

936-031219

Procedure No.: PS/00369/2019

RESOLUTION R/00078/2020 TERMINATION OF THE PROCEDURE FOR PAYMENT

VOLUNTEER

In sanctioning procedure PS/00369/2019, instructed by the Agency

Spanish Data Protection Agency to CASA GRACIO OPERATION, SLU, in view of the

complaint filed by COMUNIDAD DE PROPIETARIOS R.R.R., and based on the

following,

BACKGROUND

FIRST: On January 7, 2020, the Director of the Spanish Agency for

Data Protection agreed to initiate a sanctioning procedure against CASA GRACIO

OPERATION, SLU (hereinafter, the claimed party), by means of the Agreement

transcribe:

<<

948-230919

Procedure no.: PS/00369/2019

AGREEMENT TO START A SANCTION PROCEDURE

Of the actions carried out by the Spanish Agency for the Protection of

Data, and based on the following

FACTS

FIRST: On August 9, 2019, it had entry in this Spanish Agency of

Data Protection a document presented by the COMMUNITY OF OWNERS

RRR (hereinafter, the claimant), through which he makes a claim against

CASA GRACIO OPERATION, S.L.U., with NIF ***NIF.1 (hereinafter, the claimed one),

for the installation of a video surveillance system installed in ***ADDRESS.1 and

***ADDRESS.2, there being indications of a possible breach of the provisions of data protection regulations.

The reasons that support the claim and the documents provided by the claimant are the following:

A representative of a claimant Community of Owners presents

claim against an adjoining establishment that, in its access areas

They have dome cameras that could capture public roads and the accesses to the aforementioned

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

2/14

Community of owners. These are dome cameras and are capable of capturing these environments. They provide pictures of the cameras. In addition to the above, they point out that they do not have informative posters and, according to the photographs provided, they do not it seems that, at least on the facade of the establishment, these posters are located.

SECOND: Prior to the acceptance of this claim for processing, it is transferred the claimed, in accordance with the provisions of article 65.4 of the Law Organic 3/2018, of December 5, on the Protection of Personal Data and guarantee of digital rights (hereinafter, LOPDGDD).

The entity denounced answered the informative request indicating that the entity WFC SPAIN 1, S.L.U., is not the operator of the same, but its subsidiary, of the which owns 100% of its share capital, the company CASA GRACIO OPERATION, S.L.U., is the commercial entity that operates the hotel establishment Casa Cook Ibiza.

The operator has installed the video surveillance cameras referenced in the

request for information, located on the perimeter of the hotel, specifically in

***ADDRESS.1 and ***ADDRESS.2, whose purpose is none other than to ensure the

safety of customers, employees and hotel facilities, having been

observed at all times the data protection regulations in force both in the

installation as in the operation of security cameras.

The aforementioned company is in charge of viewing and processing

the images captured by the cameras is made by the exploiting company, not

being the treatment of the images obtained entrusted to any third party.

They state that the cameras referenced in the request for information

They are AirSpace CCTV cameras model SAM-3575 (DC12V). In addition, there are two other

(2) Dahua Dome type cameras installed, model HDW2431R-ZR. In these last

privacy masks have been installed. In the areas under video surveillance,

the mandatory video surveillance warning signs, these being completely

visible when accessing these areas.

Likewise, the data controller, CASA GRACIO OPERATION,

S.L.U., subsidiary company of WFC SPAIN. (previously called THOMAS COOK

HOTEL INVESTMENTS SPAIN 1, S.L., and previously named THOMAS COOK

HOTELS & RESORTS, S.L.), has made available to interested parties the Privacy Policy

Video surveillance privacy, available both at the hotel reception (along with the

sign

Of privacy

<https://www.thomascookgroup.com/privacy-policies-forhotels-and-resorts>).

video surveillance)

as in the

portal

You can only have access to the images obtained in the video surveillance

the hotel manager, the chief engineer, and the head of customer service, and, if

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

3/14

necessary that some other person access, requires prior and express approval of the Data Protection Officer.

For these purposes, it is reported that the security company "SEGURISBA"

provides security services within the compound, but does not have access to the images obtained from video surveillance.

The employees of the hotel establishment are aware of the existence of a video surveillance system, since in the video-surveillance areas the mandatory informative notice. The images obtained from the cameras are stored for a maximum period of one month, in accordance with the provisions of art. 22.3 of Organic Law 3/2018, of December 5, on the Protection of Personal Data and guarantee of digital rights.

THIRD: The claim was admitted for processing by means of a resolution of 15 October 2019.

FOUNDATIONS OF LAW

Yo

By virtue of the powers that article 58.2 of Regulation (EU) 2016/679 (General Data Protection Regulation, hereinafter RGPD), recognizes each Control Authority, and according to the provisions of articles 47, 48.1, 64.2 and 68.1 of the LOPDGDD, the Director of the Spanish Data Protection Agency is competent to initiate and resolve this procedure.

II

The physical image of a person, in accordance with article 4.1 of the RGPD, is a personnel and their protection, therefore, is the subject of said Regulation. In article 4.2 of the RGPD defines the concept of "treatment" of personal data.

It is, therefore, pertinent to analyze whether the processing of personal data (image natural persons) carried out through the video surveillance system reported is in accordance with the provisions of the RGPD.

III

Article 6.1 of the RGPD establishes the assumptions that allow it to be considered lawful the processing of personal data.

For its part, article 5.1.c) of the RGPD, regarding the principles of treatment, provides that the personal data will be "adequate, pertinent and limited to what is necessary in relation to the purposes for which they are processed ("data minimization")." This article enshrines the principle of minimization of

www.aepd.es

C/ Jorge Juan, 6

28001 – Madrid

sedeagpd.gob.es

4/14

data in the processing of personal data. Assume that such treatment is adjusted and proportional to the purpose to which it is directed, and the treatment of excessive data or proceed to the deletion of the same.

The relevance in the treatment of the data must occur both in the of the collection of the data as well as in the subsequent treatment that is carried out of the data. themselves.

On the other hand, in accordance with the provisions of article 22 of the LOPDGDD,

referring specifically to the "Processing for video surveillance purposes", the processing of images in public places can only be carried out -if applicable and prior compliance with the legally enforceable requirements-, by the Forces and Security Bodies, unless the exception established in the aforementioned Article 22 of the LOPDGDD for individuals or legal entities, public or private, respecting the conditions required in said article.

On some occasions, the protection of private spaces is only possible if the cameras are located in spaces such as facades. Sometimes it also turns out necessary to capture the accesses, doors or entrances, so that, although the camera is inside the building, it is impossible not to record a minimum and essential of the public road, which is inevitably captured.

For this exception on the protection of private spaces to be applicable, there shall be no alternative installation possibility. In these cases,

The person responsible for the treatment carried out through cameras will adapt the use of the installation, so that the impact on the rights of third parties (passers-by) is minimum possible. In no case will the use of surveillance practices beyond of the environment object of the installation, not being able to affect public spaces surrounding buildings, adjoining buildings and vehicles other than those accessing the space guarded.

IV

In accordance with the foregoing, the processing of images through a video surveillance system, to be in accordance with current regulations, must comply with the following requirements:

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

- Respect the principle of proportionality.

- When the system is connected to an alarm center, you can only

be installed by a private security company that meets the requirements

contemplated in article 5 of Law 5/2014 on Private Security, of April 4.

- The video cameras will not be able to capture images of the people who

are outside the private space where the security system is installed.

video surveillance, since the processing of images in public places can only be

carried out, unless there is government authorization, by the Forces and Corps of

Security. Nor can spaces owned by third parties be captured or recorded without

the consent of their owners, or, as the case may be, of the persons who are

find.

This rule admits some exceptions since, on some occasions, for the

protection of private spaces, where cameras have been installed on facades or in

inside, it may be necessary to ensure the purpose of security recording

of a portion of the public highway. That is, cameras and camcorders installed with

security purposes may not obtain images of public roads unless it is

essential for said purpose, or it is impossible to avoid it due to the location of

those and, extraordinarily, the minimum space for said

purpose. Therefore, the cameras could exceptionally capture the portion

minimally necessary for the intended security purpose.

- The duty to inform those affected provided for in the

articles 12 and 13 of the RGPD, resulting from application -by not contradicting the

provisions of the aforementioned Regulation-, the manner provided for in article 3 of the

Instruction 1/2006, of November 8, of the Spanish Agency for the Protection of

Data, on the Processing of Personal Data for Surveillance Purposes through

Camera or Video Camera Systems.

Specifically, it must be placed in the video-monitored areas, at least one

informative badge located in a sufficiently visible place, both in spaces

open and closed, in which at least the existence of a

treatment, the identity of the person in charge and the possibility of exercising the rights

provided for in these provisions. Likewise, it must be kept available to the

affected the information referred to in the aforementioned RGD.

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

6/14

- The person in charge must keep a record of treatment activities

carried out under its responsibility, including the information to which it makes

reference article 30.1 of the RGD.

- The installed cameras cannot obtain images from private space of

third party and/or public space without duly accredited justified cause, nor can

affect the privacy of passers-by who move freely through the area. No this

allowed, therefore, the placement of cameras towards the private property of neighbors

with the purpose of intimidating them or affecting their private sphere without just cause.

- In no case will the use of surveillance practices be admitted beyond the

environment object of the installation and in particular, not being able to affect the spaces

surrounding public, adjoining buildings and vehicles other than those accessing the

guarded space.

In relation to the foregoing, to facilitate the consultation of interested parties, the

Spanish Agency for Data Protection offers through its website

[<https://www.aepd.es>] access to data protection legislation

including the RGPD and the LOPDGDD (section “Reports and resolutions” / “normative”), as well as the Guide on the use of video cameras for security and other purposes, as well as the Guide for compliance with the duty to inform (both available in the “Guides and tools” section).

It is also of interest, in case of carrying out data processing of low risk, the free tool Facilita (in the “Guides and tools” section), which through specific questions, it allows to assess the situation of the person in charge regarding the processing of personal data that it carries out, and where appropriate, generate various documents, informative and contractual clauses, as well as an annex with indicative security measures considered minimal.

v

The claim is based on the alleged illegality of the installation by the claimed from a video surveillance system, made up of several security cameras different models, located on the perimeter of the hotel, located at ***ADDRESS.1 AND

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

7/14

***ADDRESS.2, which could capture images of public areas safely disproportionate

In the images provided by the reported entity, it can be seen that even if one of the cameras has a privacy mask, it should be extended the same to capture exclusively your property and proportional space in your case

of public roads, since they record too much public space.

Based on the foregoing, this Agency considers that there are indications of the existence of video surveillance cameras installed on the perimeter of the hotel facilities, located at ***ADDRESS.1 AND ***ADDRESS.2 that capture images of the public highway in excess, as can be deduced from the images of the recording provided by the claimed entity.

SAW

The corrective powers of the Spanish Protection Agency of Data, as a control authority, are established in article 58.2 of the RGPD.

Among them are the power to sanction with a warning -article 58.2

b)-, the power to impose an administrative fine in accordance with article 83 of the RGPD -article 58.2 i)-, or the power to order the person in charge or in charge of the treatment that the treatment operations comply with the provisions of the GDPR, when applicable, in a certain way and within a certain period specified -article 58. 2 d)-.

According to the provisions of article 83.2 of the RGPD, the measure provided for in the Article 58.2 d) of the aforementioned Regulation is compatible with the sanction consisting of administrative fine.

7th

In accordance with the evidence available in this moment of agreement to initiate the sanctioning procedure, and without prejudice to what result of the investigation, it is considered that the exposed facts do not comply with the established in article 5.1.c) of the RGPD, for what they could suppose the commission of an infringement typified in article 83.5 of the RGPD, which provides the following:

C/ Jorge Juan, 6

28001 – Madrid

“The infractions of the following dispositions will be sanctioned, in accordance with the paragraph 2, with administrative fines of a maximum of EUR 20,000,000 or, in the case of a company, an amount equivalent to a maximum of 4% of the global total annual turnover of the previous financial year, opting for the largest amount:

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

For the purposes of the limitation period for infractions, the infraction indicated in the previous paragraph is considered very serious and prescribes after three years, in accordance with Article 72.1 of the LOPDGDD, which establishes that:

“Based on the provisions of article 83.5 of Regulation (EU) 2016/679 are considered very serious and will prescribe after three years the infractions that suppose a substantial violation of the articles mentioned therein and, in particular, the following:

a) The processing of personal data violating the principles and guarantees established in article 5 of Regulation (EU) 2016/679.

b) The processing of personal data without the concurrence of any of the conditions of legality of the treatment established in article 6 of the Regulation (EU) 2016/679.

(...)

h) The omission of the duty to inform the affected party about the treatment of their personal data in accordance with the provisions of articles 13 and 14 of the Regulation (EU) 2016/679 and 12 of this Organic Law.”

The fine imposed must be, in each individual case, effective, proportionate and dissuasive, in accordance with the provisions of article 83.1 of the RGPD.

Therefore, it is appropriate to graduate the sanction to be imposed according to the criteria that established in article 83.2 of the RGPD, and with the provisions of article 76 of the LOPDGDD, regarding section k) of the aforementioned article 83.2 RGPD:

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

9/14

In the initial assessment, the following were considered as aggravating factors:

- The defendant has acted with a serious lack of diligence.
- The respondent has not adopted any measure to correct the effects of the infringement.

In the initial assessment, the following were considered as mitigating factors:

- The merely local scope of the data processing carried out by the claimed party.
- The damage caused to those affected by the processing of their data does not become significant.
- As mitigating circumstances to assess in order to graduate the sanction, taking into account the limited collection space, the absence of benefits obtained, as well as the fact that it is a single-member limited company.

IX

If the infraction is confirmed, it could be agreed to impose the person in charge the adoption of appropriate measures to adjust its actions to the aforementioned regulations in this act, in accordance with the provisions of the aforementioned article 58.2 d) of the RGPD,

according to which each control authority may "order the person in charge or in charge of the treatment that the treatment operations comply with the provisions of the this Regulation, where appropriate, in a certain way and within a specified period...".

In such a case, in the resolution adopted, this Agency may require the responsible for correcting the recording area within the period determined exterior, limiting himself to recording the hotel facilities and a small space

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

10/14

proportional on public roads, but not what he has indicated that he records even with the mask

Of privacy. Must prove these measures:

-Provide documentary evidence (photograph showing date and time) that proves the limitation in the recording on public roads of the devices located in

***ADDRESS.1 AND ***ADDRESS.2.

-Prove that you proceeded to remove the camera from the current location, or to reorientation of it towards its particular area.

It is warned that not meeting the requirements of this organization may be considered as an administrative offense in accordance with the provisions of the RGPD, typified as an infraction in its article 83.5 and 83.6, being able to motivate such conduct the opening of a subsequent sanctioning administrative proceeding.

Therefore, according to the above,

By the Director of the Spanish Data Protection Agency,

HE REMEMBERS:

FIRST: START A SANCTIONING PROCEDURE against CASA GRACIO

OPERATION, SLU, with NIF ***NIF.1, for the alleged infringement of article 5.1.c) of the RGPD, typified in article 83.5.a) of the same RGPD.

SECOND: APPOINT C.C.C. as instructor, and Secretary, if applicable, D.D.D.,

indicating that any of them may be challenged, as the case may be, in accordance with established in articles 23 and 24 of Law 40/2015, of October 1, on the Regime

Legal Department of the Public Sector (LRJSP).

THIRD: INCORPORATE to the disciplinary file, for evidentiary purposes, the

claim filed by the claimant and its documentation, as well as the

www.aepd.es

C/ Jorge Juan, 6

28001 – Madrid

sedeagpd.gob.es

11/14

documents obtained and generated by the Subdirectorate General for Inspection of Data.

FOURTH: THAT for the purposes provided in art. 64.2 b) of Law 39/2015, of 1

October, of the Common Administrative Procedure of the Public Administrations

(LPACAP, hereinafter), the sanction that could correspond would be 10,000 euros,

without prejudice to what results from the instruction.

Likewise, the imputed infraction, if confirmed, may lead to the imposition

of measures in accordance with the provisions of the aforementioned article 58.2 d) of the RGPD.

FIFTH: NOTIFY this agreement to CASA GRACIO OPERATION, SLU,

granting him a hearing period of ten business days to formulate the

pleadings and submit any evidence you deem appropriate. In his writing of

allegations you must provide your NIF and the procedure number that appears in the

header of this document.

If within the stipulated period it does not make allegations, this initial agreement may be considered a resolution proposal, as established in article 64.2.f) of the LPACAP.

The sanctioning procedure will have a maximum duration of nine months, counting from the date of the start agreement or, where appropriate, of the draft agreement of beginning. Once this period has elapsed, it will expire and, consequently, the file of performances; in accordance with the provisions of article 64 of the LOPDGDD.

In accordance with the provisions of article 85 of the LPACAP, in the event of that the sanction to be imposed was a fine, it may recognize its responsibility within of the term granted for the formulation of allegations to this initial agreement; it which will entail a reduction of 20% of the sanction to be imposed in the present procedure. With the application of this reduction, the sanction would be set at 8,000 euros (eight thousand euros), resolving the procedure with the imposition of this sanction.

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

12/14

Similarly, you may, at any time prior to the resolution of the present procedure, carry out the voluntary payment of the proposed sanction, which which will mean a reduction of 20% of its amount. With the application of this reduction, the sanction would be established at 8,000 euros (eight thousand euros), and its payment will imply the termination of the procedure.

The reduction for the voluntary payment of the sanction is cumulative to the one

It is appropriate to apply for the acknowledgment of responsibility, provided that this acknowledgment of responsibility is revealed within the period granted to formulate arguments at the opening of the procedure. If it proceeded to apply both reductions, the amount of the penalty would be established at 6,000 euros (six thousand euros).

In any case, the effectiveness of any of the two reductions mentioned will be conditioned to the withdrawal or renunciation of any action or resource in via administrative against the sanction.

In the event that you choose to proceed with the voluntary payment of any of the amounts indicated above, you must make it effective by entering the account number ES00 0000 0000 0000 0000 0000 opened in the name of the Agency Spanish Data Protection Agency at Banco CAIXABANK, S.A., indicating in the concept the reference number of the procedure that appears in the heading of this document and the reason for the reduction of the amount to which it avails itself. Likewise, You must send proof of entry to the General Subdirectorate of Inspection for continue with the procedure in accordance with the amount entered.

Finally, it is pointed out that in accordance with the provisions of article 112.1 of the LPACAP, there is no administrative appeal against this act.

Sea Spain Marti

Director of the Spanish Data Protection Agency

>>

: On January 29, 2020, the claimant has proceeded to pay the

SECOND

sanction in the amount of 6000 euros making use of the two reductions provided

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

13/14

in the Startup Agreement transcribed above, which implies the recognition of the responsibility.

THIRD: The payment made, within the period granted to formulate allegations to the opening of the procedure, entails the waiver of any action or resource in via administrative action against the sanction and acknowledgment of responsibility in relation to the facts referred to in the Initiation Agreement.

FOUNDATIONS OF LAW

Yo

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:

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

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 by the alleged perpetrator, in any time prior to the resolution, will imply the termination of the procedure, except in relation to the replacement of the altered situation or the determination of the compensation for damages caused by the commission of the infringement.

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 sanction, these being cumulative each. The aforementioned reductions must be determined in the notification of initiation of the procedure and its effectiveness will be conditioned to the withdrawal or Waiver of any administrative action or recourse against the sanction. The reduction percentage provided for in this section may be increased regulations.

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

14/14

According to what was stated,

the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: TO DECLARE the termination of procedure PS/00369/2019, of

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

SECOND: NOTIFY this resolution to CASA GRACIO OPERATION, SLU.

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

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es