

□ File No.: EXP202203860

RESOLUTION OF SANCTIONING PROCEDURE

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

to the following

BACKGROUND

FIRST: A.A.A. (*hereinafter, the complaining party) dated March 24, 2022

filed a claim with the Spanish Data Protection Agency. claims her-

The petition is directed against ***COMUNIDAD.1 with NIF ***NIF.1 (hereinafter, the party claiming mada). The reasons on which the claim is based are the following:

“the claimed Community of Owners has installed a video surveillance system

lances in common areas of the Community, without having previously convened a

Meeting of Owners and without evidence that it has been authorized, in accordance with the requirements

ances established for this by the Horizontal Property Law, the installation by co-

corresponding majority of owners” (folio no. 1).

It provides images of the location of cameras in common areas of the Community.

claimed (Evidence Annex I).

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

hereafter LOPDGDD), said claim was transferred to the party claimed on fe-

date 03/30/22, to proceed with its analysis and inform this Agency on the plan

within one month, of the actions carried out to adapt to the foreseen requirements.

cough 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 Public Administrations

cases (hereinafter, LPACAP), was not collected by the person in charge, nor has it proceeded to the ac-

Cessation of notifications made.

THIRD: On May 26, 2022, in accordance with article 65 of the

LOPDGDD, the claim presented by the claimant party was admitted for processing.

FOURTH: The General Subdirectorate of Data Inspection proceeded to carry out

of previous investigative actions to clarify the facts in

matter, by virtue of the functions assigned to the control authorities in article

57.1 and the powers granted in article 58.1 of Regulation (EU) 2016/679

(General Data Protection Regulation, hereinafter GDPR), and in accordance

with the provisions of Title VII, Chapter I, Second Section, of the LOPDGDD, subject

having knowledge of the following extremes:

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The antecedents that appear in the information systems are the following:

As part of the procedure (...), this Agency forwarded the claim on the day

03/30/2022, no response to date on behalf of the claimed party.

In addition, several requests were made to the State Administration Agency

(hereinafter, AEAT) requesting the NIF of the claimed party and providing

full name and possible mailing address. To this Agency came the

AEAT responses: the first dated 03/30/2022 (registration number of

entry in the AEPD 22e00010228726), the second dated 05/13/2022 (number of

registration of entry in the AEPD 22e00018607898) and the third dated 05/27/2022

(AEPD entry registration number 22e00021160758) in which

reported that "according to the data in the Database of the State Agency

of the Tax Administration, it is communicated that it has not been possible to obtain the data required with the information provided.”

On May 26, 2022, in the procedure (...) the Spanish Agency for Data Protection agreed to carry out these investigative actions in relation to the installation of a video surveillance system in common areas of the Community.

RESULT OF INVESTIGATION ACTIONS

On 06/02/2022, the NIF of the claimed party is requested from both the claimant as to the claimed party itself.

The postal notification of said request for information to the claimed party has result returned to Origin by Surplus (not withdrawn in office) dated 06/21/2022 after two delivery attempts and notification in the mailbox of the claimed party.

On 06/21/2022, the claimant provides information about the administration of farms representing the claimed party.

After the previous attempts that were unsuccessful to obtain the NIF of the party claimed in order to reliably identify you, a request for information is sent to the representative of the claiming party on 06/23/2022, by notification electronically, requesting the complete data of the claimed party, including the NIF, but Your notification is automatically rejected after the established period.

On 07/13/2022, the request for information to the representative of the party was reiterated. claimant by postal notification.

On 07/26/2022, the Administrator of the Community of Owners refers to this agency the following information and statements:

- That the data of said Community of Owners are the following:

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- ***COMMUNITY.1 of Barcelona, with NIF: ***NIF.1, address at ***ADDRESS.1 and

address for notification purposes: Asesoría Jurídica Augusta S.L. residing in

Barcelona, *** ADDRESS.2. Email: administracion@bufeteaugusta.com

- The company installing the video surveillance system is: ***COMPANY.1

- Attach invoice for the installation of said video surveillance system, dated

02/16/2022.

FIFTH: On December 13, 2022, the Director of the Spanish Agency for

Data Protection agreed to initiate disciplinary proceedings 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 13 of the GDPR, typified in the

Article 83.5 of the GDPR.

SIXTH: Notified the aforementioned start agreement in accordance with the rules established in

Law 39/2015, of October 1, on the Common Administrative Procedure of

Public Administrations (hereinafter, LPACAP), the claimed party submitted a written

of allegations in which, in summary, he stated the following:

“On July 19, 2022, an Extraordinary General Meeting of Pro-

owners, whose agenda expressly referred to the treatment of the

installation of video surveillance cameras in the building, in accordance with the precepts

established in article 553-21 of the Civil Code of Catalonia, being notified after its celebration

the corresponding Act containing the set of agreements adopted

by the group of neighbors, attached hereto as Document No. 1, without the

same has been challenged under the terms provided in article 553-

31 of the Civil Code of Catalonia.

Specifically, the first section of the Act transcribes the agreement regarding the first item on the agenda ("Treatment and approval, if applicable, installation by-electronic door phone or video door phone on the farm."), adopted by the majority of attendees, as provided for in article 553-25.2-b) of the Civil Code of Catalonia, the wording being teral thereof the following:

"In this section, the company's budget is presented ***EMPRESA.1 for the installation of surveillance cameras in the Community, said budget amounts to an amount of 1,154.40.-€ (VAT included).

After extensive deliberation, the attending Owners unanimously agree

In the same way, accept said budget and urgently proceed with its installation."

SEVENTH: On 01/20/23, a Resolution Proposal is issued in which it is considered proven that the installation of the video surveillance camera system was carried out without have the informed consent of the group of owners (as), not having irrefutably accredited such extreme the claimed, action constituting infringement tion of article 6.1 e) GDPR, proposing a sanction amounting to the amount of €1000.

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EIGHTH: On 02/06/23, a written statement of allegations was received from the claimed party to the Proposal of this body arguing "error" in the transcription of the Minutes of the Extraordinary Meeting, noting that the adoption of the resolution was dated prior to the claim presented reason for requesting the file of this procedure

to.

That this part made a numerical transcription error when referencing the date of celebration of the Minutes of the Extraordinary General Meeting of owners, feeling establishing the effective date of celebration on July 19, 2021, attaching the pre-present correction of the Act, duly notified to the group of owners as Document no.1.

Of the actions carried out in this procedure and of the documentation in the file, the following have been accredited:

PROVEN FACTS

First. On 03/24/22, a claim was received informing this agency the presence of a video-surveillance system on the part of the defendant without have the consent of the owners, or inform the set of neighbors of the property, carrying out a "data processing" that is not in accordance with the law.

Second. The Community of owners is accredited as the main responsible ***COMMUNITY.1 with NIF ***NIF.1.

Third. The Community of owners provides two documents with different dates 07/19/21 and 07/19/22 where the following is stated:

"After extensive deliberation, the attending Owners agree by one-animately, accept said budget and urgently proceed to its installation. tion."

Room. It is accredited that the documentation provided suffers from defects formal, not being enough to prove that the installation of the camera system It was produced with the support required by the regulations in force.

Fifth. No documentation has been provided convincingly confirming the informing all owners of the installation of the system, nor

Your express consent is reflected in any way.

FUNDAMENTALS OF LAW

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In accordance with the powers that article 58.2 of Regulation (EU) 2016/679 (Regulation (EU) 2016/679, hereinafter GDPR), grants each authority of control and as established in articles 47, 48.1, 64.2 and 68.1 of the Law Organic 3/2018, of December 5, 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.

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Likewise, article 63.2 of the LOPDGDD determines that: "The procedures processed by the Spanish Data Protection Agency will be governed by the provisions of Regulation (EU) 2016/679, in this organic law, by the regulations comments dictated in its development and, insofar as they do not contradict them, with a subsidiary, by the general rules on administrative procedures.

II

In the present case, we proceed to examine the claim for the date of entry into this Agency 03/24/22 through which the presence of the video camera is transferred deo-surveillance without prior authorization from the Board of Owners.

According to Article 17.1 of the Horizontal Property Law, to incorporate into the community services or improvements that are not essential for conservation, habitability and accessibility of the property, such as video surveillance cameras, it will be necessary

the favorable vote of three fifths of the owners, who in turn suppose

three fifths of the participation fees.

It will not be necessary for this majority to be reached by three fifths during the Jun-

of Owners. If in this a simple majority of owners were reached in favor

which in turn possessed a majority of participation quotas, shall be notified of the

according to the neighbors who have not attended the meeting, who will have 30 days from

that they receive the notification to oppose, in case of not doing so, their votes will be computed.

They will be considered favorable to reach a majority of three-fifths.

Only the person responsible for the file will be able to access the images, which in this case will be

It will be the community of owners itself represented by the president.

Thus, the installation of video surveillance cameras in the case of a community of pro-

owners in order to avoid certain situations of insecurity for the residents.

or their visitors, must be a proportional measure in relation to the infringement

that is intended to be avoided and in no case should it be the initial means to carry out

carry out surveillance functions, so from an objective point of view, the use

of these systems must be proportional to the end pursued, which in any case must

be legit.

Video surveillance cameras will not be able to record public roads, since security

of public space will be the exclusive responsibility of the Security Forces and Bodies.

ity of the state

Article 6 section 1 letter e) of the GDPR provides: "The treatment will only be lawful

if at least one of the following conditions is met:

e) the treatment is necessary for the fulfillment of a mission carried out in

public interest or in the exercise of public powers conferred on the data controller

treatment;

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Based on the evidence available in this proceeding

disciplinary action, it is considered that the claimed party has proceeded to install a system of video-surveillance without having the informed consent of the group of owners of the property.

The GDPR defines the "data controller" (art. 4 section 7) of data as the natural or legal person, service, body or similar entity that determines the purposes and means of treatment. In other words, it is the person who must inform about the purpose of the treatment. procedure and the means chosen for it, being in the present case the Community of owners (claimed).

The installation of video surveillance cameras in communities of owners requires the informed consent of the group of neighbors, and must be aware of the presence of a video surveillance system that controls in their case the entry of the property, and the aforementioned agreement must be embodied in the corresponding <Order of the day> and duly approved in the exposed terms.

According to the GDPR, consent shall be understood as "the expression of free will, specific, informed and unequivocal by which a person accepts, through a clear affirmative action, the processing of your personal data" (art. 4 point 11).

The defendant's allegations are in contradiction because initially provides documentation of the celebration of the Extraordinary Meeting dated 07/19/22, while that in response to the proposal of this body states that due to a "transcription error" it was held on 07/19/21.

Article 19.3 of the LPH (Law 49/1960) provides that the record "should be closed

with the signatures of the president and the secretary...".

Without going into the strict formalities that the drafting of the Minutes must comply with

of a Board of owners, from the point of view of data protection, it is not

provide any documentation that proves the real and effective notification to the set of

owners (as) informing them of the installation of the system, its purpose or

way, where appropriate, to exercise your rights within the framework of the current GDPR.

Nor is it provided despite the time elapsed since the celebration of the

itself, if we stick to the second allegations, copy of the Act duly

signed by the group of owners (as) of the property, which supports

documented an "informed consent" on the installation of the system in

question.

Article 28 "in fine" Law 39/2015 (October 1) provides the following: "Interests

sados will be responsible for the veracity of the documents they present.

Article 72 LOPDGDD (LO 3/2018, December 5). Offenses considered very serious

you see

Based on what is established in article 83.5 of Regulation (EU) 2016/679

are considered very serious and will prescribe after three years the infractions that suppose

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a substantial violation of the articles mentioned therein and, in particular, the

following:

b) The processing of personal data without the fulfillment of any of the conditions

purposes of legality of treatment established in article 6 of the Regulation (EU)

2016/679.

Therefore, neither the initial allegations nor the documentary presented were in- confirms that the defendant had adopted the necessary measures so that the system installed conforms to the requirements determined in the exposed regulations, considering stating the claimant's account of the facts in accordance with what is stated in his claim, that is, the surprise installation of a video-surveillance system without the informed about it, obtaining their express consent or the opportunity to speak out about it.

The known facts constitute an infringement, attributable to the party claimed from article 6 section 1 letter e) GDPR, previously mentioned.

IV.

The art. 83.5 GDPR provides the following: "Violations of the following provisions

These will be penalized, in accordance with section 2, with administrative fines of 20 000 000 EUR maximum or, in the case of a company, an equivalent amount to a maximum of 4% of the overall annual total turnover of the financial year previous year, opting for the one with the highest amount:

a) The basic principles for the treatment including the conditions for the consent in accordance with articles 5,6,7 and 9 (...)".

Article 83 GDPR section 2 contemplates within the "General conditions for impose administrative fines" according to the "individual circumstances" the criteria for its imposition, evaluating in the present case the letters a) and b).

In the present case, it is taken into account that it is a Community of owners rios, assessing the lack of information to the property owners about the pre-absence of the system and the null initial collaboration of the defendant despite being known ceding the existence of the claim, to finally impose a penalty of

€1,000, a sanction located on the lower scale for this type of conduct, considering conduct described as gross negligence.

V

The text of the resolution establishes which have been the infractions committed and the facts that have given rise to the violation of the regulations for the protection of data, from which it is clearly inferred what are the measures to adopt, without prejudice that the type of procedures, mechanisms or concrete instruments for implement them corresponds to the sanctioned party, since it is responsible for the treatment who fully knows its organization and has to decide, based on the proactive responsibility and risk approach, how to comply with the GDPR and the LOPDGDD.

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Therefore, in the opinion of this Agency, the legalization of the system of cameras installed in the exposed terms, having to proceed to the suspension/interruption of the recording as long as the established.

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 ***COMMUNITY.1, with NIF ***NIF.1, for a violation of the Article 6.1 e) of the GDPR, typified in Article 83.5 of the GDPR, a fine of €1,000.

SECOND: ORDER in accordance with article 58.2 GDPR so that, in the

within 1 month from the notification of this act, proceed in the following

terms:

-Regularize the system that is the object of the claim, proceeding, where appropriate, to the Accreditation of the suspension of the recordings by means of a Technical Report or Minutes notarial or any other document that irrefutably proves the suspension of the recordings in the access to the property.

THIRD: NOTIFY this resolution to the entity ***COMMUNITY.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 period

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

IBAN: ES00-0000-0000-0000-0000-0000 (BIC/SWIFT Code:

restricted no.

CAIXESBBXXX), opened on behalf of the Spanish Data Protection Agency in

the banking entity CAIXABANK, S.A. Otherwise, it will proceed to its

collection in executive period.

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

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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/](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
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

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