

File identification

Resolution of sanctioning procedure no. PS 15/2023, referring to L'Hospitalet Rpark , SL.

Background

1. On 02/12/2021, the Catalan Data Protection Authority received a letter of complaint against the residence L'Hospitalet Rpark , SL, (from now on, residence), on the grounds of an alleged non-compliance with the regulations on personal data protection . Specifically, the person making the complaint explained that in this residence there would be "more than 20 cameras, none signaled " and, therefore, without providing the affected people with information about the existence of the cameras. In the letter of complaint, the location of the unmarked cameras was indicated, some "focused on the street ", others "in workers' rest areas" and, in general, "throughout the building" of the residence
2. The Authority opened a preliminary information phase (no. IP 494/2021), in accordance with the provisions of article 7 of Decree 278/1993, of November 9, on the sanctioning procedure applied to areas of competence of the Generalitat, and article 55.2 of Law 39/2015, of October 1, on the common administrative procedure of public administrations (LPAC), to determine whether the facts were likely to motivate the initiation of 'a sanctioning procedure.
3. In this information phase, on 05/26/2022 the Authority's Inspection Area made a series of checks via the internet. Specifically, through the Google service Street Views verified that on the facade of the L'Hospitalet Rpark SL residence, located at c/ (...), there is no outside camera installed. It can be seen, however, that there are at least two informational posters about the existence of cameras, one located on the exterior facade and the other at the entrance of the residence.
4. On 05/26/2022, the residence was required, among other issues, to confirm whether it was a provider of the Catalan system of social services. Also, on the date of entry into operation of the video surveillance system and on whether they had reported the existence of the installed cameras through informative posters. If so, to report on the date on which the posters were installed and where they were located, and to provide a photograph of all of them.
5. On 06/06/2022, the residence responded to the request through a letter dated 06/03/2022, in which it stated the following:
 - That they are "(...) a provider of the Catalan system of social services."
 - That "the video surveillance system went into operation in 2013."
 - That the informative posters of the existence of the cameras were installed "In 2013, at the time when the video surveillance system was set up."
 - That "We only have cameras inside the center, and the information poster is at the main door of the center and another at the door from where the workers access to sign in."

- That "The residence has two floors, and the only informational posters are the ones mentioned above. You can only access the second floor, through the two entrances where the posters are placed."
- That "(...) there is no specific rest area for workers, they take their breaks outside the center or in common areas of the residence."
- That "there is no outside camera."

The residence provided the following documentation:

- Captures of the images of the focus field of the cameras, dated 05/26/2022. Based on these captures, it is observed that inside the residence there are cameras installed in common areas, such as the residents' living rooms, the corridors and the landing of the stairs which, by which seems to lead to the second floor of the residence.
 - Photographs of the information posters that are placed at the main access door of the residence and at the door from which workers access to sign in. It is noted that these posters state the purpose for which the data is processed (" Video-surveillance area "). They have a yellow background and, centered within a white rectangle, the pictogram of a video surveillance camera. However, the low definition of the images provided by the entity does not allow us to appreciate in detail whether the posters report on the rest of the points provided for in the personal data protection regulations.
6. On 02/24/2023, still within the framework of the prior information phase, the residence was required, among other things, to provide photographs of the two posters referenced above, which had a level of definition that allowed to appreciate -its content And, in the event that the information posters had changed, it was urged that they report on this fact and provide photographs of the current information posters.
 7. On 01/03/2023, the residence provided the photographs of the two information posters, which are placed at the main access door of the residence and the door from which the workers access to register. From here, and in accordance with what has been said in the preceding 5th, it is observed that, apart from informing about the purpose of data processing for video surveillance purposes (" Video-surveillance area "), these posters also inform about the identity of the data controller ("L'Hospitalet Rpark.SL (...)") and the possibility of exercising the rights of the affected person. However, it is noted that these posters refer to the old Organic Law 15/1999, of 13 December, on data protection (LOPD) and do not indicate the place where you can obtain more information about data processing .
 8. On 07/03/2023, also inside of this information phase previously , the Area of Inspection of the Authority made a search through the website of the residence .

First, you accessed the privacy policy section, ((...)). This section includes information on data processing activities carried out by the residence, but it is noted that there is a lack of information regarding the processing of images captured from the cameras that are installed in the residence for video surveillance purposes.

Secondly, he accessed the other sections of the residence's website ((...)) and the information on the processing of data for video surveillance purposes was also not found.

9. On 03/16/2023, the director of the Catalan Data Protection Authority agreed to initiate disciplinary proceedings against the residence L'Hospitalet Rpark , SL, for an alleged infringement provided for in article 83.5. *b* , in relation to articles 12 and 13, all of them of Regulation (EU) 2016/679 of the European Parliament and of the Council, of April 27, relating to the protection of natural persons with regard to the processing of personal data and the free circulation of this data (RGPD). This initiation agreement was notified to the imputed entity on 03/17/2023.
10. The initiation agreement explained the reasons why no charge was made with respect to other reported facts.

In relation to the facts reported regarding the eventual installation of video surveillance cameras focused on public roads and in workers' rest areas, as part of the previous information actions, the residence stated that they only have installed cameras "inside the center" and that "there is no outside camera". The Authority verified this claim based on the images captured by the Google service Street View , of which it is observed that no external camera is installed.

On the other hand, the residence defended that "there is no specific rest area for the workers, they take their breaks outside the center or in common areas of the residence". Also, from the images of the focus field of the cameras, which the residence provided as part of the prior information actions, it is identified that the residence has cameras installed in the common areas of the interior of the building (such as residents' living rooms, corridors and on the landing of the stairs leading to the second floor of the residence), but no cameras installed in exclusive areas of workers' rest. For this reason, it was considered that, if some workers of the residence took their breaks inside the building, the capture of images of these workers would be merely incidental and without the intention of exercising labor control.

These facts were filed based on the principle of presumption of innocence, as there was no evidence or evidence to corroborate these facts.

Finally, and with regard to the fact reported regarding the eventual existence of unmarked cameras, from the information provided as part of the prior information phase, it was considered that the residence had placed the information posters of the existence of the cameras in locations that make it possible to guarantee the knowledge of the people affected, before accessing the residence; therefore, before entering the field of focus of the cameras. At this point, reference is also made to the fact that, despite the fact that the residence has two floors, there is no evidence that cameras were installed on the second floor of the residence. However, regarding this it is recalled that Instruction 1/2009, of February 10, on the processing of personal data through cameras for video surveillance purposes (Instruction 1/2009), establishes that in buildings divided by floors it is necessary to col- also place the information poster on each of the floors where there are video cameras.

11. On 03/29/2023, the imputed entity made allegations to the initiation agreement .

12. On 08/06/2023 , the person instructing this procedure formulated a resolution proposal, by which he proposed that the director of the Catalan Data Protection Authority sanction the residence L'Hospitalet Rpark, SL , as to responsible for an infringement provided for in article 83.5. *b* in relation to article 13, both of the RGPD.

This resolution proposal was notified on 09/06/2023 and a period of 10 days was granted to formulate allegations.

13. On 06/13/2023, the accused entity paid in advance 600 euros (six hundred euros), corresponding to the pecuniary penalty proposed by the investigating person in the resolution proposal, once the reductions provided for in article 85 of Law 39/2015.
14. On 06/21/2023, the accused entity submitted a letter in which it acknowledges its responsibility for the alleged acts. With his letter, he provided various documentation certifying the measures taken to correct the effects of the infringement.
- Photographs of the new information posters installed in the residence, which indicate the means by which complementary information on the processing of data for video surveillance purposes is made available to the affected persons. It is noted that these posters indicate that you can obtain more information about data processing "in person at the reception of the facilities where the images are collected, or by accessing our privacy policy at: (...)".
 - Photographs of the document that is posted on the bulletin board located at the reception desk of the residence. This document contains additional information on data processing for video surveillance purposes.
 - A copy of the complementary information on data processing for video surveillance purposes that is available, in printed paper format, at the reception desk of the residence, which includes all the points provided for in article 13 of the RFGPD.

proven facts

The residence L'Hospitalet Rpark , SL did not properly inform about the processing of images for video surveillance purposes, given that, apart from the information contained in the information posters, the entity did not make available to the affected persons the information about the rest of the points provided for in article 13 of the RGPD, as provided for in the regulations for the protection of personal data.

On 21/06/2023, the residence certified that it had updated the information posters and that it makes available to the affected persons additional information on the processing of data for video surveillance purposes in person; this information is available at the reception desk of the residence, in printed paper format, and also electronically through the privacy policy of the residence's website. In this sense, on 23/06/2023 this Authority verified that, indeed, the residence had updated the section of the privacy policy on its website, which now already includes information relating to the processing of data for video surveillance purposes .

Fundamentals of law

1. LPAC and article 15 of Decree 278/1993 apply to this procedure , according to the provisions of DT 2a of Law 32/2010, of October 1, of the Authority Catalan Data Protection Authority. In accordance with articles 5 and 8 of Law 32/2010, the resolution of the sanctioning procedure corresponds to the director of the Catalan Data Protection Authority.
2. In accordance with article 85.3 of the LPAC, both the recognition of responsibility and the advanced voluntary payment of the proposed pecuniary penalty involve the application of single reductions of 20% of the amount of the penalty, cumulative with each other. The effectiveness of these reductions is conditional on the withdrawal or renunciation of any action or appeal through the administrative route against the sanction. For both cases, sections 1 and 2 of article 85 of the LPAC provide for the termination of the procedure.

Although it submitted objections to the initiation agreement, the accused entity has not made objections to the resolution proposal, since it has accepted to both options to reduce the penalty amount. However, it is considered appropriate to reiterate below the most relevant of the reasoned response that the instructing person gave to the allegations before the initiation agreement.

The allegations made by the entity formulated before the initiation agreement did not tend to distort the facts imputed to the initiation agreement, nor to its legal qualification, but only detailed the measures taken to correct the effects of the infringement.

In its statement of objections, the residence L'Hospitalet Rpark , SL, stated that, following the request of 05/26/2022, the entity had updated the informational posters that were installed in the residence , which did not indicate where further information on data processing could be obtained. Also, that he had placed the new informational posters in various places inside the residence.

Regarding this, in the resolution proposal it was pointed out that the adoption of measures to correct the effects of the infringements does not distort the imputed facts, nor does it change their legal classification, although it can have effects on the time to determine if corrective measures should be required.

Having established the above, the proposal analyzed the content of the new information posters, in which the entity indicated the two channels through which it made available to interested persons the rest of the complementary information on the processing of personal data with the purpose of video surveillance, as required by article 22.4 in fine of Organic Law 3/2018, of November 5, on the protection of personal data and guarantee of digital rights (LOPDGDD) in connection with article 13 of the RGPD .

In the informative posters referenced, it was indicated that interested persons could request more information about data processing "in person at the facilities or offices where the images are collected" or " by sending an email to (...)" . Therefore, the entity informed the interested person about two possible ways to access the rest of the information on the processing of their personal data that was not contained in said information posters.

In this regard, in Directives 3/2019 on the processing of personal data using video devices, approved on 29/01/2020, the European Data Protection Committee (EDPB) insists that the information in the second layer (the first layer of information is contained

on the information poster) must be easily accessible before entering the guarded area, especially if the information is provided in electronic form, (such as by indicating on the information posters the link to the website). In this sense, sending an email and waiting for a response, which in some cases may not be automatic, would hardly fit into what must be interpreted as an "easily accessible" way of making available the complementary information. Therefore, this way cannot be considered valid, given that it does not comply with the provisions of article 22.4 in fine of the LOPDGDD, when it prescribes the obligation of the data controller to keep the rest of the information available to those affected what article 13 of the RGPD refers to. Another thing would be for the information poster to indicate a web address where interested people could find all the complementary information.

On the other hand, it is considered valid to make additional information available to interested parties, indicating on the information poster that it can be accessed " in person at the facilities or offices where the images are collected".

In this regard , the resolution proposal also referred to Directives 3/2019 on the processing of personal data through video devices, since it is indicated there that one way to offer complementary information is at the same time of 'enter the image capture area; for example, when supplementary information is available in paper form at a central location in the premises (such as at the information desk, reception, etc.). At this point, in the proposed resolution it was indicated that, although the poster refers to the possibility of obtaining the information at the residence itself, it would be lacking to certify what is the information on paper that is offered to people interested parties who go in person to the offices of the residence.

Consequently, the investigating person considered that the corrective measures adopted by the entity did not fully comply with the provisions of article 22.4 of the LOPDGDD, since only one of the two access routes to the information provided in the information poster would be valid, and that the accused entity had also not certified the information that is hand-delivered to the interested persons who go to the reception of the residence.

For these reasons, the person instructing this procedure proposed that corrective measures be adopted to stop or correct the effects of the infringement, which the entity has already certified that it has implemented.

3. In relation to the facts described in the proven facts section, it is necessary to go to article 12 of the RGPD, which provides that: " 1. The person responsible for the treatment will take the appropriate measures to provide the interested party with all the information indicated in the articles 13 and 14, as well as any communication in accordance with articles 15 to 22 and 34 relating to the treatment, in a concise, transparent, intelligible and easily accessible form, with a clear and simple language, in particular any information directed specifically to a child (...) "

And sections 1 and 2 of article 13 of the RGPD establish the following:

"1. When personal data relating to an interested party is obtained, the data controller, at the time it is obtained, will provide all the information indicated below:

- a) the identity and contact details of the person in charge and, where appropriate, of their representative;

- b) the contact details of the data protection officer, if applicable;
 - c) the purposes of the treatment for which the personal data is intended and the legal basis of the treatment;
 - d) when the treatment is based on article 6, section 1, letter f), the legitimate interests of the person in charge or of a third party;
 - e) the recipients or the categories of recipients of the personal data, as the case may be;
 - f) in its case, the intention of the person in charge to transfer personal data to a third country or international organization and the existence or absence of an adequacy decision by the Commission, or, in the case of the transfers indicated in articles 46 or 47 or article 49, section 1, second paragraph, refers to the adequate or appropriate guarantees and the means to obtain a copy of these or the fact that they have been provided.
2. In addition to the information mentioned in section 1, the data controller will provide the interested party, at the time the personal data is obtained, the following information necessary to guarantee fair and transparent data processing:
- a) the period during which personal data will be kept or, when not possible, the criteria used to determine this period;
 - b) the existence of the right to request from the person in charge of the treatment access to the personal data relating to the interested party, and its rectification or deletion, or the limitation of its treatment, or to oppose the treatment, as well as the right to the portability of the data ;
 - c) when the treatment is based on article 6, section 1, letter a), or article 9, section 2, letter a), the existence of the right to withdraw consent at any time, without it affecting the legality treatment based on consent prior to its withdrawal;
 - d) the right to present a claim before a control authority;
 - e) if the communication of personal data is a legal or contractual requirement, or a necessary requirement to sign a contract, and if the interested party is obliged to provide personal data and is informed of the possible consequences of not providing such data;
 - f) the existence of automated decisions, including the creation of profiles, referred to in article 22, sections 1 and 4, and, at least in such cases, significant information on the logic applied, as well as the importance and expected consequences of said treatment for the person concerned."

For its part, article 22.4 of the LOPDGDD, relating to treatments for video surveillance purposes, provides that:

"4. The duty of information provided for in article 12 of Regulation (EU) 2016/679 is understood to be fulfilled by placing an information device in a sufficiently visible place with the identification, at least, of the existence of the treatment , the identity of the person responsible and the possibility of exercising the rights provided for in articles 15 to 22 of Regulation (EU) 2016/679. A connection code or an Internet address with this information may also be included in the information device.
In any case, the data controller must keep the information referred to in the aforementioned Regulation at the disposal of those affected."

Regarding the processing of personal data through cameras for video surveillance purposes, section 6 of article 12 of Instruction 1/2009, regarding the right to information, determines the following:

"12.6 The person responsible for the treatment, or whoever designates in their place, must also provide the affected persons with information on the rest of the points provided for in article 5.1 of the LOPD through printed materials or through their website or electronic headquarters, where the specific purpose of the surveillance must be stated, as well as the rest of the information established in sections a), d) and e) of article 5 of the LOPD."

Regarding this last point, it should be noted that, following the application of the RGPD, the complementary information must be understood as referring to the specific purpose of data processing and the rest of the information established in article 13 of the RGPD.

With regard to the content and design of the information poster, the annex to Instruction 1/2009 to which article 12.4 of the same rule refers states that:

"1. In the information poster referred to in article 12 of this Instruction, the following information must be clearly visible, from top to bottom, at least:

Indication of the purpose for which the data is processed (" Video-surveillance area ").

Pictogram symbolizing a video surveillance camera inside a white rectangle.

When the voice is captured, the pictogram must reflect this circumstance.

The informative text "Data Protection".

Express indication of the identification of the responsible person before whom the rights of access, rectification, cancellation and opposition can be exercised.

Indication of the site or website where the information referred to in article 12.6 of this Instruction can be obtained. (...)"

In the present case, it is considered that the residence L'Hospitalet Rpark , SL would not have properly informed the processing of images for video surveillance purposes, since, in the framework of the actions of prior information, it was established that the former informative posters that, at least until the date of the request of 26/05/2022, were installed in the residence. Although they reported on the various points provided for in article 22.4 of the LOPDGDD, they did not indicate the place where more information on data processing could be obtained, as provided for in the annex of Instruction 1/2009, in relation to what is provided for in article 22.4 in fine of the LOPDGDD.

Aside from the above, the residence did not provide any element to prove that it does, indeed, provide the interested parties with all the information provided for in Article 13 of the RGPD.

During the processing of this procedure, the fact described in the proven facts section has been proven, which is considered to constitute the offense provided for in article 83.5. *b* of the RGPD, which typifies the violation of "the rights of the interested parties

pursuant to articles 12 to 22" , among which is the right to information provided for in articles 12 and 13 of the RGPD.

The conduct addressed here has been included as a minor infraction in article 74. a of the LOPDGDD, as follows:

"a) Breach of the principle of transparency of information or the right to information of the affected person for not providing all the information required by articles 13 and 14 of Regulation (EU) 2016/679."

4. Given that the residence L'Hospitalet RPark , SL does not fall under any of the subjects established in article 77.1 of the LOPDGDD , the general sanctioning regime provided for in article 83 of the GDPR applies.

Article 83.5 of the RGPD provides that the infractions provided for in it are sanctioned with an administrative fine of 20,000,000 euros at the most, or if it is a company, an amount equivalent to 4 % as a maximum of the global total annual business volume of the previous financial year, and you must opt for the higher amount.

Having said that, the amount of the administrative fine to be imposed must be determined. According to the provisions of article 83.2 of the RGPD, and also in accordance with the principle of proportionality enshrined in article 29 of Law 40/2015, as indicated by the investigating person in the resolution proposal, the sanction should be imposed of **1,000 euros** (one thousand euros).

This quantification of the fine is based on the weighting between the aggravating and mitigating criteria indicated below:

On the one hand, we appreciate the following circumstances that operate as mitigating criteria in the grading of the fine linked to the proven facts:

- The lack of intentionality or negligence in the infringement (art. 83.2. b RGPD).
- The category of personal data affected by the breach – there is no evidence that it affected special categories of data (art. 83.2. g RGPD).
- The lack of benefits as a result of the commission of the offense (art. 83.2. k RGPD and art. 76.2. c LOPDGDD).
- The entity's immediate action to reduce the effects of the infringement (art. 83.2.c RGPD), given that, following the request of 05/26/2022, the accused entity updated the information posters that were installed at the residence.

On the contrary, as aggravating criteria the following elements must be taken into account :

- The association of the entity's activity with the practice of processing personal data (art. 83.2. k RGPD and 76.2. b LOPDGDD).

5. On the other hand, in accordance with article 85.3 of the LPAC and as stated in the initiation agreement, if before the resolution of the sanctioning procedure the accused

entity acknowledges its responsibility or makes the payment voluntary pecuniary penalty, a 20% reduction should be applied on the amount of the provisionally quantified penalty. If the two aforementioned cases occur, the reduction is applied cumulatively (40%).

As has been advanced, the effectiveness of the aforementioned reductions is conditional on the withdrawal or renunciation of any action or appeal through the administrative route against the sanction (art. 85.3 of the LPAC, in fine).

Well, as indicated in the antecedents, by means of a letter dated 21/06/2023 the accused entity has acknowledged its responsibility. Likewise, on the same date he paid **600 euros** (six hundred euros) in advance , corresponding to the amount of the penalty resulting once the cumulative reduction of 40% has been applied.

6. Faced with the finding of the violations provided for in article 83 of the RGPD in relation to privately owned files or treatments, article 21.3 of Law 32/2010, of October 1, of the Catalan Authority of Data Protection, empowers the director of the Authority so that the resolution declaring the infringement establishes the appropriate measures to stop or correct its effects.

In this case, it is not necessary to propose that corrective measures be adopted, since it has been established that the accused entity has updated the information posters and has certified that it makes available to the affected persons complementary information on the processing of data for video surveillance purposes, in person. This information is available at the reception desk of the residence in printed paper format and also electronically through the privacy policy of the residence's website.

resolution

For all this, I resolve:

1. To impose on L'Hospitalet Rpark , SL the sanction consisting of a fine of 1,000 euros (one thousand euros), as responsible for an infringement provided for in article 83.5. *b* in relation to article 13, both of the RGPD.
2. Declare that L'Hospitalet Rpark , SL has made the advance payment of 600 euros (six hundred euros), which corresponds to the total amount of the penalty imposed once the percentage of deduction of 40% corresponding to the reductions provided for in article 85 of the LPAC.
3. It is not necessary to require corrective measures to correct the effects of the infringement, in accordance with what has been set out in the 6th legal basis.
4. Notify this resolution to L'Hospitalet RPark , SL.
5. Order that the resolution be published on the Authority's website (apdcat.gencat.cat) , in accordance with article 17 of Law 32/2010, of October 1.

Against this resolution, which puts an end to the administrative process in accordance with articles 26.2 of Law 32/2010 and 14.3 of Decree 48/2003, of February 20, which approves

the Statute of the Catalan Agency of Data Protection, the accused entity can file an appeal before the director of the Catalan Data Protection Authority, within one month from the day after its notification , in accordance with the provisions of article 123 et seq. of Law 39/2015. An administrative contentious appeal can also be filed directly before the administrative contentious courts of Barcelona, within two months from the day after its notification, in accordance with Law 29/1998, of July 13 , regulator of administrative contentious jurisdiction.

If the imputed entity expresses to the Authority its intention to file an administrative contentious appeal against the final administrative decision, the decision will be provisionally suspended under the terms provided for in article 90.3 of the LPAC.

Likewise, the imputed entity can file any other appeal it deems appropriate to defend its interests.

The director

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