

□ File No.: EXP202105075

RESOLUTION OF PUNISHMENT PROCEDURE

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

BACKGROUND

FIRST: On 11/26/2021, it had entry in this Spanish Agency of
Data Protection a document presented by A.A.A. (hereinafter the part
claimant), through which he makes a claim against the SMART entity
ELECTRIC SOLUTIONS, S.L. with NIF B42973966 (hereinafter, the claimed party),
for the installation of a video surveillance system located at ***ADDRESS.1,
There are indications of a possible breach of the provisions of the regulations of
Personal data protection.

The reasons underlying the claim are as follows:

"It has a camera pointing at the access sidewalk from which the
passage of people to the Polygon and its ship, without the sign of
caveat."

Attach a photo of the location of the video surveillance camera.

SECOND: In accordance with article 65.4 of Organic Law 3/2018, of 5
December, of Protection of Personal Data and guarantee of digital rights (in
hereinafter, LOPDGDD), this Agency through electronic means put
disposition of the claimed entity a first request for information on the date
11/29/2021, producing the automatic rejection of the notification on 12/10/2021,
as stated in the certificate issued by the Service Support service of
Electronic Notification and Authorized Electronic Address of the National Factory of
Currency and Stamp (hereinafter, FNMT).

Although the notification was validly made by electronic means, assuming carried out the procedure in accordance with the provisions of article 41.5 of the LPACAP, by way of informative, a copy was sent by mail that was reliably notified in date 12/20/2021. In said notification, he was reminded of his obligation to relate electronically with the Administration, and they were informed of the means of access to said notifications, reiterating that, in the future, it would be notified exclusively by electronic means. To date, this Agency has not received any response.

THIRD: On 02/09/2022, in accordance with article 65 of the LOPDGDD, the claim filed by the claimant was admitted for processing.

FOURTH: On 04/12/2022, the Director of the Spanish Protection Agency of Data agreed to initiate a sanctioning procedure against the claimed party, for the C/ Jorge Juan, 6

28001 – Madrid

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2/10

alleged infringement of article 5.1.c) of the RGPD and article 13 of the RGPD, typified in Article 83.5 a) and b) of the GDPR.

FIFTH: The agreement to open this sanctioning procedure was notified to the party claimed by electronic means, in accordance with article 14.2 of the Law 39/2015, of October 1, of the Common Administrative Procedure of the Public Administrations (hereinafter, LPACAP).

The certificate issued by the Electronic Notification Service Support service and Authorized Electronic address of the FNMT, which appears in the file, certifies that the AEPD made the notification available to the recipient on 04/13/2022 and that on 04/24/2022 the notification was automatically rejected.

Article 43.2, second paragraph, of the LPACAP establishes that "When the notification by electronic means is mandatory, or has been expressly chosen by the interested party, it will be understood as rejected when ten days have elapsed natural since the notification is made available without accessing its contents".

In turn, article 41.5 of the LPACAP specifies that "When the interested party or his representative rejects the notification of an administrative action, it shall be recorded in the file, specifying the circumstances of the notification attempt and the medium, considering the procedure completed and following the procedure".

SIXTH: After the term granted for the formulation of allegations to the aforementioned opening agreement, it has been verified that no allegation has been received by the claimed.

Article 64.2.f) of the LPACAP - provision of which the respondent was informed in the agreement to open the procedure - establishes that if no allegations within the stipulated period on the content of the initiation agreement, when it contains a precise statement about the imputed responsibility, may be considered a resolution proposal.

In the present case, the agreement to initiate the disciplinary proceedings determined the facts in which the imputation was specified, the infraction of the RGPD attributed to the claimed and the sanction that could be imposed. Therefore, taking into account that the party complained against has made no objections to the agreement to initiate the file and

In accordance with the provisions of article 64.2.f) of the LPACAP, the aforementioned agreement of beginning is considered in the present case resolution proposal.

SEVENTH: The agreement to initiate the procedure agreed in the third point of the operative part "INCORPORATE to the disciplinary file, for the purposes of evidence, the claims submitted by claimants and the information and documentation

obtained by the Subdirector General for Data Inspection in the phase of information prior to the agreement for admission to processing of the claim”.

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

In this proceeding, the following are considered proven facts:

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3/10

PROVEN FACTS

FIRST: Installation of a video surveillance system made up of at least one camera, on the facade of a building, located at ***ADDRESS.1, which could capture images of public transit areas disproportionately. Nor does it have of the mandatory informative poster of the video-monitored area.

These extremes are accredited in the photograph provided by the claimant in the that the existence of a camera is observed on the outside of the ship focusing towards the sidewalk and without having the proper informative badge.

SECOND: It is identified as the main responsible SMART ELECTRIC SOLUTIONS, S.L. with NIF B42973966.

THIRD: The Spanish Data Protection Agency has notified the claimant of the agreement to open this sanctioning procedure, but has not presented allegations or evidence that contradicts the alleged facts

FOUNDATIONS OF LAW

Yo

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

(General Data Protection Regulation, hereinafter RGPD), grants each

control authority and as established in articles 47 and 48.1 of the Law

Organic 3/2018, of December 5, on the 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 Agency for Data Protection will be governed by the provisions in Regulation (EU) 2016/679, in this organic law, by the provisions regulations issued in its development and, as long as they do not contradict them, with a subsidiary, by the general rules on administrative procedures."

II

The physical image of a person under article 4.1 of the RGPD is personal data and its protection, therefore, is the subject of said Regulation. Article 4.2 of the GDPR defines the concept of "treatment" of personal data.

Article 22 of the LOPDGDD includes the specific rules for the treatment of data for video surveillance purposes and states the following:

"1. Natural or legal persons, public or private, may carry out the treatment of images through camera systems or video cameras with the purpose to preserve the safety of people and property, as well as its facilities.

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4/10

2. Images of public roads may only be captured to the extent that it is indispensable for the purpose mentioned in the previous section.

However, it will be possible to capture public roads to a greater extent

when necessary to guarantee the security of assets or strategic installations.

services or infrastructures linked to transport, without in any case being able to

put the capturing of images of the interior of a private home.

3. The data will be deleted within a maximum period of one month from its collection, except

when they had to be kept to prove the commission of acts that attend to

have against the integrity of people, goods or facilities. In this case, the images

must be made available to the competent authority within a maximum period of

seventy-two hours since the existence of the recording became known.

tion.

The blocking obligation provided for in art.

article 32 of this organic law.

4. The duty of information provided for in article 12 of Regulation (EU) 2016/679 is

understood to be fulfilled by placing an informative device in a sufficient place

ciently visible identifying, at least, the existence of the treatment, the identity

of the person in charge 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 device information

I attach a connection code or internet address to this information.

In any case, the person in charge of the treatment must keep available to the

affected the information referred to in the aforementioned regulation.

5. Under article 2.2.c) of Regulation (EU) 2016/679, it is considered excluded

of its scope of application the treatment by a natural person of images that are

regretfully capture the interior of your own home.

This exclusion does not cover processing carried out by a private security entity.

given that she had been hired to guard a home and had access to the

images.

6. The processing of personal data from the images and sounds obtained

through the use of cameras and video cameras by the Forces and Corps Security and by the competent bodies for surveillance and control in the centers penitentiaries and for the control, regulation, surveillance and discipline of traffic, will be governed by the legislation transposing Directive (EU) 2016/680, when the treatment for purposes of prevention, investigation, detection or prosecution of violations criminal offenses or the execution of criminal sanctions, including protection and prevention against threats to public safety. Apart from these assumptions, said treatment will be governed by its specific legislation and additionally by the Regulations to (EU) 2016/679 and this organic law.

7. What is regulated in this article is understood without prejudice to the provisions of the Law 5/2014, of April 4, on Private Security and its development provisions.

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5/10

8. The treatment by the employer of data obtained through camera systems cameras or video cameras is subject to the provisions of article 89 of this organic law.

III

In accordance with the foregoing, the processing of images through a system of video surveillance, to be in accordance with current regulations, must comply with the following requirements:

- Respect the principle of proportionality.
- When the system is connected to an alarm center, you can only be installed by a private security company that meets the requirements contemplated in article 5 of Law 5/2014 on Private Security, of 4

april.

-

Camcorders will not be able to capture images of people are outside the private space where the security system is installed. video surveillance, since the processing of images in public places only can be carried out, unless there is government authorization, by the Security Forces and Bodies. They cannot be captured or recorded spaces owned by third parties without the consent of their owners, or, in their case, 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 in facades or inside, it may be necessary to guarantee the purpose of security recording a portion of the public highway. That is, the cameras and video cameras installed for security purposes will not be able to obtain images of public roads unless it is essential for that purpose, or it is impossible to avoid due to their location and extraordinarily

The minimum space for said purpose will also be collected. Therefore, the cameras could exceptionally capture the minimally necessary portion for its intended security purpose.

- The duty to inform those affected provided for in articles

12 and 13 of the RGPD and 22.4 of the LOPDGDD.

- The person in charge must keep a record of treatment activities carried out under their responsibility, including the information to which refers to article 30.1 of the RGPD.

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The installed cameras cannot obtain images of private spaces.

third party and/or public space without duly accredited justified cause, or may affect the privacy of passers-by who move freely through the zone. It is not allowed, 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.

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6/10

- In no case will the use of surveillance practices be admitted beyond the environment object of the installations and in particular, not being able to affect the surrounding public spaces, adjoining buildings and vehicles other than those access the guarded space.

In relation to the foregoing, to facilitate the consultation of interested parties, the Agency Spanish Data Protection offers through its website

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

including the RGPD and the LOPDGDD (section “Reports and resolutions” / “regulations”), to the Guide on the use of video cameras for security and other purposes and the Guide for compliance with the duty to inform (both available in the “Guides and tools” section).

It is also of interest in the event that low-level data processing is carried out.

risk, the free tool Facilita (in the “Guides and tools” section) that,

through specific questions, it allows to assess the situation of the person in charge

regarding the processing of personal data that it carries out and, where appropriate, generate

various documents, informative and contractual clauses, as well as an annex with

indicative security measures considered minimal.

IV

In the present case, the respondent has not presented arguments or evidence that contradict the facts denounced within the period given for it.

In accordance with the evidence available and which has not been distorted during the sanctioning procedure, the claimed party has installed, at least one video surveillance camera on the facade of the building, located in ***ADDRESS.1, capturing images of public transit areas. In addition, it lacks informative badge of video-surveillance area.

Based on the foregoing, the facts entail a violation of the provisions of articles 5.1 c) and 13 of the RGPD, which supposes a commission of both infractions typified in article 83.5 of the RGPD, which provides the following:

“The infractions of the following dispositions will be sanctioned, in accordance with the section 2, with administrative fines of a maximum of EUR 20,000,000 or, in the case of a company, an amount equivalent to 4% of the turnover global annual total of the previous financial year, choosing the highest amount:

- a) The basic principles for the treatment, including the conditions for the consent under articles 5, 6, 7 and 9;
- b) The rights of the interested parties according to articles 12 to 22;

(...)

For the mere purposes of prescription, article 72.1 of the LOPDGDD qualifies as very serious:

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a) The processing of personal data violating the principles and guarantees

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

b) The processing of personal data without the concurrence of any of the conditions of

legality of the treatment established in article 6 of Regulation (EU) 2016/679;

(...)

h) The omission of the duty to inform the affected party about the processing of their data

personal in accordance with the provisions of articles 13 and 14 of the Regulation (EU)

2016/679 and 12 of this Organic Law;”

v

The corrective powers available to the Spanish Agency for the Protection of

Data, as a control authority, is established in article 58.2 of the RGPD. Among

they have the power to impose an administrative fine in accordance with

article 83 of the RGPD (art. 58.2 i)), or the power to order the person responsible or

in charge of the treatment that the treatment operations comply with the

provisions of the GDPR, where applicable, in a certain way and within a

specified term (art. 58.2 d)).

According to the provisions of article 83.2 of the RGPD, the measure provided for in article 58.2

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

administrative.

In this case, based on the facts set forth, it is considered that the sanction

that should be imposed is an administrative fine for each of the

offenses committed. The fine imposed must be, in each individual case,

effective, proportionate and dissuasive, in accordance with article 83.1 of the RGPD. finally

determining the administrative fine to be imposed, the provisions of the

article 83.2 of the RGPD, which indicates:

"two. Administrative fines will be imposed, depending on the circumstances of each individual case, in addition to or as a substitute for the measures contemplated in the Article 58, paragraph 2, letters a) to h) and j). When deciding to impose a fine administration and its amount in each individual case will be duly taken into account:

a) the nature, seriousness and duration of the offence, taking into account the nature, scope or purpose of the processing operation in question, as well such as the number of interested parties affected and the level of damages that have suffered;

b) intentionality or negligence in the infringement;

c) any measure taken by the controller or processor to alleviate the damages suffered by the interested parties;

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8/10

d) the degree of responsibility of the person in charge or of the person in charge of the treatment, taking into account the technical or organizational measures that they have applied under of articles 25 and 32;

e) any previous infringement committed by the person in charge or the person in charge of the treatment;

f) the degree of cooperation with the supervisory authority in order to remedy the infringement and mitigate the possible adverse effects of the infringement;

g) the categories of personal data affected by the infringement;

h) the way in which the supervisory authority became aware of the infringement, in particular whether the person in charge or the person in charge notified the infringement and, if so, in what measure;

- i) when the measures indicated in article 58, section 2, have been ordered previously against the person in charge or the person in charge in question in relation to the same matter, compliance with said measures;
- j) adherence to codes of conduct under article 40 or mechanisms of certification approved in accordance with article 42,
- k) any other aggravating or mitigating factor applicable to the circumstances of the case, such as financial benefits obtained or losses avoided, directly or indirectly, through the infringement.

For its part, in relation to letter k) of article 83.2 of the RGPD, the LOPDGDD, in its article 76, "Sanctions and corrective measures", provides:

"1. The penalties provided for in sections 4, 5 and 6 of article 83 of the Regulation (EU) 2016/679 will be applied taking into account the graduation criteria established in section 2 of the aforementioned article.

2. In accordance with the provisions of article 83.2.k) of Regulation (EU) 2016/679 may also be taken into account:

- a) The continuing nature of the offence.
- b) The link between the activity of the offender and the performance of treatment of personal information.
- c) The profits obtained as a result of committing the offence.
- d) The possibility that the conduct of the affected party could have included the commission of the offence.
- e) The existence of a merger by absorption process subsequent to the commission of the infringement, which cannot be attributed to the absorbing entity
- f) Affectation of the rights of minors

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9/10

g) Have, when not mandatory, a data protection delegate.

h) Submission by the person in charge or person in charge, on a voluntary basis, to alternative conflict resolution mechanisms, in those cases in which there are controversies between them and any interested party”.

With respect to infractions committed by violating the provisions of articles

5.1.c) and 13 of the RGPD, a fine of €400 (four hundred euros) and another €400 is set.

(four hundred euros), respectively.

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 SMART ELECTRIC SOLUTIONS, S.L., with NIF B42973966, for an infringement of article 5.1.c) of the RGPD, typified in article 83.5 a) of the RGPD, a fine of €400 (four hundred euros).

SECOND: IMPOSE SMART ELECTRIC SOLUTIONS, S.L., with NIF B42973966, for an infringement of article 13 of the RGPD, typified in article 83.5 b) of the RGPD, a fine of €400 (four hundred euros).

THIRD: ORDER SMART ELECTRIC SOLUTIONS, S.L., with NIF B42973966 under article 58.2 d) of the RGPD, within ten business days, adopt the following measures:

- Prove that you proceeded to remove the camera in question by providing Documentary evidence with date and time that accredits such end, or, failing that, certifies the regularization of the camera in accordance with the regulations valid.

- Prove that you have proceeded to place the informative poster in the areas

video-monitored (at least the existence of a treatment must be identified,

the identity of the controller and the possibility of exercising the rights provided

in said precepts), locating this device in a sufficiently

visible.

- Prove that you keep the information to which it refers available to those affected.

refers to the aforementioned RGPD.

FOURTH: NOTIFY this resolution to SMART ELECTRIC SOLUTIONS,

S.L., with NIF B42973966.

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

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

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10/10

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 Department of Data Protection in the banking entity CAIXABANK, S.A.. In case

Otherwise, it will be collected in the executive period.

Received the notification and once executed, if the date of execution 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 month or immediately after, and if

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

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

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

Finally, it is pointed out 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

The interested party expresses his intention to file a contentious-administrative appeal.

If this is the case, the interested party must formally communicate this fact by

writing addressed to the Spanish Agency for Data Protection, presenting it through

Electronic Register of the Agency [[https://sedeagpd.gob.es/sede-electronica-](https://sedeagpd.gob.es/sede-electronica-web/)

web/], or through any of the other registers provided for in art. 16.4 of the

aforementioned Law 39/2015, of October 1. You must also transfer to the Agency the

documentation proving the effective filing of the contentious appeal-

administrative. If the Agency was not aware of the filing of the appeal

contentious-administrative within a period of two months from the day following the

notification of this resolution would end the precautionary suspension.

Sea Spain Marti

Director of the Spanish Data Protection Agency

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