

□ Procedure No.: PS/00351/2021

RESOLUTION OF PUNISHMENT PROCEDURE

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

FACTS

FIRST: CORUÑA CITY COUNCIL (*hereinafter, the complaining party) with
dated March 22, 2021 filed a claim with the Spanish Agency for
Data Protection. The claim is directed against who identifies as A.A.A. with
NIF ***NIF.1 (hereinafter, the claimed part). The reasons on which the
claim are as follows:

“A video camera is observed inside a vehicle in operation
with the recording function activated (fact verified by observing the camera for its
back, which reflects everything you are recording” (folio nº 1).

SECOND: In accordance with article 65.4 of Organic Law 3/2018, of 5
December, of Protection of Personal Data and guarantee of digital rights (in
hereinafter LOPDGDD), said claim was transferred on 04/15/21 to the party
claimed, so that it proceeded to its analysis and inform this Agency in the pla-
period of one month, of the actions carried out to adapt to the foreseen requirements
cough in the data protection regulations.

THIRD: On 06/10/21 we proceed to reiterate the request for clarifications to the
exposed facts without any reply having been made to that effect.

FOURTH: On 07/02/21 the Director of the Spanish Agency for the Protection of
Data agreed to admit the claim filed by the claimant for processing.

FIFTH: On July 28, 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.

SIXTH: Having been notified of the aforementioned initiation agreement, the respondent submitted a written

allegations (08/18/21) in which, in summary, it stated that "it has proceeded to the

removal of the camera from the vehicle", indicating that the images are not "processed" or

uploaded to social networks, indicating that the main reason for the installation is true

acts of vandalism suffered by the vehicle.

SEVENTH: On 08/30/21, a "Proposed Resolution" is issued, confirming

the infringement of art. 5.1 c) RGPD, by having a device for obtaining

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images inside the vehicle negligently, proposing a sanction

encrypted in the amount of €1000 (Thousand Euros).

EIGHTH: On 09/17/21, allegations are received from the respondent

stating the following:

"At the time of leaving my work I verified that the car had been removed

from the scene of the events, immediately afterwards I called the Municipal Police (A Coruña),

informing me where the vehicle was (at the previously mentioned depot).

"I inform you that due to an oversight the camera forgot to turn it off since

this is powered by the car's cigarette lighter circuit and when you remove it it turns off (...) I had that

forgetting without wanting to harm third parties.

The model has been sent on 05/12/21 having the receipt of the

Shipping. Then I also send a reply by certified mail to C/Jorge

Juan nº 6 where the headquarters of the AEPD is located (...).

And if it is possible to obtain the annulment of said sanction or, failing that, its postponement or extension taking into account the Reports attached to this letter, demonstrating my intention to resolve said incident on several occasions.”

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

PROVEN FACTS

First. The facts bring cause of the Complaint filed by the Local Police (Coruña City Council) after having confirmed the presence of a recording device operative information inside a vehicle parked in a public area (folio No. 1).

Second. It is accredited as the main responsible Mr. A.A.A. with NIF ***NIF.1, who does not deny the presence of the device.

Third. It is accredited that it has a recording device with the purpose of avoiding acts of vandalism in your vehicle, stating "having removed it" of the same.

Fourth. The operability of the same is accredited, an aspect that is confirmed by the own claimed when using the images (personal data) to prove the alleged perpetration of acts of vandalism against the vehicle.

Fifth. No complaint or document is provided that proves the damages suffered in the vehicle, beyond the mere manifestations of the claimed.

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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

In the present case, we proceed to examine the claim dated 03/22/21 by medio from which the following facts are transferred in order to be analyzed by this organism.

“A video camera is observed inside a vehicle in operation with the recording function activated (fact verified by observing the camera for its back, which reflects everything you are recording” (folio nº 1).

The above facts constitute an infringement of art. 5.1 c) GDPR that you have: Personal data:

c) adequate, relevant and limited to what is necessary in relation to the purposes for which they are processed ("data minimization");

The presence of a device inside the vehicle of the claimed party that obtains images (personal data) of public space is considered excessive, not being justified that even in a parking situation it continues in display mode. tion to the outside.

This type of devices, whose proliferation in recent times is latent, can be in a situation of conflict with the right to data protection as they are the same we “treated” and later spread on social networks, without prejudice to situations permanent capturing of public space, a task reserved exclusively for

the State Security Forces and Bodies.

As a general rule, the legitimacy for the use of video surveillance installations is

It is limited to the protection of private environments. In the case of capturing images in the public thoroughfare is reserved exclusively for the Security Forces and Corps (Organic Law).

Law 4/1997, of August 4, which regulates the use of video cameras by the State Security Forces and Bodies in public places).

Sometimes this type of device allows the use of images in case of collision with another vehicle and its admissibility as evidence, although its storage

The movement is only allowed with the vehicle in motion and in the specific case of an accident.

dent, an issue that does not occur in the events described because the vehicle was parked without the driver inside, continuing with the personal data processing sound in a public transit area.

The facts are corroborated by the acting force whose manifestations have pre-assumption of veracity in relation to what is stated in accordance with art. 77.5 Law 39/2015 8 October 1).

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III

In accordance with the evidence available in this proceeding

sanctioning party, the respondent is considered to have installed a video camera surveillance inside the vehicle affecting the data of third parties that are processed for the same without being aware of such extreme.

The claimed party acknowledges the installation of the device for reasons of

safety of the vehicle, having proceeded to remove it as stated

in brief of allegations dated 08/18/21.

Cameras inside vehicles are allowed by the DGT

(Directorate General Traffic) only for domestic purposes, this is to record what

it happens inside itself, without endangering road safety; but it's not

enabled its use for external capture when obtaining images (personal data)

of third parties without your informed consent.

The control of traffic and public space is a function reserved for

State Security Forces and Corps, not being allowed to capture

outside the public area by private individuals.

According to the above, the evidence initially provided confirmed the

operability of the installed camera and its obvious orientation towards the transit area

close to a School, being insufficient the initial explanations given to the

Local Police to justify the capture of images of the exterior of the vehicle.

It is immaterial that they are not stored, since the operation of the

same has been verified, carrying out the device in question a "treatment of

data" in real time without just cause.

The known facts are therefore constitutive of an infraction, attributable to

the claimed part of the content of article 5.1 c) RGPD, as it is affecting the

processing of data in a public transit area without just cause, being

indifferent that they are not disseminated, considering the extent

disproportionate to the purpose pursued.

In cases such as the one exposed, a protection measure for the

less restrictive vehicle (eg sound alarm, etc.), given the problems that this type

of imaging devices can cause, as evidenced by the

fact of the withdrawal of the vehicle by the Security Forces and Bodies of the

location.

IV

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:

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a)

the basic principles for the treatment, including the conditions for the consent under articles 5, 6, 7 and 9;

When motivating the sanction, the following is taken into account:

- the nature, seriousness and duration of the offence, taking into account the nature nature, scope or purpose of the treatment operation in question, as well as the number of interested parties affected and the level of damages suffered; by having the camera active towards the outside of the vehicle in an area with large traffic of students continuously processing data without just cause (art. 83.2 a) RGPD).

- the intent or negligence in the infringement; (art. 83.2 b) RGPD), given the presence of a camera installed furtively inside a vehicle, pr- next to a school without any signage and once the car is parked vehicle (art. 83.2 b) RGPD).

Given the measure adopted consisting of the immediate removal of the device,
as well as the collaboration with this Agency, a sanction encrypted in the
amount of €1,000 (one thousand euros) for the infringement of art. 5.1 c) RGPD, sanction located in
the lower scale for this type of infraction; taking into account the claims
widely reiterated by the defendant.

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 A.A.A., with NIF ***NIF.1, for an infraction of Article 5.1 c)
of the RGPD, typified in Article 83.5 of the RGPD, a fine of €1,000 (one thousand euros).

SECOND: NOTIFY this resolution to A.A.A. and REPORT the result
of the actions to CORUÑA CITY COUNCIL

THIRD: 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, of the Administrative Procedure Co-
of the Public Administrations (hereinafter LPACAP), within the term of payment
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 in the name of the Spanish Agency
Department of Data Protection at the banking entity CAIXABANK, S.A.. In case of
Otherwise, it will be collected during 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
will be until the 20th day of the following month or immediately after, and if

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is between the 16th and last day of each month, both inclusive, the term of the payment

It will be valid 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.

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.

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. If it is-

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 within two months from the day following the notification of this resolution, would end the precautionary suspension.

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Director of the Spanish Data Protection Agency

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