

□ Procedure No.: PS/00395/2020

RESOLUTION OF PUNISHMENT PROCEDURE

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

FACTS

ASSOCIATION OF DAMNIFIED NEIGHBORS XXXXXXXXXX (*in

FIRST:

hereinafter, the claimant) on September 30, 2020 filed a claim
before the Spanish Agency for Data Protection. The claim is directed against
RESIDENTIAL GROUP A.A.A. with CIF *** CIF.1 (hereinafter, the claimed one). The
grounds on which the claim is based are "no action has been taken to
redirect the video-surveillance cameras" affecting the same to the set of
complaining neighbors.

Along with the claim, provide documentary evidence that proves the installation of
the cameras in a confluence area oriented towards public space.

SECOND: There is a prior proceeding associated with the defendant
PS/00407/2019, which ended with a warning to the person reported for violation of the
art. 5.1 c) RGPD, ordering the "redirection of the three outer cameras".

"WARN GRUPO RESIDENTIAL A.A.A., with CIF *** CIF.1, for an in-
fraction of Article 5.1.c) of the RGPD, typified in Article 83.5 of the RGPD,

REQUIRE RESIDENTIAL GROUP A.A.A., so that within ONE

MONTH from the notification of this act, prove compliance with the following
measures:

-That he has redirected the three video surveillance cameras to the minimum
essential for their purpose and do not record public roads".

THIRD: The database of this Agency consulted on 01/05/21 does not contain

any response in relation to the requirement ordered by it.

FOURTH: On 10/26/20, the Admission for processing of the claim for

part of the Director of this AEPD within the framework of E/08496/20, in accordance with the

article 65 LOPDGDD.

FIFTH: On February 19, 2021, the Director of the Spanish Agency for

Data Protection agreed to initiate a sanctioning procedure against the claimant, for the

alleged infringement of Article 5.1.c) of the RGPD, typified in Article 83.5 of the

GDPR.

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SIXTH: On 03/11/21 collaboration is requested from the Security Forces and Bodies

of the State (Basque Autonomous Police) without any response having been made.

do about it.

SEVENTH: On 06/24/21, the respondent entity is requested to complete allegation

tions as they are insufficient to decree the legality of the system, without

any response has been made in this body.

EIGHTH: On 07/13/21 a letter of allegations is received from the Administrator of the

Community of Owners Residential Group A.A.A. (**LOCATION.1) manifest-

do:

“This part has to reiterate what was stated in our previous writing, in the sense

that the ownership of said cameras does not belong to my client, but to the community

entity called: “commercial premises”, as stated by it”

Once all of the above has been exposed, and having contacted the administration community of commercial premises of A.A.A., tell us that they are going to pro-yield to appear in person in this file, and at that time they will provide the documentation required, which has been cited, since it is in your possession. They also point out that will provide a technical report from the company that carries out the maintenance of these facilities”.

In view of everything that has been done, by the Spanish Data Protection Agency

In this proceeding, the following are considered proven facts:

FACTS

First. On 09/30/20, a claim was filed by means of which the the presence of a video-surveillance camera system that could present “irregularities”.

Along with the claim, provide documentary evidence that proves the installation of the cameras in a confluence area oriented towards public space.

Second. It is identified as the main responsible Grupo Residencial A.A.A., the which initially alleges impersonation of the claimant's functions, considering it unlawful. empowered to act on behalf of the claimant entity.

Third. Given the contradictions in the facts and the allegations of the parties, which focus on issues unrelated to this AEPD, collaboration was requested from the Forces and State Security Corps (Basque Autonomous Police) without any response. nothing has been done about it.

Fourth. On 06/24/21, the respondent is requested to specify the number of cameras ras with contribution in your case of screen printing of what is observed with the themselves.

Fifth. On 07/13/21, a written statement was received from the Administrator of the Co-Community of Owners Grupo Residencial A.A.A. (**LOCATION.1) stating:

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“This part has to reiterate what was stated in our previous writing, in the sense sense that the ownership of said cameras does not belong to my client, but to the co-community called: "commercial premises", as stated by it"

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 according to the provisions of articles 47 and 48 of the LOPDGDD, the Director of the Spanish Agency for Data Protection is competent to initiate and to resolve this procedure.

II

On 09/30/20 a new claim was received from the complainant through which transfers to this body the failure to carry out any measure to correct the situation of irregularity of the installed cameras.

There is a prior procedure PS/00407/2019 associated with the defendant, the which ended with a warning to the denounced for violation of art. 5.1 c) GDPR, ordering the “redirection of the three outer chambers”.

The art. 58 section 2 letter d) RGPD provides the following:

“order the person responsible or in charge of the treatment that the operations of treatment comply with the provisions of this Regulation, where appropriate, in a certain way and within a specified period.

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 video surveillance cameras on the street corresponds solely and exclusively to the State Security Forces and Bodies in the performance of functions security.

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.

In any case, the cameras must be oriented towards the particular space, avoiding intimidate neighboring neighbors with this type of device, as well as control areas transit of the same without just cause.

The installation of surveillance cameras that record part of the public thoroughfare should limit only what is strictly necessary, always respecting the principle of proportionality.

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This means that its placement must be proportional to the purpose pursued, in this case security, and must not under any circumstances put the privacy of other people at risk.

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

It should be remembered that even in the case of a "simulated" camera, the same must be oriented towards private space, since it is considered that this type of devices can affect the privacy of third parties, who are intimidated by the

herself in the belief of being the object 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 in this proceeding, penalty, it is considered that the claimed party is not responsible for the installation of the video-surveillance camera system object of the complaint.

The respondent indicates that the entity--Community of commercial premises of A.A.A.—alleging succinctly that it is not responsible of data processing carried out with the aforementioned system.

The presumption of innocence governs without exceptions in the sanctioning system and has to be respected in the imposition of any sanction, whether criminal or administrative (TCo 13/1981), since the exercise of the sanctioning right in any of its manifestations, is conditioned to the test game and to a procedure contradictory environment in which their own positions can be defended.

Pursuant to this principle, no penalty may be imposed on the basis of the guilt of the accused if there is no activity to prove the charge, which in the appreciation of the authorities or bodies called to resolve, destroy this presumption (TCo Auto 3-12-81).

IV

According to the above, it is not possible to prove the infraction described, since it is not the re-claimed according to their own statements, "the ownership of said cameras is not of my client", responsible for the installed camera system.

The complaining party can transfer the "facts" to the Forces and Bodies of State Security in order to verify if we are facing an infraction continued, carrying out the necessary investigations to initiate, where appropriate, a new

consent to continue the cameras in a presumably irregular situation, transferring

the same the Act Complaint to this body

It is recalled that matters outside the framework of data protection do not

must be raised before this body, especially if they involve a certain complexity

or if they are being prosecuted in the competent judicial instances.

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Therefore, in accordance with the applicable legislation and after assessing the graduation criteria

tion of the sanctions whose existence has been proven,

the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: ORDER the FILE of this procedure as there is no evidence

gives at this time the subject responsible for the installation of the camera system

object of complaint.

SECOND: NOTIFY this resolution to the RESIDENT GROUP COMMUNITY

CIAL A.A.A. and INFORM the claimant of the result of the proceedings

ASSOCIATION OF DAMNIFIED NEIGHBORS XXXXXXXXXX.

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 in accordance with art. 48.6 of the

LOPDGDD, and in accordance with the provisions of article 123 of the LPACAP, the

resents may optionally file an appeal for reconsideration before the Director

of the Spanish Agency for Data Protection within a month from the date of

the day following the notification of this resolution or directly contentious appeal

before the Contentious-Administrative Chamber of the National High Court,
in accordance with the provisions of article 25 and section 5 of the additional provision
Final fourth of Law 29/1998, of July 13, regulating the Contentious Jurisdiction-
administrative, within a period of two months from the day following the notification
tion of this act, as provided for in article 46.1 of the aforementioned Law.

Sea Spain Marti

Director of the Spanish Data Protection Agency

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