

SPANISH DATA PROTECTION AGENCY

21648 INSTRUCTION 1/2006, of 8 November, by the Spanish Data Protection Agency, on processing personal data for surveillance purposes through camera or video-camera systems.

The recent increase in premises with cameras and video-cameras installed for surveillance purposes have given rise to considerable doubt concerning the image processing this involves. It is also a sector that provides multiple means to process personal data, such as closed circuit television, recording by "webcam" devices, image digitization, or installation of cameras in the workplace. Precisely the last International Conference of Data Protection Authorities, held in London on 1 to 3 November this year, concerned the need to adapt video-surveillance to the demands of the fundamental right to data protection. All this makes it necessary that, in exercise of the competence it is attributed under article 37.1.c) of Organic Act 15/1999, of 13 December, on Personal Data Protection, the Spanish Data Protection Agency issue an Instruction to ensure image processing for the purposes of surveillance complies with the principles of that Organic Act and guarantee the rights of the persons whose images are processed using such procedures.

The framework in which this Instruction is set is clear. Security and surveillance, elements found in present day society, are not incompatible with the fundamental right to protection of one's image as personal data, so what is required is to abide by the existing laws on data protection, in order to thus maintain citizens' confidence in the democratic system.

Images are considered personal data, by virtue of the terms established in article 3 of Organic Act 15/1999 and article 1.4 of Royal Decree 1332/1994 of 20 June, that considers graphic or photographic information to be personal data.

With regard to installation of video-camera systems, it will be necessary to consider the juridical assets protected. Thus, all installations must respect the principle of proportionality that definitively means, whenever possible, adopting other means that are less intrusive to personal privacy, in order to prevent unjustified interference with the fundamental rights and liberties.

Thus, the use of cameras or video-cameras must not amount to the initial means to perform surveillance duties so that, from an objective point of view, use of these systems must be proportional to the end intended that, in all cases, must be legitimate.

As to proportionality, in spite of being an undetermined juridical concept, Constitutional Tribunal Sentence 207/1996 determines that it is a “common, constant requirement for the constitutionality of any measure that restricts fundamental rights, among them, those that amount to interference in the rights of physical integrity and privacy, and more specifically measures that restrict the fundamental rights adopted in the course of the penal process are determined by strict observance of the principle of proportionality.

In that sense, we have emphasised that, in order to check whether a measure that restricts a fundamental right exceeds the criteria of proportionality, it is necessary to check whether it fulfils the following three requisites or conditions: “if that measure is liable to achieve the objective proposed (judgement of idealness); if, moreover, it is necessary, in the sense of there not being any more moderate means to achieve that purpose with the same efficiency (judgement of need); and, finally, if it is pondered or balanced, due to it providing more benefits or advantages for the general interest than damages to other clashing assets or values (judgement of proportionality in the strict sense)”.

Likewise, proportionality is a fundamental element in all the fields in which video-surveillance systems are installed, as there are numerous cases in which breach of that principle may give rise to situations of abuse, such as installation of surveillance systems in common spaces, or washrooms in the workplace. Due to this, the aim is to avoid omnipresent surveillance, in order to prevent personal vulnerability.

This Instruction excludes personal data recorded for domestic use or purposes, according to the terms established in article 2 a) of Organic Act 15/1999, on Personal Data Protection, although in the strict sense established by the Courts of Justice of the European Community in the Sentence of 6 November 2003, Lindqvist case, that, by interpreting the exception provided under article 3, section 2 of Directive 95/46/EC of the European Parliament and the Council of 24 October 1995, concerning protection of individuals with regard to processing personal data and free circulation of such data, indicates that it only considers “activities that are included in the setting of private or family life of individuals” and not other different ones. The same line was taken in the Opinion 4/2004, passed by the Working Group created under Article 29 of Directive 95/46/EC, dated 25 November 2002.

Moreover, the Instruction will not be applied to processing images either, when these are used to exercise the duties of the Security Forces and Corps, that are covered by specific rules, although such processing must fulfil the gas established by Organic Act 15/1999.

On the other hand, the Instruction aims to adapt processing to the criteria set in the jurisprudence of the Constitutional Tribunal, on considering that personal data processing does not require it to be conserved, but shall suffice with it being gathered or recorded. This has also been stated in the laws on the matter passed by the different Member States of the European Union, thus fulfilling the mandate contained in Directive 95/46/EC.

Lastly, the full guarantees of protection of personal data, as well as the specific features of its processing, requires specific regulation, avoiding application of a set of abstract, dispersed rules. Due to this, on regulating legitimacy of image processing, the Spanish Data Protection Agency, considers it is an essential requisite to fully apply article 6.1 and 2 of article 11.1 and 2 of the LOPD, notwithstanding strict fulfilment of the requisites established for camera or video-camera installation under the laws in force. It also regulates the content of the duty of information foreseen in article 5 of the Organic Act, as well as exercise of the rights referred to in articles 15 and following of that Organic

Act. Obviously, creation of a video-surveillance file requires prior notification to the Spanish Data Protection Agency, for its inscription at the General Register.

By virtue thereof, pursuant to the terms of article 37.1.c) of Organic Act 15/1999, of 13 December, on Personal Data Protection, I hereby dispose:

Article 1. Objective scope.

1. This Instruction applies to processing the personal data of identified or identifiable physical persons for the purposes of surveillance, through camera and video-camera systems.

The processing subject to this Instruction includes recording, capture, transmission, conservation and storage of images, including their recording or broadcasting in real time, as well as the processing of personal data related to these.

A person is considered identifiable when his identity may be determined by the processing to which this instruction refers, without that requiring disproportionate terms or activities.

The references contained in this Instruction to video-cameras and cameras will be understood to refer to any analogous technical means and, in general, to any system that allows the processing foreseen in same to be performed.

2. Processing personal data from images obtained by use of cameras and video-cameras by the Security Forces and Bodies will be governed by the provisions on the matter.

3. Images obtained in the personal and domestic scope will not be considered subject to this Instruction, that being understood as that performed by an individual within the setting of an exclusively private or family activity.

Article 2. Legitimation.

1. It will only be possible to process the data subject to this instruction when covered by the terms provided under Article 6.1 and 2, and article 11.1 and 2 of Organic Act 15/1999, of 13 December, on Personal Data Protection.

2. Notwithstanding the terms established in the preceding section, installation of cameras and video-cameras must in all cases respect the requisites established by the current laws in force on the matter.

Article 3. Information.

Controllers who have video-surveillance systems must fulfil the duty of information foreseen under Article 5 of the Organic Act 15/1999, of 13 December. To that end they must:

- a) Place at least one informative sign in the zones under video-surveillance, in a sufficiently visible location, in open as well as enclosed spaces, and
- b) Have forms available to the person/s concerned in which it details the information provided in Article 5.1 of Organic Act 15/1999. The content and design of the informative sign will comply with the terms provided in the Addendum to this Instruction.

Article 4. Principles of quality, proportionality and purpose of the processing.

1. Pursuant to Article 4 of Organic Act 15/1999 of 13 December, on Personal Data Protection, images may only be processed when they are adequate, relevant and not excessive with regard to the scope and purposes determined, legitimate and explicit, that have justified installation of the cameras or video-cameras.

2. Installation cameras or video-cameras will only be considered inadmissible when the purpose of surveillance may not be achieved by other means that, without requiring disproportionate efforts, are less intrusive to personal privacy and to the right to protection of personal data.

3. Cameras and video-cameras installed in private spaces may not obtain images of public spaces except if it is indispensable for the surveillance purpose intended, or if it is impossible to avoid this due to their location. In any case, one must avoid any data processing that is unnecessary for the purpose intended.

Article 5. Personal rights.

1. To exercise the rights referred to in Articles 15 and following of Organic Act 15/1999, on Personal Data Protection, the data subject/s must send the party responsible for processing an application in which it shall state his identity along with an updated image. Exercise of these rights will be carried out according to the terms provided in said Organic Act and the regulations that develop it.

2. The controller may provide the right to access by a document certifying, as precisely as possible and without affecting the rights of third parties, specification of the data that has been subject to processing.

3. The party concerned, who is fully or partially denied exercise of the rights stated in the preceding paragraph may claim their protection before the Director of the Spanish Data Protection Agency.

Article 6. Cancellation.

The data will be cancelled within the maximum term of one month from being gathered.

Article 7. Notification of files.

1. Persons or entities intending to create video-surveillance files must previously notify the Spanish Data Protection Agency, for their inscription at the General Registry of same.

When these are publicly owned files, the terms established in Article 20 of Organic Act 15/1999, of 13 December, on Personal Data Protection will apply.

2. To these ends, a processing file will not be considered to be one consisting exclusively of playing or broadcasting images in real time.

Article 9. Security and Secrecy.

The Controller must take the measures of a technical and organisational nature required to guarantee the security of the data and avoid their alteration, loss and unauthorised processing or access.

Moreover, any person who has access to the data due to performance of his duties must comply with the due reservation, confidentiality and secrecy in regard to these.

The Controller must inform persons with access to the data of the duty of secrecy referred to in the preceding section.

Transitory provision.

Controllers of video-surveillance files already registered at the General Register at the Spanish Data Protection Agency must adopt the measures foreseen under Article 3, letter a), and Article 4.3 of this Instruction, within the maximum term of three months from it coming into force.

Final provision.

This Instruction shall come into force on the day following its publication in the Official State Gazette.

Madrid, 8 November 2006.

*The Director of the Spanish Data Protection Agency,
José Luis Piñar Mañas.*

ADDENDUM

1. The information sign referred to in Article 3.a) of this Instruction must include a reference to «ORGANIC ACT 15/1999, ON DATA PROTECTION», will include a mention of the purpose for which the data is processed («ZONE UNDER VIDEO-SURVEILLANCE»), and a specific mention of the identification of the controller before whom the rights referred to in Articles 15 and following of Organic Act 15/1999, on Personal Data Protection may be exercised.

2. The model referred to in the preceding section will be available on the web page of the Spanish Data Protection Agency, www.agpd.es, where it may be downloaded, specifying the data of the controller.