

□ Procedure No.: PS/00156/2020

## RESOLUTION OF PUNISHMENT PROCEDURE

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

### FACTS

FIRST: A.A.A. (\*hereinafter, the claimant) dated January 3, 2020

filed a claim with the Spanish Data Protection Agency. The

claim is directed against COMMUNITY OF OWNERS \*\*\*ADDRESS.1 with

CIF H11257912 (hereinafter, the claimed).

The reasons on which the claim is based are the presence of a

camera oriented towards the entrance door of the building located at C/ \*\*\*ADDRESS.1

(\*\*\*LOCATION.1), "knowing that the images obtained could

be illegal."

Together with the claim, it provides documentary evidence (Doc. No. 2) that proves the

presence of the device without any information sign at the entrance of the property.

SECOND: On 02/17/20, the claim was TRANSFERRED to the

denounced, so that he could express what he deemed appropriate in law, without

any manifestation in this regard has occurred.

THIRD: On July 22, 2020, 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.

FOURTH: On 10/14/20 collaboration is requested from the Security Forces and Corps

State Security (\*\*LOCATION.1), to verify the presence of the

camera and the legality of the system.

FIFTH: On 02/08/21, the collaboration of the Forces and State Security Bodies, to verify the presence of the camera and the legality of the system, carrying out the appropriate inquiries.

SIXTH: On 03/01/21 a reply was received from the Provincial Police Station (\*\*\*) LOCATION.1) transferring Official Letter in which the following is reported:

"By virtue of the functions attributed to this territorial security unit, Private entity referred to control and inspection actions (articles 53 and 54 of the Law 5 / 14 of April 4 of Private Security). the acting agents proceed to turn vision ta. Effectively verifying the existence of a video-surveillance camera located gives in the place described. focusing on the public access portal to the building. Check- Likewise, the absence of the information poster of the A.E.P.D. which indicates the response C/ Jorge Juan, 6

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treatment, all of which is recorded in the inspection report issued to the effect"

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

In this proceeding, the following are considered proven facts:

First. On 03/01/20 a claim is received from the epigrapher. The reasons in which

The claim is based on the presence of a camera oriented towards the entrance door of the building located at C/ \*\*\*DIRECTORY.1 (\*\*\*) LOCATION.1), "Knowing that the images obtained could be illegal."

Together with the claim, it provides documentary evidence (Doc. No. 2) that proves the presence of the device without any information sign at the entrance of the property.

Second. It is accredited as the main person in charge -Community Owners C/

\*\*\*ADDRESS.1—Represented by Don B.B.B..

Third. There is evidence of the absence of an approved information poster in the viewing area.

ble reporting that it is a video-monitored area.

Fourth. The presence of a recording device for oriented images is accredited.

ted towards a public sidewalk area, the video surveillance camera being poorly oriented.

The camera, as verified by the acting force, is operational, proceeding to the

"processing of personal data".

Fifth. There is no evidence of any statement by the person responsible for the aforementioned property, nor

no measure or explanation has been adopted for this purpose.

## FOUNDATIONS OF LAW

Yo

By virtue of the powers that article 58.2 of the RGPD recognizes to each authori-

control, and according to the provisions of articles 47 and 48 of the LOPDGDD, the Di-

rector of the Spanish Agency for Data Protection is competent to initiate and

to solve this procedure.

II

In the present case, we proceed to examine the claim dated 03/01/20

by means of which the following is transferred as the main fact:

“presence of a camera oriented towards the entrance door of the building located

in C/ \*\*\*DIRIMIENTO.1, “knowing that the images obtained

could be illegal.

The physical image of a person, in accordance with article 4.1 of the RGPD, is a

personnel and their protection, therefore, is the subject of said Regulation. In article 4.2

of the RGPD defines the concept of "treatment" of personal data.

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The exposed facts may suppose a violation of art. 5.1 c) GDPR,

“Personal data will be: c) adequate, pertinent and limited to what is necessary

ary in relation to the purposes for which they are processed (“data minimization”)”

It should be remembered that individuals are responsible for ensuring that the systems

most installed comply with current legislation.

The installation of this type of device is remembered must have the pre-

ceptive informative poster, indicating the purposes and responsible for the treatment in its case

of personal data.

Article 22 section 4 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 an informative device

in a sufficiently visible place identifying, at least, the existence of the treatment,

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

Articles 15 to 22 of Regulation (EU) 2016/679. It may also be included in the

informative site a connection code or internet address to this information.

In any case, the data controller must keep available to

those affected the information referred to in the aforementioned regulation”

In any case, the cameras should preferably be oriented towards the

private space, avoiding intimidating neighboring neighbors with this type of device,

as well as control their transit areas without just cause.

With this type of device, the movements of the remaining ve-

Children who have not given their consent for the surveillance of transit areas

common.

According to the Horizontal Property Law (LPH), it is possible to install or pressure of concierge services, concierge, surveillance or other common services of general interest, as long as the necessary quorum is achieved. In this case, it would be necessary 3/5 parts of the total owners who, in turn, represent 3/5 of participation fees.

III

In accordance with the evidence available in this proceeding, sanctioning procedure it is considered that a video-surveillance device has been installed on the outside of the property located at C/ \*\*\*DIRIMIENTO.1.

According to an Official Letter dated 02/19/21, it is verified by the patrol displaced to the place of the facts the following:

“By virtue of the functions attributed to this territorial security unit,

Private entity referred to control and inspection actions (articles 53 and 54 of the Law

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5 / 14 of April 4 of Private Security). the acting agents proceed to turn vision

ta. Effectively verifying the existence of a video-surveillance camera located

gives in the place described, focusing on the public road access portal to the building. Check-

Likewise, the absence of the information poster of the A.E.P.D. which indicates the res-

ponsible for the treatment, all of which is recorded in the inspection report

tada to the effect”

The known facts constitute an infraction, attributable to the claimant.

mado, for violation of the content of art. 5.1 c) RGPD, previously transcribed.

#### IV

Article 12.1 of the RGPD states: "1. The data controller will take the appropriate measures to provide the interested party with all the information indicated in the articles 13 and 14" The RGPD lists the categories of information that must be provided to an interested party in relation to the processing of their personal data in cases where those collected from it (article 13) or obtained from another source (article 14).

12.7 indicates: "The information that must be provided to the interested parties under of articles 13 and 14 may be transmitted in combination with standardized icons that allow to provide in an easily visible, intelligible and clearly legible way an adequate overview of the planned treatment"

So that not all the information is contained in the data processing notice, cough, it can be done in layers. The design and layout of the first layer of the privacy statement or notice must be such that the interested party has a vision of the information available on the processing of your personal data, where and how you can find such detailed information within the layers of the declaration. tion or privacy notice. It is recommended that the first layer or modality inserted in the video surveillance area warning icon contains the most important information the details of the purpose of the treatment, the identity of the person in charge and a Description of the rights of the interested party, legal basis of the treatment and identification of the data controller and contact form. The importance of providing this information in advance arises, in particular, from recital 39 of the GDPR, not being necessary to specify the precise location of the surveillance equipment; without em- However, the context of the surveillance should be made clear.

Second layer information should be readily available in one place.

accessible to the interested party, be it an information sheet at a reception, cashier, etc. or co-

located in a visible public space, or refer to a web address with the rest of element(s) of article 13 of the GDPR.

According to the data contained in the complaint (the photograph provided by the claimant and attached Police Official Letter), there has been evidence that in the Community property of owners denounced, there is no record of the aforementioned sign that must indicate the responsible for data processing, the venue in which to exercise the rights, and the rest of information can refer to the query in the Community itself or by other means.

v

The art. 83.5 RGPD provides the following: "Infringements of the provisions

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following will be sanctioned, in accordance with section 2, with administrative fines

EUR 20,000,000 maximum or, in the case of a company, an equivalent amount.

equivalent to a maximum of 4% of the total global annual turnover of the fiscal year

previous financial statement, 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;

b) the rights of the interested parties according to articles 12 to 22;

When motivating the sanction, the following are taken into account:

-That the reported system is oriented towards the main entrance door

of housing, without just cause, causing a situation of discomfort in the neighborhood.

owners of the property, who are affected in their right to personal image (data),

when there is a control of the entrances/exits of the property, (art. 83.2 a) RGPD).

-the intentionality or negligence of the infringement (art. 83.2 b RGPD).

In accordance with the foregoing, a sanction encrypted in the amount of €1,500 for each of the infractions, (three thousand euros for both infractions), amount located in the lowest scale for this type of infractions.

The person in charge of the Community of owners must explain the reason of the installation, as well as that it conforms to current legislation, providing all the necessary documentation for this purpose (eg photograph of the poster, Minutes of the Meeting of owners, etc.).

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

FIRST: IMPOSE ON THE COMMUNITY OF OWNERS STREET \*\*\*ADDRESS.1, with CIF H11257912, for an infringement of Article 5.1.c) of the RGPD, typified in the Article 83.5 a) of the RGPD, a penalty of €1,500.

IMPOSE on

SECOND:

COMMUNITY OF OWNERS STREET

\*\*\* ADDRESS.1, with CIF H11257912, for a violation of Article 12 of the RGPD, typified in Article 83.5 b) of the RGPD, a penalty of €1,500.

THIRD: NOTIFY this resolution to the COMMUNITY OF OWNERS

\*\*\* ADDRESS.1 and REPORT the result of the actions to the complainant

A.A.A.

FOURTH: Warn the sanctioned party that he must make the imposed sanction effective once Once this resolution is enforceable, in accordance with the provisions of the art. 98.1.b) of Law 39/2015, of October 1, of the Administrative Procedure Co-



of the Public Administrations (hereinafter LPACAP), within the term of payment

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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, through its entry, 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, opened in the name of the Spanish Agency

Department of Data Protection at the banking entity CAIXABANK, S.A.. In case of

Otherwise, it will be collected during the executive period.

Received the notification and once executed, if the date of execution is

between the 1st and 15th of each month, both inclusive, the term to make the payment

will be until the 20th day of the following month or immediately after, and if

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

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

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.

Finally, it is pointed out 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 interested party

do states its intention to file a contentious-administrative appeal. Of being

In this case, the interested party must formally communicate this fact in writing

addressed to the Spanish Agency for Data Protection, presenting it through the Re-

Electronic registry of the Agency [<https://sedeagpd.gob.es/sede-electronica-web/>], or to

through any of the other registers provided for in art. 16.4 of the aforementioned Law

39/2015, of October 1. You must also transfer to the Agency the documentation

that proves the effective filing of the contentious-administrative appeal. If the

Agency was not aware of the filing of the contentious-administrative appeal

tive within two months from the day following the notification of this

resolution, would end the precautionary suspension.

Sea Spain Marti

Director of the Spanish Data Protection Agency

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