



GIOVANNI BUTTARELLI
ASSISTANT SUPERVISOR

Dr Manuel GARCIA PEREZ
Medical Adviser
Council of the European Union
Office JL 00 40 GM 27
Rue de la Loi 175
B-1048 Brussels

Brussels, 3 September 2010
GB/ZB/et D(2010)1310 C **2005-0363**

Subject: Video-cameras at the waiting room to the Council's medical facilities

Dear Dr Garcia Perez,

First of all, thank you for meeting our staff on Thursday 22 April 2010 and explaining further the need for the presence of the cameras in the waiting room as well as the safeguards taken to ensure the rights of data subjects.

This letter explains you our policy on video-surveillance at medical facilities as well as our position with respect to your particular situation.

Summary of the procedure and relevant facts

In November 2008, in the framework of following up on the EDPS prior checking opinion in case 2005-363 ("*Soins aux dispensaires, main-courante*") the Council informed the EDPS that it had installed a video-camera in its medical waiting room.

In its emails of 24 and 27 November 2008 the Council provided the following information to the EDPS regarding the purposes of the video-surveillance, the recipients and the conservation period:

"Finalités et destinataires des traitements: Visualisation des personnes se rendant dans la salle d'attente par une caméra visible uniquement par les infirmiers du dispensaire, à des fins de sécurité et de qualité du service. Durée de conservation des données: Pas d'enregistrement d'images."

The Council also confirmed that it provides notice to the data subjects on the spot, with the following text, and also featuring a pictogramme:

"Par mesure de sécurité et afin de permettre aux infirmiers de s'assurer de votre présence, une caméra de vidéo-surveillance est en fonction dans la salle d'attente. Elle ne fait l'objet d'aucun enregistrement"

On 19 May 2009 the EDPS advised the Council about (a) his general policy regarding video-surveillance of medical facilities, (b) his policy on video-surveillance used for employee monitoring and (c) some procedural aspects of dealing with video-surveillance installations pending the adoption of his Video-Surveillance Guidelines.

The EDPS issued his Video-surveillance Guidelines on 17 March 2010.¹

General EDPS policy on surveillance in medical waiting rooms

Surveillance in areas such as medical facilities - where special categories of data may be caught on cameras - is discussed in Section 6.7 of the Guidelines, on pages 28 and 29.

Our policy on surveillance at medical facilities should be understood in the broader context of the heightened protection of the so-called "special categories of data": data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, trade union membership, and data concerning health or sex life. These are sensitive data and are subject to special protection under Regulation 45 (EC) No 2001 (the "**Regulation**").

When it comes to video-surveillance, it is our policy to help ensure that the institutions and bodies of the European Union exclude the processing of images which reveal these sensitive, special categories of data, or minimize the same processing when it is truly essential.

It is also important that the institutions should also not monitor areas where there is an increased likelihood that images revealing special categories of data will be captured on the cameras. In the context of medical facilities, video-surveillance could be intrusive to people's privacy. Few people would like to be on camera when ill or injured and in a vulnerable situation, while in a waiting room. There can be, of course, exceptions under extraordinary circumstances. However, it is up to the institution to justify that video-surveillance in a medical facility (such as a waiting room of a medical facility) is absolutely necessary and there are no other viable alternatives to achieve the same purposes. It cannot be excluded that in some cases an institution or body may be able to demonstrate the need for surveillance, while at the same time providing adequate safeguards to ensure the rights of the data subjects.

The Guidelines, as a general rule, require a formal impact assessment before an institution or body decides whether it wishes to avail itself of surveillance of medical facilities in the future (Guidelines, Section 3.3). If, as a result of this impact assessment, an institution finds that it should use surveillance, it should submit its plans and policies to the EDPS for prior checking (Guidelines, Section 4.3; see also "frequently asked questions" on prior checking).

Conclusions and recommendations in this specific case

While the EDPS, in general, discourages use of video-surveillance in medical waiting rooms, in this specific case we are not taking further actions against the use of the single camera installed in the waiting room, after considering the following factors:

¹ The Guidelines are available on our website at <http://www.edps.europa.eu/EDPSWEB/edps/site/mySite/Guidelines>. The webpage also contains a set of "frequently asked questions" on prior checking.

- The risks to the privacy of the data subjects and of any misuse of the images is significantly reduced by the fact that
 - no images are recorded,
 - the number of recipients is limited to the nurses and other medical personnel on duty at the time (who will subsequently often be in direct contact with the patient, in any event), and
 - clearly visible notice is provided to data subjects on the spot.
- Due to the layout of the premises after construction work has already been completed, it was not possible to create a reception window customary in similar situations, which would have allowed the nurse on duty (also acting as receptionist) and the patients to see each other, without jeopardizing the privacy of those receiving medical care.

Please note that our conclusions and recommendations in this matter are based on the facts of the case as explained to us and should not prejudice any further comments or action from the part of the EDPS. In any event, for the future we strongly recommend that you consult your Data Protection Officer ("**DPO**") if you wish to change the modalities of the camera use or if a need arises, in other circumstances or at other locations, for use of video-cameras. Timely involvement of your DPO may help ensure that alternative arrangements can be found to avoid the recourse to video-surveillance equipment.

As for further procedural requirements, the EDPS requires no formal impact assessment or prior checking in this particular case, after considering the following exceptional circumstances:

- the case has been discussed in detail with EDPS staff who has also visited the premises; and
- therefore, it is unlikely that further relevant information would come to light as a result of an impact assessment or prior checking procedure.

To ensure transparency - assuming no specific objections from your part - we are planning to publish this letter (or a summary thereof) on our website pages on video-surveillance.

Yours sincerely,

(signed)

Giovanni BUTTARELLI

Cc: Mr Pierre Vernhes, Data Protection Officer, Council