

□ File No.: EXP202205738

RESOLUTION OF SANCTIONING PROCEDURE

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

BACKGROUND

FIRST: MURCIA CITY COUNCIL (*hereinafter, the complaining party) me-

In writing of the date of entry in this AEPD 05/17/22 transfers Police Official

City Hall premises (Murcia) for the purposes of its analysis by this Spanish Agency of

Data Protection. The aforementioned Official Letter identifies the establishment LO-

RENT 2013, S.L. with NIF B73785883 (hereinafter, the denounced party). The motives

on which the transfer is based are briefly the following:

The complaining party provides an Official Letter dated May 12, 2022 in which they state

manifest that the denounced party is responsible for an establishment that has

with a video surveillance system without being duly marked by

the mandatory informative posters of the video-surveilled area, with cameras that

They are oriented to the public highway, without mediating prior administrative authorization for it.

They reiterate the claim after having filed a claim on May 12, 2021

for the same facts before this Agency.

"In addition, this place has interior vision cameras without indication or on the outside.

interior nor interior; and finally it has another vision camera that reproduces vi-

deo continuously on a screen inside the premises showing images of the

***ADDRESS.1, from the portal of the premises, the sidewalk and half of the road"

Along with the notification, a copy of the Official Letter dated 05/12/22 is provided, where the

acting force reiterates the communication of facts in the mentioned establishment

Single supporting document).

SECOND: On July 13, 2022, the Director of the Spanish Agency for Data Protection agreed to initiate disciplinary proceedings against the claimed party, for the alleged infringement of Article 5.1.c) of the GDPR, typified in Article 83.5 of the GDPR.

THIRD: On 08/05/22 we proceed to publish in the B.O.E Notice of notification of August 3, 2022 in procedure PS/00262/2022.

Consequently, since the practice of notifying of the act indicated below, the Spanish Data Protection Agency publishes this notice by which the corresponding administrative act is notified to the indicated procedure.

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FOURTH: Consulted the database of this Agency on 09/13/22, there is no record accredited regularization of the system object of claim, nor any answer was has produced in this regard.

FIFTH: Notified of the aforementioned start-up agreement in accordance with the rules established in Law 39/2015, of October 1, on the Common Administrative Procedure of Administrative Public administrations (hereinafter, LPACAP) and after the period granted for the formulation of allegations, it has been verified that no allegation has been received by the claimed party.

Article 64.2.f) of the LPACAP -provision of which the party was informed- claimed in the agreement to open the procedure - establishes that if the arguments within the established term on the content of the initiation agreement, when

it contains a precise pronouncement about the imputed responsibility, possibly

It will be considered a resolution proposal. In the present case, the initiation agreement

of the sanctioning file determined the facts in which the imputation materialized.

the infraction of the GDPR attributed to the defendant and the sanction that could be imposed

nerse. Therefore, taking into consideration that the claimed party has not formulated

allegations to the agreement to start the file and in attention to what is established in the article

Article 64.2.f) of the LPACAP, the aforementioned initiation agreement is considered in the present proposed case resolution.

In view of all the proceedings, by the Spanish Protection Agency

of Data in this procedure the following are considered proven facts:

PROVEN FACTS

First. The facts bring cause of the claim dated 05/17/22 through the

which transfers the "presence of cameras without being duly marked"

considering the same oriented towards public roads without just cause.

Along with the notification, a copy of the Official Letter dated 05/12/22 is provided, where the

acting force reiterates the communication of facts in the mentioned establishment

Single supporting document).

Second. Lorent 2013, S.L, with NIF is accredited as the main responsible

B73785883.

Third. It is accredited that the system lacks an informative badge indicating

that it is a "video-surveilled area", without informing the person responsible for the treatment of

the data or way of exercising the rights within the framework of the current GDPR.

Room. The capture of public space is accredited after the evidence provided

In a face-to-face report from the Local Police dated 05/12/22. Report no.: (...).

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FUNDAMENTALS OF LAW

Yo

In accordance with the powers that article 58.2 of Regulation (EU) 2016/679 (Re-

General Data Protection Regulation, hereinafter GDPR), grants each authori-

quality of control and as established in articles 47, 48.1, 64.2 and 68.1 of the Law

Organic 3/2018, of December 5, Protection of Personal Data and guarantee of

digital rights (hereinafter, LOPDGDD), is competent to initiate and resolve

this procedure the Director of the Spanish Data Protection Agency.

Likewise, article 63.2 of the LOPDGDD determines that: "The procedures processed

by the Spanish Data Protection Agency will be governed by the provisions of

Regulation (EU) 2016/679, in this organic law, by the regulations

comments dictated in its development and, insofar as they do not contradict them, with a sub-

sisidario, by the general rules on administrative procedures."

II

In the present case, we proceed to examine the document dated 05/17/22 by which the

transfers an Official Letter from the Murcia Local Police that materializes in the presence of devices

vo of video-surveillance lacking informative sign(s) and affecting transit area

public.

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The art. 5.1 c) GDPR provides the following: Personal data will be:

“adequate, relevant and limited to what is necessary in relation to the purposes

for those who are processed ("data minimization").

It should be remembered that individuals are responsible for ensuring that the systems installed

fulfilled comply with current legislation, certifying 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 poster

ive, indicating the purposes and person responsible for the treatment, where appropriate, of the data of each personal character.

In any case, the cameras must be oriented towards the particular space, avoiding

to intimidate neighboring neighbors with this type of device, as well as control areas

nas of transit of the same without justified cause.

Neither with this type of device can you obtain an image(s) of public space.

since this is the exclusive competence of the Security Forces and Bodies of the State

tado.

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It should be remembered that even if it is 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, who are intimate

measured by it in the belief of being the object 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.

The purpose of this type of device must be the security of the property and its inhabitants, avoiding the affectation of the rights of third parties who are intimidated two with the same

II

In accordance with the "evidence" available in this proceeding disciplinary action, it is considered that the claimed party has a video-surveillance that affects public transit area, without being duly informed.

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

5. The documents formalized by the officials to whom the condition of authority and in which, observing the corresponding legal requirements teeth, the facts verified by the former shall be collected, they shall prove the latter except prove otherwise.

After visual inspection of the establishment, the uptake of spaces was verified. public office with the exterior camera on the system monitor, being a measure after provided for the purpose of protecting the premises and its belongings.

The known facts constitute an infringement, attributable to the party claimed, for violation of the content of article 5.1 c) GDPR, previously cited do.

According to article 72 section 1 LOPDGDD (LO 3/2018, December 5) "Infractions considered very serious" "infractions involving a substantial violation of the articles mentioned therein and, in particular, the following (...)

a) The processing of personal data in violation of the principles and guarantees

established in article 5 of Regulation (EU) 2016/679.

IV.

The complaining party also states in its brief that the system lacks informative signage in this regard, by not displaying the poster(s) that inform of video-monitored area.

"The duty of information provided for in article 12 of Regulation (EU)

2016/679 will be understood to have been complied with by placing an informative device

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in a sufficiently visible place identifying, at least, the existence of the treatment, the identity of the person responsible 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 informative device a connection code or internet address to this information" (*bold type belongs to this body)—art. 22 section 4 of the LOPDGDD--.

The AEPD, in a related report, stipulates that it is not necessary for the cartels to be sit just below the cameras. It is enough to do it in a visible place and include open and closed spaces where the video camera circuit is operational.

The facts described above imply an affectation to the content of the article

13 GDPR, as the informative poster lacks an effective address to which power can be reached in

If necessary, contact or indicate, where appropriate, the main person responsible for the treatment of the data.

Article 13 GDPR "Information that must be provided when the data personal data are obtained from the interested party"

1. When personal data relating to him or her is obtained from an interested party, the person responsible of the treatment, at the moment in which these are obtained, it will provide you with all the information information indicated below: a) the identity and contact details of the responsible and, where appropriate, his representative; b) the contact details of the delegate of pro-data protection, if applicable; c) the purposes of the processing for which the data is intended personal information and the legal basis of the treatment (...).

Article 72 section 1 of the LOPDGDD (LO 3/2018, December 5) in relation to tion to the limitation period of very serious infractions "will prescribe three years" and in particular the following:

h) The omission of the duty to inform the affected party about the treatment of their personal data in accordance with the provisions of articles 13 and 14 of the Regulation (UE) 2016/679 and 12 of this organic law.

V

The art. 83.5 GDPR provides the following: "Violations of the following provisions These will be penalized, in accordance with section 2, with administrative fines of 20 000 000 EUR maximum or, in the case of a company, an equivalent amount to a maximum of 4% of the overall annual total turnover of the financial year previous year, opting for the one with the highest amount:

a) The basic principles for the treatment including the conditions for the consent in accordance with articles 5,6,7 and 9 (...)"

the rights of the interested parties in accordance with articles 12 to 22;

b)

In this case, it is taken into account that it is an establishment whose level of income could not be determined, that he has not made any statement on the device to be transferred, bearing in mind the poor orientation of the chambers. maras verified by the acting force, being a system that is affecting zones

nas public; All of this justifies imposing a penalty of 900 euros (€600+€300), for in-

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fraction of articles art. 5.1 c) GDPR and 13 GDPR, by having a camera system

gangs without the proper informative signage oriented towards public space without cause

justified, ignoring the recommendations of the acting force after

on several occasions at the scene of the events, a sanction located on the lower scale

higher for this type of behavior, but taking into account the negligent conduct

grave of the claimed (a).

SAW

The text of the resolution establishes which have been the infractions committed and

the facts that have given rise to the violation of the data protection regulations

from which it is clearly inferred what are the measures to be adopted, without prejudice to

that the type of procedures, mechanisms or concrete instruments to implement

treat them corresponds to the sanctioned party, since it is the person responsible for the treatment who

fully knows your organization and has to decide, based on personal responsibility

active and risk-focused, how to comply with the GDPR and the LOPDGDD.

It is noted that a new inspection of the establishment without compliance

of the measures used, may lead to the opening of a new proceeding by

continued infraction, assessing the lack of collaboration when proposing the impo-

sition of a new pecuniary sanction.

Therefore, in accordance with the applicable legislation and assessed the graduation criteria

tion of the sanctions whose existence has been accredited,

the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: IMPOSE the entity LORENT 2013, S.L., with NIF B73785883, for a infringement of Article 5.1.c) of the GDPR, typified in Article 83.5 of the GDPR, a €600 fine.

SECOND: IMPOSE the entity LORENT 2013, S.L., with NIF B73785883, for a violation of Article 13 of the GDPR, typified in Article 83.5 of the GDPR, a fine €300.

THIRD: TO ORDER the claimed entity so that, within 15 business days, les, to be recorded from the following from the notification of this administrative act, proceed as follows:

- Placement of informative poster(s) indicating that it is a video-surveillance area. lada, proceeding to have an information form in the establishment or indicate- do website where you can download the form.

- Proceed to regularize the external capture camera and must deactivate the possibility of capturing public space, providing photography screen printing size that proves such extreme.

FOURTH: NOTIFY this resolution to LORENT 2013, S.L..

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FIFTH: Warn the sanctioned party that he must enforce the sanction imposed

Once this resolution is enforceable, in accordance with the provisions of Article art. 98.1.b) of Law 39/2015, of October 1, on Co-Administrative Procedure public administrations (hereinafter LPACAP), within the term of payment vo-

volunteer 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, by means of its income, 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, open in the name of the Spanish Agency of Data Protection in the bank CAIXABANK, S.A.. In case of Otherwise, it will proceed to its collection in the executive period.

Once the notification has been received and once executed, if the execution date is between the 1st and 15th of each month, both inclusive, the term to make the payment voluntary will be until the 20th day of the following or immediately following business month, and if between the 16th and the last day of each month, both inclusive, the payment period is It will run until the 5th of the second following or immediately following business month.

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

Resolution will be made public once the interested parties have been notified.

Against this resolution, which puts an end to the administrative process in accordance with art. 48.6 of the LOPDGDD, and in accordance with the provisions of article 123 of the LPACAP, the interested parties

Respondents may optionally file an appeal for reinstatement before the Director of the Spanish Agency for Data Protection within a period of one month from the the day following the notification of this resolution or directly contentious appeal before the Contentious-Administrative Chamber of the National Court, in accordance with the provisions of article 25 and section 5 of the additional provision fourth clause of Law 29/1998, of July 13, regulating the Contentious Jurisdiction-administration, within a period of two months from the day following the notification of this act, as provided for in article 46.1 of the aforementioned Law.

Finally, it is noted that in accordance with the provisions of art. 90.3 a) of the LPACAP, may provisionally suspend the firm resolution in administrative proceedings if the interested party

do states its intention to file a contentious-administrative appeal. If it is-

As the case may be, the interested party must formally communicate this fact in writing addressed to the Spanish Data Protection Agency, presenting it through the Re-Electronic registry of the Agency [<https://sedeagpd.gob.es/sede-electronica-web/>], or to through any of the other registries provided for in art. 16.4 of the aforementioned Law 39/2015, of October 1. You must also transfer the documentation to the Agency proving the effective filing of the contentious-administrative appeal. if the Agency was not aware of the filing of the contentious-administrative appeal treatment within two months from the day following notification of this resolution, would terminate the precautionary suspension.

Mar Spain Marti

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