

Procedure No.: PS/00439/2019

938-051119

## RESOLUTION OF PUNISHMENT PROCEDURE

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

### FACTS

FIRST: On 12/21/18, it entered the Spanish Protection Agency  
of Data a brief presented by Mr. A.A.A. (hereinafter referred to as the claimant),  
through which he makes a claim against the CITY COUNCIL OF MAHÍDE with NIF  
P4911700E (\*hereinafter, the claimed one), due to the installation of a  
video surveillance installed in MAHÍDE CITY COUNCIL, CALLE LA PEÑA 47,  
MAHÍDE, ZAMORA, with indications of a possible breach of the provisions  
in art. 5.1 c) GDPR.

The reasons underlying the claim are as follows:

“Dated 12/04/18 I am going to the municipal offices of the  
council to present a brief (...) and I see that in the plenary hall nothing more  
entering two cameras have been installed along with a kind of switchboard and a loudspeaker.  
One of the cameras is located on an urn focusing directly on the  
front door (...)

I access the Office of the Secretary of the City Council to register the  
document and I observe that behind the back of the municipal official at a certain height there is  
placed another camera (...).

As Councilor of the City Council I am not aware of any  
approved or processed any file in relation to the procedure for the  
Installation of surveillance cameras in the municipal building.

“There is no Ordinance that regulates data protection and the creation of corresponding files in accordance with art. 20 LOPD. I don't know the processing of any procedure (record)”

Provides documentary evidence of a device placed that corresponds to the Characteristics of a device with the possibility of obtaining images.

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.

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“No response has been received in relation to the facts that are the subject of transfer”

THIRD: The claim was admitted for processing by resolution dated 03/25/19.

FOURTH: On December 4, 2019, 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.

#### PROVEN FACTS

First. On 12/21/18, a claim has been received by this Agency for the following:

you have facts:

“Dated 12/04/18 I am going to the municipal offices of the council to present a brief (...) and I see that in the plenary hall nothing more entering two cameras have been installed along with a kind of switchboard and a loudspeaker. One of the cameras is located on an urn focusing directly on the front door (...)

I access the Office of the Secretary of the City Council to register the document and I observe that behind the back of the municipal official at a certain height there is placed another camera (...).

As Councilor of the City Council I am not aware that it has been approved or processed any file in relation with the procedure for the installation of Surveillance cameras in the municipal building.

Second. The installation of a video-surveillance device, on which the accused party does not make any allegation.

Third. The City Council entity of Mahide.

Fourth. There is no accredited evidence that the system has an informative poster, nor the sa/reason for processing the images.

Fifth. There is no evidence that all of the employees about the installation of the video-surveillance system.

## FOUNDATIONS OF LAW

Yo

By virtue of the powers that article 58.2 of Regulation (EU) 2016/679 (General Data Protection Regulation, hereinafter RGPD), recognizes each Control Authority, and according to the provisions of articles 47, 48.1, 64.2 and 68.1 of the C/ Jorge Juan, 6

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LOPDGDD, the Director of the Spanish Data Protection Agency is competent to start and solve this procedure.

II

On 12/21/18, this Agency received a claim from the complainant, transferring the "installation of a video-surveillance camera" without just cause in the meeting room City Council plenary. (Fact no. 1).

The facts described above may affect the content of art.5.1 c) RGPD. "Personal data will be:

c) adequate, pertinent and limited to what is necessary in relation to the purposes for those that are processed ("data minimization").

Every system installed inside the Town Hall must have the price ceptive informative poster adapted to the regulations in force, indicating the person in charge, the purpose of the treatment and the way to exercise the rights recognized in the articles ass 15-22 GDPR.

In the case of interior chambers, the representatives of the public employees of the presence of the same, having to avoid that the same are permanently oriented towards their work area or areas of leisure of these (vgr. changing rooms, vending area, dining room, etc).

The treatment of the images must have the corresponding protocol of access, where appropriate, to the recordings made, and it must be documented mentioned for the appropriate legal purposes.

If the cameras are installed for security reasons of the facilities should preferably be oriented towards the strategic points of the Building, avoiding

keeping the direct orientation towards the adjoining windows.

Article 13, sections 1 and 2, of the RGPD, establishes the information that must be provided to the interested party at the time of data collection. In the case of processing of personal data for surveillance purposes through camera systems or video cameras, the duty of information can be fulfilled by placing, in video-monitored areas, of an informative badge located in a place sufficiently visible, both in open and closed spaces, and using forms in the that the planned information is detailed, which the person in charge must make available of those interested.

The content and design of the informative label must comply with the provisions of the Annex to Instruction 1/2006, of November 8, of the Spanish Agency for Protection of Data, on the processing of personal data for surveillance purposes through instead of camera or camcorder systems.

On the other hand, in accordance with the provisions of article 22 of the LOPDGDD, referred to specifically to "Processing for video surveillance purposes", the processing of images in public places can only be made -if applicable and prior compliance-

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compliance with the legally enforceable requirements-, by the Security Forces and Bodies unless the exception established in the aforementioned article 22 of the LOPDGDD for natural or legal persons, public or private, respecting the conditions required in said article.

III

Article 77 LOPDGDD (LO 3/2018, December 5)" Regime applicable to certain categories of controllers or processors".

1. The regime established in this article will be applicable to the treatments of which they are responsible or entrusted: a) The constitutional bodies or those with re-constitutional relevance and the institutions of the autonomous communities analogous to the same. b) The jurisdictional bodies. c) The General Administration of the State, the Administrations of the autonomous communities and the entities that make up the Local Management. d) Public bodies and entities governed by public law connected or dependent on the Public Administrations. e) The administrative authorities independent trades. f) The Bank of Spain. g) Public law corporations public when the purposes of the treatment are related to the exercise of authority from public law. h) Public sector foundations. i) Universities Public. j) The consortiums. k) The parliamentary groups of the Cortes Generales and the regional Legislative Assemblies, as well as the political groups of the Corporations. Local tions.

2. When the persons in charge or persons in charge listed in section 1 had any of the infractions referred to in articles 72 to 74 of this law organic, the data protection authority that is competent will issue resolutions tion sanctioning them with a warning. The resolution will also establish as the measures that should be adopted to stop the behavior or correct the effects cough of the infraction that had been committed.

The resolution will be notified to the person in charge or in charge of the treatment, to the gain of which it depends hierarchically, in his case, and to those affected who had the Interested party status, if any.

3. Without prejudice to the provisions of the preceding section, the protection authority tion of data will also propose the initiation of disciplinary actions when

there are sufficient indications for it. In this case, the procedure and the sanctions to apply will be those established in the legislation on the disciplinary or sanctioning system. dor that results from application. Likewise, when the infractions are attributable to authorities and directors, and the existence of technical reports or recommendations is accredited. treatment that had not been duly attended to, in the resolution tion in which the sanction is imposed, a reprimand with denomination of the responsible position and the publication will be ordered in the Official State Gazette or corresponding autonomous community.

4. The resolutions must be communicated to the data protection authority that fall in relation to the measures and actions referred to in the paragraphs previous two.

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5. They will be communicated to the Ombudsman or, where appropriate, to the institutions analogous of the autonomous communities the actions carried out and the resolutions tions issued under this article.

6. When the competent authority is the Spanish Agency for the Protection of Data, it will publish on its website with due separation the resolutions ferred to the entities of section 1 of this article, with express indication of the identity of the person in charge or in charge of the treatment that had committed the infringement tion. When the competence corresponds to a regional protection authority of data will be, in terms of the publicity of these resolutions, to what is available its specific regulations.

#### IV

The claim is based on the alleged illegality of the installation without, in principle, municipality has been informed about their presence, lacking an informative poster.

in the area of access to the premises of the Town Hall, being res-

The public entity –Mahíde City Council- is responsible.

In addition, the claimant warns that the property reviewed does not have a sign

in which the presence of the cameras and the identity of the res-

ponsible for data processing, so that interested persons can exercise

the rights provided for in arts. 15 to 22 of the GDPR.

The art. 58 section 2 GDPR provides: "Each control authority will have

all of the following corrective powers indicated below:

b) sanction any person responsible or in charge of the treatment with a warning

when the treatment operations have violated the provisions of this

Regulation;

In the present case, it is taken into account that the "facts" have not been specified.

through the contradiction of the denounced party, unaware of this body if

It was a specific event or the specific circumstances of the case.

In any case, the evidence provided by the complainant is considered sufficient

sufficient to prove the presumption of innocence distorted, by proving the presence

of at least one video-surveillance camera without just cause, lacking the same

any informative device

The reported entity must proceed to explain whether or not it has a

camera system, the purpose of the treatment, the presence of an informative device

in a visible area and the measures adopted to make it known to the employees.

two of the City Council, accompanying the corresponding Report that corroborates everything

manifested.



Therefore, in accordance with the applicable legislation and having assessed the criteria for graduation of sanctions whose existence has been proven,

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the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: IMPOSE MAHÍDE CITY COUNCIL, with NIF P4911700E, for a

infringement of Article 5.1.c) of the RGPD, typified in article 83.5 of the RGPD, a

sanction of WARNING, due within a month from the notification

of this act, proceed to:

-Clarify the circumstances of the case or prove the legality of the system of

video-surveillance installed, providing the necessary documentation for it or on your behalf.

fect, that there is no video-surveillance device.

SECOND: NOTIFY this resolution to the entity CITY COUNCIL OF

MAHÍDE and REPORT the result of the proceedings to the complainant Mr. A.A.A..

THIRD

in accordance with the provisions of article 77.5 of the LOPDGDD.

: COMMUNICATE this resolution to the Ombudsman,

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 LPA-

CAP, the interested parties may optionally file an appeal for reconsideration before

the Director of the Spanish Agency for Data Protection within a period of one month

counting from the day following the notification of this resolution or directly

contentious-administrative case before the Contentious-administrative Chamber of the Au-

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 Jurisdiction

Contentious-administrative diction, within a period of two months from the day following

Following the notification of this act, as provided in article 46.1 of the aforementioned

Law.

Sea Spain Marti

Director of the Spanish Data Protection Agency

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