

□ File No.: EXP202105483

RESOLUTION OF SANCTIONING PROCEDURE

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

BACKGROUND

FIRST: On 12/03/2021, a document submitted to this Agency was entered
by the COMMUNITY OF OWNERS *** COMMUNITY.1 (hereinafter, the part
claimant), through which he makes a claim against A.A.A. with NIF ***NIF.1 (in
hereinafter, the claimed party), for a possible breach of the provisions of the
personal data protection regulations.

The reason for the claim is the installation of a security camera
video surveillance on the door of the defendant's home, located in BUILDING
BUILDING.1, STREET ***ADDRESS.1, ***LOCATION.1 (PROVINCE.1), without
have the authorization of the Board of Owners, and that would capture images of the
common zones.

Attach photographic report of the location of the camera and a copy of the Burofax
requesting the claimant to withdraw the device dated 08/26/2021.

SECOND: In accordance with article 65.4 of Organic Law 3/2018, of 5
December, Protection of Personal Data and guarantee of digital rights (in
forward LOPDGDD), on 12/10/2021 the claim was transferred to the party
claimed, so that it proceeds to its analysis and informs this Agency within the term
of one month, of the actions carried out to adapt to the foreseen requirements
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 Administrations

Public (hereinafter, LPACAP) by certified postal mail, it was "Returned to origin due to surplus (not withdrawn in office)" on 01/07/2022; reiterating the transfer by the same means on 02/11/2021 and obtaining the same result on 03/03/2022.

THIRD: On 03/03/2022, in accordance with article 65 of the LOPDGDD,

The claim presented by the complaining party was admitted for processing.

FOURTH: On 07/15/2022, the Director of the Spanish Protection Agency of Data agreed to initiate disciplinary proceedings against the claimed party, for the alleged violation of article 6.1 of the GDPR, typified in article 83.5 of the GDPR.

FIFTH: On 07/26/2022 the claimed party is notified of the aforementioned initiation agreement in accordance with the rules established in the LPACAP and after the period granted

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for the formulation of allegations, it has been verified that no allegation has been received any by the claimed party.

Article 64.2.f) of the LPACAP -provision of which the claimed party was informed in the agreement to open the procedure - establishes that if no arguments within the established term on the content of the initiation agreement, when it contains a precise pronouncement about the imputed responsibility, may be considered a resolution proposal.

In the present case, the agreement to initiate the sanctioning file determined the facts in which the accusation was specified, the infringement of the GDPR attributed to the claimed and the sanction that could be imposed. Therefore, taking into consideration that the claimed party has not made allegations to the agreement to start the file and

In accordance with the provisions of article 64.2.f) of the LPACAP, the aforementioned agreement of beginning is considered in the present case resolution proposal.

SIXTH: The agreement to initiate the procedure agreed in the third point of the part dispositive "INCORPORATING into the disciplinary file, for the purposes of evidence, the claims submitted by claimants and the information and documentation obtained by the General Sub-directorate of Data Inspection in the phase of information prior to the agreement to admit the claim for processing".

In view of all the proceedings, by the Spanish Agency for Data Protection

In this proceeding, the following are considered proven facts:

PROVEN FACTS

FIRST: Installation of a video surveillance camera on the door of the house of the claimant, located at BUILDING ***BUILDING.1, STREET ***ADDRESS.1, ***LOCALITY.1(***PROVINCE.1), without the proper authorization of the Board of owners; affecting the data of third parties who are intimidated by the same.

SECOND: He is identified as the main person in charge of the A.A.A. with NIF ***NIF.1.

THIRD: The Spanish Agency for Data Protection has notified the claimant of the agreement to open this disciplinary procedure, but has not presented allegations or evidence that contradicts the facts denounced.

FUNDAMENTALS OF LAW

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In accordance with the powers that article 58.2 of Regulation (EU) 2016/679 (General Data Protection Regulation, hereinafter GDPR), grants each control authority and as established in articles 47 and 48.1 of the Law Organic 3/2018, of December 5, Protection of Personal Data and guarantee of

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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: "Procedures

processed by the Spanish Data Protection Agency will be governed by the provisions

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

regulations dictated in its development and, insofar as they do not contradict them, with character

subsidiary, by the general rules on administrative procedures."

II

In the present case, we proceed to examine the claim dated 12/03/2021 for

through which the installation of a security camera is transferred as the main fact.

video surveillance on the door of the defendant's home, located in BUILDING

BUILDING.1, STREET ***ADDRESS.1, ***LOCATION.1 (PROVINCE.1), without

have the authorization of the Board of Owners, and that would capture images of the

common zones.

The facts exposed affect the content of article 6.1 of the GDPR,

which indicates the following:

"1. Processing will only be lawful if at least one of the following conditions is met:

nes:

a) the interested party gave his consent for the processing of his personal data

for one or more specific purposes;

b) the treatment is necessary for the execution of a contract in which the interested party

is part of or for the application at the request of the latter of pre-contractual measures;

c) the processing is necessary for compliance with a legal obligation applicable to the responsible for the treatment;

d) the processing is necessary to protect vital interests of the data subject or of another Physical person;

e) the treatment is necessary for the fulfillment of a mission carried out in the interest public or in the exercise of public powers conferred on the data controller;

f) the treatment is necessary for the satisfaction of legitimate interests pursued by the person in charge of the treatment or by a third party, provided that on said interests the interests or the fundamental rights and freedoms of the interested party do not prevail. that require the protection of personal data, particularly when the interest sado be a child

The provisions of letter f) of the first paragraph shall not apply to the treatment carried out by public authorities in the exercise of their functions.”

In this way, the party claimed to install cameras in common areas needs an agreement of the Board of residents of the property that must be reflected in the

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minutes of said meeting. In this sense, in accordance with article 17 of Law 49/1960,

of July 21, on horizontal property, for the installation of surveillance services

In a community of owners, the votes in favor of 3/5 of the total number of

owners, who must also represent at least 3/5 of the shares of

stake.

Individuals are responsible for ensuring that the installed video surveillance systems are conform to current legislation, and must be in a position to prove such extremes before the competent Authority.

Cameras installed by individuals must face their space private, avoiding the capture of a private area of third parties without just cause.

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

object of the installation and in particular, not being able to affect public spaces surroundings, adjoining buildings and vehicles other than those that access the space guarded.

Installed cameras cannot get images from third-party proprietary space and/or public space without duly accredited justified cause, nor can they affect the privacy of passers-by who move freely through the area.

It is not allowed, therefore, the placement of cameras towards the private property of neighbors with the purpose of intimidating them or affecting their private sphere without cause justified.

Nor can images be captured or recorded in spaces owned by third parties without the consent of their owners, or, where appropriate, of the people who find.

II

In accordance with the foregoing, the processing of images through a system video surveillance, to comply with current regulations, must comply with the following requirements:

1.- Individuals or legal entities, public or private, can establish a system video surveillance in order to preserve the safety of people and property, as well as its facilities.

It must be assessed whether the intended purpose can be achieved in another less

intrusive to the rights and freedoms of citizens. Personal data only

should be processed if the purpose of the processing cannot reasonably be achieved by other means, recital 39 of the GDPR.

2.- The images obtained cannot be used for a subsequent purpose

incompatible with the one that motivated the installation of the video surveillance system.

3.- The duty to inform those affected provided for in articles

12 and 13 of the GDPR, and 22 of the LOPDGDD.

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In this sense, article 22 of the LOPDGDD provides in relation to video surveillance

a “layered information” system.

The first layer must refer, at least, to the existence of the treatment

(video surveillance), the identity of the person responsible, the possibility of exercising the rights

provided for in articles 15 to 22 of the GDPR and where to obtain more information about the

processing of personal data.

This information will be contained in a device placed in a sufficiently

visible and must be provided in advance.

Second layer information should be easily available in one place

accessible to the affected person, whether it is an information sheet at a reception, cashier, etc...,

placed in a visible public space or in a web address, and must refer to the

other elements of article 13 of the GDPR.

4.- The treatment of images through the installation of camera systems or

video cameras must be lawful and comply with the principle of proportionality and the principle of

minimization of data, in the terms already indicated.

5.- The images may be kept for a maximum period of one month, except in those cases in which they must be kept to prove the commission of acts that threaten the integrity of people, property or facilities.

In this second case, they must be made available to the authority competent authority within a maximum period of 72 hours from the knowledge of the recording existence.

6.- The controller must keep a record of processing activities carried out under his responsibility in which the information to which he makes reference article 30.1 of the GDPR.

7.- The person in charge must carry out a risk analysis or, where appropriate, an evaluation of impact on data protection, to detect those derived from the implementation of the video surveillance system, assess them and, where appropriate, adopt security measures. appropriate security.

8.- When a security breach occurs that affects the processing of cameras for security purposes, whenever there is a risk to the rights and freedoms of natural persons, you must notify the AEPD within a maximum period of 72 hours.

A security breach is understood to be the destruction, loss or accidental alteration or unlawful transfer of personal data, stored or otherwise processed, or the communication or unauthorized access to said data.

9.- When the system is connected to an alarm center, it can only be installed by a qualified private security company contemplated in article 5 of Law 5/2014 on Private Security, of April 4.

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The Spanish Data Protection Agency offers through its website

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the legislation on the protection of personal data, including the

RGPD and the LOPDGDD (section "Reports and resolutions" / "regulations"),

the Guide on the use of video cameras for security and other purposes,

the Guide for compliance with the duty to inform (both available at the

section "Guides and tools").

It is also of interest, in case of carrying out low-risk data processing, the

free tool Facilitates (in the "Guides and tools" section) that, through

specific questions, allows to assess the situation of the person in charge with respect to the

processing of personal data that it carries out, and where appropriate, generate various

documents, informative and contractual clauses, as well as an annex with measures

indicative security considered minimum.

IV.

In the present case, the defendant party has not presented allegations or evidence that

contradict the facts denounced within the period given for it.

In accordance with the evidence that is available and that has not been

distorted during the disciplinary procedure, it is considered that the party

claimed has proceeded to install a video surveillance camera affecting area

common (landing and corridor of the plant), without having the necessary support for it.

These facts violate the provisions of article 6.1 of the GDPR, which implies a infringement typified in article 83.5.a) of the GDPR, which provides the following:

Violations of the following provisions will be sanctioned, in accordance with the paragraph 2, with administrative fines of maximum EUR 20,000,000 or, in the case of a company, an amount equivalent to a maximum of 4% of the total annual global business volume of the previous financial year, 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; (...)."

For mere prescription purposes, article 72.1.b) of the LOPDGDD qualifies as very serious "The processing of personal data without the concurrence of any of the conditions of legality of the treatment established in article 6 of the Regulation (EU) 2016/679; (...)"

V

The corrective powers available to the Spanish Agency for the Protection of Data, as a control authority, are established in article 58.2 of the GDPR. Between they have the power to impose an administrative fine in accordance with the article 83 of the GDPR (art. 58.2 i)), or the power to order the person responsible or processor that the processing operations comply with the

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provisions of the GDPR, where applicable, in a certain way and within a certain specified term (art. 58.2 d)).

According to the provisions of article 83.2 of the GDPR, the measure provided for in article 58.2

d) of the aforementioned Regulation is compatible with the sanction consisting of a fine administrative.

The fine imposed must be, in each individual case, effective, proportionate and dissuasive, in accordance with article 83.1 of the GDPR. In order to determine the fine administrative procedure to be imposed, the provisions of article 83.2 of the GDPR, which indicates:

"2. Administrative fines will be imposed, depending on the circumstances of each individual case, in addition to or in lieu of the measures contemplated in

Article 58, paragraph 2, letters a) to h) and j). When deciding to impose a fine administration and its amount in each individual case shall be duly taken into account:

a) the nature, seriousness and duration of the offence, taking into account the nature, scope or purpose of the processing operation in question such as the number of interested parties affected and the level of damages that have suffered;

b) intentionality or negligence in the infringement;

c) any measure taken by the controller or processor to alleviate the damages and losses suffered by the interested parties;

d) the degree of responsibility of the controller or processor, taking into account the technical or organizational measures that they have applied under of articles 25 and 32;

e) any previous infringement committed by the controller or processor;

f) the degree of cooperation with the supervisory authority in order to remedy the infringement and mitigate the possible adverse effects of the infringement;

g) the categories of personal data affected by the infringement;

h) the way in which the supervisory authority became aware of the infringement, in

particular whether the person in charge or the person in charge notified the infringement and, if so, in what extent;

i) when the measures indicated in article 58, paragraph 2, have been ordered previously against the person in charge or the person in charge in relation to the same matter, compliance with said measures;

j) adherence to codes of conduct under article 40 or to mechanisms of certification approved in accordance with article 42,

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k) any other aggravating or mitigating factor applicable to the circumstances of the case, such as financial benefits obtained or losses avoided, directly or indirectly, through the infringement”.

For its part, in relation to letter k) of article 83.2 of the GDPR, the LOPDGDD, in its article 76, "Sanctions and corrective measures", provides:

"1. The sanctions provided for in sections 4, 5 and 6 of article 83 of the Regulation (UE) 2016/679 will be applied taking into account the graduation criteria established in section 2 of said article.

2. In accordance with the provisions of article 83.2.k) of Regulation (EU) 2016/679 may also be taken into account:

a) The continuing nature of the offence.

b) The link between the activity of the offender and the performance of data processing. personal information.

c) The benefits obtained as a consequence of the commission of the infraction.

- d) The possibility that the conduct of the affected party could have led to the commission of the offence.
- e) The existence of a merger by absorption process subsequent to the commission of the violation, which cannot be attributed to the absorbing entity.
- f) The affectation of the rights of minors.
- g) Have, when it is not mandatory, a data protection delegate.
- h) Submission by the person responsible or in charge, on a voluntary basis, to alternative conflict resolution mechanisms, in those cases in which there are controversies between those and any interested party”.

The balance of the circumstances contemplated, with respect to the infraction committed by violating the provisions of its article 13, it allows setting a fine of €300 (three hundred euro).

Therefore, in accordance with the applicable legislation and assessed the criteria of graduation of sanctions whose existence has been accredited, the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: IMPOSE A.A.A., with NIF ***NIF.1, for a violation of article 6.1 of the GDPR, typified in article 83.5 of the GDPR, a fine of €300 (three hundred euro).

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SECOND: TO ORDER A.A.A., with NIF ***NIF.1 that, by virtue of article 58.2.d) of the GDPR, within ten business days, proceed to withdraw the device in issue by providing documentary evidence with date and time that proves such point.

THIRD: NOTIFY this resolution to A.A.A., with NIF ***NIF.1.

FOURTH: Warn the sanctioned party that he must enforce the sanction imposed

Once this resolution is enforceable, in accordance with the provisions of Article

art. 98.1.b) of Law 39/2015, of October 1, on Administrative Procedure

Common of 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, by means of its income, 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, open in the name of the Agency

Spanish Data Protection Agency at the bank CAIXABANK, S.A.. In the event

Otherwise, it will proceed to its collection in the executive period.

Once the notification has been received and once executed, if the execution date 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 or immediately following business month, and if

between the 16th and the last day of each month, both inclusive, the payment term

It will be until the 5th of the second following or immediately following business month.

In accordance with the provisions of article 50 of the LOPDGDD, this

Resolution will be made public once the interested parties have been notified.

Against this resolution, which puts an end to the administrative process 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 reversal before the

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

count 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 for in article 46.1 of the referred Law.

Finally, it is noted 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 through writing addressed to the Spanish Data Protection Agency, presenting it through of the Electronic Registry of the Agency [<https://sedeagpd.gob.es/sede-electronica-web/>], or through any of the other registries 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

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contentious-administrative proceedings within a period of two months from the day following the Notification of this resolution would terminate the precautionary suspension.

Mar Spain Marti

Director of the Spanish Data Protection Agency

938-120722

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