

NATIONAL DATA PROTECTION COMMISSION

OPINION/2020/91

I. Order

1. On May 8, 2020, by order of the Assistant Secretary of State and Internal Administration, the National Data Protection Commission (CNPd) was requested to give an opinion on the request for authorization to install a video surveillance system in the city of Portimão, submitted by the Public Security Police (PSP).

The CNPD assesses the project under the terms and for the purposes of Law No. 1/2005, of 10 January, amended and republished by Law No. 9/2012, of 23 February, which regulates the use of surveillance systems by video cameras by the security forces and services in public places of common use, for capturing and recording image and sound and their subsequent processing.

It should be noted that the CNPD had already issued an opinion on the previous request for authorization to install a video surveillance system in the same city - Opinion/2019/92, of 27 December (which was ratified on 7 January 2020)¹ -, However, the request has been reformulated in the meantime, and is accompanied by a document containing new reasoning and technical information on the system, as well as the impact assessment on data protection (AIPD), provided for in article 29 of Law no. 59/2019, of August 8th.

II. ASSESSMENT

1. Object of the opinion to be issued under the terms of article 3 of Law No. 1/2005, of 10 January

Pursuant to Article 3(2) of Law No. 1/2005, of January 10, as amended by Law No. 9/2012, of February 23 (hereinafter, Law No. 1 /2005), the CNPD's opinion is limited to pronouncement on the compliance of the request with the rules regarding the security of the treatment of the collected data, as well as on the special security measures to be implemented adequate to guarantee the entrance controls in the premises, of data carriers, insertion, use, access, transmission, introduction and transport, as well as verification of compliance

Accessible at https://vwww.cnpcl.pt/hoine/decisoos/Par/PAR_2019_92.pdf

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Process PAR/2020/37 1v.

of the information duty and before whom the e-rectification access rights can be exercised.

In accordance with the provisions of the same legal precept and in paragraphs 4, 6 and 7 of article 7 of that law, the CNPD's opinion is also subject to respect for the prohibition of installing fixed cameras in areas that, despite located in public places, whether, by their nature, intended to be used in guarding or the use of video cameras when the capture of images and sounds covers the interior of an inhabited house or building or its dependence, or when this capture affects, in a way, directly and immediately, the privacy of people, or results in the recording of conversations of a private nature.

The CNPD must also verify that all persons appearing in recordings obtained in accordance with this law are guaranteed the rights of access and elimination, with the exceptions provided for by law.

Pursuant to paragraph 7 of article 3 of the same legal instrument, the CNPD may also formulate recommendations with a view to ensuring the purposes provided for by law, subjecting the issuance of a totally positive opinion to the verification of completeness of compliance with its recommendations.

2. Video surveillance in public places of common use in the city of Portimão

The authorization request refers to a video surveillance system in the city of Portimão, with a total of 61 fixed cameras, distributed over 24 locations in the city of Portimão. Of these, 51 cameras will be located in three areas surrounding Praia da Rocha (west zone, central zone and east zone), in order to "guarantee the protection and safety of people and goods, public or private, and to prevent the practice of criminal offenses". in places where there is a reasonable risk of their occurrence", while the remaining 10 cameras will be installed "on the main access roads to the city of Portimão with the main purpose of preventing and repressing road infractions" (cf. Request for authorization, respective Annexes A and D, and AIPD).

Therefore, two purposes are indicated for the installation and use of the video surveillance system: the protection of the security of people and goods, public or private, and the prevention of criminal offenses in places where there is a reasonable risk of their

Process PAR/2020/37 2

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occurrence, on the one hand, and the prevention and repression of road infractions, on the other.

Both purposes have a legal framework, in paragraphs c) and d) of no. 1 of article 2 of Law no. 1/2005.

As stated in the point on the grounds for the authorization request and confirmed in Annex A, the purpose of the system in relation to the 10 cameras incident on the main road axes is the prevention and repression of road infractions, targeting the others, located in three areas surrounding Praia da Rocha, with the aim of protecting the safety of people and property and preventing crime.

2.1. Notwithstanding, under the terms of the legal powers defined in Law no. 1/2005, it is not up to the CNPD to pronounce on the proportionality of the use of video surveillance systems in public places of common use for the purpose of protecting people and property, this competence already exists when the cameras are installed in areas that are, by their nature, intended to be used as a guard or to capture images or sound covering the interior of an inhabited house or building or its dependence or affect, directly and immediately, the privacy of persons, or results in the recording of conversations of a private nature (cf. paragraphs 4, 6 and 7 of article 7 of Law No. 1/2005).

However, the installation of a video surveillance system in the city of Portimão implies the processing of personal data which, due to its scope and extent, seems to affect the private life of people who circulate or are in that city.

It should, however, be noted that in the request under consideration here, contrary to what happened with the request that merited Opinion/2019/92, there is no reference to the use of Artificial Intelligence or softrecognition technology, nor to the capture of sound, by that the impact on citizens' privacy and freedom is substantially less. In fact, in Annex B, it is even stated that «[it is not intended that there is room for sound capture [...]]».

Furthermore, it is stated in Annex B of the application that the cameras allow the «definition of 3D digital privacy masks», being also presented in images with areas delimited with black rectangles that seem to correspond to areas with windows and building entrances, presuming that correspond to the digital blocking zones. It is not, however, possible for the CNPD, due to the lack of quality of the images that

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Process PAR/2020/37 2v.

instruct the process, certify that the limits provided for in paragraphs 6 and 7 of article 7 of Law no. 1/2005 are respected. In any case, and also drawing attention to the need to prevent the capture of images of public spaces intended for use with

shelter, such as the beach (cf. paragraph 4 of article 7 of Law no. 1/2005), the declaration of the controller, as well as what was stated in the impact assessment on data protection, is in the sense that that measure will be sufficient to mitigate the impact on the privacy of citizens.

2.2. With regard to security measures, three aspects stand out.

The first concerns the recording and conservation of images. The statement that the back-up storage is «located in the same compartment as the main storage - conditioned compartment, in the Police Division of Portimão» (cf. Annex G and AIPD) raises serious reservations for the CNPD, as it is thus harmed the function of this redundancy mechanism. In fact, if the conditioned compartment is affected, the back-up storage will not be able to guarantee the recording and operation of the video surveillance system. It is therefore recommended that the backup storage be located in a separate compartment, with security guarantees.

The second aspect concerns access controls to the room where the main server is located and the monitoring screens. Although, in Annex B, it is mentioned that on one of the computers that integrates the video surveillance system, «recording via the usb ports [is] disabled», it is not clear whether the other computer, which does not have the same characteristic, is located in the room of monitoring. To that extent, it is recommended that all machines in the monitoring room have safeguards to prevent image copying and storage on external media.

The third observation concerns access to recorded images (cf. Annex F). Regarding access codes, although it is mentioned that the "number of people who are aware of the data recording location and the respective access codes will be limited to the minimum necessary", the CNPD recommends that such codes be updated regularly, in order to guarantee the confidentiality of the access key and, consequently, the integrity of the recorded images.

Process PAR/2020/37 3

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2.3. Finally, a note regarding the intervention of the data protection officer in the video footage extraction procedure. Not calling into question the solution for this intervention to occur, it is suggested that it does not assume an authorizing character, but only a consultative one (therefore, providing for the need for an opinion from the person in charge, instead of authorization), as

this is essentially the nature of their legal duties (cf. article 35 of Law no. 59/2019, of 8 August).

III. CONCLUSION

1. It is not within the competence that is legally attributed to it to comment on the concrete grounds for installing a video surveillance system in the city of Portimão, and

2. Considering that the system under consideration does not have the same characteristics nor is it equipped with the Artificial Intelligence and soft recognition technologies that were summarily described (and without an assessment of the respective impact, nor adequate reasoning) in the previous authorization request concerning the video surveillance system in the same city, which gave rise to the Opinion/2019/92,

The CNPD, with the arguments set out above, recommends that the observations contained in points 2.2 and 2.3. be observed, especially with a view to strengthening the security measures to be adopted.

Lisbon, August 4, 2020

Filipa Calvão (President, who reported)

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