

□ Procedure No.: PS/00430/2019

938-090320

RESOLUTION OF PUNISHMENT PROCEDURE

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

BACKGROUND

FIRST: On October 21, 2019, it had entry in this Spanish Agency
of Data Protection a document presented by the Police Headquarters of the
City Council of Las Palmas (hereinafter, the claimant), through which it formulates
claim against Don A.A.A. with NIF ***NIF.1 (hereinafter, the claimed one), for the
installation of a video surveillance system installed on the street *** ADDRESS.1 and street
***ADDRESS.2, there being indications of a possible breach of the provisions of
data protection regulations.

The reasons that support the claim and, where appropriate, the documents
provided by the claimant are the following:

The Local Police files a claim against the owner of a plot, above
mentioned, which has a camera facing public roads. The camera
controversial was analyzed in PS/00055/2012 and RR/00615/2012, where
pointed out that "the camera installed on the street ***ADDRESS.1, and whenever it is
kept in these conditions, is proportional and appropriate to the purpose of
surveillance and control by sticking to private spheres" However, they point out that
there are cameras in the attic of the claimant's home, for which he was
sanctioned in said PS for capturing public roads, and follows the camera in the attic.
They provide numerous photographs taken from outside the site. Adding
They have gone several times to talk to the owner and have not found him.

SECOND: The claim was admitted for processing by means of a resolution of 19

November 2019.

THIRD: On January 7, 2020, 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.

The start agreement was notified on January 10, 2020, as stated in the

Electronic notification service certificate.

FIFTH: Once the initiation agreement has been notified, the claim at the time of this resolution

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tion has not submitted a brief of allegations, so what is indicated is applicable

in article 64 of Law 39/2015, of October 1, on Administrative Procedure

Common of the Public Administrations, which in its section f) establishes that in case

of not making allegations within the stipulated period on the content of the initial agreement

ciation, it may be considered a resolution proposal when it contains a pro-

precise statement about the imputed responsibility, so we proceed to

dictate Resolution.

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

Data in this procedure are considered proven facts the following

FACTS

FIRST: Don A.A.A. It has a video surveillance camera installed on the street

***DIRECTORATE.2, which focuses on the street, as well as the portal camera, according to

the statements of the Local Police of the City Council of Las Palmas de Gran Canaria; although, they have not found the owner in his home on two occasions that he has come do to it.

FOUNDATIONS OF LAW

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By virtue of the powers that article 58.2 of the RGPD recognizes to each control authority, and as established in arts. 47 and 48.1 of the LOPDGDD, the Director of the Spanish Data Protection Agency is competent to resolve this procedure.

II

The physical image of a person, in accordance with article 4.1 of the RGPD, is a personnel and their protection, therefore, is the subject of said Regulation. In article 4.2 of the RGPD defines the concept of "treatment" of personal data.

It is, therefore, pertinent to analyze whether the processing of personal data (image natural persons) carried out through the video surveillance system denouncing ciated is in accordance with the provisions of the RGPD.

III

Article 6.1 of the RGPD establishes the assumptions that allow it to be considered lawful the processing of personal data.

For its part, article 5.1.c) of the RGPD, regarding the principles of processing to, provides that the personal data will be "adequate, pertinent and limited to what is necessary in relation to the purposes for which they are processed ("minimization of data")." This article enshrines the principle of data minimization in the treatment of personal data. It assumes that said treatment is adjusted and proportional to

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the purpose to which it is directed, and the processing of excessive data must be restricted.

you or proceed to delete them.

The relevance in the treatment of the data must occur both in the

the collection of the data as well as in the subsequent treatment that is carried out on the same.

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On the other hand, in accordance with the provisions of article 22 of the LOPDGDD,

referring specifically to the "Processing for video surveillance purposes", the treatment

ing of images in public places can only be carried out -if applicable and pre-

saw compliance with the legally enforceable requirements-, by the Forces and Bodies

of Security, unless the exception established in the aforementioned article 22 operates

of the LOPDGDD for individuals or legal entities, public or private, respecting

do the conditions required in said article.

On some occasions, the protection of private spaces is only possible if

the cameras are located in spaces such as facades. Sometimes it is also necessary

ary to capture the accesses, doors or entrances, so that, although the camera is

inside the building, it is impossible not to record a minimal and important part

dispensable from the public road, which is inevitably captured.

In order for this exception on the protection of private spaces to apply,

cable, there shall be no alternative installation possibility. In these cases, the

responsible for the treatment carried out through cameras will adapt the use of the

so that the impact on the rights of third parties (passers-by) is minimal.

mo possible. In no case will the use of surveillance practices be admitted beyond the

environment object of the installation, not being able to affect the surrounding public spaces.

contiguous buildings and vehicles other than those accessing the guarded space.

IV

In accordance with the above, the treatment of images through a system subject of video surveillance, to be in accordance with current regulations, you 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 established in article 5 of Law 5/2014 on Private Security, of April 4.
 - The video cameras will not be able to capture images of the people who are outside the private space where the video surveillance system is installed.
- since the treatment of images in public places can only be carried out, unless there is government authorization, by the Security Forces and Bodies.

Nor can spaces owned by third parties be captured or recorded without the consent of their owners, or, where appropriate, 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 on facades or in the

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inside, it may be necessary to ensure the security purpose the recording of a portion of the public road. That is, cameras and camcorders installed with fi- security officers will not be able to obtain images of public roads unless it is indispensable for said purpose, or it is impossible to avoid it due to the location of

those and, extraordinarily, the minimum space for said financing will also be collected.

ity. Therefore, the cameras could exceptionally capture the minimum portion-
mind necessary for the intended security purpose.

- The duty to inform those affected provided for in the articles must be complied with.

12 and 13 of the RGPD.

Specifically, at least one distinction must be placed in video-monitored areas.

informative display located in a sufficiently visible place, both in open spaces

as closed, which will identify, at least, the existence of a treatment, the

identity of the person in charge and the possibility of exercising the rights foreseen in said

precepts. Likewise, the information must be kept available to those affected.

to which the aforementioned RGPD refers.

- The person in charge must keep a record of treatment activities

carried out under its responsibility, including the information to which it makes

reference article 30.1 of the RGPD.

- The installed cameras cannot obtain images from private space of

third party and/or public space without duly accredited justified cause, nor can

affect the privacy of passers-by who move freely through the area. It's not per-

mitigated, 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.

- In no case will the use of surveillance practices beyond the en-

object of the installation and in particular, not being able to affect the public spaces

surrounding spaces, adjoining buildings and vehicles other than those accessing the space.

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v

The claim is based on the presumed illegality of the installation by the

called from a video surveillance system, made up of several cameras located in

the door and in the attic of the home of the respondent located on the street *** ADDRESS.2, which could capture images of public areas disproportionately from the road public.

In addition, the claimant was sanctioned in 2012 for the installation of several video surveillance cameras in different locations.

In accordance with the foregoing, this Agency considers that it is accredited that there two video surveillance cameras installed on the street *** ADDRESS.2, on the portal and in an attic, which capture images of public thoroughfares in excess.

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The corrective powers of the Spanish Protection Agency of Data, as a control authority, are established in article 58.2 of the RGPD. In- Among them are the power to sanction with a warning -article 58.2 b)-, the power to impose an administrative fine in accordance with article 83 of the RGPD -article 58.2 i)-, or the power to order the controller or processor that the treatment operations comply with the provisions of the RGPD, when appropriate, in a certain way and within a specified period -article 58. 2 d)-.

According to the provisions of article 83.2 of the RGPD, the measure provided for in article Article 58.2 d) of the aforementioned Regulation is compatible with the sanction consisting of a fine administrative.

Without prejudice to the provisions of article 83 of the RGPD, the aforementioned Regulation

has in its art. 58.2 b) the possibility of sanctioning with a warning, in relation

with what is stated in Considering 148:

“In the event of a minor offence, or if the fine likely to be imposed

would constitute a disproportionate burden for a natural person, rather than a sanction.

tion by means of a fine, a warning may be imposed. must, however, lend

special attention to the nature, seriousness and duration of the infringement, its character

intentional, to the measures taken to alleviate the damages suffered, to the degree

liability or any relevant prior violation, to the manner in which the authority

control authority has become aware of the infraction, compliance with measures

measures ordered against the person in charge or in charge, adherence to codes of con-

conduct and any other aggravating or mitigating circumstance.”

7th

The exposed facts do not comply with the provisions of article 5.1.c) of the RGPD,

which implies the commission of an infringement typified in article 83.5 of the RGPD,

which provides the following:

“Infractions of the following provisions will be sanctioned, in accordance

with paragraph 2, with administrative fines of a maximum of EUR 20,000,000 or, alternatively,

being from a company, of an amount equivalent to a maximum of 4% of the volume

overall annual total turnover of the previous financial year, opting for the

higher amount:

a) the basic principles for the treatment, including the conditions for the

consent under articles 5, 6, 7 and 9;

For the purposes of the limitation period for infractions, the infraction indicated

in the previous paragraph is considered very serious and prescribes after three years, in accordance with

Article 72.1 of the LOPDGDD, which establishes that:

“Based on the provisions of article 83.5 of Regulation (EU) 2016/679

are considered very serious and will prescribe after three years the infractions that suppose a substantial violation of the articles mentioned therein and, in particular, the following:

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a) The processing of personal data violating the principles and guarantees established established in article 5 of Regulation (EU) 2016/679.”

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The fine imposed must be, in each individual case, effective, proportionate nothing and dissuasive, in accordance with the provisions of article 83.1 of the RGPD. So, It is appropriate to graduate the sanction to be imposed in accordance with the criteria established by art. article 83.2 of the RGPD, and with the provisions of article 76 of the LOPDGDD, regarding the section k) of the aforementioned article 83.2 RGPD:

In the assessment, the following were considered as aggravating factors:

- The defendant has acted with a serious lack of diligence.
- The respondent has not adopted any measure to correct the effects of the infraction, despite having been sanctioned years ago for the installation of cameras video surveillance on their properties.

In the assessment, the following were considered as mitigating factors:

- The merely local scope of the data processing carried out by the claimed party.
- The damage caused to those affected by the processing of their data does not become significant.
- As mitigating circumstances to be assessed in order to graduate the sanction

tion, taking into account the limited catchment space, the absence of benefits

had, as well as the fact of being a natural person.

Therefore, in accordance with the applicable legislation and having assessed the criteria for

graduation of the sanctions whose existence has been accredited

The Director of the Spanish Data Protection Agency RESOLVES:

FIRST: IMPOSE A.A.A., with NIF ***NIF.1, for an infraction of Article 5.1.c)

of the RGPD, typified in Article 83.5 of the RGPD, a fine of €2,000 (two thousand euros).

SECOND: REQUEST A.A.A., with NIF ***NIF.1, so that, within ONE MONTH

from the notification of this act, prove compliance with the following

measures:

That correct the outside recording area, limiting itself to a small space

proportional of public thoroughfare, of the cameras installed in the portal and in the attic.

THIRD

: NOTIFY this resolution to A.A.A.

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FOURTH: Warn the sanctioned party that he must make the imposed sanction effective once

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

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 Data Protection at Banco CAIXABANK, S.A. Otherwise, it will be collected during the executive period.

Received the notification and once executed, if the date of execution is is between the 1st and 15th of each month, both inclusive, the term to carry out the voluntary payment will be until the 20th day of the following month or immediately after, and if is between the 16th and last day of each month, both inclusive, the term of the payment will be until the 5th of the second following month or immediately after.

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

LPACAP, the interested parties may optionally file an appeal for reconsideration

before the Director of the Spanish Agency for Data Protection within a period of

month 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, the firm resolution may be provisionally suspended in administrative proceedings

if the interested party expresses his intention to file a contentious appeal-

administrative. If this is the case, the interested party must formally communicate this made by writing to the Spanish Agency for Data Protection, introducing him to the agency [<https://sedeagpd.gob.es/sede-electronica-web/>], or through any of the other records provided for in art. 16.4 of the aforementioned Law 39/2015, of October 1. Also must transfer to the Agency the documentation that proves the effective filing of the contentious-administrative appeal. If the Agency were not aware of the filing of the contentious-administrative appeal within two months from the day following the notification of this resolution, it would end the precautionary suspension.

Electronic Registration of

through the

Sea Spain Marti

Director of the Spanish Data Protection Agency

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