

National Data Protection Commission

OPINION/2022/12

I. Order

1. By order of the Assistant Secretary of State and Internal Administration, dated November 18, 2021, an opinion was requested from the National Data Protection Commission (CNPd) on the request for authorization for the installation and use of a video surveillance system in the Cascais Citadel Palace, submitted by the Public Security Police (PSP).

2. The request was submitted under the terms of paragraph 2 of article 3 of Law no. 1/2005, of 10 January, amended and republished by Law no. 9/2012, of 23 February, which regulates the use of video cameras by security forces and services in public places of common use, for capturing and recording images and sound and their subsequent processing.

3. The request is accompanied by a document containing the grounds for the request and the system's technical information, hereinafter referred to as "Rationale", as well as the data protection impact assessment (AIPD). On 25 November, information was also sent on the location of the cameras that make up the video surveillance system.

II. appreciation

i. Object of the opinion to be issued pursuant to article 5 of Law No. 95/2021, of 29 December

4. Although the request was made under Law No. 1/2005, of 10 January, as, in the meantime, this was revoked by Law No. 95/2021, of 29 December, which regulates the use and access by security forces and services and by the National Emergency and Civil Protection Authority to video surveillance systems for capturing, recording and processing image and sound (hereinafter, Law No. 95/2021), the CNPD appreciates the present treatment of personal data under the new legal regime.

5. Thus, under the terms of paragraph 3 of article 5 of Law no. 95/2021, the opinion of the CNPD is limited to the pronouncement on the compliance of the request with the rules regarding the security of the processing of the data collected and with the provisions of paragraphs 4 to 6 of article 4 and articles 16, 18 to 20 and 22 of the same legal instrument.

6. Thus, under the terms of these articles, the CNPD's opinion is also subject to respect for the prohibition of installation and use of fixed cameras in areas that, despite being located in public places, are, by their nature, intended to be used in protection and also the use of video cameras when the capture of images and sounds involves the interior of an inhabited

house or building or its dependence or establishments

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hoteliers and the like, and when this capture directly and immediately affects the sphere of private and intimate life.

7. The collection and subsequent processing of personal data is also subject to the CNPD's opinion, especially when carried out through an analytical management system of the captured data, by application of technical criteria, as well as respect for the conditions and limits of conservation of the recordings.

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

ii. The purposes of the treatment resulting from video surveillance at the Palácio da Cidadela de Cascais

9. Notwithstanding that, under the terms of the powers defined in Law no. 95/2021, 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, this competence already exists when cameras installed in areas that, by their nature, are intended to be used as guards, or when they capture images and sound from inside the inhabited house or building or its dependence or from hotels and similar establishments, or when the capture of images or sound affects, in a direct and immediate way, the sphere of the reserve of intimate and private life (cf. paragraphs 4 to 6 of article 4 of Law No. 95/2021).

10. The processing of data resulting from the installation and use of 28 fixed cameras in the Palácio da Cidadela de Cascais, which is part of the heritage assigned to the Presidency of the Republic, to cover the interior spaces, as well as the courtyards and interior gardens, is at issue. of the Palace and also of the wall that delimits the external perimeter of the fortress.

11. As stated, the processing of personal data aims at the protection of public buildings and facilities and their accesses, the protection of facilities with an interest for defense and security, the protection of people and goods, public and private, and the prevention of the practice of facts qualified by law as crimes and prevention of terrorist acts, thus corresponding to the purposes set out in subparagraphs a), b) d) and e) of paragraph 1 of article 3 of Law n° 95/2021 (cf. p. 2 of the Justification accompanying the request).

12. It is also declared that "[the] system is not capturing audio" and that "[the] system does not have the technical capacity to record audio and capture images from the interior of private residences adjacent to the building » (cf. Annexes A and B of the Grounds).

13. Indeed, it is indicated that some cameras capture images of the public road, although it is specified, in some cases, that there is no ability to «visualize people's faces» - only silhouettes - and, in other cases,

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that the capture of images only aims to detect movements of people. It should also be noted that some of the cameras have "privacy zone functionality and video zone inhibition" (cf. Annex B of the Justification).

14. With regard to surveillance locations and filming angles, neither Annex A nor the document sent later show the probable viewing angles of the outdoor cameras. To that extent, the CNPD cannot assess whether the application of privacy masks safeguards the limits defined in paragraphs 4 to 6 of article 5 of Law no. housing, residences and the hotel unit.

iii. Video surveillance system security

15. From the perspective of the security of the video surveillance system, it should be noted that the Grounds are silent on some essential aspects so that a complete assessment of the security of the system can be carried out, under the terms provided for in paragraph 3 of article 5 . of Law No. 95/2021.

16. Thus, as regards the physical installation of the system, it is not defined in the request and its annexes how, at a physical level, the transport of camera image data will be installed to the viewing station and, therefore, the operations sent from the operator to the camera. Nor is there any mention of the possible existence of communication lockers and whether they will have "anti-tampering" mechanisms with alerts. The CNPD is limited, therefore, to recommending that the solution to be

adopted includes intrusion alarms in the infrastructure where the cameras will be connected, remembering that it is essential to ensure that there are no racks located on the floor or at a height that makes them easily accessible and that , preferably all cables are underground.

17. Regarding security in accessing the control post, in view of the omission of information, the CNPD recommends its reinforcement with a two-factor system that allows for automatic control, at all times, of entrances and exits and who was present in the room at any given time, and that these records support audit reports.

18. With regard to the logical communications network, the CNPD considers it essential that the support and maintenance services of the video surveillance system are provided physically on site, and not remotely, otherwise, through the punctual opening of a channel of communication on the Internet, if you expose the system to the vulnerabilities of an open network.

19. With regard to authentication and user profiles, Annex B states that "[t]he access to the video surveillance system must be protected by the obligation to enter a "username" and a "password" - double

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factor". It is clarified that the username/password combination does not, obviously, constitute a double authentication factor, so that such statement can only be the result of a mistake in writing. It should be noted that the adoption of a double authentication factor is recommended, which, in the present scenario, could, for example, lead to an access code to the control room and a password to access the video surveillance application. In any case, it is important that the chosen mechanism is personal and non-transferable between users who have access to the system.

20. With regard to user profiles, it must be defined whether all operators will have access to the image extraction functionality or whether there will be a user profile with privileged access to this functionality, the CNPD understanding that image

extraction should be a privileged access feature. In any case, it is emphasized that there must be a record of the cameras whose images are extracted and the time interval in the extraction, as well as the person responsible for the execution of the same - which is mentioned in the AIPD that accompanies the request, but is not explained in the Rationale.

21. The documentation presented does not define how these recordings, except for the 30-day rotation of the system archive, are preserved. Thus, the CNPD recommends that it be determined that, within the scope of the collection of images, mechanisms that enable the export in digital format, digitally signed, which attest to the veracity of its content, are contemplated. Encryption mechanisms must also be mentioned, if the export is intended to be protected with an access password or other security factor.

22. Still regarding the extraction of images, Annex B of the Justification mentions the existence of the "Local Record" functionality, to «allow users to record any event live on the PC monitor they use, without taking into account the set recording times'. As it is true that at no point in the request and in the Grounds time periods are defined for the recording of images, the CNPD cannot fail to express its surprise at the provision of such a functionality, when in Law No. 95/2021 (cf. Article 18) prescribes the procedure to be adopted when facts with criminal relevance are detected (as, incidentally, was also in Law No. 1/2005).

23. Thus, the CNPD understands that the functionality of "local registration" is not allowed by Law no. by law, also underlining that it appears that this video surveillance system with recording time limits jeopardizes the adequacy of data processing for the stated purposes.

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iv. Auditability of the processing of personal data

24. Annex F, point 13, provides for the existence of chronological records 'in order to allow the aforementioned audit operations, as provided for in Annex B'. However, Annex B only mentions that "[the] application ensures the authenticity of user names and passwords and records the activities carried out in memory, nothing more is said.

25. A policy for the retention of activity records (/i.e., for how long they are retained until they are discarded) and key indicators

for audit reports should be defined in terms of monitoring security in accesses and operations carried out.

26. Finally, it is also important to take into account the fact that chronological records (logs) are essential for the detection of failures and anomalies. However, this function of chronological records is only achieved if they are the object of analysis.

v. subcontracting

27. Regarding the installation and maintenance of the video surveillance system, because it is directly related to information security and the system's ability to fulfill the intended purposes, it is important to emphasize that this obligation falls on the data controller, regardless of whether who owns the video cameras and other equipment that make up the system.

28. Establishing Law No. 95/2021, in paragraph 1 of article 17, that the person responsible for processing the data is the requesting security force or service, any subcontracting in a company to ensure the maintenance or replacement of the equipment has to be formalized, contractually, with the PSP. If there is a contract signed between the Presidency of the Republic and a company to ensure maintenance and technical assistance to the video surveillance system, that contract must be framed under the terms of article 23 of Law No. August.

29. It is therefore important that a legal act be signed that specifically regulates the relationship between the PSP and the Presidency of the Republic, ensuring the domain of the processing of personal data by the person responsible for that treatment - which is also the PSP in its relationship with the company hired by the Presidency of the Republic.

III. Conclusion

30. It is not within the competence that is legally attributed to it to pronounce on the concrete grounds for the installation and use of a video surveillance system in the Palácio da Cidadela de Cascais, the CNPD, with the arguments set out above:

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The. cannot assess whether the application of privacy masks safeguards the limits defined in paragraphs 4 to 6 of article 5 of Law no. and the hotel unit;

B. understands that the functionality of "local registration" is not allowed by Law No. 95/2021, by virtue of the principle of legality, under which it is only legitimate conduct of the Public Administration authorized or provided for by law, underlining that , if the video surveillance system has recording time limits, it seems to jeopardize the adequacy of data processing for the stated purposes;

ç. And it insists that, being the person responsible for the processing of personal data, under the terms of the law, the PSP, must be expressly framed by article 23 of Law No. explained above in points 28 and 29.

31. The CNPD also recommends that measures be adopted capable of guaranteeing the security of the system and the auditability of the processing of personal data, as indicated above, in points 16 to 26.

Lisbon, February 15, 2022

Filipa Calvão (President, who reported)