

□ File No.: PS/00588/2021

RESOLUTION OF PUNISHMENT PROCEDURE

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

BACKGROUND

FIRST: NEIGHBORHOOD ASSOCIATION ***ASOCIACIÓN.1 and NEIGHBORHOOD ASSOCIATION
NOS ***ASOCIACIÓN.2 (*hereinafter, the complaining party) with initial date 30 of
September 2020 filed a claim with the Spanish Agency for the Protection of
Data. The claim is directed against what is identified as a PROPERTY COMMUNITY
OWNERS ***COMUNIDAD.1 with NIF ***NIF.1 (hereinafter, the claimed party).

The grounds on which the claim is based are as follows:

“After warning the Group ***GRUPO.1 for capturing public space
from at least three of their security cameras. To this day, despite the warning
communicated by the AEPD, the cameras have not been redirected
security” (folio nº 1).

SECOND: After consulting the database of this Agency, there is an associated procedure
prior investigation PS/00395/2020, where a series of preliminary inquiries were made
in relation to the facts described by the same claimant previously mentioned-
do, which ended with the Archive of the proceedings as the infraction could not be verified
administrative object of the claim, nor the presumed person responsible for them.

ORDER the FILE of this procedure as it is not accredited
at this time the subject responsible for the installation of the camera system ob-
complaint subject.

THIRD: On 12/09/21 a communication is received from the Tax Agency (AET)
communicating new identification data of the claimed party—C.P. ***COMMUNITY.1

with NIF ***NIF.1.

FOURTH: On January 17, 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.

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FIFTH: On 03/04/22, the instructor of the procedure agreed to practice the following tests: requirement of collaboration so that those displaced to the place of The facts will show the following:

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-Main person responsible for the installation of the system.

-Number of cameras and operability of the same.

-Presence of informative poster(s) indicating that it is a video area-guarded.

SIXTH: On 05/05/22, this Agency received a Report from the competent authority (Bilbao City Council) at the request of this body after traveling to the gar of the facts and carry out the corresponding inquiries.

-The data controller is C.P. ***COMUNIDAD.1 with NIF ***NIF.1. The

employee states that the cause of its installation is for the video-surveillance of the shopping areas Shopping center ***GROUP.1.

-That only an informative poster is observed on the doors of the offices reporting that it is a video-monitored area.

-That a photographic report is attached with the location of the two oriented cameras- you give to the street and its orientation. Record that the person identified stated that said cameras were offline and not working.

SEVENTH: On 05/30/22, a "Resolution proposal" was issued, where after Analyzing the evidence provided, the conclusion is reached of the non-operationality of the external camera(s), not specifying data processing associated with a third party identified, reason that justifies the proposal to file the proceedings.

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 initial claim to this Agency dated 09/30/20 through which the following facts were made known:

"After warning the Group ***GRUPO.1 for capturing public space from at least three of their security cameras. To this day, despite the warning communicated by the AEPD, the cameras have not been redirected security" (folio nº 1).

Second. It is identified as the main responsible C.P. *** COMMUNITY.1 with NIF ***NIF.1.

Third. There is evidence of the presence of a single informative poster indicating that It is a video-monitored area.

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Fourth. The presence of two exterior chambers in the facade is verified (of the 63 that make up the system) one of them facing the street and the other turned towards the wall and oriented towards it.

Fifth. It has not been proven that the system retains any third-party data, as it is the same as stated in the Report stated "disconnected" at the indication of the en-loaded interviewed after displacement of the acting force to the place of the facts.

FOUNDATIONS OF LAW

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In accordance with 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 subsidiary, by the general rules on administrative procedures."

II

In the present case, the claim dated 09/30/20 is examined by me-gave from which is transferred as the main fact:

"presence of a series of cameras that, according to a statement by the claimant, could affect the rights of third parties without just cause" (folio nº 1).

The complaining party does not prove the operability of the cameras, nor is there any associated

filed any complaint with the local Security Forces and Bodies for the facts described.

On 12/09/21, a communication was received from the AET communicating new data identification data of the claimed party—C.P. ***COMUNIDAD.1 with NIF ***NIF.1, which justifies the initiation of this procedure in order to determine the alleged infraction subject to claim.

The facts initially denounced could suppose an affectation to the content of the art. 5.1 c) RGPD (regulations currently in force) that provides: "Personal data they will be:

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

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Individuals are responsible for the installed video-surveillance systems to be comply with current legislation, and must be able to prove such extremes.

We report to the competent authority.

Cameras installed by individuals must be oriented towards their private space.

avoiding the capture of private area of third parties without just cause.

In no case will the use of surveillance practices be admitted beyond the objective environment.

of the installation and in particular, not being able to affect the surrounding public spaces.

contiguous buildings and vehicles other than those accessing the guarded space.

Likewise, in the case of false cameras, they must be oriented

to a private area, avoiding intimidation of neighboring neighbors who are unaware

know whether or not they process personal data.

Another of the obligations involved in the use of video surveillance for security purposes, in relation to data protection, is to comply with the right to information, by means of an informative badge.

To facilitate the adaptation of the treatments to the provisions of the RGPD, the AEPD has edited the Guide for compliance with the duty to inform, in which it is explained how to comply with this right, through the so-called "two-layer" system, due to the type of information that must be provided by those responsible in relation to the different processing of personal data of the interested parties that they carry out.

III

At the request of this body, the collaboration of the Forces and Corps is requested. Security Office (Bilbao City Council) that in the Report on the date of entry in this Agency 05/05/22 confirm after going to the scene of the events the presence of at least two exterior cameras although "without operation".

"Record that the person identified stated that said cameras were unconnected and not working" (folio nº 1 Report dated 03/30/22).

Article 77 section 5 of Law 39/2015 (October 1) provides the following:

"5. The documents formalized by the officials who are recognized as authority and in which, observing the corresponding legal requirements the facts verified by those are collected will prove them unless they are prove the contrary".

On this aspect, remember that this Agency only analyzes behaviors that involve a "data processing" outside the cases permitted by the regulations in force, not being the same according to the outlined report: in operation in the current moment.

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Although in the past the AEPD has sanctioned data controllers for use of this type of device, it is currently understood that the use of simulated cameras ladas does not imply an infringement of the fundamental right to data protection.

Article 22 section 2 of the LOPDGDD (Lo 3/2018, December 5) provides:

“Images of public roads may only be captured to the extent that it is impressive.

disposable for the purpose mentioned in the previous section.

The party complained against has not directly clarified in the corresponding written the cause of the installation, beyond the brief police observation of motives You video-surveillance of the passage according to the purpose of this type of device.

After analyzing the photograph (s) presented, it is possible to specify the minimum bad orientation of the same, as they are oriented towards public space and adjacent road, making passers-by “discomfort”, so it would be advisable to reorient of it, minimizing the impact of its presence.

It is recalled that their presence does not prevent the right to tranquillity. community of neighbors in the area who may be intimidated by this type of devices, and must refrain from interference that may affect even go to fundamental rights (vgr. STS 07/11/2019 for all "disproportion measure").

The guiding criteria of the civil and administrative jurisdictions are different, as are the fundamental right to privacy and data protection personal.

Other aspects worthy of evaluation have not been outlined in the report, such as

example, a situation of social alarm or that they have been the object of complaints.

repeatedly or even that they are "processing data" in an unjustified manner.

gives.

The presumption of innocence governs without exceptions in the sanctioning system and has

to be respected in the imposition of any sanction, whether criminal or administrative

(TCo 13/1981), since the exercise of the sanctioning right in any of its

manifestations, is conditioned to the test game and to a procedure

contradictory environment in which their own positions can be defended.

Pursuant to this principle, no penalty may be imposed on the basis of the

guilt of the accused if there is no activity to prove the charge, which in the

appreciation of the authorities or bodies called to resolve, destroy this

presumption (TCo Auto 3-12-81).

IV

Based on the foregoing, it can be concluded that the operability of the

cameras, much less an illicit processing of personal data associated with

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identified or identifiable third parties, notwithstanding that the assessment of the facts

exposed could have repercussions in other branches of law, reasons all

they who advise to propose the File of the present administrative procedure, if

well with the recommendation of a minimum reorientation of the camera in question towards

cia minimum private space necessary.

However, it is warned that not meeting the requirements of this body may

be considered as an administrative infraction in accordance with the provisions of the RGPD, typified as an infringement in its article 83.5 and 83.6, being able to motivate such conducts the opening of a subsequent sanctioning administrative proceeding, given that this Agency has already expressed itself on the advisability of reorienting the camera if well as little as possible.

Therefore, in accordance with the applicable legislation, the Director of the Spanish Agency

Data Protection Regulation RESOLVES:

FIRST: ORDER the ARCHIVE of these proceedings as they are not accredited

tada the commission of any administrative infraction in the matter that occupies you.

SECOND: NOTIFY this resolution to the COMMUNITY OF OWNERS

COMMERCIAL PREMISES ***GROUP.1.

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

resents 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

Director of the Spanish Data Protection Agency

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