

□ Procedure No.: PS/00026/2020

938-300320

RESOLUTION OF PUNISHMENT PROCEDURE

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

BACKGROUND

FIRST: On October 29, 2019, it had entry in this Spanish Agency
of Data Protection a document presented by D. G. DE LA GUARDIA CIVIL -
MAIN POST OF ***LOCALITY.1 (hereinafter, the claimant), by
who makes three complaints against A.A.A. with NIF ***NIF.1 (hereinafter, the
claimed), for the installation of a video surveillance system installed in
***ADDRESS.1 ***LOCATION.2 (A CORUÑA), with indications of a possible
Non-compliance with the provisions of the data protection regulations
personnel (Complaint 1810/19); for the collection of personal data for a
different purpose without the consent of the affected party (Complaint 1811/19); Y
for violation of the duty of confidentiality established in article 5 of the
Regulation (EU) 2016/679 (General Data Protection Regulation, hereinafter
GDPR) (Complaint 1812/19).

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

«On the afternoon of October 19, personnel from this Unit had
knowledge that several photographs of
components of this Unit, through the social network, INSTAGRAM. sayings
photographs corresponded to a performance carried out by the agents
***AGENTE.1 and ***AGENTE.2, on the morning of the 12th of this month, with

reason for an altercation that had occurred at ***ADDRESS.1, of the municipality of ***LOCALIDAD.2 (A Coruña), in front of the house of A.A.A. (**NIF.1). Said Agents did not consent to the recording and subsequent publication of the images, being perfectly visible in said photographs their faces as well as a police vehicle. The photographs are compatible with the images that are extracted from the house located in said place, and residence of A.A.A. every time that the position and height from which observe the Agents with the cameras that are located in the columns that delimit the pedestrian and vehicle accesses of the perimeter fence of the estate that gives access to said house. In view of the aforementioned images, commissioned Agents ***AGENTE.3 and ***AGENTE.2 of this Unit, in the afternoon of October 19, to the reference dwelling, observing a Informative poster of the existence of a video surveillance system, as well as the location of multiple cameras. Taking into account the orientation of the cameras, as well as the fact that the Acting Agents were recorded themselves would be oriented towards the PUBLIC HIGHWAY and consequently capturing

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a public place/space [...] A screenshot of the frames is attached hanged by A.A.A. on your Instagram profile ***USER.1 being able to It can be observed in said screenshot that on the 19th of today, it had 1130 followers [...] This dissemination could affect both personal safety and of the acting agents, confirming that said photographs were

extracted from the video surveillance system that exists in the house number

***NUMBER.1, as they are compatible due to the location of the cameras with the

position where the Agents were, as well as the circumstance of

that the user profile ***USER.1 is the dweller of the dwelling. In

these photographs, it is directly observed in the same TWO AGENTS OF

THE CIVIL GUARD [...], AS WELL AS A VEHICLE in addition to other people

on public roads [...] Superimposed on these images one could read the

phrase #...***PHRASE.1# followed by several laughing face emoticons. [...] The

farm is closed perimeter and in the ENTRANCE portal there is a

INFORMATIVE POSTER of VIDEO SURVEILLANCE AREA, with distinctive of the

security company SEGURIDAD A1, and as responsible for the [...]

SECURITY SYSTEMS A1. ***RESPONSIBLE.1 [...]

Attached is a screenshot of the frames posted on the profile of

Instagram ***USER.1, as well as photographs taken of the home of the

video surveillance and information poster.

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.

The aforementioned transfer was returned due to "absent distribution" on 01/03/2020,

reiterating on date 01/09/2020, reiteration again returned for "absent

cast" on 01/24/2020.

THIRD: The claim was admitted for processing by resolution of the Director

of the Spanish Data Protection Agency of January 31, 2020.

FOURTH: On June 8, 2020, the Director of the Spanish Agency for

Data Protection agreed to initiate a sanctioning procedure against the claimant, for the alleged infringement of articles 5.1.c) of the RGPD and 13 of the RGPD, typified in the article 83.5 of the RGPD.

FIFTH: Formal notification of the initiation agreement, the respondent has not submitted brief of allegations, for which what is stated in article 64 of the Law 39/2015, of October 1, of the Common Administrative Procedure of the Public Administrations, which in section f) establishes that in the event of make allegations within the stipulated period on the content of the initiation agreement, this may be considered a resolution proposal when it contains a precise pronouncement about the imputed responsibility, for which reason to issue resolution.

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In view of everything that has been done, by the Spanish Protection Agency of Data in this procedure the following are considered proven facts,

FACTS

FIRST: The Acts-Complaints number 1810/19, 1811/19 and 1812/19 filed by the DG Civil Guard - Main Post of Milladoiro-Ames reflect that on the 19th of October 2019, some photographs of the action of agents belonging to the Civil Guard corps in ***ADDRESS.1

***LOCATION.2 (A CORUÑA) in the user account ***USER.1, identifying the person claimed as the account holder.

SECOND: In the photographs provided as an attachment to the minutes-complaint,

observes that, at the address indicated in the preceding event, the residence of the respondent, A video surveillance system has been installed, two of whose cameras are located placed on the access posts to the property.

THIRD: In the photographs provided as an attachment to the minutes-complaint, You can see a large part of the longitudinal axis of the street, as well as the entire width of the sidewalk and roadway, including cars parked and passing through it, and by the capture angle, would correspond to the images captured by the cameras described in the second proven fact.

FOURTH: The informative poster placed in the dwelling only informs that It is a video-monitored area and does not comply with the provisions of the RGPD.

FIFTH: The ***USER.1 account is considered private.

SIXTH: The respondent has not presented arguments in this proceeding.

FOUNDATIONS OF LAW

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By virtue of the powers that article 58.2 of the RGPD recognizes to each control authority, and as established in arts. 47 and 48.1 of the LOPDGDD, the Director of the Spanish Data Protection Agency is competent to resolve this procedure.

II

The defendant is charged with the commission of two infractions for violation of the articles 5.1.c) and 13 of the RGPD.

Article 5.1.c) of the RGPD, regarding the principles of treatment, provides that 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")." East www.aepd.es

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article enshrines the principle of data minimization in data processing

personal. It assumes that said treatment is adjusted and proportional to the purpose to be which is addressed, and the processing of excessive data must be restricted or proceed to their removal.

The relevance in the treatment of the data must occur both in the of the collection of the data as well as in the subsequent treatment that is carried out of the data. themselves.

Article 13 of the RGPD provides:

"1. When personal data relating to him is obtained from an interested party, the responsible for the treatment, at the moment in which these are obtained, will provide all the information indicated below:

a) the identity and contact details of the controller and, where appropriate, of his representative;

b) the contact details of the data protection officer, in his case;

c) the purposes of the treatment to which the personal data is destined and the legal basis of the treatment;

d) when the treatment is based on article 6, paragraph 1, letter f), the legitimate interests of the person in charge or of a third party;

e) the recipients or categories of recipients of the data personal, if any;

f) where appropriate, the intention of the person responsible for transferring data to a third country or international organization and the existence

or absence of an adequacy decision by the Commission, or, in the case of the transfers indicated in articles 46 or 47 or article 49, section 1, second paragraph, reference to adequate guarantees or appropriate and to the means to obtain a copy of these or to the fact that they have been borrowed.

2. In addition to the information mentioned in section 1, the person responsible for the treatment will facilitate the interested party, at the moment in which the personal data, the following information necessary to guarantee a fair and transparent data processing:

a) the period during which the personal data will be kept or, where this is not possible, the criteria used to determine this term;

b) the existence of the right to request from the data controller the access to personal data relating to the interested party, and its rectification or suppression, or the limitation of its treatment, or to oppose the treatment, as well as the right to data portability;

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c) when the treatment is based on article 6, paragraph 1, letter a), or Article 9, paragraph 2, letter a), the existence of the right to withdraw consent at any time, without affecting the legality of the treatment based on the consent prior to its withdrawal;

d) the right to lodge a complaint with a law enforcement authority

control;

e) if the communication of personal data is a legal requirement or contractual, or a necessary requirement to sign a contract, and if the

The interested party is obliged to provide personal data and is

informed of the possible consequences of not providing such data;

f) the existence of automated decisions, including the preparation of profiles, referred to in article 22, sections 1 and 4, and, at least in such cases, significant information about the applied logic, as well as the significance and anticipated consequences of such processing for the interested.

3. When the person in charge of the treatment projects the subsequent treatment of personal data for a purpose other than that for which it was collected, will provide the interested party, prior to said subsequent treatment, information about that other purpose and any additional information relevant to tenor of section 2.

4. The provisions of sections 1, 2 and 3 shall not apply when and in to the extent that the interested party already has the information.

In the case of personal data processing for surveillance purposes through of camera or video camera systems, the duty of information can be fulfilled by placing, in video-monitored areas, an informative sign located in a sufficiently visible place, both in open and closed spaces, and using forms detailing the information provided, that the responsible must make available to interested parties.

The infractions are typified in article 83.5 of the RGPD, which provides the

Next:

"Infringements of the following provisions shall be sanctioned, in accordance

with paragraph 2, with administrative fines of EUR 20,000,000 as maximum or, in the case of a company, an amount equivalent to 4% as a maximum of the overall annual total turnover of the financial year above, opting for the highest amount:

a)

basic principles for treatment, including conditions for consent under articles 5, 6, 7 and 9;

b) the rights of the interested parties according to articles 12 to 22; [...]».

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For the purposes of the limitation period for infringements, the one referred to in article

5.1. of the RGPD is considered very serious and prescribes after three years, in accordance with article 72.1 of the LOPDGDD, which establishes that:

"According to the provisions of article 83.5 of Regulation (EU) 2016/679

are considered very serious and the infractions that entail a substantial violation of the articles mentioned therein and, in particular, the following:

a) The processing of personal data violating the principles and guarantees established in article 5 of the Regulation (EU) 2016/679.

For its part, article 74 of the aforementioned LOPDGDD provides:

«They are considered minor and the remaining infractions of

merely formal character of the articles mentioned in sections 4 and 5 of article 83 of Regulation (EU) 2016/679 and, in particular, the following:

a) Failure to comply with the principle of information transparency or the right to information of the affected party for not providing all the information required by articles 13 and 14 of the Regulation (EU)

2016/679 [...]».

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III

In the present case, it is appropriate to analyze the alleged illegality of the installation, of a video surveillance system composed of two cameras and located on the poles access to the property of the respondent located at ***ADDRESS.1 ***LOCATION.2 (TO CORUÑA).

The facts proven in this sanctioning procedure show manifest that the cameras installed in the access to the property located in paragraph above disproportionately capture public roads. Regarding this issue, the Article 22 of the LOPDGDD, regarding processing for video surveillance purposes, provides that, in order to guarantee the safety of people and property, they may capture images of public thoroughfares "to the extent that it is essential", in correspondence with the principle of data minimization established in the article 5.1.c) of the GDPR.

Taking into account the foregoing, in the event that it is a question of guaranteeing the security of an area of access to a property or its perimeter, the area of public roads

captured should be kept to a minimum. In the case subject to this proceeding this means that, to guarantee the security of access to housing, the images can reach a part or portion of the sidewalk at the minimum of the longitudinal axis that corresponds to the access or perimeter, but it is not considered proportionate to capture or the entire width of the sidewalk or the roadway. Extensive uptake would entail that pedestrians and motorists are excessively affected their right to protection of the physical image.

Expanding on this issue, it is reported that the ability to capture images on public roads is attributed, in general, to the Police Forces and Corps Security in accordance with the provisions of Organic Law 4/1997, which regulates the use of video cameras by the Security Forces and Bodies in public places and their implementing regulations.

With regard to compliance with the duty of information contained in the article 12 of the RGPD, article 13 of the same legal text provides the information that must be provided when the personal data is obtained from the interested party, situation that occurs in cases of image capture by a system of video surveillance. In this sense, article 22.4 of the LOPGDD establishes that "The duty of information provided for in article 12 of Regulation (EU) 2016/679 is understood fulfilled by placing an informative device instead sufficiently visible identifying, at least, the existence of the treatment, the identity of the person in charge and the possibility of exercising the rights foreseen in the 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". Therefore, a poster that only informs about the existence of a video-monitored area does not comply with the obligation to provide the minimum information, must also include the identity of the person responsible and the possibility and manner of

exercise the rights recognized in articles 15 to 22 of the RGPD; without impairment

that the rest of the information must also be kept available to those affected.

information stipulated by the RGPD.

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Finally, it is reported that access to images by third parties

other than the data controller must be regulated by the existence of a

contract and that those systems that are connected to a receiving center

alarm system or a control center must comply with the provisions of Law 5/2014 of 4

April of Private Security and other applicable regulations.

It is not considered for the purposes of infringing the data protection regulations

the publication of the images in the social network account.

IV

In the present case, when deciding the appropriate sanction to impose,

In particular, the following elements have been taken into account.

☐ That it is an individual whose main activity is not linked to the

treatment of personal data.

☐ That there is no recidivism, because the commission is not recorded, in the term of

one year, of more than one infraction of the same nature.

For all these reasons, it is considered that the sanction that should be imposed is

WARNING, in accordance with the provisions of article 58.2 b) of the RGPD, in

in relation to what is stated in Considering 148, cited above.

Therefore, in accordance with the applicable legislation and having assessed the criteria for

graduation of the sanctions whose existence has been proven, the Director of the

Spanish Data Protection Agency RESOLVES:

FIRST: IMPOSE A.A.A., with NIF ***NIF.1, for respective infractions of the articles 5.1.c) and 13 of the RGD, typified in article 83.5 of the RGD, a sanction of WARNING.

Likewise, within ONE MONTH from the notification of this act,

You must prove the following:

☐ That it has proceeded to remove the cameras placed on the poles of the access to the property or its reorientation by reducing the angle of catchment. In the case of adjustable cameras, with "zoom" or both, you must prove that they have privacy masks.

☐ That he has proceeded to complete the information offered on the poster informative (it must be identified, at least, the existence of a treatment, the identity of the person in charge and the possibility of exercising the rights provided for in articles 15 to 22 of the RGD), locating this device in conspicuous place.

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☐ That it keeps the rest of the information available to those affected. referred to in the GDPR.

SECOND: NOTIFY this resolution to A.A.A. and REPORT the result of the actions to D. G. OF THE CIVIL GUARD - MAIN POST OF

***LOCATION.1

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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