

□ Procedure No.: PS/00191/2020

RESOLUTION R/00056/2021 TERMINATION OF THE PROCEDURE FOR PAYMENT
VOLUNTEER

In the sanctioning procedure PS/00191/2020, instructed by the Spanish Agency for
Data Protection to RIPOBRUNA 2007, S.L., given the claim filed by
CITY COUNCIL OF ***LOCALITY.1, and based on the following,

BACKGROUND

FIRST: On September 2, 2020, the Director of the Spanish Agency
of Data Protection agreed to initiate a sanctioning procedure against RIPOBRUNA
2007, S.L.. Having notified the initiation agreement and after analyzing the allegations presented,
On January 11, 2021, the resolution proposal was issued that
is transcribed below:

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Procedure no.: PS/00191/2020

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

FACTS

FIRST: CITY COUNCIL OF ***LOCALITY.1 (*hereinafter, the claimant) with
dated June 11, 2020 filed a claim with the Spanish Agency for
Data Protection. The claim is directed against RIPOBRUNA 2007, S.L.
(RESTAURANT ***RESTAURANT.1) with NIF B64595242 (hereinafter, the
reclaimed). The reasons on which the claim is based are the installation of
video-surveillance towards public space without just cause
“It has been verified by the agents that the surveillance cameras are
oriented towards public roads, a fact that has also been verified in previous

occasions and dates after the Resolution of the AEPD reference E/00984/2018

(*attached)"—folio nº 1--.

Together with the claim, it provides a photographic report made at the time of the inspection and before the manager himself, stating in it the orientation of two cameras towards public space (photographs nº 1, 4 and 5).

SECOND: On 06/25/20, the claim is TRANSFERRED to the entity denounce so that it expresses in law what it deems appropriate, without no allegation has been made to that effect.

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THIRD: On September 2, 2020, the Director of the Spanish Agency of Data Protection agreed to initiate sanctioning procedure to the claimed, with in accordance with the provisions of articles 63 and 64 of Law 39/2015, of October 1, of the Common Administrative Procedure of Public Administrations (hereinafter, LPACAP), for the alleged infringement of Article 5.1.c) of the RGPD, typified in the Article 83.5 of the RGPD.

FOURTH: Once the aforementioned initial agreement has been notified, the respondent has not any allegation in time and form to this body.

FIFTH: The database of this AEPD consulted on 01/10/21 does not contain no allegation in this regard, nor has the legality of the system been clarified.

SIXTH: On this date, the collaboration of the Local Police (***) is requested to verifying that the reported establishment is in operation and confirming the presence of the cameras in question.

SEVENTH: On 12/29/w20 a Report from the Local Police is received

(***LOCATION.1) reporting the following:

“That transferred to the scene, today 12/29/20, the Agents

of this Local Police (**LOCATION.1) have verified that the activity of

Maverick restoration continues in operation, open to the public and performed

functions of its hotel activity”

“That it has also been proven that the installed cameras that are the object of this

procedure, they are in the same position, focusing on public roads without

just cause.”

EIGHTH: Attached as an annex is a list of documents in the

process.

Of the actions carried out in this procedure and the documentation

in the file, the following have been accredited:

PROVEN FACTS

First. A claim is received at this Agency on 06/11/20 by means of

from which the presence of video-surveillance cameras oriented towards these

public space without just cause.

Together with the claim, it provides a photographic report made at the time of

the inspection and before the manager himself, stating in it the orientation of two

cameras towards public space (photographs nº 1, 4 and 5).

Second. The Restaurant entity is identified as the main responsible entity.

te ***RESTAURANTE.1 (Ripobruna 2007 S.L).

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Third. It is proven that, transferred to the scene of the events, the force ac-
before the aforementioned establishment "is operational" with the cameras remaining in the pos-
Reported situation (Report 12/29/20)-Local Police ***LOCATION.1.

Fourth. According to the attached Report dated 12/29/20 of the Local Police ***LOCALI-
DAD.1 the following is verified:

"That it has also been proven that the installed cameras that are the object of this
procedure, they are in the same position, focusing on public roads without
just cause."

Fifth. The database of this Agency was consulted on 10/01/21, it has not been carried out.
do any allegation in relation to the facts described.

FOUNDATIONS OF LAW

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By virtue of the powers that article 58.2 of the RGPD recognizes to each authori-
control, and according to the provisions of articles 47 and 48 of the LOPDGDD, the Di-
rector of the Spanish Agency for Data Protection is competent to initiate and
to solve this procedure.

II

In the present case, the claim dated 06/11/20 is analyzed through
from which the installation of a video-surveillance system that obtains images
genes from public space without just cause.

The art. 5.1 c) RGPD provides the following: The personal data will be:
"adequate, relevant and limited to what is necessary in relation to the purposes
for which they are processed ("data minimization").

It should be remembered that individuals are responsible for ensuring that the systems installed
felled comply with current legislation, proving that it complies with all

the requirements demanded by the regulations in force.

The installation of this type of device must have the mandatory informative sign.

tive, indicating the purposes and responsible for the treatment, where appropriate, of the data of each personal character.

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In any case, the cameras should preferably be oriented towards the space particular, avoiding intimidating neighboring neighbors with this type of device, as well how to control their transit areas without just cause.

With this type of device it is not possible to obtain image(s) of public space either. co, as this is the exclusive competence of the State Security Forces and Bodies ted.

It should be remembered that even in the case of a "simulated" camera, the same should preferably be oriented towards private space, since it is considered that this type of device can affect the privacy of third parties, that they are intimated by it in the belief of being the subject of permanent recording.

On the part of individuals, it is not possible to install devices for obtaining images of public space, outside the cases allowed in the regulations.

III

In accordance with the evidence available at this time, sanctioning procedure, it is considered that the defendant has a video-surveillance system oriented towards public space without just cause, affected respecting the right of third parties to process your data without your informed consent.

Article 77 section 5 of Law 39/2015 (October 1) provides the following:

“The documents formalized by the officials who are recognized as condition of authority and in which, observing the corresponding legal requirements, teeth the facts verified by those are collected will prove them except prove the contrary”.

Security cameras installed in private spaces will not be able to obtain images of public spaces, the security function of public spaces corresponds exclusively to the State Security Forces and Bodies.

For its part, the Spanish Agency for Data Protection in its Resolution R/00818/2012 of May 18 indicates:

“the treatment of images in public places can only be carried out, except I require government authorization, by the Security Forces and Bodies ”.

Therefore, capturing images of public spaces by security cameras private surveillance, must be limited to what is strictly necessary, applying in any case the principle of proportionality.

The known facts constitute an infraction, attributable to the claimant. mado, for violation of the content of art. 5.1 c) RGPD, previously transcribed.

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The installation of two video-surveillance cameras facing the public space, without any explanation about them having been made, it is accredited its blatant orientation towards third-party space, producing a deviation from the purpose of controlling them.

Article 83.5 RGPD 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 greater amount:

a) the basic principles for the treatment, including the conditions for the consent under articles 5, 6, 7 and 9;

When motivating the sanction, the following is taken into account:

-the nature of the infraction by having a video-surveillance system that is oriented towards public space without just cause 8 art. 83.5 a) GDPR).
-the way in which this body has had knowledge of the facts, being transferred by the State Security Forces and Bodies (vgr. Local Police), having been repeatedly warned by the acting force of the illegality of the conduct (art. 83. 5 h) RGPD).

Therefore, it is considered correct to propose a sanction encrypted in the amount of €2,000 (Two thousand euros), a sanction located on the lower scale for this type of driving. tas, all without prejudice to proceed to the regularization of the denounced system.

In view of the foregoing, the following is issued

MOTION FOR A RESOLUTION

That the Director of the Spanish Data Protection Agency sanction RI-POBRUNA 2007, S.L., with NIF B64595242, 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).

Likewise, in accordance with the provisions of article 85.2 of the LPACAP, informs that you may, at any time prior to the resolution of this proceeding, carry out the voluntary payment of the proposed sanction, which will entail

a reduction of 20% of the amount of the same. With the application of this reduction
tion, the sanction would be established at €1,600 and its payment will imply the termination of the
process. The effectiveness of this reduction will be conditioned to the withdrawal or
Waiver of any administrative action or recourse against the sanction.

In the event that you choose to proceed with the voluntary payment of the amount specified above,
subsequently, in accordance with the provisions of article 85.2 cited, it must be carried out
tive by depositing it in restricted account number ES00 0000 0000 0000 0000 0000
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opened in the name of the Spanish Agency for Data Protection in the banking entity
CAIXABANK, S.A., indicating in the concept the reference number of the procedure
that appears in the heading of this document and the cause, for voluntary payment
voluntary, reduction of the amount of the penalty. You must also send proof
admission to the Subdirector General for Inspection to proceed to close the
tooth.

By virtue of this, you are notified of the foregoing, and the procedure is made clear to you.
so that within TEN DAYS you can allege whatever you consider in your defense and
present the documents and information that it considers pertinent, in accordance with
article 89.2 of the LPACAP).

A.A.A.

INSPECTOR/INSTRUCTOR

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926-300320

: On February 5, 2021, RIPOBRUNA 2007,S.L. has proceeded to

SECOND

payment of the sanction in the amount of 1,600 euros making use of the planned reduction in the motion for a resolution transcribed above.

THIRD: The payment made entails the waiver of any action or resource in via against the sanction, in relation to the facts referred to in the resolution proposal.

FOUNDATIONS OF LAW

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By virtue of the powers that article 58.2 of the RGPD recognizes to each authority of control, and as established in art. 47 of the Organic Law 3/2018, of 5 December, of Protection of Personal Data and guarantee of digital rights (in hereinafter LOPDGDD), the Director of the Spanish Agency for Data Protection is competent to sanction the infractions that are committed against said Regulation; infractions of article 48 of Law 9/2014, of May 9, General Telecommunications (hereinafter LGT), in accordance with the provisions of the article 84.3 of the LGT, and the infractions typified in articles 38.3 c), d) and i) and 38.4 d), g) and h) of Law 34/2002, of July 11, on services of the society of the information and electronic commerce (hereinafter LSSI), as provided in article 43.1 of said Law.

II

Article 85 of Law 39/2015, of October 1, on Administrative Procedure Common to Public Administrations (hereinafter LPACAP), under the rubric "Termination in sanctioning procedures" provides the following:

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"1. A sanctioning procedure has been initiated, if the offender acknowledges his responsibility, the procedure may be resolved with the imposition of the appropriate sanction.

2. When the sanction is solely pecuniary in nature or fits impose a pecuniary sanction and another of a non-pecuniary nature but it has been justified the inadmissibility of the second, the voluntary payment for the alleged responsible, at any time prior to the resolution, will imply the termination of the procedure, except in relation to the restoration of the situation altered or to the determination of compensation for damages caused by the commission of the offence.

3. In both cases, when the sanction is solely pecuniary in nature, the competent body to resolve the procedure will apply reductions of, at least 20% of the amount of the proposed penalty, these being cumulative with each other. The aforementioned reductions must be determined in notification of initiation of the procedure and its effectiveness will be conditioned to the abandonment or renunciation of any action or resource in via administrative against the sanction.

The reduction percentage provided for in this section may be increased regulations."

In accordance with the above, the Director of the Spanish Agency for the Protection of Data

RESOLVES:

FIRST: TO DECLARE the termination of procedure PS/00191/2020, of

in accordance with the provisions of article 85 of the LPACAP.

SECOND: NOTIFY this resolution to RIPOBRUNA 2007, S.L..

In accordance with the provisions of article 50 of the LOPDGDD, 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 as prescribed by

the art. 114.1.c) of Law 39/2015, of October 1, on Administrative Procedure

Common of the Public Administrations, the interested parties may file an appeal

contentious-administrative 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.

Sea Spain Marti

Director of the Spanish Data Protection Agency

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