

□ File No.: EXP202200673

## RESOLUTION OF PUNISHMENT PROCEDURE

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

### BACKGROUND

FIRST: Don A.A.A. (\*hereinafter, the complaining party) dated January 11,  
2022 filed a claim with the Spanish Data Protection Agency. the re-  
outcry is directed against C.P. \*\*\*COMUNIDAD.1 with NIF \*\*\*NIF.1 (hereinafter, the  
claimed party). The grounds on which the claim is based are as follows:

The claimant filed a claim with this Agency against the Property Community  
users claimed which gave rise to file E/06744/2021 and was the subject of resolutions  
inadmissibility to the extent that the Community was not sufficiently identified.  
ity claimed. The claimant files a new claim in which he provides a reference  
of the CIF of the Community of Owners claimed and indicates that said Community  
It has a video surveillance system in common spaces, in the case of a system  
video surveillance issue that would not only capture images, but also sound, understand-  
considering that it is an excessive data treatment and not necessary for the finalization  
of the same, also pointing out that the informative posters of the video surveillance zone  
lada do not have the complete information required by the protection regulations  
of data, including only a brief reference to the data controller,  
as is the Community, without including more information. It also raises questions about the  
Procedure for access and custody of images from the system. Contribute  
Minutes of the Community of Owners approving the installation of the system and  
images of the informative posters of the video-monitored area. In your previous claim  
provided video from the video surveillance system where it can be seen that the system

ma picks up sound.

Together with the notification, documentary evidence is provided (Annex I) for legal purposes.

timely wales.

SECOND: In accordance with article 65.4 of Organic Law 3/2018, of 5

December, of Protection of Personal Data and guarantee of digital rights (in

hereinafter LOPDGDD), said claim was transferred to the claimed party/

ALIAS, so that it could proceed with its analysis and inform this Agency within a

month, of the actions carried out to adapt to the requirements set forth in the

data protection regulations.

The transfer, which was carried out in accordance with the regulations established in Law 39/2015, of

October 1, of the Common Administrative Procedure of the Public Administrations

(hereinafter, LPACAP), both by electronic means, and to the President himself

of the Community of owners on 02/15/22, without any response or clarification

has been made for this purpose.

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THIRD: On March 25, 2022, in accordance with article 65 of the

LOPDGDD, the claim filed by the claimant was admitted for processing.

FOURTH: On May 27, 2022, the Director of the Spanish Agency for

Data Protection agreed to initiate a sanctioning procedure 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 RGPD, typified in the

Article 83.5 of the RGPD.

FIFTH: The database of that Agency consulted on 07/13/22 has not been recorded.

received any response, nor clarification on the facts subject to transfer has been produced.

SIXTH: On 07/15/22, a Resolution Proposal is issued in which it is considered

accredited the infringement of article 5.1 c) RGPD, by having a video-

surveillance that allows you to obtain sound of conversations in common areas, as well

as misinformed on the information poster confirming the violation of article 13

RGPD, proposing a penalty of €600 (€300+€300) for the described infractions.

SEVENTH: When the database of this Agency was consulted, the <Proposal of re-

solution> as Postally notified in the email address associated with the entity

claimed.

## FOUNDATIONS OF LAW

Yo

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

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

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

Organic 3/2018, of December 5, on the 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 formal procedures

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

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

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

sidiario, by the general rules on administrative procedures."

In the present case, the claim dated 01/11/22 is examined by me-

gave from which the following is transferred as the main fact:

“presence of a video-surveillance camera system that presents certain

Irregularities regarding the purpose of the data or the way of accessing them

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(...) including sound in common spaces, as well as deficiencies in informative signage.

mativa”—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.

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 must be oriented towards the particular space, avoiding

intimidate neighboring neighbors with this type of device, as well as control zo-

nas of transit of the same 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.

The recording of personal conversations both in the company and in communities of proprietors (ace), supposes an invasion of the intimacy of the user, reason why with the exception that there is prior judicial authorization and the recordings are made by the people competent to do so do not allow this type of behavior.

cough.

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 intimidated 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 and/or transit of third parties, outside the cases allowed in the normative.

The purpose of this type of device must be the security of the property and of its inhabitants, avoiding the affectation of the rights of third parties who are intimidated two with the same

III

In accordance with the evidence available in this proceeding sanctioning party, it is considered that the claimed party has a camera system that obtains sound (personal data) in common areas, exceeding the purpose of the system, not being clear the purpose or mode of access to the exercise of rights in the terms of the current GDPR.

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The video-surveillance systems can obtain, according to sound characteristics of what happens in "common" areas reaching the recording of conversations of private nature, this being a disproportionate measure when carrying out a "treatment of data" that is not legally justified in principle.

In the specificity of the principle of proportionality is the right to the first privacy, honor, the image of people and the protection of personal data (vgr. STC 292/2000) so that the capture of images will be disproportionate. that may affect these rights or the listening or recording of conversations-nes.

The known facts constitute an infraction, attributable to the party claimed, for violation of the content of art. 5.1 c) RGPD, by being able to obtain with the same (s) recordings of a private nature, without just cause for it.

According to article 72 LOPDGDD (LO 3/2018, December 5) "Infractions considered very serious offenses" "the infractions that suppose a substantial violation of the articles mentioned therein and, in particular, the following guides (...)

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

#### IV

Similarly, in the set of evidence provided by the complaining party, it was observed

The presence of an informative poster is indicated, although it is limited to indicating in the section responsible "the Community" being an insufficient assertion since a direction must be indicated.

effective action for the purposes of being able to exercise your rights, which does not entail any effort.

to those affected (eg, by way of example, the President of the Community or Administrative manager).

"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 in 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" (\*bold type belongs to this agency)—art. 22 section 4 of the LOPDGDD--.

The AEPD, in a related report, stipulates that it is not necessary for cars are placed just below the cameras. It is enough to do it in a visible place and that includes open and closed spaces where the video camera circuit is operative.

The facts described above imply an affectation to the content of the article 13 RGPD, as the informative poster lacks an effective address to which you can address your case, having informed the group of owners of the finality facility (eg protection of facilities, etc).

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Article 13 RGPD "Information that must be provided when the personal data are obtained from the interested party"

1. When personal data relating to him/her is obtained from an interested party, the responsible for the treatment, at the time these are obtained, will provide you with all the information indicated below: a) the identity and contact details of the controller and, where appropriate, his representative; b) the contact details of the delegate of data protection, where appropriate; c) the purposes of the treatment to which the data is destined.

personal data and the legal basis of the treatment (...).

Article 72 section 1 of the LOPDGDD (LO 3/2018, December 5) in rela-

limitation period for very serious infractions “will prescribe after three

years” and in particular the following:

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 art. 83.5 RGD provides the following: “Infringements of the following provisions will be sanctioned, in accordance with section 2, with administrative fines of 20

EUR 000,000 maximum or, in the case of a company, an equivalent amount.

to a maximum of 4% of the total global annual turnover of the financial year

above, 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 (...).”.  
the rights of the interested parties under articles 12 to 22;

b)

In the present case, the lack of initial allegations of the claim is taken into account.

as well as the absence of previous infractions, being also a support measure

given by the Community of owners, to impose a penalty of €600 (€300+€300),

due to the affectation of articles 5 and 13 RGD, previously mentioned.

v

The text of the resolution establishes the infractions committed and

the facts that have given rise to the violation of the data protection regulations

these, from which it is clearly inferred what the measures to be adopted are, without prejudice to

that the type of procedures, mechanisms or concrete instruments to implement

tar them corresponds to the sanctioned party, since it is the person in charge of the treatment who



fully knows his organization and has to decide, based on the responsibility proactive and in risk approach, how to comply with the RGPD and the LOPDGDD.

Remember that not meeting the requirements of this body can be considered considered as a new 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.

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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 OWNERS COMMUNITY \*\*\* COMMUNITY.1, with NIF

\*\*\*NIF.1, for an infringement of Article 5.1.c) of the RGPD, typified in Article 83.5 letter a) of the RGPD, a fine of €300.

SECOND: IMPOSE C.P. \*\*\*COMUNIDAD.1, with NIF \*\*\*NIF.1, for an infraction of Article 13 of the RGPD, typified in Article 83.5 letter b) of the RGPD, a fine of €300.

THIRD: ORDER the entity claimed so that, within a period of ten days working days from the notification of this act, in accordance with article 58.2 d) GDPR proceed:

-Regularization of the system avoiding obtaining sound from the system in issue, informing the technical characteristics of the same to the group of owners or removal of the chamber(s) from its current location.

-Place informative poster (s) duly conformed according to the regulations in force, in such a way that it is informed of the way to exercise the rights, effective management and data controller.

FOURTH: NOTIFY this resolution to the COMMUNITY entity

OWNERS \*\*\* 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 Law 39/2015, of October 1, on Administrative Procedure

Common Public Administrations (hereinafter LPACAP), within the payment term

voluntary 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, through its entry, 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, opened on behalf of the Agency

Spanish Department of Data Protection in the banking entity CAIXABANK, S.A.. In case

Otherwise, it will be collected in the 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.

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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

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

[web/](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

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