

□ File No.: EXP202102397

RESOLUTION OF SANCTIONING PROCEDURE

Of the procedure instructed by the Spanish Agency for Data Protection and

based on the following:

BACKGROUND

FIRST: C.P. ***COMMUNITY OF OWNERS .1 (hereinafter, the claiming party)

te), dated August 31, 2021, filed a claim with the Spanish Agency

of Data Protection. The claim is directed against the neighbor of the property Mrs.

A.A.A., with NIF ***NIF.1 (hereinafter, the claimed party).

The reasons on which the claim is based are briefly the following:

The claimant Community of Owners states in this case "that a

neighbor has a video surveillance camera installed on her terrace, which is

It is oriented to common areas of the Community, said camera being oriented to the outside

and being capable of capturing images of said common areas, among others the swimming pool.

community kitchen, without authorization to do so" (folio no. 1).

They provide communications made by email by the Community.

to the claimed requesting the withdrawal or reorientation of the camera and images of

its location (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 09/28/21, to proceed with its analysis and inform this Agency on the plan

within one month, of the actions carried out to adapt to the foreseen requirements.

cough in the data protection regulations.

No response has been received or any allegation has been made in relation to the

exposed facts.

THIRD: On November 30, 2021, in accordance with article 65 of

the LOPDGGDD, the claim presented by the complaining party was admitted for processing.

FOURTH: On March 14, 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,

of the Common Administrative Procedure of Public Administrations (hereinafter

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

Article 83.5 of the GDPR.

FIFTH: On 04/05/21, the claimant's pleadings letter was received

summarizing the following:

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"This party wishes to inform that the camera has no other purpose than to pro-

protect a private space (terrace of the property) seasonally (only for the fe-

summer day) and only at night (since it needs a supply

plug-in that is only done at that time). How can it be compared with the do-

graphic documentation provided, not even a portion of the public thoroughfare is recorded. TO

such effects, photographs are provided where the field of vision is clearly reflected.

camera sion.

In any case, it is reported that said camera is not operational in

current events (due to its surveillance purpose in the summer/night period), therefore

that this party understands that it has complied at all times with the principle of responsibility

proactive ability.

For all of which REQUESTS, That, considering that it has been submitted in a timely manner this writing, together with the accompanying documentation, is served to attend in time and form the request for information referred to above”.

SIXTH: On 05/23/22, the "Proposal Resolution" is issued, proposing a Penalty in the amount of €600, for the accredited violation of art. 5.1c) GDPR, by having a poorly oriented video surveillance camera, which affects the third party right.

SEVENTH: On 07/11/22, an attempt was made to contact the defendant at the number of cell phone ***TELEPHONE.1, without any contact being established.

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

PROVEN FACTS

First. The facts bring cause of the claim dated 08/31/21 through the which is transferred as the main fact "that a neighbor has a video camera deovigilancia installed on its terrace, which is oriented to common areas of the Community said camera being oriented towards the outside and being capable of capturing images of these common areas, among others the community pool, without having autorización for it" (folio nº 1).

Second. It is accredited as the main person in charge of A.A.A., who confirms to be the responsible for the installation of the device.

Third. It is proven that images are obtained with the device in question of adjoining terraces on a temporary basis, justifying the presence of the device for security reasons.

Room. There is no record that they have authorization from the Board of Owners, nor are there No informative sign indicating that it is a video-surveilled area.

FUNDAMENTALS OF LAW

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

(General Data Protection Regulation, hereinafter RGPD), grants each au-

control authority 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

Data processed by the Spanish Data Protection Agency will be governed by the dis-

set out in Regulation (EU) 2016/679, in this organic law, by the provisions

regulations dictated in its development and, as long as they do not contradict them, with

subsidiary character, by the general rules on administrative procedures

you."

II

In this case, we proceed to examine the claim dated 08/31/21

by means of which the following is transferred as the main fact:

"Installation of a camera on a private terrace affecting the rights of third parties

without complying with data protection regulations" (folio no. 1).

Along with the claim, the presence of a device (web-cam) is observed.

oriented towards the outside area of the terrace installed by the owner paying attention to

ignoring the recommendations of the governing bodies of the Community of Owners

rivers (as).

Article 5.1.c) of the GDPR provides that personal data will be "adequate

two, pertinent and limited to what is necessary in relation to the purposes for which they are

treated ("data minimization")."

It should be remembered that individuals are responsible for ensuring that the systems

more installed comply with current legislation, certifying that it complies with

all the requirements demanded by the regulations in force.

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

informative, indicating the purposes and data controller, where appropriate

of a personal nature.

Article 22.4 of the LOPDGDD provides that:

"The duty of information provided for in article 12 of Regulation (EU)

2016/679 will be understood to have been complied with by placing an informative device

in a sufficiently visible place identifying, at least, the existence of the treatment,

the identity of the person responsible and the possibility of exercising the rights provided for in the

Articles 15 to 22 of Regulation (EU) 2016/679. It may also be included in the

informative site a connection code or internet address to this information".

In any case, the cameras must be oriented towards the particular space,

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avoiding intimidating neighboring neighbors with this type of device, as well as controlling

lar transit areas of the same without just cause.

It is not possible to obtain space images with this type of device either.

public, as this is the exclusive competence of the Security Forces and Bodies of the State.

It should be remembered that even in the case of being a "simulated" camera, the

It should preferably be oriented towards a private space, since it is

considers that this type of device can affect the privacy of third parties, who

are intimidated by it into the belief that they are permanently recorded.

tea.

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.

II

In accordance with the evidence available in this proceeding,

disciplinary action, it is considered that the claimed party has a device for

image capture (web cam) that is oriented towards private areas and/or

third-party community without just cause.

The part claimed with this device, which we understand is used for reasons of

security, is "processing personal data" disproportionately, affecting

with them to the rights of third parties who are intimidated by it and without complying with

the requirements of the regulations in force.

The device (web-cam) acts as a video-monitoring camera, being

himself a measure disproportionate to the intended purposes, exercising with the

same a certain intimidation to the adjoining neighbours, who have been affected

by its presence.

There are less invasive measures of the private space of third parties (eg, a

false camera) always oriented towards the particular private space, being

commendable in any case a collaborative attitude with the governing bodies of the

Community of owners.

It is indifferent that it is operational certain periods of the year, that may coincide with the periods of permanence of the same, since while remains poorly oriented towards exterior and/or neighboring areas, a "data processing" with the logical inconvenience to the neighbors, complying with the same purpose if it is inside the home, but facing the sliding door from the terrace.

The known facts constitute an infringement, attributable to the party claimed, for violation of the content of art. 5.1 c) GDPR, previously mentioned

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Article 83.5 GDPR provides the following: "Infringements of the following provisions will be sanctioned, in accordance with section 2, with fines administrative costs of a maximum of 20,000,000 EUR or, in the case of a company, of an amount equivalent to 4% of the total annual turnover for the year financial statement, opting for the one with the highest amount:

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

For mere prescription purposes, article 72.1 of the LOPDGDD qualifies as very serious:

a) The processing of personal data in violation of the principles and guarantees

established in article 5 of Regulation (EU) 2016/679;

V

The corrective powers available to the Spanish Protection Agency

of Data, as control authority, are established in article 58.2 of the GDPR. In-

These include the power to impose an administrative fine in accordance with the

article 83 of the GDPR -article 58.2 i)-, or the power to order the person responsible or in-

charged with the processing that the processing operations comply with the provisions

GDPR, where applicable, in a certain way and within a specified period of time.

specified - article 58. 2 d).

According to the provisions of article 83.2 of the GDPR, the measure provided for in article

Article 58.2 d) of the aforementioned Regulation is compatible with the sanction consisting of a fine administrative.

In the present case, based on the facts, it is considered that the sanction imposed

It would be appropriate to impose an administrative fine. The fine imposed shall

be, in each individual case, effective, proportionate and dissuasive, in accordance with the

Article 83.1 of the GDPR. In order to determine the administrative fine to be imposed,

to observe the provisions of article 83.2 of the GDPR, which indicates:

"2. Administrative fines will be imposed, depending on the circumstances

of each individual case, as an addition to or substitute for the measures contemplated

in article 58, paragraph 2, letters a) to h) and j). When deciding to impose a fine

administration and its amount in each individual case shall be duly taken into account:

a) the nature, seriousness and duration of the offence, taking into account the

nature, scope or purpose of the processing operation in question, as well as

such as the number of interested parties affected and the level of damages that

already suffered;

b) intentionality or negligence in the infraction;

c) any measure taken by the controller or processor

to alleviate the damages and losses suffered by the interested parties;

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d) the degree of responsibility of the data controller or processor

taking into account the technical or organizational measures that they have applied under

tude of articles 25 and 32;

e) any prior infringement committed by the controller or processor

l lie;

f) the degree of cooperation with the supervisory authority in order to remedy the

gave to the breach and mitigate the potential adverse effects of the breach;

g) the categories of personal data affected by the infringement;

h) the way in which the supervisory authority became aware of the infringement, in

particular whether the person in charge or the person in charge notified the infringement and, if so, in what

extent;

i) when the measures indicated in article 58, paragraph 2, have been ordered

previously nothing against the person in charge or the person in charge in relation to

with the same matter, compliance with said measures;

j) adherence to codes of conduct under article 40 or to mechanisms

certificates approved in accordance with article 42,

k) any other aggravating or mitigating factor applicable to the circumstances of the

case, such as the financial benefits obtained or the losses avoided, direct or indirect

rightly, through the infraction".

For its part, in relation to letter k) of article 83.2 of the GDPR, the LO-

PDGDD, in its article 76, "Sanctions and corrective measures", provides:

"1. The sanctions provided for in sections 4, 5 and 6 of article 83 of the Regulations

Regulation (UE) 2016/679 will be applied taking into account the graduation criteria established

established in section 2 of said article.

2. In accordance with the provisions of article 83.2.k) of the Regulation (EU)

2016/679 may also be taken into account:

a) The continuing nature of the offence.

b) Linking the activity of the offender with the performance of processing

of personal data.

c) The benefits obtained as a consequence of the commission of the infraction.

d) The possibility that the conduct of the affected party could have included the co-

offense mission.

e) The existence of a merger process by absorption after the commission

of the infringement, which cannot be attributed to the absorbing entity

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f) Affectation of the rights of minors

g) Have, when it is not mandatory, a data protection delegate.

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h) Submission by the person in charge or person in charge, voluntarily

to alternative conflict resolution mechanisms, in those cases in which

where there are controversies between those and any interested party".

In the present case, when motivating the sanction, the following is taken into account:

next:

-The nature of the infringement, as it is affecting the rights of third parties that are have been intimidated by it, obtaining images of a private area and/or disproportionately (art. 83.2 a) GDPR).

-The intentionality or negligence of the conduct, there being an "intentionality" "respondent" (a), given that he has been warned by the governing bodies of the Co-community on the wrong orientation of the cameras (art. 83.2 b) RGPD).

The principle of guilt is provided for in article 28.1 of the Law 40/2015, of October 1, of the Legal Regime of the Public Sector (LRJSP), and this provision states that "they may only be penalized for acts constituting an admitted infringement natural and legal persons, as well as, when a Law recognizes them as ability to act, affected groups, unions and entities without personality legal entity and the independent or autonomous estates, which are responsible for the same by way of fraud or negligence".

In accordance with the "evidence" available in this proceeding, sanctioning procedure, it is considered that the claimed party has proceeded to install a system of video-surveillance cameras poorly oriented towards a private area and/or community, creating a situation of some discomfort in the rest of the owners (as) of the community.

In accordance with the foregoing, it is considered correct to impose an encrypted sanction in the amount of €600 (six hundred euros), for the violation of art. 5.1 c) GDPR, sanction located on the lower scale for this type of infraction and according to the condition individual of the defendant.

No measures are imposed since the complaining party indicates that the chamber does not It is operational at the present time.

Therefore, in accordance with the applicable legislation and assessed the criteria of

graduation of sanctions whose existence has been accredited,

The Director of the Spanish Data Protection Agency RESOLVES:

FIRST: IMPOSE A.A.A., with NIF ***NIF.1, for a violation of Article 5.1.c)

of the GDPR, typified in Article 83.5 of the GDPR, a fine of €600.

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SECOND: NOTIFY this resolution to Ms. A.A.A..

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 number ES00 0000 0000 0000 0000 0000, open in the name of the Spanish Agency

ñola of Data Protection in the bank CAIXABANK, S.A.. In case of

Otherwise, it will proceed to its collection in the executive period.

Once the notification has been received and once executed, if the execution date falls within

between the 1st and 15th of each month, both inclusive, the deadline for making the

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

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

Payment will be until the 5th of the second following or immediate business month.

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

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 LPA-

CAP, interested parties may optionally file an appeal for reversal before

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

count from the day following the notification of this resolution or directly appeal

administrative litigation before the Administrative Litigation Chamber of the Au-

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 Juris-

Contentious-administrative diction, within a period of two months from the day if-

following the notification of this act, as provided 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 LPA-

CAP, the firm resolution may be temporarily suspended 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 through

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

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

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

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

documentation proving the effective filing of the contentious-administrative appeal

you. If the Agency were not aware of the filing of the contentious appeal-

administration within a period of two months from the day following the notification of the

present resolution, would terminate the precautionary suspension.

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