

□ Procedure No.: PS/00082/2020

938-300320

RESOLUTION OF PUNISHMENT PROCEDURE

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

FACTS

FIRST: Mrs. A.A.A. (*hereinafter, the claimant) dated November 18,
2019 filed a claim with the Spanish Data Protection Agency. The
claim is directed against GRÚAS BAREA S.L.U. with NIF B14300313 (hereinafter,
the claimed). The reasons on which the claim is based are "installation of a security camera
video-surveillance" with orientation towards the parking area without the
permission of the land owner.

Together with the claim, it provides documentary evidence that proves the presence of
video-surveillance device-Annex I--.

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-
yielded 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 confirmed
that the data controller is the claimed party.

THIRD. On 01/10/20, the claim was TRANSFERRED to the party denounced so that he could allege what he deemed appropriate in law, expressing succinctly the following:

- That the system has an informative poster (Doc. test nº 1).
- That the number of installed cameras is six, which are installed by security reasons for the establishment.
- That the cameras installed in the parking area are installed for security reasons. capturing images of heavy machinery, although the property is rented, considering that the Complaint is due to "pressure" from the lessor for reasons of the rental system.
- The decision has been made to abandon the ship, with the transfer to the new location before May of the current year.

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Based on the foregoing, REQUESTS that the allegations be taken into account and that for complying with data protection regulations.

FOURTH: On March 30, 2020, the Director of the Spanish Agency for Data Protection agreed to initiate a sanctioning procedure against the claimant, for the alleged infringement of Article 5.1.c) of the RGPD, typified in Article 83.5 of the GDPR.

FIFTH: On 06/22/20, this Agency received a written statement of allegations from the entity denounced -Grúas Barea- stating the following:

“In advance, we want to state that on March 20,

Grúas Barea completely and definitively vacated the rented warehouse where they were the chambers object of the complaint, proceeding that same day to the withdrawal of the same (..) Document No. 1.

For this reason and understanding that said equipment is not in operation, we understand by complying with the provisions of the Legal Basis IV of the resolution received, since all cameras have been removed, not just the camera qualified as "conflictive" but all the others.

In order to certify the closure of said Delegation in Seville, it is attached as Document No. 3, screenshot of June 22, 2020, obtained on the web of Grúas Barea, SLU (**URL.1) where it can be seen that, among the Delegations of this company, the one located in the aforementioned warehouse is no longer found.

In order to prove the above, a letter addressed to the owner is attached.

by burofax communicating the termination of the lease by said reason, such as Document No. 2.

We also understand it is necessary to keep in mind that the ship where the chambers object of the complaint were found (1.2 of plot 12) adjoined by its left with 1.1 of the aforementioned plot, also owned by Insauce Inmuebles SLU and both warehouses were the only buildings that existed on plot No. 12, whose ownership also belongs to the aforementioned Company.

In the same way, we also wanted to clarify in our previous writing, insofar as to the images captured by camera 3 referred to in the request sent by said Subdirectorate, that the nave, in addition to the existing pedestrian door on the façade, It had two tilting doors on its right side, whose access area was essential for maneuvers and continuous entry/exit of large machinery dimensions.

We also reiterate that our intention in placing the cameras was, in all

moment, guarantee the safety of personnel and facilities, because in said area working with heavy machinery.

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For all of the above, I request the AEPD to consider this document as submitted, with the accompanying documentary evidence, taking for granted the allegations to the resolution of the beginning of the sanctioning procedure (...)."

SIXTH: On 07/13/20, a resolution proposal is issued proposing impose a sanction of Warning, as it is proven that the reported had a camera system oriented towards the third party area(s) without cause justified, in violation of art. 5.1 c) RGPD, without any response having been made in this regard by it.

In view of everything that has been done, by the Spanish Protection Agency of Data in this procedure the following are considered proven facts,

First. On 11/18/19, this Agency received a Complaint against the entity Grúas Barea, for the installation of a video-surveillance system with orientation from at least one of the cameras towards the common parking area with the ship adjoining, obtaining in his case images of third parties without having the authorization informed of these.

Second. The entity-Grúas Barea—which acknowledges having a video-surveillance system made up of a total such a six-chamber.

The cameras are fixed image, they have infrared for night recording.

Na, they do not have zoom or rotation.

-Camera nº4. It captures an image of the parking area, displaying part of the sidewalk in front of the camera installation location.

-Camera nº5. Obtains a view of the parking area by displaying the squares located in it, in such a way that it allows to control the movements of everyone who accesses it.

Third. The reported entity proves that it has an informative poster(s), providing photographic material that proves its presence in a visible area, instating the data controller.

Fourth. It is accredited as the main reason for installing the system reasons of "security" not having contracted the installation of the system with foreign prey.

Fifth. In a letter dated 06/22/20 by the denounced entity, it was states that he proceeded to withdraw all the cameras, having vacated the rented ship, not existing any device to date.

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FOUNDATIONS OF LAW

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By virtue of the powers that article 58.2 of the RGPD recognizes to each authority 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 solve this procedure.

II

In the present case, the claim dated 11/18/19 is examined by me-

of which the following facts are brought to the attention of this Agency:

"In the Seville delegation, located on ***DIRIMIENTO.1 street, of ***LOCA-

LIDAD.1, in Seville, cp ***C.P.1, have 3 cameras installed to monitor the parking community private facilities that are also used by the adjoining ship, without authorization of the community of owners of said plot, which has already requested by burofax to remove the cameras, ignoring. Nor does it have posted billboards.

indicative of the existence of said cameras and of the right of access to the images genes of these chambers.

The facts are specified in the installation of a video-surveillance system with orientation of at least one of the cameras towards the parking area with common with the adjoining ship, obtaining in its case images of third parties without counting with their informed consent.

The content of article 5.1 letter c) RGPD is considered affected, which provides: "The personal data will be:

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

It should be remembered that cameras installed by individuals cannot be oriented towards public/private space, affecting the privacy of third parties, which are intimidated by these types of devices.

Surveillance cameras may make recordings limited to what is necessary, the perimeter and some reasonable points, applying the principle of proportionality, it is In other words, only the truly relevant areas for the purpose will be recorded. wanted.

III

In accordance with the evidence provided in this proceeding
sanctioning party, it is considered that the defendant had a video camera system
deo-surveillance, with an excessive orientation towards third-party areas, without just cause.
each.

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Specifically, after examining the screen prints of cameras No. 4 and 5,
images of the entrance to the enclosure were obtained, capturing the sidewalk and adjoining road
(camera nº 4) and with camera nº 5 the entire parking area was controlled.

The accused party argues that at the time of renting the ship, the
adjoining warehouse was unoccupied and with a "For Rent" sign, being the
car parks for the exclusive use of the Grúas Barea entity.

The truth is that between the parties (complainant/defendant) there is no good relationship
as argued by the complainant himself when stating that "they leave the property
against his will" or "due to the unsustainability of the situation".

In this case, it would have been advisable for the accused party to inform the
less to the Administrator of the intention to control the parking zone of use
shared with the adjoining ship, even if it was "unoccupied" and there was
half control with the system to the exclusive area of his ship, being able to reach a
understanding based on good faith between the parties.

Article 1,255 of the Civil Code provides: » The contracting parties may establish
make the agreements that they deem convenient, provided that they are not contrary to the law,
to morality or public order.

The mere presence of the camera(s) was considered an “intimate” element.

giver” by the denouncing party, regardless of whether or not there has been a “processing of third-party data”, this aspect is not accredited at least in the area of parking.

The control for “security” reasons of the denounced entity was achieved free limiting access to the area that had the right of use based on the relationship contract between the parties.

Therefore, the facts object of the complaint are accredited as they are considered excessive obtaining images of third-party space without just cause.

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:

a)

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

In the present case, the collaboration of the accused with this body, the limited nature of the collection, being a private space, as well as the lack of intentionality, given that the installation was for security reasons of personnel and facilities, particularly because in that area they worked with ma-heavy machinery.

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Therefore, from now on, the installation of a camera system must have the mandatory information poster (art. 22.4 LOPDGDD), limit its catchment area to the private space or what is necessary to allow the security of the facilities, as well as to comply with the specific regulations of the sector that, in its case, could regulate larla.

IV

Without prejudice to the provisions of article 83 of the RGPD, the aforementioned Regulation has in its art. 58.2 b) the possibility of sanctioning with a warning, in relation with what is stated in Considering 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. must, however, lend special attention to the nature, seriousness and duration of the infringement, its character intentional, to the measures taken to alleviate the damages suffered, to the degree liability or any relevant prior violation, to the manner in which the authority control authority has become aware of the infraction, compliance with measures measures ordered against the person in charge or in charge, adherence to codes of conduct and any other aggravating or mitigating circumstance.”

To date, the cameras that are the subject of dispute between the parties have been withdrawn. das, by ceasing the contractual relationship between the parties, so the area is free of any camera, although it is necessary to warn the accused, when accredited the "facts" opting for a mere Warning for the infraction committed in based on slight negligence.

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 GRÚAS BAREA S.L.U., with NIF B14300313, for a
infringement of Article 5.1.c) of the RGPD, typified in Article 83.5 of the RGPD, a
warning sanction.

SECOND: NOTIFY this resolution to GRÚAS BAREA S.L.U. and

REPORT the result of the proceedings to the denouncing party Ms. A.A.A.

In accordance with the provisions of article 50 of the LOPDGDD, the

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 interested parties may optionally file an appeal for reconsideration

before the Director of the Spanish Agency for Data Protection within a period of

month from the day following the notification of this resolution or directly

contentious-administrative appeal before the Contentious-Administrative Chamber of the

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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.

Sea Spain Marti

Director of the Spanish Data Protection Agency

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