

□ Procedure No.: PS/00296/2020

## RESOLUTION OF PUNISHMENT PROCEDURE

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

### FACTS

FIRST: A.A.A. (\*hereinafter, the claimant) dated June 18, 2020

filed a claim with the Spanish Data Protection Agency. The

claim is directed against COMMUNITY OF OWNERS \*\*\*ADDRESS.1 with

CIF H23453772 (hereinafter, the claimed). The grounds on which the claim is based

are "installation of two cameras without the consent of the Board of

owners, which may be recording neighbors' balconies, not having

informed where to obtain information on the processing of data (...)"-

folio nº 1--.

"That on May 7 he informed the President of the obligation to have to

be approved such extension by the Board of Owners and NOT by him (..) that has not

been summoned, nor informed of anything."

Together with the claim, it provides documentary evidence that proves the presence of

the devices object of complaint (documentary Annex I).

SECOND. On 07/16/20, the claim is TRANSFERRED to the

denounced, without any statement having been made in this regard.

THIRD. On 09/09/20, the admission to processing of the claim was decided, at the

appropriate legal effects.

FOURTH. On December 9, 2020, the Director of the Spanish Agency for

Data Protection agreed to initiate a sanctioning procedure against the defendant, with

glo to the provisions of articles 63 and 64 of Law 39/2015, of October 1, of the Pro-

Common Administrative Procedure of Public Administrations (hereinafter, LPA-CAP), for the alleged infringement of Article 5.1.c) of the RGD, typified in Article 83.5 of the GDPR.

FIFTH: On 03/01/21, a "Resolution Proposal" is issued, accrediting the described infringement of art. 5.1 c) RGD, without any response or measure correction has been adopted for this purpose.

SIXTH: 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:

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## PROVEN FACTS

First. The facts are specified in the installation of at least two cameras, oriented towards common and/or private areas of residents of the property, without having informed in the Board of owners of the installation of the same, being able to "treat data" of these without any legitimacy.

"That on May 7 he informed the President of the obligation to have to be approved such extension by the Board of Owners and NOT by him (..) that has not been summoned, nor informed of anything."

Second. It is identified as the main person responsible for the installation Community of Santa Julia Residential Owners.

Third. The database of this Agency consulted on 03/01/21 does not contain

any allegation in this regard.

Fourth. The presence of video-surveillance devices that "deal with data" of the community members without their legally informed consent, as stated in the Owners' Meeting.

Fifth. From the circumstantial evidence provided in this regard, an external affectation is inferred. accessions of third-party areas, affecting the pool area and other common areas of disproportionate way.

## 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

In the present case, the claim dated 06/18/20 is examined by me-- gave from which the following is transferred as the main fact:

"Installation of two cameras without the consent of the Board of owners, which may be recording neighbors' balconies, not having informed where to obtain information on the processing of data (...)"- folio nº 1--.

The facts are specified in the installation of at least two cameras, oriented towards common and/or private areas of residents of the property, without having informed in the Board of owners of the installation of the same, being able to "treat data" of these without any legitimacy.

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.

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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.

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.

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 defendant has installed a series of cameras, without have the express authorization of all the owners of the Community, affecting the right of third parties.

Video surveillance in a community is the installation of cameras in the ele- common elements of the building that allow us to improve security within it.

Article 17.3 of the Horizontal Property Law, which literally says:

«The establishment or suppression of porter, concierge, surveillance or

other common services of general interest, whether or not they involve a change in title constitutive (horizontal division) or the statutes, will require the favorable vote of the three-fifths of the total owners who, in turn, represent the three fifths of the participation fees.

At the duly convened Meeting, all the communities must be informed of the purpose of the installation, as well as the characteristics of the same or the affected space.

Given the absence of a response from any person in charge of the Community, announced, it is not possible to know the reasons for the installation of two new cameras and if they are due to a real security need of the complex.

The recording of the interior of the pool is a decision to be made in the community of owners because it can violate the privacy of users, but it can also be installed in order to allow the safety of users if there is a lifeguard to view the images.

The claimant himself states that the "President informed them about the expansion via Whatsup" being this an issue outside the jurisdictional framework of this AEPD.

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From the set of tests provided, a capture of spaces is inferred for what comes to be the security of the complex (vgr. mainly the area of swimming pool or sports area), this being an area reserved for privacy whose capture requires the adoption of certain measures.

The known facts constitute an infraction, attributable to the defendant, for violation of article 5.1 c) RGPD, previously cited, since it is considered that cameras installed (beyond the formalities of the LPH) are addressed to common areas specially protected in terms of preserving privacy and data personal of the users.

#### IV

The art. 83.5 RGPD provides the following: "Infringements of the following provisions will be sanctioned, in accordance with section 2, with administrative fines of 20 EUR 000,000 maximum or, in the case of a company, an equivalent amount. to a maximum of 4% of the total global annual turnover of the financial year above, opting for the highest 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 since a video-surveillance system has been installed, affecting the right of third parties without just cause (art. 83.2 a) RGPD).
- the intentionality or negligence in the infraction, being oriented towards the private property of third parties without just cause, which makes negligence be considered as serious (art. 83.2 b) RGPD).

For all this, it is agreed to impose a sanction encrypted in the amount of €2,000

(Two thousand euros), for the installation of a series of cameras without the consent informed opinion of the Board of Owners, which affects third-party areas in a disproportionate, infringement located on the lower scale of this type of infringement.

Therefore, in accordance with the applicable legislation and having assessed the criteria for graduation of sanctions whose existence has been proven,

the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: IMPOSE THE COMMUNITY OF OWNERS entity

\*\*\* ADDRESS.1, with CIF H23453772, for a violation of Article 5.1.c) of the RGD, typified in Article 83.5 of the RGD, a fine of €2,000 (Two Thousand Euros).

SECOND: NOTIFY this resolution to the COMMUNITY OF OWNERS

\*\*\*ADDRESS 1.

THIRD: Warn the sanctioned party that he must make the imposed sanction effective once

Once this resolution is enforceable, in accordance with the provisions of the

art. 98.1.b) of Law 39/2015, of October 1, on Administrative Procedure

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Common Public Administrations (hereinafter LPACAP), within the payment term

voluntary established in art. 68 of the General Collection Regulations, approved

by Royal Decree 939/2005, of July 29, in relation to art. 62 of Law 58/2003,

of December 17, through its entry, indicating the NIF of the sanctioned and the number

of procedure that appears in the heading of this document, in the account

restricted number ES00 0000 0000 0000 0000 0000, opened on behalf of the Agency

Spanish Department of Data Protection in the banking entity CAIXABANK, S.A.. In case

Otherwise, it will be collected in the executive period.

Received the notification and once executed, if the date of execution is

between the 1st and 15th of each month, both inclusive, the term to make the payment

voluntary will be until the 20th day of the following month or immediately after, and if

between the 16th and last day of each month, both inclusive, the payment term

It will be until the 5th of the second following month or immediately after.

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

Interested parties may optionally file an appeal for reconsideration before the

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

counting from the day following the notification of this resolution or directly

contentious-administrative appeal 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.

Finally, it is pointed out that in accordance with the provisions of art. 90.3 a) of the LPACAP,

may provisionally suspend the firm resolution in administrative proceedings if the

The interested party expresses his intention to file a contentious-administrative appeal.

If this is the case, the interested party must formally communicate this fact by

writing addressed to the Spanish Agency for Data Protection, presenting it through

Electronic Register of the Agency [[https://sedeagpd.gob.es/sede-electronica-](https://sedeagpd.gob.es/sede-electronica-web/)

web/], or through any of the other registers provided for in art. 16.4 of the

aforementioned Law 39/2015, of October 1. You must also transfer to the Agency the

documentation proving the effective filing of the contentious appeal-

administrative. If the Agency was not aware of the filing of the appeal

contentious-administrative within a period of two months from the day following the

notification of this resolution would end the precautionary suspension.



Sea Spain Marti

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