

□ Procedure No.: PS/00336/2019

938-051119

## RESOLUTION OF PUNISHMENT PROCEDURE

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

### FACTS

FIRST: COMMUNITY OF OWNERS R.R.R. (\*hereinafter, the claimant)

On March 5, 2019, he filed a claim with the Spanish Agency for  
Data Protection. The claim is directed against the neighbor of the property A.A.A.  
(hereinafter, the claimed).

The reasons on which the claim is based are "installation of a camera by  
of a neighbor of the property" oriented towards common areas and/or public roads, without  
authorization of the board of owners.

"The Community of owners has repeatedly required this neighbor  
to remove the cameras, for which you do not have any type of permit, NO  
meets the requirements" (folio nº 1).

Along with the claim, provide documentary evidence (CD) that proves the  
installation of the cameras that are the subject of the complaint.

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 05/08/19, the claim is TRANSFERRED to the party denounced, without any allegation having been made to date.

FOURTH: On October 23, 2019, 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.

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#### PROVEN FACTS

First. On 03/05/19 a claim is received at this Agency through the which translates as the main fact the following:

"Installation of a camera by a neighbor of the property" oriented towards common areas and/or public roads, without authorization from the owners' meeting.

"The Community of owners has repeatedly required this neighbor to remove the cameras, for which you do not have any type of permit, NO meets the requirements" (folio nº 1).

Second. It is identified as the main responsible A.A.A.

Third. The presence of a video-surveillance device, oriented disproportionately, as well as the requirements of the Community of

owners about it.

Fourth. It has not been possible to determine if it has the mandatory information poster informing that it is a video-monitored area, informing where appropriate of the responsible for the treatment.

Fifth. It is accredited that you do not have the authorization of the Board of owners for the installation of the camera object of complaint, ignoring of the warnings of those responsible for the community of owners.

## FOUNDATIONS OF LAW

Yo

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

II

In the present case, the claim dated 03/05/19 is examined by me- gave from which the following is transferred as the main "fact":

"Installation of a camera by a neighbor of the property" oriented towards common areas, without authorization from the board of owners.

The cameras installed by individuals cannot be oriented towards a private area. third-party cameras, obtaining images/sound of third-party conversations, by affecting protect your privacy, regardless of the fact that there are less invasive measures to protect the property, if necessary.

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The facts described suppose an affectation to article 5.1 c) RGPD "The data personal cough will be:

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

Individuals who install this type of device are responsible for ensuring that it conforms to current legislation, and must comply with the requirements established cided in the Horizontal Property Law (LPH).

### III

In accordance with the evidence available in this proceeding, sanctioning procedure, it is considered that the defendant (a) has a device of video-surveillance, which could be "processing data" of third parties without just cause affecting your right to personal image (personal data).

The known facts could constitute an infraction, attributable to the claimed, for violation of art. 5.1 c) RGPD, previously described.

The Supreme Court (Judgments of July 5, 1998 and March 2, 1999) comes understanding that there is recklessness whenever a legal duty is neglected of care, that is, when the offender does not behave with the required diligence. ble. Diligence whose degree of demand will be determined in accordance with the circumstances. concurrent conditions in each case, such as the special value of the protected legal interest or the professionalism required of the offender. In this sense, the aforementioned Judgment of 5 June 1998 requires professionals in the sector "a duty to know especially the applicable regulations".

In this case, the defendant has installed a video-surveillance device oriented ted to common areas, without just cause, altering the peaceful coexistence of the Community, which has been forced to report it to this Agency.

Article 83 section 5 of the RGPD provides the following:

“Infractions of the following provisions will be sanctioned, in accordance with paragraph 2, with administrative fines of a maximum of EUR 20,000,000 or, alternatively, being from a company, of an amount equivalent to a maximum of 4% of the volume overall annual total turnover of the previous financial year, opting for the greater amount:

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

Without prejudice to the provisions of article 83 of the RGPD, the aforementioned Regulation provides ne in your art. 58.2 b) the possibility of sanctioning with a warning, in relation to what stated in Recital 148:

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“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. You must, however, pay Special attention is paid to the nature, seriousness and duration of the infraction, its character intentional ter, to the measures taken to alleviate the damages suffered, to the degree of responsibility or any relevant prior violation, the manner in which the control authority has become aware of the infraction, to the fulfillment of measures ordered against the person in charge or in charge, adherence to codes of conduct and any other aggravating or mitigating circumstance.”

In the present case, it is taken into account that it is an individual, who on a daily basis of the date has not made any allegation about the device in question, lack of a previous administrative infraction, considering it correct to impose a sanction warning tion.

The denounced party must clarify the cause/reason for the installation of the camera. mara, as well as the technical characteristics of the same, or failing that it has proceeded ordered to the removal of the same from the scene of the events (vgr. providing photograph date and time), warning her that a lack of collaboration with this body may have an administrative infraction punishable financially in the terms of art.

72.1 letter o) LOPDGDD.

The denouncing party to file a new claim for the same facts chos, must certify that by the President (Administrator) of the Community of Owners, the situation described has been communicated to the respondent, as well as in its attaching a copy of this Resolution, in case of "passivity" it must be provide the evidence again (photograph date and time of the camera), attaching documentary proof of the notification attempt (eg acknowledgment of receipt from the Official Service of Correos, Burofax, or sending to the personal email of the accused).

The "facts" can also be transferred to the security forces and Bodies. locality, for the raising of Act-Complaint-- where the alleged administrative violation committed, then forwarding it to this Agency.

Inc.

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 A.A.A., with NIF \*\*\*NIF.1, for an infraction of Article 5.1.c) of the RGPD, typified in Article 83.5 of the RGPD, a sanction of WARNING,

so that within ONE MONTH from the receipt of this administrative act:

-You must prove the characteristics of the camera, attaching all the documentation.

necessary certification that demonstrates the legality of the system.

-You must prove the removal of the camera from its current location.

providing photography of the before and after, in order for its analysis by this organ-

nism.

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SECOND: NOTIFY this resolution to the defendant A.A.A. and inform

of the result of the actions to the denouncing entity COMMUNITY OF

OWNERS R.R.R.

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 LPA-

CAP, the interested parties may optionally file an appeal for reconsideration before

the Director of the Spanish Agency for Data Protection within a period of one month

counting from the day following the notification of this resolution or directly

contentious-administrative case before the Contentious-administrative Chamber of the Au-

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 Jurisdiction

Contentious-administrative diction, within a period of two months from the day following

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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