

□ Procedure No.: PS/00151/2020

RESOLUTION OF PUNISHMENT PROCEDURE

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

BACKGROUND

FIRST: FIGUERES CITY COUNCIL URBAN GUARD (hereinafter,
the claimant) on October 2, 2019 filed a claim with the Agency

Spanish Data Protection. The claim is directed against A.A.A. with NIF

***NIF.1 (hereinafter, the claimed one). The reasons on which the claim is based, in its
Spanish translation, are the following:

“[...] On July 26, 2019 at 6:00 p.m., the agents of the Urban Guard of

Figueres with ***TIP.1 and ***TIP.2 in non-uniformed service go to the

*** ADDRESS.1 to check what activity is carried out in this property due to

Complaints from various residents of the area regarding the constant entry and exit of
different people and noises that disturb your rest.

Agents identify three people residing on the first floor for rent:

a) AAA who calls himself B.B.B. [...]

The agents warned that both at the entrance door of the property on the
interior as in each door of the 1st, 2nd and 3rd floors were cameras of
video recording in operation. There was no information poster [...].

[...]

[...] It is known that the property of the second and third floor is in the name of. A.A.A. [...].

On 09/17/2019 [...] Sergeant ***TIP.3 and Agent ***TIP.4 went to the
property and verified that Mr. A.A.A. lived on the first floor for rent. Y

They confirmed that the second and third floors were rented for tourists

[...].

[...]

Agents ***TIP.3 and ***TIP.4 in this inspection verified that indeed

there was a security camera running just entering the door of the

building and another on the doors of the 1st, 2nd and 3rd floors.

When A.A.A. was questioned, she confirmed to the agents that she had a video recorder in her

domicile and that he had them installed for security due to his car rental activity.

bedrooms. [...]. There is also no authorization from the community of owners

in a meeting agreement that would allow this person to manage this system of

security.

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2/10

Having seen the facts, it can be seen that these 4 cameras have recorded data from

personal character (one or various elements of physical, physiological identity)

[...] and have been incorporated into some type of computer file of a video recorder that

manages A.A.A. as are the faces of various identified people as well as of

the 4 acting agents [...].”

Along with the claim, provide the following documents:

1. Simple note from the property registry of the three floors that make up the property.
2. Contract model used by the person in charge for the rental of the 2nd and 3rd floors.
3. Photographs of the exterior of the property and of the 4 cameras installed inside the east (entrance, 1st, 2nd and 3rd floors).

4. Contract model used by the person claimed for the tourist rental.

SECOND: Prior to admitting this claim for processing, the

Subdirector General for Data Inspection sent the respondent a request for

information on November 4, 2019, which was notified on November 12,

2019. In the absence of a response, the request for information was reiterated on the 17th of

February 2020, whose notification took place on February 27, 2020. No information has been

received reply

THIRD: The Director of the Spanish Protection Agency agreed to admit

Process the claim on June 1, 2020.

FOURTH: On November 3, 2020, the Director of the Spanish Agency for

Data Protection agreed to initiate a sanctioning procedure against the claimant, for the

alleged infringements of articles 5.1.c) and 13 of Regulation (EU) 2016/679

(General Data Protection Regulation, hereinafter RGPD), typified in the

article 83.5 of the same norm.

FIFTH: Notification of the initiation agreement on November 13, 2020, the claimed

has not submitted a brief of allegations, so what is stated in the

Article 64 of Law 39/2015, of October 1, on Administrative Procedure

Common of the Public Administrations, which in its section f) establishes that in case

of not making allegations within the stipulated period on the content of the resolution of

initiation, it may be considered a resolution proposal when it contains a

precise pronouncement about the imputed responsibility, for which reason

to issue resolution.

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

In this proceeding, the following are considered proven facts:

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3/10

FACTS

FIRST: In accordance with the Report of complaint filed by the Guàrdia Urbana de Figueres on September 17, 2019 and the attached photographic report, the claimed has installed a video surveillance system in the property located in

*** ADDRESS.1 composed of 4 cameras located in the portal and 1st, 2nd and 3rd floors.

1. The camera located in the portal is installed on top of a

lateral wall focusing on the access door to the building.

2. The camera located on the first floor is installed on a wall of the landing.

3. The second floor chamber is located above the door.

4. No photograph of the camera installed on the third floor is attached. According to report, it would be placed above the door as well.

SECOND: There is no authorization from the community of owners for the installation of the system and it does not have an information poster.

THIRD: The respondent resides as a tenant on the 1st floor and in accordance with the simple notes from the Property Registry attached to the complaint, is the owner of the flats located on the 2nd and 3rd floors of the building.

FOURTH: The respondent develops an economic activity consisting of renting of the 2nd and 3rd floors of the building as tourist accommodation.

FIFTH: The defendant states to the agents that he has installed the cameras for security reasons related to your room rental activity and that

You have a VCR in your home.

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 as established in arts. 47 and 48.1 of the Organic Law 3/2018, of 5 December, Protection of Personal Data and guarantee of digital rights (hereinafter, LOPDGDD), the Director of the Spanish Agency for Data Protection is competent to resolve this procedure.

II

The defendant is imputed, on the one hand, the commission of an infraction for violation of article 5.1.c) of the RGPD that the personal data will be "adequate, relevant and limited to what is necessary in relation to the purposes for which they are processed ("data minimization")."

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4/10

Likewise, the defendant is charged with the commission of another infraction for violation of the article 13 of the RGPD, which establishes that:

"1. When personal data relating to him is obtained from an interested party, the responsible for the treatment, at the time these are obtained, will provide all the information indicated below:

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

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;

d) when the treatment is based on article 6, paragraph 1, letter f), the interests

legitimate of the person in charge or of a third party;

e) the recipients or the categories of recipients of the personal data, in their

case;

f) where appropriate, the intention of the controller to transfer personal data to a third party

country or international organization and the existence or absence of a decision to

adequacy of the Commission, or, in the case of transfers indicated in the

Articles 46 or 47 or Article 49, paragraph 1, second paragraph, reference to the

adequate or appropriate warranties and the means to obtain a copy of these or

to the fact that they have been borrowed.

2. In addition to the information mentioned in section 1, the person responsible for the

treatment will facilitate the interested party, at the moment in which the data is obtained

personal, the following information necessary to guarantee data processing

fair and transparent

a) the period during which the personal data will be kept or, when it is not

possible, the criteria used to determine this period;

b) the existence of the right to request from the data controller access to the

personal data relating to the interested party, and its rectification or deletion, or the limitation

of its treatment, or to oppose the treatment, as well as the right to portability

of the data;

c) when the treatment is based on article 6, paragraph 1, letter a), or article

9, paragraph 2, letter a), the existence of the right to withdraw consent in

any time, without affecting the legality of the treatment based on the

consent prior to its withdrawal;

d) the right to file a claim with a supervisory authority;

e) if the communication of personal data is a legal or contractual requirement, or a

necessary requirement to sign a contract, and if the interested party is obliged to provide

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5/10

personal data and is informed of the possible consequences of not provide such data;

f) the existence of automated decisions, including profiling, to which referred to in article 22, sections 1 and 4, and, at least in such cases, information about applied logic, as well as the importance and consequences provisions of said treatment for the interested party.

3. When the controller plans the further processing of data

personal data for a purpose other than that for which they were collected, you will provide the interested party, prior to such further processing, information on that other purpose and any additional information relevant under paragraph 2.

4. The provisions of sections 1, 2 and 3 shall not apply when and in the to the extent that the interested party already has the information.”

The aforementioned infractions are typified in article 83.5 of the RGPD, which provides the following:

“The infractions of the following dispositions will be sanctioned, in accordance with the paragraph 2, with administrative fines of a maximum of EUR 20,000,000 or, in the case of a company, an amount equivalent to a maximum of 4% of the global total annual turnover of the previous financial year, opting for the largest 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 pursuant to articles 12 to 22 [...]"

For the purposes of the limitation period for infractions, both infractions are considered very serious and prescribed after three years, in accordance with article 72.1 of the LOPDGDD, which establishes that:

"Based on the provisions of article 83.5 of Regulation (EU) 2016/679, considered very serious and will prescribe after three years the infractions that suppose a substantial violation of the articles mentioned therein and, in particular, the following:

- a) The processing of personal data violating the principles and guarantees established in article 5 of Regulation (EU) 2016/679. [...]
- h) The omission of the duty to inform the affected party about the processing of their data personal in accordance with the provisions of articles 13 and 14 of the Regulation (EU) 2016/679 and 12 of this Organic Law. [...]"

III

Article 22 of the LOPDGDD, regarding "Processing for video surveillance purposes"

establishes in its section 1 that: "The natural or legal persons, public or private,

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6/10

may carry out image processing through camera systems or

video cameras in order to preserve the safety of people and property,

as well as its facilities. This treatment, which is legitimized in the cause of

fulfillment of a mission public interest public interest included in the article

6.1.e) of the RGPD, you must comply with the principles set forth in article 5 of the mentioned European standard.

One of these principles is data minimization (article 5.1.c), which establishes the need for the data processed to be the minimum necessary to carry out the purpose pursued by the person in charge. In this way, the cameras installed may only capture images of public thoroughfares to the extent that they are essential and will avoid affecting the legal sphere of third-party rights people without just cause, so it will not be possible to obtain images of spaces public or areas of private use of third parties without the concurrence of the aforementioned just cause.

On the other hand, individuals who use this type of device are responsible that these comply with current legislation, and must comply, when the property is under the regime of community of owners, with the requirements established in Law 49/1960, of July 21, on horizontal property (LPH). A) Yes, The installation of a video surveillance system by an individual will require authorization of the board of the community of owners both when its location in a common area as when, even installed in an area of use exclusive, is oriented to surrounding common areas and captures —respecting in any case the principle of data minimization—tangentially common areas.

As regards the joint assessment of factual elements in the sanctioning procedure, it is necessary to point out in advance that, according to with article 77.5 of the LPACAP, “Documents formalized by officials to which the condition of authority is recognized and in which, observing the corresponding legal requirements, the facts verified by those they will test them unless the contrary is proven”. Therefore, not having presented the claimed no evidence to the contrary, must be fully understood

proven, for the purposes of this proceeding, the facts found and documented by the agents of the Guàrdia Urbana de Figueres in their complaint report of September 17, 2019.

Taking into account the foregoing, the proven facts show that the claimed has installed a video surveillance system - alleging reasons of related to the tourist accommodation business that it runs— in areas of the building, such as the portal and the landings of the floors. the system like this installed violates the principle of data minimization because the cameras in operation capture areas that exceed those that would be covered by the mentioned end of security. The fact that some real estate of the building are dedicated to tourist rental does not legitimize the capture of common areas, unless by agreement of the board of the community of owners the installation of a video surveillance system for the purpose of guaranteeing the security of the building.

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IV

7/10

The RGPD establishes as another of its fundamental principles that of transparency in relationship with stakeholders. As one of its manifestations, article 13 of the RGPD—in compliance with the duty of information contained in the preceding article 12 of the same legal text - regulates the information that must be provided when personal data is obtained from the interested party, a situation that occurs in the assumptions in which images are captured by a video surveillance system. In this

sense, article 22.4 of the LOPDGDD establishes that "The duty of information provided for in article 12 of Regulation (EU) 2016/679 shall be deemed 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 articles 15 to 22 of the Regulation (EU) 2016/679. A code of identification may also be included in the informative device. connection or internet address to this information".

Regarding this issue, the facts proven in this proceeding also allow to prove that the claimed, as responsible for the treatment carried out through a video surveillance system, has breached the aforementioned duty to information, as there is no information poster informing those affected that data processing of your image is being carried out, the identity of the responsible or the possibility of exercising their rights in this regard.

v

The corrective powers available to the Spanish Agency for the Protection of Data, as a control authority, is established in article 58.2 of the RGPD. Among them they have the power to sanction with a warning -article 58.2 b)-, the power to impose an administrative fine in accordance with article 83 of the RGPD -article 58.2 i)-, or the power to order the controller or processor that the treatment operations comply with the provisions of the RGPD, when appropriate, in a certain way and within a specified period -article 58. 2 d)-.

According to the provisions of article 83.2 of the RGPD, the measure provided for in article 58.2 d) of the aforementioned Regulation is compatible with the sanction consisting of a fine administrative.

SAW

In accordance with the provisions of the RGPD in its art. 83.2, when deciding to impose a administrative fine and its amount in each individual case will be taken into account aggravating and mitigating factors that are listed in the aforementioned article, as well as any other that may be applicable to the circumstances of the case.

In order to set the sanction to be imposed on the defendant, it is considered as concurrent the aggravating circumstance of intentionality or negligence in the infringement (article 83.2.b) of the RGPD), since the claimed party has not shown the minimum diligence required to the owner of a business in compliance with the applicable regulations in matter of data protection.

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8/10

Likewise, the extenuating circumstance that the defendant is a Physical person.

Based on the foregoing, it is appropriate to impose a fine of two thousand euros (€2,000.00) for the infringement of article 5.1.c) of the RGPD and one thousand euros (€1,000.00) for the infringement of the article 13 of the RGPD, resulting in a total of three thousand euros (€3,000.00).

On the other hand, in accordance with the provisions of the aforementioned article 58.2 d) of the RGPD, according to which each control authority may "order the person in charge or in charge of the treatment that the treatment operations comply with the provisions of the this Regulation, where appropriate, in a certain way and within a specified period [...]", the person in charge must prove, within a period of (1) month, the following ends:

☐ Having proceeded to remove the camera located in the portal of the building.

☐ Having proceeded to remove the cameras located on the 1st, 2nd and 3rd floors of the property or its reorientation towards private areas.

☐ In the event that the installation of a camera that complies with the principle of data minimization, having proceeded to place the device informative in the video-monitored areas or to complete the information offered in the itself (it must be identified, at least, the existence of a treatment, the identity of the responsible and the possibility of exercising the rights provided for in said precepts), locating this device in a sufficiently visible place. Also, you must prove which maintains at the disposal of those affected all information referred to in the GDPR.

It is warned that not meeting the requirements of this organization may be considered as an administrative offense in accordance with the provisions of the RGD, typified as an infraction in its article 83.5 and 83.6, being able to motivate such conduct the opening of a subsequent sanctioning administrative proceeding.

Therefore, in accordance with the applicable legislation and having assessed the criteria for graduation of the 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 infringement of article 5.1.c) of the RGD, typified in article 83.5 of the aforementioned regulation, a fine of TWO THOUSAND EUROS (€2,000.00).

☐ For an infringement of article 13 of the RGD, typified in article 83.5 of the aforementioned rule, a fine of ONE THOUSAND EUROS (€1,000.00)

The total of the fines amounts to THREE THOUSAND EUROS (€3,000.00)

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SECOND: ORDER to A.A.A., with NIF ***NIF.1, that certifies, within the maximum term

ONE MONTH from the notification of this resolution, the following extremes:

- ☐ Having proceeded to remove the camera located in the portal of the building.
- ☐ Having proceeded to remove the cameras located on the 1st, 2nd and 3rd floors of the property or its reorientation towards private areas.
- ☐ In the event that the installation of a camera that complies with the principle of data minimization, having proceeded to place the device informative in the video-monitored areas or to complete the information offered in the itself (it must be identified, at least, the existence of a treatment, the identity of the responsible and the possibility of exercising the rights provided for in said precepts), locating this device in a sufficiently visible place. Also, you must prove which maintains at the disposal of those affected all information referred to in the GDPR.

THIRD: NOTIFY this resolution to A.A.A. and inform the claimant.

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, on Administrative Procedure

Common 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, 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 on behalf of the Agency

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

Otherwise, it will be collected in 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

voluntary 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

Interested parties may optionally file an appeal for reconsideration before the

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

counting 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

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10/10

Contentious-administrative jurisdiction, within a period of two months from the

day following the notification of this act, as provided 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

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 by writing addressed to the Spanish Agency for Data Protection, presenting it through Electronic Register of the Agency [<https://sedeagpd.gob.es/sede-electronica-web/>], or 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 proving the effective filing of the contentious appeal-administrative. If the Agency was not aware of the filing of the appeal contentious-administrative within a period of 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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