

938-0419

Procedure No.: PS/00120/2019

RESOLUTION OF PUNISHMENT PROCEDURE

In sanctioning procedure PS/00120/2019, instructed by the Spanish Agency for Data Protection, before the entity, A.A.A. S.L.U. with NIF ***NIF.1, (hereinafter "claimed entity"), by virtue of a complaint filed by D. B.B.B. (hereinafter "the claimant") and based on the following:

BACKGROUND

FIRST: On 11/18/18, you had entry into this Agency in writing submitted by the claimant, in which he stated, among others, that: "the company denounced has a video surveillance camera (photo attached), recording the public road, which is not has a sign indicating the existence of this, for which it violates the law of protection of data. In addition, the captured images are stored indefinitely".

SECOND: In view of the facts set forth in the claim and the documents provided, the General Subdirectorate for Data Inspection proceeded to carry out actions for its clarification, under the investigative powers granted to the control authorities in article 57.1 of the Regulation (EU) 2016/679 (General Data Protection Regulation, RGPD). Thus, with date 12/14/18, an information request is addressed to the respondent so that he proves that The installation of the cameras is in accordance with data protection regulations.

THIRD: On 01/08/19, a written claim for information is reiterated to the claimed indicating that, "by not having agreed to the initial notification dated 12/14/18 and, exceptionally, it is forwarded."

FOURTH: On 02/15/19, the respondent entity sends a letter to this Agency indicating, among others, the following:

“The person responsible for the image capture system placed within the facilities located at ***ADDRESS.1, is D. A.A.A., acting as manager of the entity A.A.A. S.L.U.

That to comply with the provisions of article 12 and following of the RGPD and article 22 of the LOPDGDD in relation to the provisions of article 89 of the Law of reference, the facilities object of this claim have: -

Informational video surveillance devices and posters placed in a visible place. The information provided to the video-monitored user is: The existence of the treatment and purpose. The identity of the person in charge. The possibility of exercising the rights provided for in articles 15 to 22 of the RGPD. Notice to employees posted on the bulletin board where information is given about the installation of the video surveillance. We attach photographs of the devices placed inside the facilities of the person in charge as document number one. We attach photography on the bulletin board as document number two.

That the entity has signed with the company SECURITAS DIRECT a contract of Installation services of video surveillance systems or elements without this including

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viewing and processing of the images captured by the cameras, performing said function only by authorized personnel within the facilities of the data controller. The cameras placed inside the

The facilities of the person in charge are part of a closed circuit. said images they go to a recorder to which only the company administrator has access, being this, the only person authorized to view the images. The

Securitas Direct company is only responsible for the installation of the cameras, and punctual, of the repairs of the video surveillance devices, provided that it is requires performs said service. We attach the contract signed with the company Securitas Direct, as document number three.

To certify the brand and model of the cameras placed in the facilities, we provide as document number four, the manuals of the cameras that have been mounted new ones, having been impossible for this part to obtain the manuals of the older cameras. Likewise, it is provided as document number five, the VCR manual.

The cameras are located and focus on the entry and exit points of the facilities, critical or strategic points within the ship whose security can be affected. Finally, some of the cameras focus on the cabinets where saves and stores all confidential information owned by the entity. For certify that its installation was carried out in accordance with current regulations, and that the Capturing the images is limited to what is strictly necessary to comply with the purpose for which they were installed, we attach the photographs of the images captured by cameras, as document number six. Provided a photograph of system monitor, as document number seven. Installation plan provided of the chambers, as document number eight. The retention periods of the images captured by video surveillance systems are kept for the period of one month from its collection, in accordance with the provisions of the LOPDGDD. In order to inform about the different treatments carried out by the responsible in particular, the one related to video surveillance systems, we attach the Record of processing activities as document number nine”.

FIFTH: On 04/12/19, the Director of the Spanish Agency for the Protection of Data agreed to initiate a sanctioning procedure against the person claimed, for alleged

infringement of article 5.1.c) of the RGPD and granting a hearing period of ten working days to formulate the allegations and present the evidence that considered convenient.

SIXTH: According to a certificate issued by the Electronic Notification Service and Authorized Electronic Address, it is verified that the document initiating the file sanctioning party was placed at the disposal of the claimed entity on 05/13/19, producing the automatic rejection of the same on 05/24/19.

SEVENTH: The entity claimed has not submitted to this Agency, any written or allegation, within the period granted for this purpose.

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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 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.

In the present case, a sanctioning procedure is initiated because two chambers, identified as CAM 1 and CAM2, installed on the property of the claimed party, record disproportionately, capturing images of the surrounding public road of the plot of the industrial estate where the company is located.

II

The installation of this type of device must obey some cause/reason plausible, which allows this Agency to assess the proportionality of the extent, especially if it comes into play with the rights/freedoms of third parties, in areas where it can travel freely.

As a general rule, capturing images for security purposes, by the public thoroughfare must be carried out by the Security FFCC, since they are responsible for prevention of criminal acts and the guarantee of safety in the aforementioned public thoroughfare, in accordance with what is regulated by Organic Law 4/1997, of 4/08, and its Regulation of developing. This rule admits some exceptions since on some occasions, for the protection of private spaces, where cameras have been installed on facades or in inside, it may be necessary to ensure the purpose of security recording of a portion of the public highway. That is, cameras and camcorders installed with security purposes may not obtain images of public roads unless it is essential for said purpose, or it is impossible to avoid it due to the location of those. Therefore, the cameras could exceptionally capture a portion minimally necessary for the intended security purpose.

The art. 4 section 2 of Instruction 1/2006 (AEPD) provides the following: "Only shall consider the installation of cameras or video cameras admissible when the purpose monitoring cannot be obtained through other means that, without requiring efforts disproportionate, are less intrusive to people's privacy and to your right to personal data protection.

The "facts" described above may imply a violation of art. 5.1.c) GDPR, since cameras appear to exert excessive control over a area of free transit.

III

Article 83 section 5 of the RGPD provides that: "The infringements of the following provisions will be sanctioned, in accordance with section 2, with fines administrative fees of EUR 20,000,000 maximum or, in the case of a company, of an amount equivalent to a maximum of 4% of the total annual turnover of the previous financial year, opting for the highest amount: a) the

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basic principles for processing, including conditions for consent

according to articles 5, 6, 7 and 9;

The sanction to be imposed must be graded according to the criteria established

article 83.2 of the RGPD, and with recital 148 of the RGPD itself, which provides for the

possibility of punishing with a warning in certain circumstances.

In the present case, it has been taken into account for the application of the warning that

These are company facilities that require security and there is legitimacy

for the installation and collection of images in these cases.

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 the entity A.A.A. S.L.U. with NIF ***NIF.1, for infraction of the

Article 5 of the RGPD, typified in Article 83.5 of the RGPD, a sanction of

warning.

SECOND: REQUIRE the entity A.A.A. S.L.U, so that, within a month

from this act of notification, proceed to modify the orientation of the cameras

ceasing to record the public highway, thus adjusting to current regulations.

THIRD: NOTIFY this resolution to the A.A.A. S.L.U.

In accordance with the provisions of article 50 of the LOPDPGDD, 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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Director of the Spanish Data Protection Agency