

Procedure No.: PS/00118/2019

938-0419

## RESOLUTION OF PUNISHMENT PROCEDURE

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

### FACTS

FIRST: A.A.A. \*\*\*ADDRESS.1 -representative Don B.B.B.-- (\*hereinafter, the  
claimant) dated November 13, 2018 filed a claim with the

Spanish Agency for Data Protection, motivated by data processing  
carried out through cameras of a video surveillance system whose owner is  
ZUMOLANDIA GELATO (C.C.C.) with NIF \*\*\*NIF.1 (hereinafter the claimed one)  
installed in Avenida del Puerto 6-Local-Sada-A Coruña.

The reasons on which the claim is based are that "in the Local Zumolandia  
Gelato there are two cameras installed inside the premises focused on the outside of the  
same (terraces and public roads)" –folio nº 1--.

Together with the claim, it provides a Report from the local Police, as well as evidence  
Documentary (photographs) that confirm the absence of an information poster in the area  
Outside, only a sign of the company Securitas Direct S.A. can be seen.

SECOND: On 11/30/18, the claim was TRANSFERRED to the party  
denounced, so that as responsible for the installation of the video-  
surveillance proceeded to allege in law what it considered appropriate, including that the  
It complied with the regulations in force, appearing as notified for the purposes  
appropriate legal.

THIRD: On 01/03/19 a first brief of allegations is received from the party  
denounced acknowledging being responsible for the installation, which has been

carried out by the company Securitas Direct S.A, which is made up of two cameras in the Zumolandia Gelato establishment for the purpose of protecting it against possible theft.

FOURTH: On 01/05/2019, this Agency received a letter from Don D.D.D., identifying himself as President of the Community of owners, noting that the system remains the same and that in his opinion it records the public thoroughfare, although he does not provide evidence some in the above sense.

FIFTH: On October 11, 2019, the Director of the Spanish Agency for Data Protection agreed to initiate a sanctioning procedure against the claimant, for the alleged infringement of Article 13 of the RGPD, typified in Article 83.5 of the RGPD.

SIXTH: On 02/15/19, a new letter from the party is received by this body. denounced by providing documentary evidence (photographs) that prove that he has placed

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a sign inside the establishment, although it can be seen at first glance that it has left blank the part corresponding to the person responsible for it.

SEVENTH: On 10/28/19 a new document is received from the defendant, accrediting the availability of informative form, as well as providing documentary evidence (photograph no. 1) that proves the indication of the person responsible for the file on the poster informative.

## PROVEN FACTS

First. On 11/13/19, this AEPD received a claim motivated by the alleged data processing carried out through cameras of a security system

video surveillance whose owner is ZUMOLANDIA GELATO.

Second. It is identified as the main responsible Mr. C.C.C., who does not deny the facts.

Third. The existence of an informative poster inside the premises is verified, although the same initially did not indicate the person in charge, proceeding to modify it after the notification of the Initiation Agreement (Exhibit Doc. No. 2).

Fourth. The respondent has proceeded to obtain information form(s) available of the clients.

Fifth. It is accredited that the poster provided, refers to a regulation repealed, as is the LOPD (LO 15/99, December 13), limiting its action to put the name on the old sign you already owned.

Sixth. There is no evidence that the system obtains images of the exterior of the establishment, only inside it, obeying the installation for reasons of security.

## FOUNDATIONS OF LAW

Yo

By virtue of the powers that article 58.2 of the RGPD recognizes to each authority of control, and as established in art. 47 of the Organic Law 3/2018, of 5 December, of Protection of Personal Data and guarantee of digital rights (in hereinafter LOPDGDD), the Director of the Spanish Agency for Data Protection is competent to initiate and resolve this procedure.

II

In the present case, the claim 11/13/18 is examined through the which the denouncing party reports as the main fact the following:

“In the Local Zumolandia Gelato there are two cameras installed inside the premises focused on the outside of it (terraces and public roads)” –folio nº 1--.

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Furthermore, the non-existence of an informative poster in the exterior of the Premises indicating that it is a video-monitored area, indicating in its case the person in charge of the system in question.

Article 22 section 4 of the LOPDGDD (LO 3/2018, December 5) provides the

Next:

“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, that of the person in charge and the possibility of exercising the rights provided for in articles 15 to 22 of Regulation (EU) 2016/679. It may also be included in the device informative a connection code or internet address to this information.

In any case, the data controller must keep available to those affected the information referred to in the aforementioned regulation”.

The information poster must be installed in an area visible to customers of the establishment, who must be informed of their rights.

In addition, you must have inside the establishment some forms in case of exercising any "client" the rights recognized in the regulations in force.

You can obtain a type model on the Internet and adapt it, it will suffice to indicate in bold Right of access, the person in charge of the system, a space for the hypothetical affected fill in your data (Name, surnames, DNI and address of

answer), what you request and inform you about the possibility of contacting, in your case, a competent Control Authority, and, finally, place for the date and signature.

III

According to the data in the file and despite the indications of this organization, the poster initially sent did not indicate expressly the person responsible for the processing of personal data, as indicates the regulations in force, since he has only placed the poster, but it is blank as to the person in charge, which effectively prevents the exercise of right of any hypothetical affected party.

The exposed facts could suppose the commission, on the part of the defendant of an infringement of article 12 of the RGD, in the terms referred to both in the aforementioned article, as in articles 13 and 14 of said rule, and the respondent must give due compliance with the provisions of article 3 of Instruction 1/2006, of 8 November, from the Spanish Data Protection Agency. Consequently, the claimed must:

Place in the video-monitored areas, at least one informative badge located in a sufficiently visible place, both in open spaces and closed.

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In accordance with the provisions of articles 13 and 14 RGD, in the distinctive aforementioned information must identify, at least, the existence of a treatment, the identity of the person in charge and the possibility of exercising the

rights provided for in said precepts.

1. Keep available to those affected the information referred to in the quoted GDPR;

IV

In accordance with the evidence available in this sanctioning procedure, it is considered that the defendant has committed an infraction of the content of article 74.1 letter a) of the LOPDGDD (LO 3/2018, December 5).

“Breach of the principle of transparency of information or the right of information of the affected party for not providing all the information required by the articles 13 and 14 of Regulation (EU) 2016/679”

The known facts could constitute a minor infraction, subject to a limitation period of one year for the purposes of article 74 LOPDGDD.

Article 71 LOPDGDD (LO 3/2018, December 5) provides the following:

“The acts and behaviors referred to in the regulations constitute infractions. sections 4, 5 and 6 of article 83 of Regulation (EU) 2016/679, as well as those that are contrary to this organic law.

In the present case, it is taken into account that it is an establishment small, as well as the collaboration of the owner with this organism, which denotes an attitude of complying with the regulations in force, opting therefore for the Warning as a proposal for an administrative sanction to be imposed.

v

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

sanction by means of a fine, a warning may be imposed. must however

Special attention should be paid to the nature, seriousness and duration of the infringement, its intentional nature, to the measures taken to alleviate the damages suffered, the degree of liability or any relevant prior violation, the manner in which that the control authority has been aware of the infraction, compliance of measures ordered against the person responsible or in charge, adherence to codes of conduct and any other aggravating or mitigating circumstance.”

SAW

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In accordance with the foregoing, it should be noted that the defendant has a camera system that initially did not comply with current legislation, lacking the information poster located inside the reference establishment mandatory for the data controller.

On the occasion of the notification of the Initiation Agreement of this procedure, the defendant has met the requirements of this Agency, proving that the sign indicates the "responsible for the treatment" to whom to contact and that it has a form (s) available to customers.

It is recalled that the poster provided, refers to a repealed regulation such as Law 15/99, December 13 (LOPD), in such a way that it must be adjust to the current legal basis: RGPD and LOPDGDD (LO 3/2018, December 5), containing the same reference to the rights to be exercised by those affected in the framework of the arts 12 to 22 GDPR.

It is also recalled that in your case the outdoor terrace area cannot be subject to control of any kind, as it is a public space.

Therefore, according to what has been stated

the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: PROCEED TO WARN the accused party ZUMOLANDIA GELATO

(C.C.C.), by having an information poster that does not comply with current regulations,

granting it a period of one month to proceed to replace the existing one with one

new that adjusts to the exposed legal basis, for this reason:

-You must provide documentary evidence (photograph) of the new poster adapted to the regulations in force.

SECOND: NOTIFY this resolution to the entity ZUMOLANDIA GELATO

(C.C.C.) and REPORT the result of the actions to the complainant A.A.A

\*\*\*ADDRESS 1

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

LOPDPGDD, 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 month from

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

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

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.



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