

□ Procedure No.: PS/00109/2020

938-300320

RESOLUTION OF PUNISHMENT PROCEDURE

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

935-200320

FACTS

FIRST: Don A.A.A. (*hereinafter, the claimant) dated October 24, 2019

filed a claim with the Spanish Data Protection Agency. The

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

with NIF ***NIF.1 (hereinafter, the claimed one). The grounds on which the claim is based

are "installation of video-surveillance cameras" oriented towards public space without
justified cause, considering that the system does not comply with current legislation.

Along with the claim, provide documentary evidence that proves the installation of the
device in question.

SECOND: In view of the facts denounced in the claim and the documents

data provided by the claimant, the Subdirector General for Data Inspection pro-
vided to carry out preliminary investigation actions for the clarification

of the facts in question, by virtue of the powers of investigation granted to the

control authorities in article 57.1 of Regulation (EU) 2016/679 (Regulation

General Data Protection, hereinafter RGPD), and in accordance with the provisions

ed in Title VII, Chapter I, Second Section, of Organic Law 3/2018, of 5

December, of Protection of Personal Data and guarantee of digital rights (in
hereinafter LOPDGDD).

As a result of the research actions carried out, it is confirmed

that the data controller is the claimed party.

THIRD: On June 9, 2020, the Director of the Spanish Agency for

Data Protection agreed to initiate a sanctioning procedure against the claimant, for the alleged infringement of Article 5.1.c) of the RGPD, typified in Article 83.5 of the GDPR.

FOURTH: The database of this Agency consulted on 09/10/20 has not been received any allegation in relation to the facts object of the complaint.

In view of everything that has been done, by the Spanish Data Protection Agency

In this proceeding, the following are considered proven facts:

FACTS

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First. On 10/24/19, this AEPD received a letter from the complainant through from which the following is transferred:

“installation of video surveillance cameras” oriented towards public space without just cause, considering that the system does not comply with current legislation.

Along with the claim, provide documentary evidence that proves the installation of the device in question.

Second. It is identified as the main responsible Community of Owners

***ADDRESS 1

Third. No allegation has been received in relation to the facts that are the subject of the complaint. cia in this Agency.

Fourth. There is evidence of the presence of the devices object of the complaint, guidance

two into public space without just cause.

FOUNDATIONS OF LAW

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By virtue of the powers that article 58.2 of the RGPD recognizes to each authority, and according to the provisions of articles 47 and 48 of the LOPDGDD, the Director of the Spanish Agency for Data Protection is competent to initiate and to solve this procedure.

II

In the present case, the claim dated 10/24/19 is examined by me-
gave from which is transferred as the main fact:

“...I understand that cameras installed by individuals cannot obtain data.

cough of public space (...)

“That when I am about to address the data controller in writing,

to, in the mandatory informative poster it does not have the required data (...)” (folio no.1).

The art. 5.1 c) RGPD provides the following: The personal data will be:

“adequate, relevant and limited to what is necessary in relation to the purposes for which they are processed ("data minimization").

It should be remembered that individuals are responsible for ensuring that the systems installed
felled comply with current legislation, proving that it complies with all
the requirements demanded by the regulations in force.

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

tive, indicating the purposes and responsible for the treatment, where appropriate, of the data of each personal character.

In any case, the cameras should preferably be oriented towards the space particular, avoiding intimidating neighboring neighbors with this type of device, as well how to control their transit areas without just cause.

With this type of device it is not possible to obtain image(s) of public space either. co, as this is the exclusive competence of the State Security Forces and Bodies ted.

It should be remembered that even in the case of a "simulated" camera, the same should preferably be oriented towards private space, since it is considered that this type of device can affect the privacy of third parties, that they are intimated by it in the belief of being the subject of permanent recording.

On the part of individuals, it is not possible to install devices for obtaining images of public space, outside the cases allowed in the regulations.

III

In accordance with the evidence available in this proceeding, sanctioning procedure, and without prejudice to what results from the investigation, it is considered that the defendant has a video-surveillance system that does not comply with the law.

ity in force, being oriented towards public space are justified cause.

The known facts constitute an infraction, attributable to the claimant. mado, for violation of art. 5.1 c) GDPR.

The art. 83.5 RGPD provides the following: "Infringements of the provisions following will be sanctioned, in accordance with section 2, with administrative fines EUR 20,000,000 maximum or, in the case of a company, an equivalent amount. equivalent to a maximum of 4% of the total global annual turnover of the fiscal year

previous financial statement, opting for the highest amount:

a)

the basic principles for the treatment, including the conditions for the

consent under articles 5, 6, 7 and 9;

IV

Without prejudice to the provisions of article 83 of the RGPD, the aforementioned Regulation

has in its art. 58.2 b) the possibility of sanctioning with a warning, in relation

with what is stated in Considering 148:

“In the event of a minor offence, or if the fine likely to be imposed

would constitute a disproportionate burden for a natural person, rather than a sanction.

tion by means of a fine, a warning may be imposed. must, however, lend

special attention to the nature, seriousness and duration of the infringement, its character

intentional, to the measures taken to alleviate the damages suffered, to the degree

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liability or any relevant prior violation, to the manner in which the authority

control authority has become aware of the infraction, compliance with measures

measures ordered against the person in charge or in charge, adherence to codes of con-

conduct and any other aggravating or mitigating circumstance.”

Since it is not confirmed, initially, that the camera obtains an image of space

public service, despite the requirements of this body, it is considered correct

initially propose a sanction of Warning, at the expense of the allegations

of the accused.

In order to avoid new complaints about the same facts, the denouncing party
ciada must provide documentary evidence (eg screen print with date and time)
of what in your case is captured with the camera in question, in such a way that it is easy-
the content of the images obtained with it can be analysed, as well
as if the installed system complies with current legislation (eg informative poster,
indication of the data controller, etc.).

Remind the complainant that in cases such as the one exposed, it is preferable to transfer
the facts to the local Security Forces and Corps, which can verify
irrefutably the same, proceeding to send the appropriate minutes to this Agency, in
case of proving the commission of any administrative infraction in the matter that
occupies us.

Remember for the appropriate legal purposes, that the lack of collaboration with this
Agency may lead to the opening of a sanctioning procedure of a
economic, under the terms of art. 72.1 letter o) LOPDGDD.

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

the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: IMPOSE the COMMUNITY OF OWNERS OF ***ADDRESS.1, with
NIF ***NIF.1, for an infringement of Article 5.1.c) of the RGPD, typified in Article
83.5 of the RGPD, a sanction of warning.

SECOND: NOTIFY this resolution to the COMMUNITY OF OWNERS

FROM ***ADDRESS.1 and INFORM the complainant of the result of the proceedings

Don A.A.A.

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

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 period of month 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

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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

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