

□ Procedure No.: PS/00407/2019

938-051119

RESOLUTION OF PUNISHMENT PROCEDURE

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

BACKGROUND

FIRST: On July 8, 2019, it had entry in this Spanish Agency of

Data Protection a document presented by Don A.A.A. (hereinafter the

claimant), through which he makes a claim against GRUPO RESIDENCIAL

R.R.R., with NIF ***NIF.1 (hereinafter, the claimed one), for the installation of a system

video surveillance system installed at *** ADDRESS.1, with indications of a possible

breach of the provisions of the data protection regulations.

The reasons underlying the claim are as follows:

That the denounced Community has a system of 24 video surveillance cameras

lancia, of which three are focusing on the access streets of the urbanization.

SECOND: Prior to the acceptance of this claim for processing, it is

transferred the claimed, in accordance with the provisions of article 65.4 of the Law

Organic 3/2018, of December 5, on the Protection of Personal Data and guarantee of

digital rights (hereinafter, LOPDGDD).

The request for information was received by the respondent entity, not

having received a response to it.

THIRD: The claim was admitted for processing by means of a resolution of 14

November 2019.

FOURTH: On January 7, 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.

The start agreement was notified on January 10, 2020, as stated in the Electronic notification service certificate.

FIFTH: Once the initiation agreement has been notified, the claim at the time of this resolution has not submitted a brief of allegations, so what is indicated is applicable in 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 initial agreement, it may be considered a resolution proposal when it contains a pro-

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precise statement about the imputed responsibility, so we proceed to dictate Resolution.

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

Data in this procedure are considered proven facts the following

FACTS

FIRST: GRUPO RESIDENCIAL R.R.R., has a 24-hour system installed.

video surveillance cameras, at ***ADDRESS.1 of which three are focusing to the access streets of the urbanization.

FOUNDATIONS OF LAW

Yo

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

control, and as established in arts. 47 and 48.1 of the LOPDGDD, the Directorate of the Spanish Agency for Data Protection is competent to resolve this process.

II

Article 6.1 of the RGPD establishes the assumptions that allow it to be considered lawful the processing of personal data.

For its part, article 5.1.c) of the RGPD, regarding the principles of processing to, provides that the personal data will be "adequate, pertinent and limited to what is necessary in relation to the purposes for which they are processed ("minimization of data")." This article enshrines the principle of data minimization in the treatment of personal data. It assumes that said treatment is adjusted and proportional to the purpose to which it is directed, and the processing of excessive data must be restricted. you or proceed to delete them.

The relevance in the treatment of the data must occur both in the the collection of the data as well as in the subsequent treatment that is carried out on the same. mos.

On the other hand, in accordance with the provisions of article 22 of the LOPDGDD, re-referring specifically to "Processing for video surveillance purposes", the processing of images in public places can only be carried out -if applicable and prior compliance compliance with the legally enforceable requirements-, by the Security Forces and Bodies unless the exception established in the aforementioned article 22 of the LO-PDGDD for natural or legal persons, public or private, respecting the conditions required in said article.

On some occasions, the protection of private spaces is only possible if the cameras are located in spaces such as facades. Sometimes it is also necessary

ary to capture the accesses, doors or entrances, so that, although the camera is inside the building, it is impossible not to record a minimal and important part dispensable from the public road, which is inevitably captured.

In order for this exception on the protection of private spaces to apply, cable, there shall be no alternative installation possibility. In these cases, the responsible for the treatment carried out through cameras will adapt the use of the so that the impact on the rights of third parties (passers-by) is minimal. no possible. In no case will the use of surveillance practices be admitted beyond the environment object of the installation, not being able to affect the surrounding public spaces. contiguous buildings and vehicles other than those accessing the guarded space.

III

In accordance with the above, the treatment of images through a system subject of video surveillance, to be in accordance with current regulations, you must comply with the following requirements:

- Respect the principle of proportionality.
 - When the system is connected to an alarm center, you can only be installed by a private security company that meets the requirements established in article 5 of Law 5/2014 on Private Security, of April 4.
 - The video cameras will not be able to capture images of the people who are outside the private space where the video surveillance system is installed.
- since the treatment of images in public places can only be carried out, unless there is government authorization, by the Security Forces and Bodies.

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

This rule admits some exceptions since, on some occasions, for the protection of private spaces, where cameras have been installed on facades or in the inside, it may be necessary to ensure the security purpose the recording of a portion of the public road. That is, cameras and camcorders installed with security officers will not be able to obtain images of public roads unless it is indispensable for said purpose, or it is impossible to avoid it due to the location of those and, extraordinarily, the minimum space for said financing will also be collected. Therefore, the cameras could exceptionally capture the minimum portion-mind necessary for the intended security purpose.

- The person in charge must keep a record of treatment activities carried out under its responsibility, including the information to which it makes reference article 30.1 of the RGPD.
- The installed cameras cannot obtain images from private space of third party and/or public space without duly accredited justified cause, nor can affect the privacy of passers-by who move freely through the area. It's not permitted, therefore, the placement of cameras towards the private property of neighbors with the purpose of intimidating them or affecting their private sphere without just cause.

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- In no case will the use of surveillance practices beyond the en-object of the installation and in particular, not being able to affect the public spaces

surrounding spaces, adjoining buildings and vehicles other than those accessing the space.

guarded man

IV

The claim is based on the illegality of the installation by the claimed of a video surveillance system, since there are three video cameras that are located recording public roads and pedestrians. There is no authorization from the Ministry of the Interior for the placement of the same recording public road. So, GROUP RESIDENTIAL R.R.R., has installed a system of 24 video cameras surveillance, in ***ADDRESS.1 of which three are focusing on the streets of action process of urbanization, and that they would capture images of public areas unintentionally. provided; without the claimant having argued otherwise.

In accordance with the foregoing, this Agency considers that the regulation has been breached. data protection requirement due to the existence of video surveillance cameras installed given by GRUPO RESIDENCIAL R.R.R., at ***ADDRESS.1 that capture images of public roads in excess.

v

The corrective powers of the Spanish Protection Agency of Data, as a control authority, are established in article 58.2 of the RGPD. In- Among them are 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)-.

It is considered that the exposed facts fail to comply with the provisions of article 5.1.c) of the RGPD, for which they could suppose the commission of an infraction typified in

Article 83.5 of the RGPD, which provides the following:

“Infractions of the following provisions will be sanctioned, in accordance with paragraph 2, with administrative fines of a maximum of EUR 20,000,000 or, alternatively, being from a company, of an amount equivalent to a maximum of 4% of the volume overall annual total turnover of the previous financial year, opting for the higher amount:

a) the basic principles for the treatment, including the conditions for the consent under articles 5, 6, 7 and 9;

For the purposes of the limitation period for infractions, the infractions indicated in the previous paragraph are considered very serious and prescribe after three years, with conform to article 72.1 of the LOPDGDD, which establishes that:

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“Based on the provisions of article 83.5 of Regulation (EU) 2016/679 are 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 established in article 5 of Regulation (EU) 2016/679.

SAW

Without prejudice to the provisions of article 83.5, sections a) and b), of the RGPD, in your art. 58.2 b) establishes the possibility of sanctioning with a warning, in relation with what is stated in Considering 148:

“In the event of a minor offence, or if the fine likely to be imposed would constitute a disproportionate burden for a natural person, rather than a sanction. tion by means of a fine, a warning may be imposed. must, however, lend special attention to the nature, seriousness and duration of the infringement, its character intentional, to the measures taken to alleviate the damages suffered, to the degree liability or any relevant prior violation, to the manner in which the authority control authority has become aware of the infraction, compliance with measures measures ordered against the person in charge or in charge, adherence to codes of conduct and any other aggravating or mitigating circumstance.”

In the present case, it is taken into account that it is a Community of pro- owners without prior infraction accredited in this Agency, considering correct sanc- act with warning.

Therefore, in accordance with the applicable legislation and having assessed the criteria for graduation of sanctions whose existence has been proven,

The Director of the Spanish Data Protection Agency RESOLVES:

FIRST: NOTICE GRUPO RESIDENCIAL R.R.R., with NIF ***NIF.1, for a infringement of Article 5.1.c) of the RGPD, typified in Article 83.5 of the RGPD, SECOND: REQUEST GRUPO RESIDENCIAL R.R.R., so that within the term of ONE MONTH from the notification of this act, prove compliance with the following measures:

-That he has redirected the three video surveillance cameras to the minimum essential for their purpose and do not record public roads.

THIRD

: NOTIFY this resolution to GRUPO RESIDENCIAL R.R.R.

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

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 LPA-

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CAP, the interested parties may optionally file an appeal for reconsideration before

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

counting from the day following the notification of this resolution or directly

contentious-administrative case before the Contentious-administrative Chamber of the Au-

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 Jurisdiction

Contentious-administrative diction, within a period of two months from the day following

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 LPA-

CAP, the firm resolution may be provisionally suspended 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-](https://sedeagpd.gob.es/sede-electronica-web/)

[web/](https://sedeagpd.gob.es/sede-electronica-web/)], or through any of the other registers provided for in art. 16.4 of the city

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

certifying the effective filing of the contentious-administrative appeal. Yes

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

nistrative within two months from the day following the notification of the pre-

This resolution would end the precautionary suspension.

Sea Spain Marti

Director of the Spanish Data Protection Agency

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