

□ Procedure No.: PS/00179/2021

## RESOLUTION OF PUNISHMENT PROCEDURE

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

### BACKGROUND

FIRST: On January 14, 2020, it had entry in this Spanish Agency of  
Data Protection a document presented by A.A.A. (hereinafter referred to as the claimant),  
through which he makes a claim against \*\*\*COMUNIDAD.1, with CIF \*\*\*CIF.1 (in  
hereinafter, the claimed), for the installation of a video surveillance system installed  
at \*\*\*ADDRESS.1, with indications of a possible breach of the provisions  
in the provisions of the personal data protection regulations.

The complainant states that the Community has installed a video surveillance system  
with 4 cameras, in the access portal, which capture images of the entire Community  
(street, adjoining homes, ...). This system has recently been expanded with  
a 5th camera, which rotates 360°, which can raise and lower the lens, night vision and  
magnifying zoom, which is installed next to the claimant's property, recording the  
interior of it, and several other adjoining properties. Indicates that the system  
has been installed by \*\*\*COMPANY.1

Likewise, it states that the information poster installed does not meet the requirements  
established in the data protection regulations.

Provides photographs of the last camera installed on a pole in which you can see a  
good part of the street, many houses on both sides of it, as well as the  
vehicles and people passing through the area.

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The notification was returned by the postal service with the notation "Returned to Origin by Surplus (Not withdrawn in the office)", for which said shipment was reiterated, being returned again for the same reason.

THIRD: The claim was admitted for processing by means of a resolution of 06 August 2020.

FOURTH: The General Subdirectorate for Data Inspection carried out the actions listed below.

On December 15, 2020, a letter was sent to \*\*\*EMPRESA.1 requesting information regarding the last installed camera. This shipment occurred both by

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2/11

electronic notification, resulting expired by not having been received, such as postal mail, which was returned to this Agency with the notation "Returned to Origin by Surplus (Not withdrawn in the office)".

In that letter, it was requested:

1. Identification of the person responsible for the video surveillance system (Name and NIF or company name and CIF), postal address and contact telephone numbers.
2. Information on the identity of the person or company that made the installation of the video surveillance system and relationship with the person in charge of the system. In If it is a third party, attach a copy of the installation contract.
3. Clearly explain the causes that have motivated the installation of the aforementioned

camera and what is the purpose of its installation.

4. Information provided on the existence of a video-monitored area through photographs of the poster or informative posters in which it is possible to appreciate both its location as the data shown.

5. Camera features.

6. Scope of the camera and place where it is installed, accrediting by photograph of the images captured by the camera, as they are displayed in the monitor or equivalent system, that the capture space has been limited so as not to affect adjoining land and homes, public roads or any other foreign space or reserved.

7. Detail of the measures adopted to guarantee that only the personnel authorized accesses the cameras and their recordings. If access is allowed to third parties, attach a copy of the corresponding contract.

8. Detail where the recordings are kept and with what security measures to prevent unauthorized access.

9. Causes that have caused the diffusion in WhatsApp groups of the images captured by the camera and measures taken to prevent their recurrence produce similar incidents, as well as dates of implementation of said measures.

10. Indicate the term of conservation of the registered images.

11. If the video surveillance system is connected to an alarm center:

a. Identification of the security company that has carried out the installation of the video cameras and a copy of the contract for the provision of services signed with it.

b. Copy of the supporting documentation that the company security is authorized by the competent administrative body of the Ministry of the Interior as a private security company and number of

accreditation.

c. Copy of documentation that allows verifying that the company of security has notified the characteristics of the aforementioned facility to the authority competent in matters of private security.

12. Copy of the Minutes of the Community of Owners in which it is agreed install the video surveillance system.

FIFTH: On April 23, 2021, the Director of the Spanish Agency for Data Protection agreed to initiate a sanctioning procedure against the claimant, for the alleged infringement of articles 5.1.c) and 13 of the RGPD, typified in article 83.5 of the GDPR.

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3/11

SIXTH: On May 15, 2021, the notification of the Agreement to Start the Sanctioning Procedure, for which it was sent to the Board Single Edictal (TEU), being published on May 19, 2021.

There is no record that, at the present time, the respondent has submitted a written allegations to the same, for which what is stated in article 64 of the Law 39/2015, of October 1, of the Common Administrative Procedure of the Public Administrations (hereinafter, LPACAP), which in its section f) establishes that in case of not making allegations within the stipulated period on the content of the initiation agreement, this may be considered a resolution proposal when contains a precise statement about the imputed responsibility, therefore that a Resolution is issued.

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 January 14, 2020, a claim was filed with this Agency

of A.A.A. against the claim for having installed a video surveillance system with 4

cameras, in the access portal, that capture images of the entire Community (street,

adjoining homes, ...). This system has recently been expanded with a 5th

camera, which rotates 360°, which can raise and lower the objective, night vision and zoom of

increase, which is installed next to the claimant's property, recording the interior

of it, and of several more adjoining properties. It also states that the

installed informative poster does not meet the requirements established in the regulations of

Data Protection.

SECOND: Photographs of the location of one of the cameras are provided

installed on a post where you can see a good part of the street, many houses

both parts of it, as well as the vehicles and people who pass through the

zone.

THIRD: The transfer of the claim that was made to the claimed party was returned by the

postal service with the annotation "Surplus (not picked up at the office)". Therefore, it

He reiterated the transfer, being returned again for the same reason.

## FOUNDATIONS OF LAW

I

By virtue of the powers that article 58.2 of the RGPD recognizes to each authority of

control, and as established in arts. 47 and 48.1 of the LOPDGDD, the Director of

The Spanish Agency for Data Protection is competent to resolve this

process.

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The physical image of a person under article 4.1 of the RGPD is personal data and its protection, therefore, is the subject of said Regulation. Article 4.2 of the GDPR defines the concept of “treatment” of personal data.

Article 22 of the LOPDGDD establishes the specificities of data processing for video surveillance purposes, indicating the following:

"one. Natural or legal persons, public or private, may carry out the processing of images through camera systems or video cameras with the purpose of preserving the safety of people and property, as well as their facilities.

2. Images of public roads may only be captured to the extent that is essential for the purpose mentioned in the previous section.

However, it will be possible to capture the public road in an extension superior when necessary to guarantee the security of goods or strategic installations or infrastructures linked to transport, without In no case may it involve capturing images of the interior of a home private.

3. The data will be deleted within a maximum period of one month from its collection, except when they had to be kept to prove the commission of acts that threaten the integrity of persons, property or facilities. In that case, the images must be made available to the competent authority in within a maximum period of seventy-two hours from the date of knowledge of the

existence of the recording.

The blocking obligation provided for in

article 32 of this organic law.

4. The duty of information provided for in article 12 of the Regulation (EU)

2016/679 will be understood to be fulfilled by placing an informative device

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

the identity of the person in charge 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 device a connection code or internet address to this

information.

In any case, the data controller must keep available to

those affected the information referred to in the aforementioned regulation.

5. Under article 2.2.c) of Regulation (EU) 2016/679, it is considered

excluded from its scope of application the treatment by a natural person of images

that they only capture the interior of their own home.

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5/11

This exclusion does not cover processing carried out by a security entity

private that had been contracted for the surveillance of a home and had access

to the images.

6. The processing of personal data from the images and

sounds obtained through the use of cameras and video cameras by the Armed Forces

and Security Bodies and by the competent bodies for surveillance and control in

penitentiary centers and for the control, regulation, vigilance and discipline of the traffic, will be governed by the legislation transposing Directive (EU) 2016/680, when the treatment is for the purposes of prevention, investigation, detection or prosecution of criminal offenses or execution of criminal sanctions, including protection and prevention against threats to public safety. Out of

In these cases, said treatment will be governed by its specific legislation and additionally by Regulation (EU) 2016/679 and this organic law.

7. What is regulated in this article is understood without prejudice to the provisions of Law 5/2014, of April 4, on Private Security and its development provisions.

8. The treatment by the employer of data obtained through information systems cameras or video cameras is subject to the provisions of article 89 of this law organic.”

### III

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:

- 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 inside, it may be necessary to guarantee the security purpose the recording of a portion of public road. That is, cameras and video cameras installed for the purpose of security will not be able to 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

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6/11

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, and 22 of the LOPDGDD, in the terms already indicated.
- 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 RGPD.
- 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 summary and to facilitate the consultation of interested parties, the Spanish Agency for Data Protection offers through its website [<https://www.aepd.es>] access to the legislation on the protection of personal data, including the RGPD and the LOPDGDD (section “Reports and resolutions” / “regulations”), 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 section “Guides and tools”).

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

#### IV

In the present case, the claim was filed because the respondent has installed a video surveillance system with 4 cameras, in the access portal, which capture images of the entire Community (street, adjoining homes, ...). This system has been recently expanded with a 5th camera, which rotates 360°, which can go up and lower the lens, night vision and magnification zoom, which is installed next to the property of the claimant, recording the interior of it, and of various properties adjoining more. Likewise, it states that the information poster installed does not comply with the requirements established in the data protection regulations.

As proof of these statements, the claimant provided the evidence

indicated in the "Facts" section of this agreement.

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7/11

The corrective powers available to the Spanish Agency for the Protection of Data, as a control authority, is established in article 58.2 of the RGPD. Between they have the power to issue 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 controller or processor that the treatment operations comply with the provisions of the RGPD, when appropriate, in a certain way and within a specified period -article 58. 2 d)-.

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

Without prejudice to the provisions of article 83 of the RGPD, the aforementioned Regulation has in its art. 58.2 b) the possibility of directing a warning, in relation to what indicated in Recital 148: "In the event of a minor infraction, or if the fine likely to be imposed would constitute a disproportionate burden on a natural person, instead of sanctioning by means of a fine, a warning. However, special attention must be paid to the nature, gravity and duration of the infringement, its intentional nature, the measures taken to mitigate the damages and losses suffered, to the degree of responsibility or to any pertinent previous infraction, to the way in which the control authority has had

knowledge of the infraction, compliance with measures ordered against the responsible or in charge, adherence to codes of conduct and any other aggravating or mitigating circumstance.

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In accordance with the evidence available and which has not been distorted in the sanctioning procedure, the defendant has installed a system of video surveillance that could be capturing images of third parties, and in addition, the informative poster of the existence of said cameras does not meet the requirements arranged in the data protection regulations, for which it is considered that these facts violate the provisions of articles 5.1.c) and 13 of the RGPD, which implies the commission of offenses typified in article 83.5 of the RGPD, which provides the following:

"Infringements of the following provisions shall be sanctioned, in accordance with 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;

b) the rights of the interested parties according to articles 12 to 22;

[...]."

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

"According to 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.

(...)»

SAW

In the present case, it is considered that, in terms of non-compliance with the provisions of Article 13 of the RGPD, the corresponding sanction is to direct a warning, of in accordance with the provisions of article 58.2 b) of the RGPD, in relation to the indicated in Considering 148, cited above.

In addition, the following elements have been taken into account, in particular.

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that there is no recidivism, because the commission is not recorded, in the term of one year, of more than one infraction of the same nature.

However, as already indicated in the initial agreement and in accordance with the established in the aforementioned article 58.2 d) of the RGD, according to which each authority of control may "order the person responsible or in charge of processing that the processing operations comply with the provisions of this Regulation, where appropriate, in a certain manner and within a specified period [...]."

The respondent is required to take the following measures:

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provide the images that are observed with the devices in question, indicating on a location map the parts that correspond to its private property.

certify having proceeded to withdraw the cameras from the places current, or to the reorientation of the same towards their particular area.

certifies having proceeded to the placement of the informative device in the video-monitored areas or to complete the information offered in the same

(must identify, at least, the existence of a treatment, the identity

of the person in charge and the possibility of exercising the rights foreseen in

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9/11

said precepts), locating this device in a sufficiently visible, both in open and closed spaces.

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certifies that it keeps the information available to those affected

referred to in the aforementioned RGPD.

In the present case, it is considered that the provisions of article 5.1.c) of the GDPR.

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 in accordance with the criteria established by the

article 83.2 of the RGPD, and with the provisions of article 76 of the LOPDGDD, regarding

to section k) of the aforementioned article 83.2 RGPD:

In the initial assessment, the following have been considered:

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The nature of the offense by having a video surveillance system that

is oriented towards public transit areas without just cause, trying to

data of identifiable natural persons (art. 83.5 a) RGPD.

The intentionality or negligence of the infraction, the cameras are oriented

to the outside of your establishment (83.2.b) RGPD).

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, 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 \*\*\*COMUNIDAD.1, with CIF \*\*\*CIF.1, for an infraction of the

article 5.1.c) of the RGPD, typified in article 83.5 of the RGPD, a fine of €1,000

(A thousand euros).

SECOND: ADDRESS A WARNING to \*\*\*COMUNIDAD.1, with CIF \*\*\*CIF.1, for an infringement of article 13 of the RGPD, typified in article 83.5 of the RGPD.

THIRD: ORDER to \*\*\*COMUNIDAD.1, with CIF \*\*\*CIF.1 that, by virtue of the article 58.2.d) of the RGPD, within ten days, adopt the following measures:

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provide the images that are observed with the devices in question, indicating on a location map the parts that correspond to its private property.

certify having proceeded to withdraw the cameras from the places current, or to the reorientation of the same towards their particular area.

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10/11

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certifies having proceeded to the placement of the informative device in the video-monitored areas or to complete the information offered in the same

(must identify, at least, the existence of a treatment, the identity

of the person in charge and the possibility of exercising the rights foreseen in said precepts), locating this device in a sufficiently

visible, both in open and closed spaces.

certifies that it keeps the information available to those affected



referred to in the aforementioned RGPD.

FOURTH: NOTIFY this resolution to \*\*\*COMMUNITY.1.

FIFTH: 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 the LPACAP, within the voluntary payment term established in art. 68 of the

General Collection Regulations, approved by Royal Decree 939/2005, dated 29

July, in relation to art. 62 of Law 58/2003, of December 17, through its

income, indicating the NIF of the sanctioned and the procedure number that appears in

the heading of this document, in the restricted account number ES00 0000 0000

0000 0000 0000, opened on behalf of the Spanish Agency for Data Protection in

the banking entity CAIXABANK, S.A.. Otherwise, it will be processed

collection in 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

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11/11

Electronic Register of the Agency [<https://sedeagpd.gob.es/sede-electronica-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

Director of the Spanish Data Protection Agency

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