

Procedure No.: PS/00135/2019

RESOLUTION R/00275/2019 TERMINATION OF THE PROCEDURE BY
VOLUNTARY PAYMENT

In sanctioning procedure PS/00135/2019, instructed by the Spanish Agency for
Data Protection to the entity AMADOR RECREATIVOS, S.L. (CLASS OF
TIKI TAKA GAMES), given the complaint filed by MOLINA CITY COUNCIL
DE SEGURA -LOCAL POLICE, and based on the following,

BACKGROUND

FIRST: On April 15, 2019, the Director of the Spanish Agency for
Data Protection agreed to initiate a sanctioning procedure against the entity AMADOR
RECREATIONAL, S.L. (TIKI TAKA GAMES ROOM), by means of the Agreement
transcribe:

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Procedure No.: PS/00135/2019

AGREEMENT TO START A SANCTION PROCEDURE

Of the actions carried out by the Spanish Agency for the Protection of
Data before the entity AMADOR RECREATIVOS, S.L. (TIKI GAMES ROOM
TAKA), by virtue of a claim filed by the CITY COUNCIL OF MOLINA DE
SEGURA - LOCAL POLICE (hereinafter, the claimant) and based on the following:

FACTS

FIRST: The CITY COUNCIL OF MOLINA DE SEGURA -LOCAL POLICE (in
hereinafter, the claimant) dated December 7, 2018 filed a claim with
the Spanish Data Protection Agency, motivated by data processing
carried out through cameras of a video surveillance system whose owner is
AMADOR RECREATIVOS, S.L. (TIKI TAKA GAMES ROOM) with NIF ***NIF.1

(*hereinafter the claimed) installed at ***ADDRESS.1.

The reasons on which the claim is based are "existence of security cameras safety towards public roads" without just cause (folio nº 1).

Together with the claim, it provides an intervention report from the Environment unit Environment (Local Police)—Proof Document No. 1--.

Documentary evidence is provided (Doc. No. 1) consisting of a photograph(s) of the monitor of the denounced company, where you can see how they obtain images of public roads.

SECOND: On 01/16/19, the claim was TRANSFERRED to the entity denounced, so that it will manifest itself on the facts, specifically characteristics of the cameras, orientation of the same, compliance with the duty of information,

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appearing as "Notified" in the computer system of this body.

THIRD: Consulted the computer system of this body on 03/21/19

there is no evidence that any allegation has been made by the accused, explaining the characteristics of the system or indicating the measures adopted to, where appropriate, ensure for compliance with current regulations.

FOURTH: Consulting the computer system of this body, it is associated with the denounced a previous Complaint of the same City Council, with reference number E/05991/2017, which caused this body to send a letter to the denounced, reminding him of compliance with measures in relation to the video-Surveillance installed.

FOUNDATIONS OF LAW

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By virtue of the powers that article 58.2 of the RGD recognizes to each authority of control, and as established in art. 47 of the Organic Law 3/2018, of 5 December, of Protection of Personal Data and guarantee of digital rights (in hereinafter LOPDGDD), the Director of the Spanish Agency for Data Protection is competent to initiate and resolve this procedure.

II

In the present case, the "facts" are specified in the installation of video cameras-surveillance directed towards public space without just cause.

The facts described may affect the content of article 5

letter c) GDPR. "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").

Cameras installed by individuals cannot obtain images of the road adjoining public, as it is a matter of exclusive competence of the Forces and State Security Bodies (Organic Law 4/1997, of August 4).

By means of this type of device, it is possible to affect passers-by who are affected in their right to privacy, "processing data" of the same outside the cases permitted by current regulations.

Therefore, the person responsible for the installation must adopt all those necessary measures, so that the camera system complies with the regulations in force, following the recommendations of the administrative control authorities, as well as as well as the State Security Forces and Bodies.

The treatment of images in public places can only be carried out -in your case and prior compliance with the legally enforceable requirements-, by the Forces and

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Security Forces, unless the exception established in article 4.3 operates of Instruction 1/2006, of November 8, of this Agency, which establishes: "the cameras and video cameras installed in private spaces will not be able to obtain images of public spaces unless it is essential for the purpose of surveillance that is intended, or is impossible to avoid because of the location of those. In any case, any unnecessary data processing should be avoided. for the intended purpose"

- 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.

III

For informational purposes only, it is worth remembering some of the requirements that must be comply with the processing of images through a video surveillance system to be in accordance with current regulations:

- 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 since the treatment of images in places

public can only be carried out, where appropriate, by the Forces and Bodies 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.

- The duty to inform those affected provided for in article

12 of the RGPD 2016/679, of April 27, 2016, in the terms referred to both in the

cited article, as in articles 13 and 14 of said rule, resulting from the application

-by not contradicting the provisions of the aforementioned Regulation-, the manner provided in the

Article 3 of Instruction 1/2006, of November 8, of the Spanish Agency for

Data Protection, on the Processing of Personal Data for the Purpose of

Surveillance through Camera Systems or Video Cameras (Instruction 1/2006, of 8

of November, of the Spanish Data Protection Agency).

Specifically, it must:

1. Place at least one informative badge in the video-monitored areas

located in a sufficiently visible place, both in open spaces and

closed.

In accordance with the provisions of articles 13 and 14 of the Regulation (EU)

2016/679, of April 27, 2016, in the informative sign above

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mentioned must identify, at least, the existence of a treatment, the

identity of the person in charge and the possibility of exercising the rights provided in

these precepts.

2. Keep available to those affected the information referred to in the cited Regulation (EU) 2016/679, of April 27, 2016.

IV

In accordance with the evidence available at the present time of agreement to initiate the sanctioning procedure, and without prejudice to what results from the instruction, it is considered that the person claimed has proceeded to install a system video-surveillance oriented towards public space without just cause.

The known facts could constitute an infraction, attributable to the claimed, for violation of article 5 RGPD, as it is oriented towards public space disproportionately.

This fact is verified by the Report issued by the Forces and Bodies of State Security (Local Police)-Doc. exhibit nº 1-- where the images contributed verify the obtaining of images of the public pavement and of the cars parked.

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Among the corrective powers that article 58 section 2 of the RGPD recognizes each Control Authority, contemplates:

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Impose an administrative fine under article 83, in addition to or in Instead of the measures mentioned in this section, according to the circumstances of each particular case. (...)”.

This infraction classified as very serious can be sanctioned with a fine of €20,000,000 maximum or, in the case of a company, an equivalent amount at a maximum of 4% of the total global annual turnover of the financial year above, opting for the highest amount. (article 83.5 a) RGPD), assuming a infringement:

a) the basic principles for the treatment, including the conditions for the consent under articles 5, 6, 7 and 9 (...)".

The LOPGDD in its article 72.1.a) indicates: "Infringements considered very serious":

"1. Based on the provisions of article 83.5 of Regulation (EU) 2016/679, 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".

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The entity denounced, despite the warnings of the Authorities public, has ignored, being the video-surveillance cameras oriented into public space, without any measure being adopted in this regard.

In the present case, when adjusting the amount of the sanction to be imposed, taking into account the following aggravating circumstances:

-the intentionality or negligence of the infraction, given that according to what is verified in the report (Proof Document No. 1) there have been several times in which it has been warned by the acting force, of the incorrect orientation of the camera, making disregard the warnings exposed, so the conduct must be classified as grave—art. 83.2 b) GDPR--.

-He has not collaborated with the control authority, since the claim was transferred, with its documentation did not respond to this AEPD in any way, not knowing

In addition, if you have taken any measure so that the infraction is not repeated and to mitigate the events produced --(83.2.f) RGPD--.

-the facts are known by this body, as a result of a complaint sent by the City Council of Molina de Segura (Local Police) that transfers them to the continued passivity of the data controller—art. 83.2 h) RGPD--.

As mitigating circumstances to assess in order to graduate the sanction, taking into account the limited collection space, the absence of benefits obtained, as well as the fact that it is a small company, so the

The amount of the economic sanction is considered to have to be proportionate to the offense committed, considering it correct to encrypt it in the amount of €6,000 (Six Thousand Euros), considering that they have been fully informed by the Agents transferred to the scene of the violation of the regulations on the matter of Data Protection.

SAW

Among the corrective powers contemplated in article 58 of the RGPD, in its section 2 d) it is established that each control authority may “order the person in charge or in charge of the treatment that the treatment operations comply with the provisions of this Regulation, where appropriate, in a certain way and within a specified period...”. The imposition of this measure is compatible with the sanction consisting of an administrative fine, as provided in art. 83.2 of the GDPR.

The reported entity must prove compliance with the required measure by this body, reorientation of the outer chamber, providing documentation (vgr. screen printout with date and time) of what in your case is captured with the same.

Therefore, as stated,

By the Director of the Spanish Data Protection Agency,

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HE REMEMBERS:

1.

START A SANCTIONING PROCEDURE against the AMADOR entity RECREATIONAL, S.L. (TIKI TAKA GAMES ROOM), with NIF ***NIF.1, by the alleged infringement of article 5 letter c) RGPD, by keeping cameras of video-surveillance oriented towards public space without just cause, infringement typified in article 83.5 a) RGPD and qualified as very serious.

2. APPOINT Mr. R.R.R. as Instructor, and Secretary, if applicable, Mr. S.S.S. indicating that any of them may be challenged, where appropriate, in accordance with the provisions of articles 23 and 24 of Law 40/2015, of 1 October, of the Legal Regime of the Public Sector (LRJSP).

3.

INCORPORATE to the disciplinary file, for evidentiary purposes, the claim filed by the claimant and its attached documentation, the documents obtained and generated by the Subdirector General for Inspection of Data during the investigation phase, all of them part of the present Administrative file.

4. THAT for the purposes provided in art. 64.2 b) of Law 39/2015, of 1 October, of the Common Administrative Procedure of the Administrations Public, the sanction that could correspond would be €6,000.

(Six Thousand Euros), without prejudice to what results from the instruction.

5. NOTIFY this agreement to the entity denounced AMADOR

RECREATIONAL, S.L. (TIKI TAKA GAMES ROOM), with NIF ***NIF.1,

granting him a hearing period of ten business days to formulate the pleadings and submit any evidence you deem appropriate.

If within the stipulated period it does not make allegations to this initial agreement, the same may be considered a resolution proposal, as established in article 64.2.f) of Law 39/2015, of October 1, of the Common Administrative Procedure of Public Administrations (hereinafter, LPACAP).

In accordance with the provisions of article 85 of the LPACAP, in the event that the sanction to be imposed was a fine, it may recognize its responsibility within the term granted for the formulation of allegations to this initial agreement; it which will entail a reduction of 20% of the sanction to be imposed in the present procedure. With the application of this reduction, the sanction would be established at €4,800 (€6,000-€1,200), resolving the procedure with the imposition of this sanction.

Similarly, you may, at any time prior to the resolution of this procedure, carry out the voluntary payment of the proposed sanction, which will mean a reduction of 20% of its amount. With the application of this reduction, the sanction would be established at €4,800 and its payment will imply the termination of the process.

The reduction for the voluntary payment of the penalty is cumulative with the corresponding

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apply for the acknowledgment of responsibility, provided that this acknowledgment of the responsibility is revealed within the period granted to formulate arguments at the opening of the procedure. The voluntary payment of the referred amount in the previous paragraph may be done at any time prior to the resolution. In this case, if it were appropriate to apply both reductions, the amount of the penalty would be set at €3,600 (Three thousand six hundred Euros)

In any case, the effectiveness of any of the two reductions mentioned will be conditioned to the abandonment or renunciation of any action or resource in via administrative against the sanction.

In case you chose to proceed to the voluntary payment of any of the amounts indicated above (€4,800 or €3,6000), you must make it effective through your Deposit in account number ES00 0000 0000 0000 0000 0000 opened in the name of the Spanish Data Protection Agency at Banco CAIXABANK, S.A., indicating in the concept the reference number of the procedure that appears in the heading of this document and the reason for the reduction of the amount to which welcomes

Likewise, you must send proof of payment to the General Subdirectorate of Inspection to proceed with the procedure in accordance with the quantity entered.

The procedure will have a maximum duration of nine months from the date of the start-up agreement or, where appropriate, of the draft start-up agreement.

Once this period has elapsed, it will expire and, consequently, the file of performances; in accordance with the provisions of article 64 of the LOPDGDD.

Finally, it is pointed out that in accordance with the provisions of article 112.1 of the LPACAP,

There is no administrative appeal against this act.

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Director of the Spanish Data Protection Agency

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SECOND: On 06/01/2019 the reported entity AMADOR RECREATIVOS, SL (TIKI TAKA GAMES ROOM) has proceeded to pay the penalty in the amount of 4,800 euros making use of the reduction(s) foreseen in the Agreement of commencement, which entails the waiver of any administrative action or recourse against the sanction in case of voluntary payment without acknowledgment of responsibility.

FOUNDATIONS OF LAW

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By virtue of the powers that article 58.2 of the RGPD recognizes to each control authority, and as established in art. 47 of the Organic Law 3/2018, of December 5, Protection of Personal Data and guarantee of rights

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(hereinafter LOPDGDD), the Director of the Spanish Agency for Data Protection is competent to sanction the infractions that are committed against said Regulation; violations of article 48 of Law 9/2014, of 9 May, General de Telecomunicaciones (hereinafter LGT), in accordance with the provided in article 84.3 of the LGT, and the infractions typified in articles 38.3 c), d) and i) and 38.4 d), g) and h) of Law 34/2002, of July 11, on services of the information society and electronic commerce (hereinafter LSSI), according to Article 43.1 of said Law provides.

Article 85 of Law 39/2015, of October 1, on the Procedure

Common Administrative of Public Administrations (hereinafter LPACAP), under the heading "Termination in sanctioning procedures" provides the following:

"1. A sanctioning procedure has been initiated, if the offender acknowledges his responsibility, the procedure may be resolved with the imposition of the sanction to proceed.

2. When the sanction is solely pecuniary in nature or fits impose a pecuniary sanction and another of a non-pecuniary nature but it has been justified the inadmissibility of the second, the voluntary payment by the alleged perpetrator, in any time prior to the resolution, will imply the termination of the procedure, except in relation to the replacement of the altered situation or the determination of the compensation for damages caused by the commission of the infringement.

3. In both cases, when the sanction is solely pecuniary in nature, the competent body to resolve the procedure will apply reductions of, at least 20% of the amount of the proposed sanction, these being cumulative each. The aforementioned reductions must be determined in the notification of initiation of the procedure and its effectiveness will be conditioned to the withdrawal or Waiver of any administrative action or recourse against the sanction.

The reduction percentage provided for in this section may be increased regulations".

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.

According to what was stated,

the Director of the Spanish Data Protection Agency RESOLVES

FIRST: DECLARE

in accordance with the provisions of article 85 of the LPACAP.

the termination of procedure PS/00135/2019, of

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this resolution to the entity--AMADOR

SECOND: NOTIFY

RECREATIONAL, S.L. -(TIKI TAKA GAMES ROOM).

Against this resolution, which puts an end to the administrative procedure as prescribed by

the art. 114.1.c) of Law 39/2015, of October 1, on Administrative Procedure

Common of the Public Administrations, the interested parties may file an appeal

contentious-administrative 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.

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