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Are there information duties for camera dummies?

Introduction

The use of video cameras is becoming increasingly popular in everyday life. Not only private individuals and public authorities, but also businesses and companies want to protect their highly frequented or sensitive areas with video cameras.

The use of functioning video cameras results in the processing of personal data within the meaning of Art. 4 No. 2 GDPR, so that, among other things, compliance with the transparency and information obligations is required.

It is questionable whether the data protection regulations must also be taken into account when using camera dummies. After all, one might think that no data protection information is to be provided, since no processing of personal data takes place. This question is examined in this article.

Types of video surveillance

The type of video surveillance or camera depends strongly on the area of application and purpose of the surveillance. The choice of the video camera also affects the lawfulness of the processing.

A basic distinction must be made between video cameras that monitor a specific area from a stationary position or have the function of being able to swivel or film in a 360° radius. A further distinction must be made between cameras that store their recordings in a kind of black box or send a live transmission directly to a screen.

Camera	Attributes	Monitoring pressure*
Domes	<ul style="list-style-type: none"> • Good protection against vandalism • Alignment difficult to detect 	Medium
Infrared	<ul style="list-style-type: none"> • Monitoring in darkness possible 	Low
IP camera	<ul style="list-style-type: none"> • Integration into a network • Remote access 	Medium
Candid Camera	<ul style="list-style-type: none"> • Camouflaged insert 	High**
4K camera	<ul style="list-style-type: none"> • High picture quality 	High

* Any video camera exerts a surveillance pressure; the intensity certainly affects the balance of interests.

** The use of hidden video cameras is generally not permitted.

In the case of a black box procedure, the video recordings are stored on a separate storage medium for a certain period of time (max. 10 days) and are only viewed if they are needed.

In contrast to this, video surveillance in live broadcasting is to be mentioned. In this case the video recordings are transmitted directly to a screen for live transmission and viewing by a security officer. The camera serves as an improved visual element for the security officer.

Legality and purpose of video surveillance

In principle, the legality of the use of video cameras is based on data protection and subsidiary personal rights. According to Art. 6 para. 1 lit. f GDPR, video surveillance is only permissible

after a detailed weighing of the interests of the parties involved. Many factors must be taken into account in the weighing process, such as the suitability, necessity and proportionality or appropriateness of the measure. Finally, each decision must be assessed on a case-by-case basis.

Basically, the purpose of video surveillance is to protect against burglary, theft, vandalism, or assault, for which it is also suitable.

The point of examination of the necessity depends among other things on the area or environment in which the video surveillance is to be used. In this respect, there should be no milder means of achieving the same end. Alarm systems, security personnel or motion detectors can be considered as alternatives.

When weighing up interests, the risk situation with regard to past events must also be taken into account, according to which the interests of the data subjects always prevail in the case of video surveillance without cause. The expectations of the data subjects must also be taken into account in the weighing of interests.

"The aspects of prevention and investigation of criminal offences are in principle legitimate interests within the meaning of Section 6b (1) No. 3 of the old version of the BDSG (German data protection law). However, they can only justify video surveillance as objectively justifiable if there is a risk situation that goes beyond the general life risk. Such a danger can only arise from actual findings; subjective fears or a feeling of insecurity are not sufficient" (BVerwG, 27 March 2019 - 6 C 2.18)

Information duties

For a functioning camera, at least the following information must then be visibly indicated in accordance with Art. 12, 13 GDPR:

- the fact of observation
- the identity of the controller
- the purpose of processing and the legal basis
- the legitimate interest, and
- the duration of the storage, and
- a QR Code or reference to further mandatory information (information sheet and rights of data subjects)

The data protection authorities have provided several signs as examples:

Beispiel für ein vorgelagertes Hinweisschild nach Art. 13 der Datenschutz-Grundverordnung bei Videoüberwachung¹



Weitere Informationen erhalten Sie:
• per Aushang (wo genau?)
• an unserer Kundeninformation /
Rezeption / Kasse im Erdgeschoss
• (ggf.) zusätzlich im Internet unter ...

Name und Kontaktdaten des Verantwortlichen und ggf. seines Vertreters:

Kontaktdaten des Datenschutzbeauftragten (sofern vorhanden):

Zwecke und Rechtsgrundlage der Datenverarbeitung:

berechtigte Interessen, die verfolgt werden:

Speicherdauer oder Kriterien für die Festlegung der Dauer:

¹ Hinweis: Die Informationen sind unentgeltlich in präziser, transparenter, verständlicher und leicht zugänglicher Form in einer klaren und einfachen Sprache bereitzustellen. Sie können in Kombination mit standardisierten Bildsymbolen bereitgestellt werden (vgl. Art. 12 DSGVO). Um Lesbarkeit zu erreichen, sollte der Ausdruck mindestens in DIN A4 erfolgen.

Source: [Example of an upstream sign LfD Lower Saxony](#)

In particular, it should be noted that this information should be provided before entering the area of video surveillance and that it should be as simple as possible to demarcate and identify the area that is being in video surveillance.

Monitoring pressure

In the case of a dummy camera, these conditions for the lawfulness of the processing do not exist from a data protection perspective, but the personal rights of the recorded persons are still affected. Although there is in fact no surveillance by a dummy, it is not apparent to an outside person whether the camera is functioning or not. In this regard, the German Federal Court of Justice has fundamentally stated that a "surveillance pressure" affecting the right of

personality can also exist objectively, regardless of the camera's functionality. (German Federal Court of Justice, 16 March 2010 - VI ZR 176/09 Rz. 14)

Dummy camera

Camera dummies do not process any personal data and are therefore not bound by the data protection regulations, such as the above-mentioned information duties from the GDPR. Nevertheless, they can generate surveillance pressure on individuals and thus affect the general right of personality.

"In particular, the tenant does not have to constantly check the circumstances to make sure that the dummy has not changed." (District Court Berlin, 28 October 2015 - 67 S 82/15 Rz. 11)

"This is especially true against the background that the currently installed camera dummy already looks deceptively real and can therefore be easily replaced by a real video camera without attracting attention". (District Court Essen, 30 January 2019 - 12 O 62/18 Rz. 46)

Conclusion

The use of functioning video cameras requires extensive legality checks, a prior data protection impact assessment and an examination of signposting. The use of dummy cameras, on the other hand, does not require this in a purely dogmatic way due to the lack of processing of personal data.

Nevertheless, even a dummy camera affects the general right of personality and must be evaluated in each individual case on the basis of the interests of fundamental rights. A reference to data protection regulations, in particular the duty to provide information and signs, can only be realistic if the purpose of the use of the dummy is not negated.

We consult you in all data protection questions and provide an external data protection officer for you. Feel free to contact us!

Kind regards, the NOTOS Xperts Team!