

□ Procedure No.: PS/00227/2020

RESOLUTION OF PUNISHMENT PROCEDURE

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

based on the following

BACKGROUND

FIRST: Don A.A.A. (hereinafter, the claimant), dated July 23, 2020,

filed a claim with the Spanish Data Protection Agency. The

claim is directed against RECAMBIOS VILLALEGRE, S.L., with NIF B74393992

(hereinafter, the defendant) for facts that could be violating the

legislation on personal data protection. The main reasons on which he bases

the claim are as follows:

"I am contacting you due to the harassment and threats that are taking place.

frying a poor indigent from the city of ***LOCALITY.1 (**PROVINCE.1)

because of a publication that the company Recambios Villalegre put in its

Facebook page on the night of the day ***DATE.1. In said publication,

They accuse this homeless man (who earns his living begging for alms) of having robbed them.

all the cash from the cash register, and last but not least, so recorded

sees accusation, they attach a photograph taken of the aforementioned person from the

video surveillance cameras something totally illegal even more so when the aforementioned company

The dam does not have an information sign for a video-monitored area in its facilities.

As you can see in the screenshots attached to this claim, you can imagine

will appreciate the great repercussion that this has had in the city since, at the time

As of writing this text, the publication has been shared by XXXX people and

with hundreds of humiliating, insulting and even threatening comments.

It is worth mentioning that, although in the controversial publication they claim to have everything

perfectly engraved it is striking that in the photograph provided it is not seen

cash register nowhere, which is why it's sobering if you really-

mind has been a robbery or on the contrary some kind of revenge or enmity

of the company with the injured party.

As if that were not enough, all of the above, the aforementioned company has

also circulated through WhatsApp groups another photograph (which is attached

attached to this claim) of this person taken in this case from the front,

of what appears to be a vehicle and in which his face is perfectly recognizable.

possible, multiplying even more, if possible, all the harassment and threats that this

This man is suffering all over the city.

Since this person has no recourse to try to solve

mention the problem that they have caused you intentionally, and after communicating

came his decision to leave town (at best) for all

what he is suffering, I am obliged to inform the AEPD with the

intention that they take the appropriate measures with the aforementioned company that has

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

2/15

disproportionately abused against this person.

It should be remembered that the Spanish Constitution of 1978 in its article 18,

protects and preaches the right to honor, personal and family privacy, as well

as well as the image itself, a right that this company has flagrantly violated.

great against this person.

For all of the above, please take the necessary measures.

aries to put an end to this situation as soon as possible, as well as proceed to impose the corresponding sanction on the aforementioned company in the event from which it is coming.

P.S.: Three screenshots are attached that demonstrate everything explicated, as well as the link of the publication made by the company.

***URL.1

One of the images submitted is a photograph of a person dragging A car.

The other image is the one included in the Facebook profile of the claimed entity, that was published last ***DATE.1 a post that included a photograph with corresponding to a frame of the images captured by the video surveillance camera store, in which he sees himself on the other side of the threshold of the door of the store (the chamber mara captures an important part of the sidewalk without an informative sign being observed), for outside, the silhouette of a man with a shopping cart. The publication is accompanied ña of the following comment:

"This man who spends his days asking for help very politely for the center of ***LOCALIDAD.1 and especially, for the terraces of the bars, today in the afternoon we have entered our business and in a moment that we have had to be in the back of the store, has entered inside the counter and took all the money we had in cash.

The cameras have recorded it perfectly.

I beg maximum spread for everyone's help.

It has been verified that the publication remains available.

SECOND: The claim was admitted for processing by resolution of July 24 of 2020.

THIRD: The claimant submitted a new brief, on July 25, 2020, in the

which indicates the following:

“Apologizing in advance for writing to you on the same subject with a time interval of just over 24 hours, I see myself doing it due to changes recently emerged bios with this issue. To put us in background, it is of the case of the company ***LOCALIDAD.1 that published on its social networks the photo-

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

3/15

photograph, taken in a totally illegal way from a homeless person who had entered the premises

beg. In said complaint before you yesterday, the citation-

person of having committed a rather dubious robbery from our point of view,

but due to the implausible version argued by the company, it would have been

duced a violation of the Data Protection Law for having published the photograph

of the alleged offender. Well, as you can see in the links below-

provided, the repercussion of this incident has been seen to increase considerably

remarkable since it has been published in the most widely read newspapers in this area (***DIARIO.1

and ***DIARIO.2) As published by both, the arrest of said person for the de-

nuncia that the company had studied and having to go to the celebration of a trial

fast price, since the alleged robbery exceeded XXX, today and for which

He was completely acquitted for lack of evidence. Proof of his immediate release can be

You can corroborate by reading the new publication that the complainant company has

posted on his social networks in which he affirms what I expose here. person accused of

a criminal offense has been released on the same day as the trial,

we believe that it is more than enough proof and there is no reason to submit

defendant to such social exposure. And once again, that you agree with this

harassment, they republish the images of this person to facilitate recognition.

to the rest of the people. Just as I did yesterday, using pan-

size of the social network of the aforementioned company, as well as in the different links in which

has been published by the media.

I request your immediate withdrawal from these publications:

***URL.2

***URL.3

***URL.4

FOURTH: On August 11, 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 6 of the RGPD, and of article 13 of the RGPD, typified in

Article 83.5 of the RGPD.

FIFTH: The initiation agreement was electronically notified to the respondent. This is how

ge article 14.2 of Law 39/2015 of Common Administrative Procedure of the

Public Administrations (LPACAP) according to which "In any case, they will be obliged

two to relate through electronic means with the Public Administrations

to carry out any procedure of an administrative procedure, at least,

the following subjects: a) Legal persons".

Works in the file the Certificate issued by the Notification Service

Electronic and Authorized Electronic Address of the FNMT-RCM, which records

the sending of the initiation agreement, notification of the AEPD addressed to the claimed, through

through that means being the date of availability in the electronic headquarters of the

agency on 08/13/2020 and the automatic rejection date on 08/24/2020.

Article 43.2. of the LPACAP establishes that when the notification by means

e-mails is mandatory -as is the case in this case- "it is en-

will tend to be rejected when ten calendar days have elapsed since the disposition of the notice without accessing its content.” (The underlining is from the

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

4/15

AEPD)

pectorily:

Add that articles 41.5 and 41.1, third paragraph, of the LPACAP say, res-

“When the interested party or his representative rejects the notification of an act-

administrative action, it will be recorded in the file, specifying the circumstances

ences of the notification attempt and the means, considering the procedure completed and following-

I know the procedure.” (The underlining is from the AEPD)

“Regardless of the means used, the notifications will always be valid.

that allow proof of its sending or making available, of the reception or

access by the interested party or their representative, of their dates and times, of the in-

full, and the reliable identity of the sender and recipient thereof. The acre-

The notification issued will be incorporated into the file”.

Thus, considering that the notification of the start agreement to the respondent is

made electronically by legal imperative (article 14 LPACAP) and that there was

the rejection of the notification after ten days, as provided in article 43.2

of the aforementioned law, the procedure was considered carried out and the procedure continued its course.

so (former article 41.5 LPACAP)

TO: On September 26, 2020, the test phase began, agreeing

SEX

practice the following:

1. They are considered reproduced for evidentiary purposes the claim filed by the claimant and the documentation provided.

2. RECAMBIOS VILLALEGRE S.L. is requested to inform us of the following questions:

a) If you have filed a complaint for theft of XXX euros against the indigent who points out on the entity's facebook.

b) If a judgment has been issued on that complaint and its result, attaching a copy of the same, if any.

c) If you have removed from your Facebook the images of the homeless person to whom you attributed the theft of XXX euros from the cashier of your establishment and the recording of those facts.

d) Provide documentary evidence of the informative poster of the video-monitored area with the information required by data protection regulations.

The Notification of the test practice has been returned with the legend of "Unknown".

SEVENTH: In accordance with article 73.1 of the LPACAP, the term to formulate allegations to the Home Agreement is ten days computed from the day following the of the notification.

Article 64.2. LPACAP, indicates that the defendant will be informed of the right to formulate allegations, the "right to be heard in the procedure and the deadlines

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

for its exercise, as well as the indication that in case of not making allegations in the term established on the content of the initiation agreement, it may be considered proposed resolution proposal when it contains a precise pronouncement about the imputed responsibility". (The underlining is from the AEPD)

The agreement to initiate the sanctioning file that concerns us contained a precise statement on the responsibility of the claimed entity: in the aforementioned agreement specified what was infringing conduct, the sanctioning type in which it was subsumable, the modifying circumstances of the responsibility described and the sanction that in the opinion of the AEPD it was appropriate to impose.

In consideration of the foregoing and in accordance with the provisions of article 64.2.f) of the LPACAP, the initiation agreement of PS/00227/2020 is considered Pro-Resolution setting.

In view of everything that has been done, by the Spanish Protection Agency of Data in this procedure the following are considered proven facts,

FACTS

FIRST: On July 23, 2020, the Spanish Agency for Pro-Protection of Data a claim in which it was indicated that the company Spare Parts Villalegre had published on his Facebook page, on ***DATE.1, that an individual people had stolen all the cash they had in the cash register.

Accompanying the publication was an image of the accused person taken from his video surveillance camera. They include the following information:

"This man who spends his days asking for help very politely for the center of ***LOCALIDAD.1 and especially, by the terraces of the bars, today in the afternoon of us has entered our business and at a time we have had to be in the back of the store, has entered inside the counter and took all the money we had in cash. The cameras have recorded it perfectly. I beg

maximum spread for everyone's help.

SECOND: The publication has been shared by XXXX people and numerous mere humiliating, insulting and even threatening comments.

Likewise, the claimed company has also circulated through groups of WhatsApp another photograph (which is attached to this claim) of this person all-taken in this case from the front, from what appears to be a vehicle and in which his face is perfectly recognizable, multiplying even more if possible all the harassment and threats Nazas that this poor man is suffering throughout the city.

THIRD: The claimed company does not have posters informing that it is a video surveillance area.

FOUNDATIONS OF LAW

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

6/15

Yo

By virtue of the powers that article 58.2 of Regulation (EU) 2016/679

(General Data Protection Regulation, hereinafter RGPD), recognizes each

Control Authority, and according to the provisions of articles 47, 48.1, 64.2 and 68.1 of the

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

Digital Rights Agency (hereinafter, LOPDGDD), the Director of the Spanish Agency

Spanish Data Protection Authority is competent to initiate and resolve this procedure.

unto

Article 63.2 of the LOPDGDD determines that: «The procedures

processed by the Spanish Agency for Data Protection will be governed by the provisions

in Regulation (EU) 2016/679, in this organic law, by the provisions regulations issued in its development and, as long as they do not contradict them, with a subsidiary, by the general rules on administrative procedures.”

II

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.

It is, therefore, pertinent to analyze whether the processing of personal data (image natural persons) carried out through the capture of photography and video reported is in accordance with the provisions of the RGPD.

III

In the first place and referring to the publication of the images indicated in the background by the claimed party, article 6.1 of the RGPD, establishes the assumptions that allow the processing of personal data to be considered lawful: conditions:

"1. The treatment will only be lawful if it meets at least one of the following

a) the interested party gave their consent for the processing of their data personal for one or more specific purposes;

b) the treatment is necessary for the execution of a contract in which the interested party is a party or for the application at the request of the latter of measures pre-contractual;

c) the treatment is necessary for the fulfillment of a legal obligation applicable to the data controller;

d) the treatment is necessary to protect the vital interests of the interested party or of another natural person.

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

public interest or in the exercise of public powers vested in the controller

of the treatment;

f) the treatment is necessary for the satisfaction of legitimate interests

pursued by the data controller or by a third party, provided that

over said interests do not prevail the interests or the rights and freedoms

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

7/15

fundamental data of the interested party that require the protection of personal data,

in particular when the interested party is a child.

The provisions of letter f) of the first paragraph shall not apply to

treatment carried out by public authorities in the exercise of their functions.

On this question of the legality of the treatment, it also affects the

Recital 40 of the aforementioned RGPD, when it states that "For the

processing is lawful, personal data must be processed with the consent

of the interested party or on any other legitimate basis established in accordance with Law, either

either in this Regulation or by virtue of other law of the Union or of the

Member States covered by this Regulation, including the need to

comply with the legal obligation applicable to the data controller or the need to

to execute a contract to which the interested party is a party or in order to take measures

at the request of the interested party prior to the conclusion of a contract.»

In relation to the above, it is considered that there is evidence that the

treatment of data of the person that appears in the images object of this

claim has been made without legitimizing cause of those included in article 6

of the GDPR.

The GDPR applies to personal data, which is defined as "data personal" means any information about an identified or identifiable natural person ("the interested"); An identifiable natural person shall be deemed to be any person whose identity can be determined, directly or indirectly, in particular by means of an identifier, such as a name, an identification number, location data, a online identifier or one or more elements of physical identity, physiological, genetic, psychic, economic, cultural or social of said person.

The person whose data the claimed party has processed is perfectly identifiable since your identity can be determined, directly or indirectly, in particular through the images and comments that the company has included on Facebook claimed.

IV

Second, the photograph that is extracted from the video surveillance system installed by the claimed invades the sidewalk of the street from which you enter the premises. It is, therefore, pertinent to analyze whether the processing of personal data (image natural persons) carried out through the video surveillance system of the claimed is in accordance with the provisions of the RGPD.

Article 5.1.c) of the RGPD, regarding the principles of treatment, provides that personal data will be "adequate, relevant and limited to what is necessary in relation to the purposes for which they are processed ("data minimization")." East article enshrines the principle of data minimization in data processing personal. It assumes that said treatment is adjusted and proportional to the purpose to be which is addressed, and the processing of excessive data must be restricted or proceed to their removal.

The relevance in the treatment of the data must occur both in the

of the collection of the data as well as in the subsequent treatment that is carried out of the data.

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

8/15

themselves.

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”

Article 22 of the LOPDGDD establishes the specificities of the treatment of data for video surveillance purposes, indicating the following:

"1. Natural or legal persons, public or private, may carry out the processing of images through camera systems or video cameras with the purpose of preserving the safety of persons and goods, as well as their installations.

2. Images of public roads may only be captured to the extent that it is essential for the purpose mentioned in the previous section.

However, it will be possible to capture public roads to a greater extent when necessary to ensure the safety of goods or facilities

strategic or infrastructure linked to transport, without in any case

may involve capturing images of the interior of a private home.

3. The data will be deleted within a maximum period of one month from its collection, except when they had to be kept to prove the commission of acts that threaten the integrity of persons, property or facilities. In that case, the images must be made available to the competent authority in within a maximum period of seventy-two hours from the date of knowledge of the existence of the recording.

The blocking obligation provided for in the article 32 of this organic law.

4. 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 device a connection code or internet address to this information.

In any case, the person in charge of the treatment must keep available to the affected the information referred to in the aforementioned regulation.

5. Under article 2.2.c) of Regulation (EU) 2016/679, it is considered excluded from its scope of application the treatment by a natural person of images that they only capture the interior of their own home.

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

This exclusion does not cover processing carried out by a security entity private that had been contracted for the surveillance of a home and had access to the images.

6. The processing of personal data from the images and sounds obtained through the use of cameras and video cameras by the Armed Forces and Security Bodies and by the competent bodies for surveillance and control in penitentiary centers and for the control, regulation, vigilance and discipline of the traffic, will be governed by the legislation transposing Directive (EU) 2016/680, when the treatment is for the purposes of prevention, investigation, detection or prosecution of criminal offenses or execution of criminal sanctions, including protection and prevention against threats to public safety. Outside In these cases, said treatment will be governed by its specific legislation and additionally by Regulation (EU) 2016/679 and this organic law.

7. What is regulated in this article is understood without prejudice to the provisions of Law 5/2014, of April 4, on Private Security and its development provisions.

8. The treatment by the employer of data obtained through information systems cameras or video cameras is subject to the provisions of article 89 of this law organic.”

v

In order that the duty of information provided for in article 12 of the RGPD is complied with in a concise and understandable manner for the affected party, the aforementioned Article 22 of the LOPDGDD provides for a system of "layered information".

It is recommended that the first layer or modality inserted in the icon of video surveillance area warning contains the most important information, 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 person in charge of the treatment and form of contact. The importance of providing this information in advance arises, in particular, from recital 39 of the RGPD, not being necessary to specify the precise location of the surveillance equipment; nevertheless, The context of the surveillance should be made clear.

Thus, in summary, on the sign or sign of the video-surveillance area, you must inform about:

- The existence of the treatment (video surveillance).
- The identity of the data controller or the video surveillance system, and the address of it.
- The possibility of exercising the rights recognized in articles 15 to 22 of the GDPR.
- Where to obtain more information about the processing of personal data.

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

10/15

Second layer information must be available in one place easily accessible to the interested party, be it an information sheet at a reception, cashier etc. or placed in a visible public space, or refer to a web address with the rest of the elements of article 13 of the RGPD.

Article 13 of the RGPD establishes the information that must be provided when personal data is obtained from the interested party, which is as follows:

"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

presenter;

treatment schedule;

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

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

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

46 or 47 or article 49, section 1, second paragraph, reference to guarantees

adequate or appropriate and the means to obtain a copy of them or the fact of

that have been borrowed.

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

treatment will provide the interested party, at the time the personal 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 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 related to the interested party, and its rectification or deletion, or the limitation

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

data quality;

- c) when the treatment is based on article 6, paragraph 1, letter a), or the 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 sentiment prior to 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 obligated to provide personal data and is informed of the possible consequences acknowledgments that you do not provide such data;
- f) the existence of automated decisions, including profiling, to referred to in article 22, sections 1 and 4, and, at least in such cases, information

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

11/15

significance on applied logic, as well as the importance and consequences pre-views of said treatment for the interested party.

3. When the person in charge of the treatment projects the subsequent treatment of data personal data for a purpose other than that for which they were collected, you will provide to the data subject, prior to such further processing, information about that other purpose and any additional information relevant to the meaning of paragraph 2.

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

The second part of the claim is specified in that the claimed entity

It does not have a poster informing about the presence of the cameras.

Based on the foregoing, this Agency considers that there are indications of the existence of video surveillance cameras installed in the claimed entity without the necessary informative badge.

SAW

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

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 person in charge or in charge of the treatment that the treatment operations comply with the provisions of the GDPR, when applicable, in a certain way and within a certain period specified -article 58. 2 d)-.

It has been proven that the exposed facts do not comply with what is established in articles 6.1. and 13 RGPD, for what they could suppose the commission of paths offenses 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, 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 according to articles 12 to 22; [...].”

For the purposes of the limitation period for infractions, the infraction indicated in the previous paragraph is considered very serious and prescribes 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

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

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

12/15

following:

b) The processing of personal data without the concurrence of any of the conditions of legality of the treatment established in article 6 of the Regulation (EU) 2016/679.

(...)

h) The omission of the duty to inform the affected party about the treatment of their personal data in accordance with the provisions of articles 13 and 14 of the Regulation (EU) 2016/679 and 12 of this Organic Law.”

7th

In order to determine the administrative fine to be imposed, the provisions of articles 83.1 and 83.2 of the RGPD, precepts that indicate:

“Each control authority will guarantee that the imposition of fines administrative actions under this article for violations of this

Regulation indicated in sections 4, 9 and 6 are in each individual case effective, proportionate and dissuasive.”

“Administrative fines will be imposed, depending on the circumstances of each individual case, in addition to or as a substitute for the measures contemplated in the Article 58, paragraph 2, letters a) to h) and j). When deciding to impose a fine

administration and its amount in each individual case will be duly taken into account:

a) the nature, seriousness and duration of the offence, taking into account the

nature, scope or purpose of the processing operation in question

as well as the number of stakeholders affected and the level of damage and

damages they have suffered;

b) intentionality or negligence in the infringement;

c) any measure taken by the controller or processor

to alleviate the damages suffered by the interested parties;

d) the degree of responsibility of the person in charge or of the person in charge of the

treatment, taking into account the technical or organizational measures that have

applied under articles 25 and 32;

e) any previous infraction committed by the person in charge or the person in charge of the

treatment;

f) the degree of cooperation with the supervisory authority in order to put

remedying the breach and mitigating the possible adverse effects of the breach;

g) the categories of personal data affected by the infringement;

h) the way in which the supervisory authority became aware of the infringement,

in particular if the person in charge or the person in charge notified the infringement and, in such

case, to what extent;

i) when the measures indicated in article 58, paragraph 2, have been

previously ordered against the person in charge or the person in charge in question

in relation to the same matter, compliance with said measures;

j) adherence to codes of conduct under article 40 or mechanisms

certificates approved in accordance with article 42, and

k) any other aggravating or mitigating factor applicable to the circumstances of the

case, such as financial benefits realized or losses avoided, direct

or indirectly, through infringement.”

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

13/15

Regarding section k) of article 83.2 of the RGPD, the LOPDGDD, article 76,

“Sanctions and corrective measures”, provides:

"two. In accordance with the provisions of article 83.2.k) of Regulation (EU) 2016/679

may also be taken into account:

a) The continuing nature of the offence.

b) The link between the activity of the offender and the performance of treatments

of personal data.

commission of the offence.

c) The profits obtained as a result of committing the offence.

d) The possibility that the conduct of the affected party could have induced the

e) The existence of a merger by absorption process subsequent to the commission of

the infringement, which cannot be attributed to the absorbing entity.

f) Affectation of the rights of minors.

g) Have, when not mandatory, a data protection officer.

h) The submission by the person in charge or person in charge, with

voluntary, to alternative conflict resolution mechanisms, in those

assumptions in which there are controversies between those and any interested party.”

In this case, the following have been taken into account, in particular:

items:

□

The nature and seriousness of the infringement, taking into account the purpose of the treatment operation in question as well as the level of damage damages and damages they have suffered;

b) intentionality or negligence in the infringement;

☐

☐ That it is a small company whose main activity is not related to cula with the processing of personal data.

☐ That there is no recidivism, because the commission is not recorded, in the term of one year, of more than one infraction of the same nature.

viii

In accordance with the provisions of article 58.2 d) of the RGPD, according to which each supervisory authority may "order the controller or processor

that the processing operations comply with the provisions of this Regulation.

moment, where appropriate, in a specified manner and within a specified period of time.

do [...]”, is required to adapt the data processing that video surveillance entails.

lance of the veterinary center to the requirements established in the RGPD, and specifically, to the placement in a visible place of an informative device.

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 RGPD,

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.

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

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: IMPOSE RECAMBIOS VILLALEGRE S.L., with NIF B74393992, for an infringement of article 6 of the RGD, typified in Article 83.5.a) of the RGD, a fine of 10,000 euros (ten thousand euros).

SECOND: IMPOSE RECAMBIOS VILLALEGRE S.L., with NIF B74393992, for an infringement of article 13 of the RGD, typified in Article 83.5.b) of the RGD, a fine of 2,000 euros (two thousand euros).

THIRD: REQUEST RECAMBIOS VILLALEGRE S.L., with NIF B74393992, to that according to art. 58.2 d) RGD, and within one month from the notification of this resolution:

- Remove the images uploaded to Facebook and the comments that identify the person whose data is being processed.
- Certify having proceeded to the placement of the informative device in the video-monitored areas or to complete the information offered therein (you must identify, at least, the existence of a treatment, the identity of the person in charge and the possibility of exercising the rights provided for in said precepts), locating this device in a sufficiently visible place, both in open and closed spaces.
- Certify that you keep available to those affected the information to which refers to the aforementioned RGD.

FOURTH: NOTIFY this resolution to RECAMBIOS VILLALEGRE S.L.

FIFTH: 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 is between the 1st and 15th of each month, both inclusive, the term to carry out the voluntary payment will be until the 20th day of the following month or immediately after, and if is between the 16th and last day of each month, both inclusive, the term of the payment will be until the 5th of the second following month or immediately after.

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

15/15

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

LPACAP, the interested parties may optionally file an appeal for reconsideration

before the Director of the Spanish Agency for Data Protection within a period of

month 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 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, the firm resolution may be provisionally suspended in administrative proceedings if the interested party expresses his intention to file a contentious appeal-administrative. If this is the case, the interested party must formally communicate this made by writing to the Spanish Agency for Data Protection, introducing him to the agency

[<https://sedeagpd.gob.es/sede-electronica-web/>], or through any of the other records provided for in art. 16.4 of the aforementioned Law 39/2015, of October 1. Also must transfer to the Agency the documentation that proves the effective filing of the contentious-administrative appeal. If the Agency were not aware of the filing of the contentious-administrative appeal within two months from the day following the notification of this resolution, it would end the precautionary suspension.

Electronic Registration of
through the
Sea Spain Marti
Director of the Spanish Data Protection Agency
938-300320
C/ Jorge Juan, 6
28001 – Madrid
www.aepd.es

