

□ File No.: EXP202101893

RESOLUTION OF PUNISHMENT PROCEDURE

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

BACKGROUND

FIRST: The entity EXPLOTACIONES TURÍSTICAS A.A.A. (*hereinafter, the part
claimant) on August 27, 2021 filed a claim with the Agency
Spanish Data Protection. The claim is directed against C. P. B.B.B. with
NIF ***NIF.1 (hereinafter, the claimed part). The reasons on which the
claim are as follows:

“I denounce the installation and bad manipulation of the images by the
community, they are going to claim that we are uncivil people when we are the
tourist guide of the tourist complex since what they want is that we cannot
exercise our legal activity in said complex and we do not know the name of the company
of said cameras and where the control of the cameras is in a bungalow of a
owner who does not even belong to the board of said community. I hope solution
urgent tion since there are cameras that overlook the street, the community pool and areas
private” (folio nº 1).

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 09/10/21, 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.

No response has been received to this letter, nor has any clarification been made to this

Agency on the facts described.

THIRD: On November 17, 2021, the Director of the Spanish Agency of Data Protection agreed to admit for processing the claim presented by the party claimant.

FOURTH: On January 5, 2022, the Director of the Spanish Agency for Data Protection agreed to initiate a sanctioning procedure against the claimed party, for the alleged infringement of Article 13 of the RGPD, typified in Article 83.5 of the GDPR.

FIFTH: On 01/20/22 a written statement is received from the respondent stating the following:

“At the Ordinary Meeting of February 23, 2019, the owners were informed installation of the cameras, of the common spaces that filter

of

the

rivers

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ma, and the adequacy through mask filters of the private areas that can they would stay in the recording area. (Annex III). The facility was established by 8 cameras distributed in the two entrances to the complex, corridors, swimming pool and solarium, facilities and machinery rooms, pool machinery room, na, reception (out of use), gardens and non-passable roofs and cistern.

Likewise, informative posters were placed in a sufficiently visible place, so

all in the (...)

In this sense we have to show our discrepancy because said photograph

It is NOT included in the Agreement to Start the Sanctioning Procedure (...) what pro-

leads to a defenselessness to the Community of owners (...)

As has already been explained, the cameras exclusively collect the accesses in

the circumstances allowed by the LPH and provided with the respective computerized posters.

vos, corridors and transit areas, as well as the pool where it is also placed

the corresponding informative poster.

The complainant is missing the truth, since the video surveillance system is made up of

baby

In addition to the cameras, two recorders that are located in the room

to the facilities, as well as in the reception area (closed and in disuse). A.M-

Both locals are locked with a key that is exclusively available to the Admi-

nistrator the President of the Community. Not being true, therefore, their "du-

you give" about it.

For all of the above REQUESTS: The allegations presented are accepted

and proceed to the closing/Filing of the File that begins (...)"

In view of everything that has been done, by the Spanish Data Protection Agency

In this proceeding, the following are considered proven facts:

PROVEN FACTS

First. The facts bring cause of the claim presented in this Agency by

through which certain "irregularities" are transferred in the video surveillance system

installed, as well as the absence of poster(s) duly informed.

Second. The entity Community Pro-

owners B.B.B. which denies the exposed facts.

Third. There is evidence of the presence of various informative posters indicating

that it is a video-monitored area adapted to the regulations in force.

Evidence is provided (Annex IV) that confirms the presence of various posters throughout the complex informing "Video surveillance area" with the indication of the responsible and the way to exercise the rights within the framework of the current RGPD.

Fourth. The approval of the installation of the system by the Community is accredited. ownership of owners providing a copy of the Ordinary Act where such aspect is expressed. to (Annex II).

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FOUNDATIONS OF LAW

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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

Before going into the merits of the matter, the respondent files a Complaint for independence by not transferring the evidence provided by the claimant.

Remember that article 53 Law 39/2015 (October 1) provides: 1. In addition to the rest of the rights provided for in this Law, those interested in an administrative procedure treatment have the following rights:

Likewise, they will also have the right to access and obtain a copy of the documents contained in the aforementioned procedures”

Therefore, any person who is a party to an administrative procedure has right to consult the status of the procedure and obtain a copy of any documents all the file exists.

The right is not exercised before this Agency in a timely manner and therefore no defenselessness, nor any reproach can be exercised before it, being a right of the interested party in the procedure, which he has not exercised, so it is appropriate dismiss the complaint filed.

III

In the present case, the claim dated 08/27/21 is examined by me- gave from which the following is transferred as the main fact:

“presence of a video surveillance camera system that lacks information in legal form” (folio nº1).

The complaining party provides documentary evidence (Annex I Photograph) that accredits the presence of various cameras, as well as the presence of an informative poster tive although crossed out in its informative sections.

Reporting on video surveillance according to RGPD is an obligation contained in our legislative framework -art. 13 GDPR-.

In accordance with the aforementioned article, the person responsible for the “processing” provides you with You will see all the information listed below:

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a) the identity and contact details of the person in charge and, where appropriate, of their representative. tant;

b) the contact details of the data protection delegate, if any;

c) the purposes of the treatment to which the personal data is destined and the legal basis of the treatment; (...).

To adapt to current regulations, the AEPD published the new mandatory poster
river that must be located in spaces that are subject to video surveillance.

Article 22 section 4 of the LOPDGDD (LO 3/2018, December 5) provides:

“The duty of information provided for in article 12 of the Regulation (EU)
2016/679 will be understood to be fulfilled by placing a computerized device
in a sufficiently visible place identifying, at least, the existence of the treatment
to, the identity of the person in charge and the possibility of exercising the rights foreseen in
Articles 15 to 22 of Regulation (EU) 2016/679. It may also be included in the
informative device a connection code or internet address to this information
tion”.

IV

The party claimed responds to the Initiation Agreement of this body on 01/20/22
denying the facts object of the claim.

Confirms that the installation of the camera system was approved at the Ordinary Meeting.
ria of the Community on 12/16/2006, being ratified on the date
04/07/18 unanimously by the owners of the property.

There is evidence of the presence of an informative poster(s) in the visible information area.
control that it is a video-monitored area, adapted to the regulations in force
(GDPR).

Throughout the complex there are various signs informing that it is
a video-monitored area, declining the accusation of the claimant party before the evidence
has presented by the claimed party in the exercise of his right to defense.

When installing security cameras in neighboring communities, it is necessary

that the Community of Neighbors has the favorable vote of 3/5 of the total

ownership of the owners who in turn represent 3/5 of the share quotas.

cipation as developed in article 17.1 of the Horizontal Property Law.

Provided screen impression (s) of the same, no uptake of

public space, limiting the collection to the area of the complex according to the purpose

protection of this type of system.

The camera that obtains images of the pool area is at a distance

enough to control the space, but not invade the privacy of the users of the

itself, not being infrequent the control of said area for reasons of security or bad

use of the complex facilities, so the measure is considered in any case

provided without further evaluation elements in this regard.

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Regarding the purpose of the images by the claimed party, it is put forward

manifested certain "uncivic" conduct of the complaining party, being admissible that it be

use the images of the system as a means of proof in their case to prove the

authorship of the facts that are recorded with them, deciding the validity of the

same in the appropriate judicial instances.

It is not up to this Agency to enter into matters of greater complexity

civil law, such as some of those exposed by the claimant, which must, where appropriate, address

be examined in the appropriate judicial instances if deemed necessary.

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 game of the test 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).

v

In accordance with the allegations set forth and the extensive evidence provided by the claimed, no irregularity is found in the system that is the subject of the claim, reason why it is appropriate to order the Archive of this procedure.

The importance of the rights at stake in the matter that concerns us is recalled. occupies, and must avoid instrumentalizing this Agency for "personal" matters far from the framework of data protection or, where appropriate, prosecutable in the timely court cases.

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: ORDER the FILE of this procedure as there is no evidence gives the commission of any administrative infraction in the matter that concerns us.

SECOND: NOTIFY this resolution to C. P. B.B.B..

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

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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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