planned illicit acts. It is therefore essential that they are not located on the ground or at a height that makes them easily accessible.

29. Annex F of the Justification states that «the monitoring screens will be installed in the Command and Control Center of the District Command of Coimbra, a space whose access is restricted to communications operators, duly accredited for the purpose according to the approved listing [...]. Access to the Command and Control Center and the monitoring screens by elements other than the aforementioned communications operators is only allowed upon request and service reason that justifies it». The same annex informs that the recording of the registered data will be carried out through physical means installed in

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PAR/2021/41

conditioned compartment, in the District Command of Coimbra with conditioned access, providing for the establishment of an access control system that only allows the entry, without accompaniment, of duly qualified and authorized persons». In the additional clarifications, it is added that "both spaces will be located in a class 1 security area, whose access already has 2 levels of control (doors only accessible with an individual programmed card - which can be traced and then different doors per service, only accessible with a physical key)'.

30. From the statement, it appears that access to the space of each service, within the class 1 security area, is done through a physical key, which does not seem to allow an accurate assessment of who is present at any given time in each service , within said security area. It would be preferable to adopt the reverse logic, using a physical key to access the security area and then the individual card to enter the specific service required.

31. Furthermore, the access control mechanism by authorized persons must - in order to be fully able to identify who, at any given moment, is in the two rooms - register, in addition to entrances, also exits. Only in this way is it possible to demonstrate the subjective imputability of any event.

32. Regarding the registration of non-accredited persons, mentioned in Annex F of the Justification, since it depends on the action of an accredited element, it is necessary to adopt a solution that does not allow errors or omissions in the registration of those persons.

33. Finally, it is noted that insufficient information was provided on the procedure for extracting images for the purpose of criminal investigation. In particular, it is important to define rules on the procedure for preserving the extracted images, which guarantee their elimination after the conclusion of the criminal process.

saw. Auditability of the processing of personal data

34. Regarding the forecast of the existence of chronological records, in Annex G of the Justification, it is noted that the generic statement that the application must keep the system's activities in memory is not enough. Indeed, for a system to be truly auditable, it is imperative to ensure that it has the details of the operation carried out, so that it is possible at all times to know who and what has been done with the personal data.

35. In fact, in the same sense, Resolution of the Council of Ministers No. 41/2018, of March 28, points out, which also determines the implementation of this requirement by the services of the Direct and Indirect State Administration. It provides for the obligation to record all actions that a user performs on data.

National Data Protection Commission

personal data, including access attempts, as well as the obligation to guarantee its integrity, through a digital signature and TimeStamp.

36. For a better understanding of what is being said, it is exemplified that it is not enough to register that there was an action on a mask, and it is necessary to specify whether it was placed, removed or changed.

37. A policy for the retention of activity records should be defined (i.e., how long they are retained until they are discarded) and key indicators for audit reports in terms of monitoring security in accesses and operations carried out

38. Finally, it is also important to take into account the fact that chronological records (logs) are essential for the detection of failures and anomalies. However, this function of chronological records is only achieved if they are the object of analysis.

39. To this end, a retention policy should be defined for activity records (i.e., how long they are retained until they are discarded) and key indicators for audit reports in terms of monitoring security in accesses and operations carried out.

40. In this way, it is important to point out that the person responsible for the treatment, that is, the PSP, must be endowed with human resources with sufficient technical knowledge to analyze the records and identify any incidents.

III. Conclusion

41. It is not within the competence that is legally attributed to it to pronounce on the concrete grounds for the installation and use of the video surveillance system in the city of Figueira da Foz, the CNPD, with the arguments set out above:

The. Considers that there is no basis that legitimizes the recording of sound in public spaces (in the immediate vicinity of buildings intended for housing), under penalty of violation of paragraph 7 of article 7 of Law no. 1/2005;

B. Recommends that the authorization of permanent sound capture be especially considered, as the need for such processing of personal data for the intended purpose has not been demonstrated, and any authorization of occasional sound capture should depend on precise criteria that guide the system operators;

ç. And insists that, being the person responsible for the processing of personal data, under the terms of the law, the PSP, must be expressly and clearly delimited in a contract or agreement, the intervention of the Municipality as

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PAR/2021/41

4v.

subcontractor of this entity, and of any subcontractors, as well as other subcontractors;

d. Since the software applied comprises Artificial Intelligence features that allow facial recognition and the tracking of citizens, which, despite being declared that they will not be used, remain in the system and are susceptible to use (at least by the administrator profile of the system), it is recommended that in any authorizing decision on the installation and use of this video surveillance system, the activation of these features is expressly prohibited.

42. The CNPD also recommends that measures be adopted capable of guaranteeing the security of the system and the auditability of the processing of personal data, as indicated above, in points 25 to 40.

Lisbon, August 23, 2021

Filipa Calvão (President, who reported)