

□ File No.: PS/00376/2021

## RESOLUTION OF PUNISHMENT PROCEDURE

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

### FACTS

FIRST: A.A.A. (\*hereinafter, the complaining party) dated March 26, 2021

filed a claim with the Spanish Data Protection Agency. The

claim is directed against CITY COUNCIL R.R.R. with NIF \*\*\*NIF.1 (hereinafter,

the claimed party). The grounds on which the claim is based are as follows:

-Dissemination of images of unidentified people on the social network-facebook—

by the CITY COUNCIL R.R.R. (Madrid) to accredit the alleged perpetrators

of acts of vandalism in the village festivals.

-Installation of video-surveillance cameras by the City Council that

show various irregularities.

-Deficiencies in the informative signage when indicating that it is

a video-monitored area.

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 in fe-

date 04/30/21, to proceed with its analysis and inform this Agency on the

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

cough in the data protection regulations.

THIRD: On 06/09/21, a response is received from the respondent, providing photo-

graphy (s) that do not allow verifying the content of the informative device, nor the number

number of cameras that it has installed in a situation plan.

FOURTH: On 07/01/21 new allegations are received from the respondent indicating-  
do that the system is made up of 14 video-surveillance cameras.

a. The sports center cameras do not invade public roads (6 cameras). b. chambers of the  
Zacatín bridge (tourist building, access with tour guide)(4 cameras) c. The ca-  
gangs of the city hall only the accesses to the building. (4 cameras).

MEASURES. a. Communication prohibiting the sending of any type of images by  
private groups. b. In the monitor of the sports center, change of location of the monitor  
so that it is not visible from the outside.

FIFTH: On July 19, 2021, the Director of the Spanish Agency for Pro-  
Data protection agreed to admit for processing the claim presented by the claimant party.  
keep.

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SIXTH: On September 7, 2021, the Director of the Spanish Agency for  
Data Protection agreed to initiate a sanctioning procedure against the defendant, with  
glo to the provisions of articles 63 and 64 of Law 39/2015, of October 1, of the Pro-  
Common Administrative Procedure of Public Administrations (hereinafter, LPA-  
CAP), for the alleged infringement of Article 5.1.c) of the RGPD and Article 13 of the RGPD,  
typified in Article 83.5 of the RGPD.

SEVENTH: On 09/27/21, a written statement is received from the respondent  
in which it succinctly states the following:

“As it was previously stated in the required information that the images  
nes cited have NEVER been exposed on the social network Facebook. They are images

stolen (we were unaware until this complaint) of a whatsapp group

private internal work of the City Council (and encrypted by the app itself). (They have already been removed from that group). These images were taken between March and May 2018. (having been notified of said dissemination outside the working group by the AEPD in June 2021)

The quality of the images is very defective, making it impossible to identify  
tification of protected faces or details, with old cameras and are used more for du  
dissuasive power than by the identification (...)

Changed all updated "video surveillance area" indicators to  
new European regulation (...)

The town hall recording is 15 days in loop recording, the access

The recording is in a locked room with a password to the system  
engraving (...)"

EIGHTH: On 10/04/21, a "Resolution Proposal" was issued, in which  
agreed to propose a warning to the respondent for having proceeded to the  
correction of certain "irregularities" of the installed system, after having knowledge  
of the events carried out by this body.

NINTH: The database of this Agency consulted on 12/20/21 has not been  
received a new allegation in this regard.

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

#### PROVEN FACTS

First. The facts bring cause of the claim dated 03/26/21 through the  
which reveal the following "irregularities" in the video-vi- system  
gillance of the R.R.R. CITY COUNCIL.

Second. It is accredited that the main person in charge is the entity TOWN HALL-

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Third. It is proven that the information duty of the system was not in accordance with current legislation, having proceeded to change the informative badges, adjusting bringing them to current regulations.

Fourth. The screen prints provided by the claimed Entity (Doc. probatory No. 2 Written arguments) do not allow to verify affectation of establishment hotelier close to the area, although they state that in a percentage of 80% they point to land owned by the local council.

Fifth. The entity claimed acknowledges that images from the video-surveillance system were disseminated in a private WhatsApp chat, indicating as the date of the events chos -March and May 2018—although it denies the "public dissemination on social networks" and that "have been eliminated."

## FOUNDATIONS OF LAW

Yo

By virtue of the powers that article 58.2 of the RGPD recognizes to each authority of control, 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 resolve this procedure.

II

In the present case, the claim dated 03/26/21 is examined by me- from which various irregularities are transferred in the video-surveillance system

felled by the CITY COUNCIL R.R.R. (Madrid).

“8 cameras have been located that are not marked and do not have  
of informative badge” (folio nº 2).

The installation of video surveillance cameras on the street corresponds solely and exclusively to  
to the State Security Forces and Bodies in the performance of functions  
security.

For there to be "data processing" it must be associated with an identified person or  
identifiable, stating the claimant that the “faces of the people are covered  
you give”.

When the City Council wants to install a video surveillance system with the  
to prevent crime, deter the commission of crimes or leave evidence of them  
when they are committed, the authorization comes from the Video Surveillance Guarantees Commission.  
lancia.

The process must also be carried out in accordance with compliance with the Or-  
Law 4/1997, of August 4, which regulates the use of video cameras by  
the Security Forces and Bodies in public places and the regulations that develop  
rolla, approved by Royal Decree 596/1999.

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The request must be addressed to the Government Delegate in the Autonomous Community  
ma and must include data regarding the reasons for which it is requested, the area that you want  
be recorded with video surveillance cameras and the need, if it exists, of gra-  
bar sounds following the restrictions of the legislation on the matter.

Other issues that must be specified in the document are the qualification of the people who will work with the images and sound that are recorded, the characteristics techniques of the video surveillance equipment and the period during which it will proceed to make recordings.

The City Council may have a video surveillance camera system with the purpose of protecting the town hall and its belongings, this being flexible agency in terms of their perimeter scope, as long as they adhere for the purpose described and is duly informed by means of the necessary badges. documents that allow knowing that it is a video-monitored area, as well as facilitating do the exercise of rights 12-22 RGPD to all those affected by them.

The facts denounced could imply an affectation to the content of art. 5.1 c) RGPD (regulation currently in force) that provides: "personal data will be: c) adequate, pertinent and limited to what is necessary in relation to the purposes for which they are processed ("data minimization") (...)".

Article 22, section 2 of the LOPDGDD (LO 3/2018, December 5) "Only Images of public roads will be captured to the extent that it is essential for the purpose mentioned in the previous section. However, it will be possible to construction of the public road in a higher extension when necessary to guarantee guarantee the security of strategic assets or installations or of infrastructures linked given to transport, without in any case implying the capture of images of the inside a private home.

As stated in the claim, any of the pre-installed cameras sumptuously they excessively capture private space of a third party "part of a restaurant" next to you".

As a second question, the complainant considers that the installed cameras are not signposted as they lack any informative sign where it is indicated that they are

ta of a video-monitored area, which supposes an affectation to the content of art. 13

GDPR.

Article 22 section 4 of the LOPDGDD provides the following:

“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 site a connection code or internet address to this information

(...)”.

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III

In accordance with the evidence available in this proceeding

sanctioning party, it is considered that the claimed party has a video system

surveillance that did not comply with current legislation, lacking the distinctive

necessary informative information required in accordance with the regulations in force.

The entity claimed has accredited the change of signage (attach a copy of the

informative badge) adjusted to the regulations in force: current RGPD-EU Regulation

2016/679—so that the system is currently duly informed,

the same must be in the main entrances of the Town Hall.

The respondent also provides a screen print of one (s) of

the cameras, without printing date and time, but that allow to prove that they are not

focused on the private area of third parties.

Article 22 section 2 "in fine" provides the following: "However, it will be possible

It is possible to capture the public road in a greater extension when necessary

to guarantee the security of assets or strategic installations or infrastructure

companies linked to transport, without in any case implying the capture of

images of the interior of a private home" (\*the underlining belongs to this AEPD).

Lastly, although without delving into the matter, he recognized the spread of

images in a private WhatsApp Group, denying "the publication on social networks

les", pointing out that it was an accidental event that dates back to 2018, if

well "they have already been eliminated".

In this case, the presumed diffusion of images of third parties in a particular way, will not be

can impute to the claimed entity, regardless of the vagueness in the claim

presented in terms of the manner and date in which the described events occurred.

In accordance with what was stated by the parties, the events could have occurred

cer at the beginning of the year 2018, being prescribed at the time of presentation of the

claim for having "passed two years from the commission of the same", which

assumes that this specific fact is not going to be prosecuted on the basis of the foregoing.

unto

The proven facts suppose an administrative infraction typified in the

article 83.5 letters b) RGPD.

"The infractions of the following dispositions will be sanctioned, in accordance with the

section 2, with administrative fines of a maximum of EUR 20,000,000 or, treating-

of a company, of an amount equivalent to a maximum of 4% of the volume of

Total annual global business of the previous financial year, opting for the one with the highest

amount:

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

IV

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

ne in your art. 58.2 b) the following:

“2 Each control authority will have all the following corrective powers in-

listed below:

(...)

b) send a warning to any person responsible or in charge of the treatment

when the treatment operations have violated the provisions of this

Regulation;”

Likewise, article 77 of the LOPDGDD provides the following: “Regime applicable to

certain categories of controllers or processors.

1. The regime established in this article will be applicable to the treatment of

who are responsible or in charge:

a) The constitutional bodies or those with constitutional relevance and the institutions of

autonomous communities analogous to them.

b) The jurisdictional bodies.

c) The General State Administration, the Administrations of the autonomous communities

tónomas and the entities that make up the Local Administration.

d) Public bodies and public law entities linked or dependent

of the Public Administrations.

e) The independent administrative authorities.

f) The Bank of Spain.

g) Public law corporations when the purposes of the treatment are related to the exercise of powers of public law.

h) Public sector foundations.

i) Public Universities.

j) The consortiums.

k) The parliamentary groups of the Cortes Generales and the Legislative Assemblies autonomous, as well as the political groups of the Local Corporations.

2. When those responsible or in charge listed in section 1 committed

any of the infractions referred to in articles 72 to 74 of this organic law

ca, the competent data protection authority will issue a sanction resolution

mentioning them with warning. The resolution will also establish the

measures to be taken to stop the conduct or correct the effects of the

offense that had been committed.

The resolution will be notified to the person in charge or in charge of the treatment, to the body of the

that depends hierarchically, where appropriate, and to those affected who had the condition

interested party, if any.

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3. Without prejudice to what is established in the previous section, the data protection authority

data will also propose the initiation of disciplinary actions when there are in-

Enough words for it. In this case, the procedure and the sanctions to be applied

will be those established in the legislation on disciplinary or sanctioning regime that

result of application.

Likewise, when the infractions are attributable to authorities and managers, and proves the existence of technical reports or recommendations for the treatment that had not been duly attended to, in the resolution imposing the

The sanction will include a reprimand with the name of the responsible position and will order the publication in the corresponding Official State or Autonomous Gazette.

4. The data protection authority must be notified of the resolutions that fall in relation to the measures and actions referred to in the sections previous.

5. They will be communicated to the Ombudsman or, where appropriate, to similar institutions of the autonomous communities the actions carried out and the resolutions issued under this article.

6. When the competent authority is the Spanish Data Protection Agency, this will publish on its website with due separation the resolutions referring to the entities of section 1 of this article, with express indication of the identity of the person in charge or in charge of the treatment that had committed the infraction.

When the competence corresponds to a regional data protection authority, It will be, in terms of the publicity of these resolutions, to what your specific regulations.”

The party complained against has proceeded following the indications of this body to modify some of the "irregularities" of the system in question, as evidenced by with the change of informative signage (vgr. Doc. Test nº 4 Written allegations), as well as well as by reinforcing the security measures in relation to the processing of the data obtained. nested with the system images, so it is not appropriate to propose an additional measure any, without prejudice to the declaration of the described infraction.

The RGPD introduces the appointment of a Protection Delegate as mandatory.

tion of Data (DPD) by those responsible and in charge in the supposed regulations two in its article 37.1.

Notwithstanding the foregoing, the respondent Entity is reminded that the images obtained from the camera system must be in the custody of restricted personnel authorized, and must be transferred to the competent or judicial authority in the cases described in the regulations in force.

In the case of situations described as "acts of vandalism" the images of the cameras in question may be made available to the Local Police or their case transferred to the competent judicial authority, being able with certain guarantees to be used to prove the presumed authorship of facts constituting an admissible infraction. nistrativa or criminal offense depending on the case.

Likewise, this Agency can appear at any time in the place of the facts and proceed to carry out an exhaustive verification of the measures taken (eg orientation of cameras, availability of form(s), measures

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technical and organizational measures adopted, etc.), taking for granted that the measures widely exposed to this effect.

Therefore, in accordance with the applicable legislation and after assessing the graduation criteria tion of the sanctions whose existence has been proven,

the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: SANCTION the entity CITY COUNCIL R.R.R., with NIF \*\*\*NIF.1, for

an infringement of Article 5.1.c) of the RGD and Article 13 of the RGD, typified in the

Article 83.5 of the RGPD, with a warning, without the imposition of additional measures.

them.

SECOND: NOTIFY this resolution to R.R.R. CITY COUNCIL.

THIRD: COMMUNICATE this resolution to the Ombudsman,

in accordance with the provisions of article 77.5 of the LOPDGDD.

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

resorts may optionally file an appeal for reconsideration before the Director

of the Spanish Agency for Data Protection within a month from the date of

the day following the notification of this resolution or directly contentious appeal

before the Contentious-Administrative Chamber of the National High Court,

in accordance with the provisions of article 25 and section 5 of the additional provision

Final fourth of Law 29/1998, of July 13, regulating the Contentious Jurisdiction-

administrative, within a period of two months from the day following the notification

tion of this act, as provided for in article 46.1 of the aforementioned Law.

Sea Spain Marti

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