

f NATIONAL COMMISSION ON DATA PROTECTION

OPINION/2020/88

I. Order

1. On April 24, 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 Faro, 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.

The request is accompanied by a document containing the reasons for the request and the technical information of the system, hereinafter referred to as "Rationale", as well as the impact assessment on data protection, provided for in article 29 of Law no. 59/2019, of August 8, requested by the CNPD on April 27, 2020 and sent on May 5, 2020.

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 opinion of the CNPD ; is restricted to the 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 the data carriers, of the insertion, of use, access, transmission, introduction and transport, as well as verification of compliance with the duty to provide information and against whom the rights of access and rectification 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

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installation of fixed cameras in areas that, despite being located in public places, are, 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 a house or inhabited building or dependence, or when this capture directly and immediately affects people's privacy, 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 Faro

The authorization request refers to a video surveillance system in the city of Faro, in a total of 59 cameras, installed in 34 locations in the municipality of Faro. Specifically, 47 cameras will be installed in the commercial/downtown area, with the remaining 12 cameras reserved for the main roads.

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 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 regarding the grounds for the authorization request and confirmed in Annex A, the purpose of the system in relation to the 12 cameras incident on the main road axes is the prevention and repression of road infractions, targeting the others, located in the commercial area. and downtown, the purpose of protecting the safety of people and property and preventing crime.

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Regarding the purposes of the video surveillance system, it is only important to note that in the protocol signed between the Municipality of Faro and the Public Security Police it is indicated, in paragraph 1 f) of the First Clause, as the purpose of the video surveillance system « makes it possible to ensure the transmission of anonymised data, namely counts and

classifications (flows of pedestrians, cyclists, vehicles, etc.)'. However, neither the present application, nor the IAPD presented, focus on that purpose. It should be added that, not only does this purpose not seem to be framed in Law No. 1/2005, but the transmission of these statistical data (anonymized) would, from the outset, have to be preceded by a processing of personal data (i.e., the counting and classification correspond to operations on images of identifiable people or vehicles that make them identifiable), and the description of the technology to be used for this purpose is essential for the assessment of their impact. In short, as the request and the AIPD are silent on this purpose, the CNPD merely emphasizes that this video surveillance system cannot, under these conditions, continue to do so.

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 Faro 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. Regarding this impact, it is stated in Annex B of the Justification that the 59 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, assuming that they correspond to the digital blocking zones. It is not, however, possible for the CNPD, due to the lack of quality of the images that inform the process, to certify that the established limits are respected.

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in paragraphs 6 and 7 of article 7 of Law no. 1/2005. In any case, the statement by 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. It should also be noted that it is not intended to capture or record sound (cf. Annex B).

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 Faro District Command» (cf. Annex G and AIPD) raises serious reservations for the CNPD, since 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 monitoring screens. Although, in the IAPD, it is mentioned that there is "control of data carriers", it is not clear that this control is also carried out at the entrance to the room, and therefore if a control procedure is foreseen that ensures that all professionals who access the room do not carry external supports. It is recommended, however, that the machines have safeguards to prevent copying images and storing them on external media.

The third observation refers to the procedure described for entering the conditioned compartment, where the recorded images are kept (cf. Annex F). It is stated that the «access key to the compartment will be kept in a sealed envelope» and that «opening the envelope always implies the preparation of information justifying the respective reason, proceeding as soon as possible to package the key in a new sealed envelope , dated and signed by the person responsible for the conservation and processing of the data'. As the replacement of the access key seems to be limited to situations in which there is a "breakage of security or this possibility is suspected", the planned measure of (re)storage of the access key in a new envelope is not sufficient to guarantee the confidentiality of the key

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access and, consequently, the integrity of the recorded images. Thus, the CNPD recommends that, whenever there is a need to open the envelope, the access key is replaced.

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 take place, 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 the functions legally assigned to it (cf. article 35 of Law no. 59/2019, of 8 August).

III. CONCLUSION

As 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 Faro, the CNPD, with the arguments set out above, recommends that the observations contained in points 2.2 and 2.3 be taken into account. , particularly with a view to strengthening the security measures to be adopted.

Approved at the meeting of July 28, 2020

Filipa Calvão (President)

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