

□ File No.: EXP202204461

RESOLUTION OF SANCTIONING PROCEDURE

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

BACKGROUND

FIRST: A.A.A. (*hereinafter, the complaining party) dated March 29, 2022
filed a claim with the Spanish Data Protection Agency. claims her-
tion is directed against COMMUNITY OF OWNERS R.R.R. with NIF ***NIF.1 (in
below, the claimed party). The reasons on which the claim is based are the following:
you:

The claimant states that he resides in a property that the claimant is a resident of.
kitchen and, at the time of the facts that are the subject of the claim, she was President of the Community
of Owners and that is, taking advantage of said condition, together with the other person
claimed, accessed recordings from the video surveillance system of the
Community of Owners in which the claimant appeared, making to his
recordings of said videos, which they spread in a WHATSAPP Group to
other neighbors, the claimant understanding that the defendants have agreed and processed
provided data from the complaining party, as well as from other neighbors.

Provide the broadcast recordings, as well as the Minutes of the Meeting of Owners
dated March 10, 2022 where the subject is discussed and where the defendant (a) recognises
know the facts and have acted together with the defendant in that regard (Annex I).

SECOND: In accordance with article 65.4 of Organic Law 3/2018, of 5
December, Protection of Personal Data and guarantee of digital rights (in
hereafter LOPDGDD), said claim was transferred to the party claimed on fe-
date 04/21/22 and 05/11/22, to proceed with its analysis and inform this Agency

within a month, of the actions carried out to adapt to the requirements

provided for in the data protection regulations.

Made the transfer in accordance with the provisions of Law 39/2015

(October 1)-LPAC- No response was received in this regard, nor has an explanation been given.

made in relation to them at the appropriate procedural moment.

THIRD: On 04/07/22, communication was received from the AET providing the data

prosecutors of the COMMUNITY OF OWNERS R.R.R. that work in your system

form with NIF identifier associated with the claimed ***NIF.1.

FOURTH: On June 29, 2022, in accordance with article 65 of the LO-

PDGDD, the claim presented by the claimant party was admitted for processing.

FIFTH: On September 9, 2022, the Director of the Spanish Agency for

Data Protection agreed to initiate disciplinary proceedings against the claimed party,

in accordance with the provisions of articles 63 and 64 of Law 39/2015, of October 1,

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of the Common Administrative Procedure of Public Administrations (hereinafter

te, LPACAP), for the alleged infringement of Article 5.1.f) of the GDPR, typified in the

Article 83.5 of the GDPR.

SIXTH: Notified the aforementioned start agreement in accordance with the rules established in

Law 39/2015, of October 1, on the Common Administrative Procedure of

Public Administrations (hereinafter, LPACAP), the claimed party submitted a written

of allegations dated 10/11/22 in which, in summary, he stated the following:

"That by means of this document this party recognizes as adjusted to

Law and reality the factual and legal foundations of the complaint filed for the affected (...) reason why my principal, the Community of owners acknowledge the facts.

Attached as document No. 1 Minutes with the dismissal of the President and various agreements relevant to this sanction.

In point 4, the undersigned is hired as the new Administrator of the estate.

Add that over the years who has controlled the room where remains the monitor and image recorder have been the different Presidents (as) therefore the negligent action of a President cannot imply a sanction for the rest of the neighbors (as) that carry the Community of owners of the same (...)

It should be noted that the Community of owners has done everything possible to put a solution and/or end to the facts denounced, by what this part understands The proposed sanction is NOT adjusted to law (...) although the sanction must be directed against the person who has carried out the offense described".

SEVENTH: On 12/07/22 <Proposed Resolution> is issued in which proposes a penalty of €2,000 for the misuse of images from the video-surveillance installed, for the accredited violation of art. 5.1 f) GDPR, when testing the access to the system without justified cause and the subsequent dissemination of the same.

EIGHTH: After consulting the information system of this Agency, it is reported electronically the aforementioned act, in accordance with the provisions of Article 16 Law 39/2015 (October 1).

Of the actions carried out in this procedure and of the documentation in the file, the following have been accredited:

PROVEN FACTS

First. The facts bring cause of the claim before this body on the date

03/29/22 through which the following is transferred:

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“making recordings through the installed video surveillance system

in the Community of owners carried out on the reproduction of images of the

same being the object of recording in the common access/exit area of the same,

the images being distributed through WhatsApp (...)”—folio nº 1--.

Second. The entity COMUNIDAD DE

OWNERS R.R.R. with NIF ***NIF.1.

Third. The access of the main person in charge of the Community to the

room where the video surveillance camera system was installed, without

justified cause in the regulations in force.

Room. The obtaining of images obtained from the system monitor is accredited.

ma, as well as the dissemination of these through a private messaging application,

reaching the same knowledge of an indeterminate number of owners (as)

of the property, accompanied by derogatory expressions.

FUNDAMENTALS OF LAW

Yo

In accordance with the powers that article 58.2 of Regulation (EU) 2016/679 (Re-

General Data Protection Regulation, hereinafter GDPR), grants each authori-

quality of control and as established in articles 47, 48.1, 64.2 and 68.1 of the Law

Organic 3/2018, of December 5, Protection of Personal Data and guarantee of

digital rights (hereinafter, LOPDGDD), is competent to initiate and resolve

this procedure the Director of the Spanish Data Protection Agency.

Likewise, article 63.2 of the LOPDGDD determines that: "The procedures processed

by the Spanish Data Protection Agency will be governed by the provisions of

Regulation (EU) 2016/679, in this organic law, by the regulations

comments dictated in its development and, insofar as they do not contradict them, with a sub-

sisidario, by the general rules on administrative procedures."

II

In the present case, the claim dated 03/29/22 is examined by means of

from which the alleged non-consensual access and without justified cause to the

images obtained from the recording system of the Community of owners, being

object according to the claimant's statement of diffusion in a WhatsApp Group without

no apparent reason.

"That he has been made aware of the recording in the facilities of the building of

images associated with your person considering your privacy and intimacy affected

(...)” –folio nº 1--.

It should be noted that the Community of owners (as) holds the status of

"responsible for the treatment" (article 4 point 7 of the GDPR), regardless of whether the

access to the images has been made by a governing body of the same, without the

The reasons for accessing and obtaining the images have been clarified to date.

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"responsible for the treatment" or "responsible": the natural or legal person,

public authority, service or other body that, alone or jointly with others, determines the purposes and means of treatment; if the law of the Union or of the Member States determines the purposes and means of processing, the controller or the criteria

Specific criteria for their appointment may be established by Union Law or of the Member States;

Being one of the governing bodies, which holds the legal representation of the Co-community, according to article 13.3 of the LPH, the President must comply with the mandates, act with diligence and execute the agreements adopted by the Board of Pro-owners, and may be affected by liability in the event of an alleged extralimitation in the exercise of their duties.

The facts described above may affect the article

5.1 f) GDPR.

“processed in such a way as to ensure adequate data security

personal data, including protection against unauthorized or unlawful processing and against its loss, destruction or accidental damage, through the application of technical measures or organizational ("integrity and confidentiality").

Video surveillance in a community is the installation of cameras in the elements common areas of the building that allows to improve surveillance and therefore security within of the same. At the time of its installation, the obligations set forth must be complied with.

in the European Data Protection Regulation and the Organic Law 3/2018 of Protection tion of Personal Data and Guarantee of Digital Rights.

Article 22 section 3 of the LOPDGDD (LO 3/2018, December 5) provides as following:

The data will be deleted within a maximum period of one month from its capture.

tion, except when they had to be kept to prove the commission of acts

that threaten the integrity of people, property or facilities. In such a case, the

Images must be made available to the competent authority within a period maximum of seventy-two hours from when the existence of the the recording" (* underlining belongs to this organization).

Access to the recordings of the video surveillance systems can only be provided occur in the legally determined cases and by a duly authorized person.

zada in his case, being equally "exceptional" the diffusion of the images that were have obtained with it (them), respecting in any case the regulations in force in personal data protection, as well as the other regulations of the legal system in force.

II

Based on the evidence available in this proceeding disciplinary action, it is considered that the party claimed according to the statements made has proceeded to access the recording system of the Community without just cause

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owners, proceeding to disseminate data (images) of the claimant without obey one (s) of the reasons provided for in the rule.

Article 13 of the LPH (Law 49/1960, July 21) "The governing bodies of the Community are as follows:

b) The president, and if applicable, the vice-presidents (...).

The claimed party in its current representative acknowledges, without ambiguity, the facts rights transferred by this body "recognizes as adjusted to law and to the reality of the factual and legal foundations" for which the Community of Property

The petitioners acknowledge the facts (folio no. 1 Statement of allegations 10/11/22).

It is argued that the responsibility for the facts, however, should lie

on the President (a) who made them and not on the group of owners

that in his opinion they have suffered these actions "adopting the necessary measures

to alleviate the situation" that has even led to the rescission of the mandate conferred,

Hiring a new Property Manager.

On this aspect, influence the responsibility of the Community as a whole.

of course, being the same knowledgeable in some (as) of its members of the facts described

as evidenced by the fact that the images are disseminated in a well-known mental system.

Sajería of private use of the same.

Furthermore, in the installation of this type of device the "responsibility

saber" of the system is this and not the President who acts as a mere representative,

Since it is the Community as such that approves the installation, the purpose of the work

treatment and the means to carry out said treatment, being ultimately the

own Board of owners, the body to which it is subordinated, which can act

against excesses in the exercise of functions or situations that can be classified in

<abuse of power> by the same, through the mechanisms provided for in the

LPH (vgr. art. 14 LPH).

The management of the President and other positions of the Community may have

consequences at the legal level if it is not done diligently, even if there are

when they use their position and authority to make decisions or behaviors

that may not be convenient for the Community of owners.

The question of an alleged civil or criminal liability for damages

damages caused, where appropriate, to the Community of owners by the President of the

itself, due to willful or negligent breach in the exercise of its functions, it is

a question that, in its case, is the responsibility of all the owners of the property, exercising

in his case against the same the legal actions that are deemed pertinent in-

even in the case of an alleged abuse of power.

Of the set of allegations and evidence provided, recognized by the re-

claimed, it can be concluded that there has been an access not protected by law to the

images (data) from the video surveillance system installed, which allowed the capture

of a community space without justified cause for access and dissemination of these

in the exposed form.

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The measures adopted have been decided after the events occurred

described as a result of the intervention of both this body, as well as having knowledge

of criminal complaint as a result of the facts described in the Instruction Court No. 5

(Palmas de Gran Canaria) without them being complete in the opinion of this organization.

mine.

It would be advisable to adopt additional measures such as clearly indicating

the main person responsible for access to them, establishing documentary-

an action protocol, which will avoid actions such as those described in the future.

tas, without prejudice to informing the set of owners (as) of the property.

The known facts are therefore constitutive of an infringement, attributable to the

claimed party, for violation of article 5.1 letter f) RGPD, previously cited.

IV.

The art. 83.5 GDPR provides the following: "Violations of the following provisions

These will be penalized, in accordance with section 2, with administrative fines of 20

000 000 EUR maximum or, in the case of a company, an equivalent amount to a maximum of 4% of the overall annual total turnover of the financial year previous year, opting for the one with the highest amount:

a) The basic principles for the treatment including the conditions for the consent in accordance with articles 5,6,7 and 9 (...)."

When motivating the sanction, it is taken into account that it is a person physical person who has accessed the images (data), but who cannot ignore the responsibilities of his position in the Community of owners, who has agreed to the recording system of the same without just cause, proceeding to the diffusion of the same without adequate guarantees through a well-known application of mensajeria, which entails gross negligence in the conduct described attributable differently. directly to the Community itself by not adopting any guarantee in the dissemination to third parties. ros (as) affecting the rights of the affected, as well as the insufficient reaction from the first moment of having knowledge of these, reasons all of which justify tify the imposition of a penalty of €2,000, according to the seriousness of the facts taking into account the number of owners, the nature of the conduct described and located in any case on the lower scale for this type of behavior.

Therefore, in accordance with the applicable legislation and assessed the graduation criteria tion of the sanctions whose existence has been accredited,

the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: IMPOSE on COMMUNITY OF OWNERS R.R.R., with NIF ***NIF.1, for a violation of Article 5.1.f) of the GDPR, typified in Article 83.5 of the GDPR, a fine of €2000.

SECOND: NOTIFY this resolution to the entity COMMUNITY OF PRO-PIETARIOS R.R.R..

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THIRD: Warn the penalized person that they must make the imposed sanction effective

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

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

public administrations (hereinafter LPACAP), within the term of payment vo-

lunteer 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, by means of its income, indicating the NIF of the sanctioned and the number

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

restricted IBAN number: ES00-0000-0000-0000-0000 (BIC/SWIFT Code: CAIXES-

BBXXX), opened on behalf of the Spanish Data Protection Agency in the entity

banking entity CAIXABANK, S.A. Otherwise, it will be collected in

executive period.

Once the notification has been received and once executed, if the execution date 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 or immediately following business month, and if

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

It will run until the 5th of the second following or immediately following business month.

In accordance with the provisions of article 50 of the LOPDGDD, this

Resolution will be made public once the interested parties have been notified.

Against this resolution, which puts an end to the administrative process in accordance with art. 48.6 of the

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

Respondents may optionally file an appeal for reinstatement before the Director

of the Spanish Agency for Data Protection within a period of one month from the day following the notification of this resolution or directly contentious appeal before the Contentious-Administrative Chamber of the National Court, in accordance with the provisions of article 25 and section 5 of the additional provision fourth clause of Law 29/1998, of July 13, regulating the Contentious Jurisdiction-administration, within a period of two months from the day following the notification of this act, as provided for in article 46.1 of the aforementioned Law.

Finally, it is noted 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 interested party do states its intention to file a contentious-administrative appeal. If it is-

As the case may be, the interested party must formally communicate this fact in writing addressed to the Spanish Data Protection Agency, presenting it through the Re-Electronic registry of the Agency [<https://sedeagpd.gob.es/sede-electronica-web/>], or to through any of the other registries provided for in art. 16.4 of the aforementioned Law 39/2015, of October 1. You must also transfer the documentation to the Agency proving the effective filing of the contentious-administrative appeal. if the Agency was not aware of the filing of the contentious-administrative appeal treatment within two months from the day following notification of this resolution, would terminate the precautionary suspension.

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