

□ Procedure No.: PS/00293/2019

938-051119

RESOLUTION OF PUNISHMENT PROCEDURE

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

FACTS

FIRST: On May 7, 2019, it had entry in this Spanish Agency of

Data Protection a document presented by D.G. OF THE POLICE - COMMISSIONER

LOCAL DE LA LINEA (*hereinafter, the claimant), through which he formulates

claim against Mrs. A.A.A. with NIF ***NIF.1 (hereinafter, the claimed one), for the

installation of a video surveillance system installed in ***ADDRESS.1 LA LINEA

DE LA CONCEPCIÓN, CÁDIZ, with indications of a possible breach of the

provided in art. 5.1 c) GDPR.

The reasons that support the claim and, where appropriate, the documents
provided by the claimant are the following:

“installation of a camera oriented on the exterior facade” with the purpose of con-
control public space, without having an informative poster—folio nº 1--.

“Specifically, the Act signed by the acting parties is reiterated where it is verified
that the private home located at ***ADDRESS.1 of this locality, continue to install
all the video-surveillance cameras camouflaged in chimneys, facts that have already been
brought to the attention of that Agency through an Official Letter with DGP output record
No. XXXXX/2019 of ***DATE.1”.

Documentary evidence is attached (Annex I) that proves the presence of the camera.

ra with manifest orientation towards public space, stating that in the property

Activities related to the trafficking of prohibited substances are carried out.

SECOND: Prior to the acceptance of this claim for processing, it is transferred the claimed, in accordance with the provisions of article 65.4 of the Law Organic 3/2018, of December 5, on the Protection of Personal Data and guarantee of digital rights (hereinafter, LOPDGDD). The result of this action is describes below.

“It does not make any reply in relation to the facts described”

THIRD: The claim was admitted for processing by resolution of August 7 of 2019.

FOURTH: On November 21, 2019, the Director of the Spanish Agency of Data Protection agreed to initiate a sanctioning procedure against the claimed, for the C/ Jorge Juan, 6
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alleged infringement of Article 5.1.c) of the RGPD, typified in Article 83.5 of the GDPR.

In view of everything that has been done, by the Spanish Data Protection Agency

In this proceeding, the following are considered proven facts:

PROVEN FACTS

First. On 05/07/19, this Agency received a COMPLAINT from the D.G.Police (La Línea Local Police Station) for the installation of a video surveillance system installed in ***ADDRESS.1 --LA LINEA DE LA CONCEPCIÓN, CÁDIZ, existing indications of a possible breach of the provisions of art. 5.1 c) GDPR.

Second. It is identified as the main person in charge of the installation Doña

A.A.A., being identified as such by the acting force.

Third. Based on the documentary evidence provided, the installation of a video-surveillance camera, oriented towards public space, with the purpose of control the public street next to the house.

As manifested by the acting force, the dwelling develops activities related to drug trafficking, which is why it is installed the system, allowing control of the public space.

Fourth. There is no evidence of the presence of an informative poster, adapted to the regulations in force, informing of the person in charge before whom to exercise the rights recognized in articles 15 to 22 RGPD.

Fifth. No explanation has been given despite the requirements of this Agency, about the cause/reason for the presence of the camera, and its orientation towards public space.

FOUNDATIONS OF LAW

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By virtue of the powers that article 58.2 of Regulation (EU) 2016/679 (General Data Protection Regulation, hereinafter RGPD), recognizes each Control Authority, and according to the provisions of articles 47, 48.1, 64.2 and 68.1 of the LOPDGDD, the Director of the Spanish Data Protection Agency is competent te to start and solve this procedure.

II

In the present case, a Complaint was received from the Security Forces and Bodies of the State transferring as the main fact "the installation of a camera oriented on the facade-da exterior" with the purpose of controlling public space, without having an informative poster.

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The facts described above may affect the content of the

art.5.1 c) RGPD. "Personal data will be:

c) adequate, pertinent and limited to what is necessary in relation to the purposes for those that are processed ("data minimization").

It should be remembered that individuals can install video surveillance cameras although they assume the responsibilities that they comply with the provisions in force on the matter.

On the other hand, in accordance with the provisions of article 22 of the LOPDGDD, referring specifically to the "Processing for video surveillance purposes", the treatment of images in public places can only be carried out -if applicable and pre-saw compliance with the legally enforceable requirements-, by the Forces and Bodies of Security, unless the exception established in the aforementioned article 22 operates of the LOPDGDD for individuals or legal entities, public or private, respecting do the conditions required in said article.

The camera(s) can only be oriented towards the main entrances of your private home, without being able to obtain images of public and/or private space third parties close to the home you own.

III

In accordance with the above, the treatment of images through a system subject of video surveillance, to be in accordance with current regulations, you must comply with the following requirements:

- Respect the principle of proportionality.
- When the system is connected to an alarm center, it can only be

installed by a private security company that meets the requirements contemplated

two in article 5 of Law 5/2014 on Private Security, of April 4.

- The video cameras will not be able to capture images of people who are outside the private space where the video surveillance system is installed, since the treatment of images in public places can only be carried out, unless Government authorization concurs, by the Security Forces and Bodies. Either spaces owned by third parties may be captured or recorded without the consent of their owners, or, where appropriate, of the people who are in them.

This rule admits some exceptions since, on some occasions, for the protection of private spaces, where cameras have been installed on facades or in the inside, it may be necessary to ensure the security purpose the recording of a portion of the public road. That is, cameras and camcorders installed with fi- security officers will not be able to obtain images of public roads unless it is indispensable for said purpose, or it is impossible to avoid it due to the location of those and, extraordinarily, the minimum space for said financing will also be collected. ity. Therefore, the cameras could exceptionally capture the minimum portion- mind necessary for the intended security purpose.

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- The duty to inform those affected provided for in the articles must be complied with.

12 and 13 of the RGPD, resulting from application -by not contradicting the provisions of the aforementioned Regulation-, the manner provided for in article 3 of Instruction 1/2006, of 8 of November, of the Spanish Agency for Data Protection, on the Treatment

of Personal Data for Surveillance Purposes through Camera Systems or Videochambers.

Specifically, at least one distinction must be placed in video-monitored areas.

informative display located in a sufficiently visible place, both in open spaces

as closed, which will identify, at least, the existence of a treatment, the

identity of the person in charge and the possibility of exercising the rights foreseen in said

precepts. Likewise, the information must be kept available to those affected.

to which the aforementioned RGPD refers.

- The person in charge must keep a record of treatment activities

carried out under its responsibility, including the information to which it makes

reference article 30.1 of the RGPD.

- The installed cameras cannot obtain images from private space of

third party and/or public space without duly accredited justified cause, nor can

affect the privacy of passers-by who move freely through the area. It's not per-

mitigated, therefore, the placement of cameras towards the private property of neighbors with

the purpose of intimidating them or affecting their private sphere without just cause.

- In no case will the use of surveillance practices beyond the en-

object of the installation and in particular, not being able to affect the public spaces

surrounding spaces, adjoining buildings and vehicles other than those accessing the space.

guarded man

In relation to the foregoing, to facilitate the consultation of interested parties, the Agency

Spanish Data Protection Agency offers through its website

[<https://www.aepd.es>] access to legislation on personal data protection

regulations, including the RGPD and the LOPDGDD (section "Reports and resolutions" / "nor-

tive"), as well as the Guide on the use of video cameras for security and other finances.

ities, as well as the Guide for compliance with the duty to inform (both available

ble in the “Guides and tools” section).

It is also of interest, in case of carrying out data processing of low risk, the free tool Facilita (in the “Guides and tools” section), which through specific questions, it allows to assess the situation of the person in charge aspect of the processing of personal data that it carries out, and where appropriate, generate diverse documents, informative and contractual clauses, as well as an annex with indicative security measures considered minimal.

IV

The claim is based on the presumed illegality of the installation by the called from a video surveillance system, made up of a number of cameras determined (at least one) in the property located at ***ADDRESS.1 THE LINE OF THE C/ Jorge Juan, 6

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CONCEPCIÓN, CÁDIZ, which could capture images of public areas unintentionally. provided.

In addition, the claimant warns that the reviewed property does not have sign

in which the presence of the cameras and the identity of the responsible for data processing, so that interested persons can exercise cite the rights provided for in arts. 15 to 22 of the GDPR.

Article 77 section 5 of Law 39/2015 (October 1) provides: “Documents documents formalized by officials who are recognized as authorities and in which, observing the corresponding legal requirements, the

facts verified by those will prove them unless it is proven

trary”

So the "illegality" of the camera (s) installed is considered proven

as it does not have an informative poster and is blatantly oriented towards public space.

public, in order to control it disproportionately.

v

The corrective powers of the Spanish Protection Agency

of Data, as a control authority, are established in article 58.2 of the RGPD. In-

Among them are the power to sanction with a warning -article 58.2 b)-,

the power to impose an administrative fine in accordance with article 83 of the RGPD

-article 58.2 i)-, or the power to order the controller or processor

that the treatment operations comply with the provisions of the RGPD, when

appropriate, in a certain way and within a specified period -article 58. 2

d)-.

According to the provisions of article 83.2 of the RGPD, the measure provided for in article

Article 58.2 d) of the aforementioned Regulation is compatible with the sanction consisting of a fine

administrative.

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 con-
conduct and any other aggravating or mitigating circumstance.”

SAW

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It is identified as the owner of the home Doña A.A.A., whose personal data
nals provides the acting force.

The conduct described could involve the commission of an offense typified in
Article 83.5 of the RGPD, which provides the following:

“Infractions of the following provisions will be sanctioned, in accordance
with paragraph 2, with administrative fines of a maximum of EUR 20,000,000 or, alternatively,
being from a company, of an amount equivalent to a maximum of 4% of the volume
overall annual total turnover of the previous financial year, opting for the
higher amount:

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 of the infraction as it is affecting public space without cause
justified, controlling a wide space of the public street (art. 83.2a) RGPD).
- intentionality, which is marked by controlling access to public roads-
ca, to avoid police raids, being aware of the illegality of the measure
adopted (art. 83.2 b) RGPD).

It is taken into account that it is an individual, although the presence of the device (s) has already been warned that it is an illegal measure, not knowing the ni-level of income of the accused, so it is considered correct to impose a sanction encrypted in the amount of €4,000 (Four Thousand Euros), as it is affecting with the Mara to public space without just cause.

The accused party must also remove the camera pointing towards the road. public or prove what is observed with it, providing impres-screen version (eg with date and time).

It is warned that not meeting the requirements of this organization may be considered as a new administrative infraction in accordance with the provisions of the RGPD, typified as an infringement in its article 83.5 and 83.6, being able to motivate such conducts the opening of a subsequent sanctioning administrative proceeding.

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 Mrs. A.A.A., with NIF ***NIF.1, for a violation of Article 5.1.c) of the RGPD, typified in article 83.5 of the RGPD, a fine of €4,000 (Four Thousand Euros), being punishable in accordance with art. 58.2 GDPR.

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SECOND: NOTIFY this resolution to the defendant A.A.A. and inform of the result of the proceedings to the denouncing party D.G. FROM THE POLICE - LOCAL COMMITTEE OF THE LINE.

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, on Administrative Procedure

Common Public Administrations (hereinafter LPACAP), within the payment term

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 on behalf of the Agency

Spanish Data Protection at Banco CAIXABANK, S.A. Otherwise,

it will be collected during the executive period.

Received the notification and once executed, if the date of execution is

is between the 1st and 15th of each month, both inclusive, the term to carry out the

voluntary payment will be until the 20th day of the following month or immediately after, and if

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

payment will be until the 5th of the second following month or immediately after.

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

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.

Finally, it is pointed out that in accordance with the provisions of art. 90.3 a) of the LPACAP, the firm resolution may be provisionally suspended in administrative proceedings if the interested party expresses his intention to file a contentious appeal-administrative. If this is the case, the interested party must formally communicate this made by writing to the Spanish Agency for Data Protection, introducing him to

the agency

[<https://sedeagpd.gob.es/sede-electronica-web/>], or through any of the other

records provided for in art. 16.4 of the aforementioned Law 39/2015, of October 1. Also

must transfer to the Agency the documentation that proves the effective filing

of the contentious-administrative appeal. If the Agency were not aware of the

filing of the contentious-administrative appeal within two months from the

day following the notification of this resolution, it would end the

precautionary suspension.

Electronic Registration of

through the

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