

□ Procedure No.: PS/00085/2020

938-300320

RESOLUTION OF PUNISHMENT PROCEDURE

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

FACTS

FIRST: XERESA CITY COUNCIL - LOCAL POLICE (*hereinafter, the
claimant) dated February 20, 2020 filed a claim with the Agency

Spanish Data Protection. The claim is directed against the neighbor of the
locality A.A.A. with NIF ***NIF.1 (hereinafter, the claimed one). The reasons in which
the claim is based on are “the presence of a video-surveillance camera that could be
oriented towards public space” without just cause.

“...it is observed that the camera is in the same place, so this Agent is
of the opinion that it is recording the public thoroughfare...” -folio nº 1--.

Together with the claim, it provides documentary evidence (Annex I) consisting of
Photographic report that accredits what was stated in your letter before this Agency.

SECOND: On June 9, 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.

THIRD: The information system of this Agency contains the notification of the
Start Agreement dated 07/14/20 and 07/15/20 with the indication “Absent in
Distribution”, proceeding to the publication in the B.O.E for the appropriate legal purposes.

FOURTH: The database of this Agency consulted on 09/04/2020 does not contain
No allegation in relation to the facts object of the complaint.

FOUNDATIONS OF LAW

Yo

By virtue of the powers that article 58.2 of the RGPD recognizes to each authority, 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

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In the present case, the claim is based on the transfer by the Local Police (City Hall) of Xeresa Court) of the existence of a video-surveillance device that could be badly oriented in the judgment of the acting force.

A photographic report is attached (Doc. nº 1) on the presence of the camera and the alleged orientation towards public space without just cause.

The art. 5.1 c) RGPD provides the following: The personal data will be: "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 individuals are responsible for ensuring that the systems installed comply with current legislation, proving that it complies with all the requirements demanded by the regulations in force.

The installation of this type of device must have the mandatory informative sign, indicating the purposes and responsible for the treatment, where appropriate, of the data of each personal character.

In any case, the cameras should preferably be oriented towards the space particular, avoiding intimidating neighboring neighbors with this type of device, as well how to control their transit areas without just cause.

With this type of device it is not possible to obtain image(s) of public space either. co, as this is the exclusive competence of the State Security Forces and Bodies ted.

It should be remembered that even in the case of a "simulated" camera, the same should preferably be oriented towards private space, since it is considered that this type of device can affect the privacy of third parties, that they are intimidated by it in the belief of being the subject of permanent recording.

On the part of individuals, it is not possible to install devices for obtaining images of public space, outside the cases allowed in the regulations.

III

In accordance with the "evidence" available in this prosecution procedure, it is considered that the defendant has a video-surveillance that could be misdirected towards public space without just cause each.

Article 77 section 5 of Law 39/2015 (October 1) provides the following:

“The documents formalized by the officials who are recognized as condition of authority and in which, observing the corresponding legal requirements, the facts verified by those are collected will prove them except prove the contrary”.

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The known facts constitute an infraction, attributable to the claimant.

mado, for violation of the content of art. 5.1 c) GDPR.

The art. 83.5 RGPD provides the following: "Infringements of the provisions

following will be sanctioned, in accordance with section 2, with administrative fines

EUR 20,000,000 maximum or, in the case of a company, an equivalent amount.

equivalent to a maximum of 4% of the total global annual turnover of the fiscal year

previous financial statement, 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;

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 con-

conduct and any other aggravating or mitigating circumstance."

Since it is not confirmed, initially, that the camera obtains an image of space

public service, despite the requirements of this body, it is considered correct

propose a warning sanction.

In order to avoid new complaints about the same facts, the denouncing party

ciada must provide documentary evidence (eg screen print with date and time)

of what in your case is captured with the camera in question, in such a way that it is easy-

the content of the images obtained with it can be analysed, indicating

do the number of this procedure.

Remember for the appropriate legal purposes, that the lack of collaboration with this

Agency may lead to the opening of a sanctioning procedure of a

economic, under the terms of art. 72.1 letter o) LOPDGDD.

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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 Mr. 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 sanction of

warning.

SECOND: REQUIRE the accused to certify the legality of the system,

providing a screen impression of what, in your case, is captured with the device

denounced or, failing that, proves the legality of the system in question.

THIRD: NOTIFY this resolution to A.A.A. and REPORT the result

of the actions XERESA CITY COUNCIL - LOCAL POLICE-.

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.

Sea Spain Marti

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