

□ File No.: EXP202201047

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. and B.B.B. (*hereinafter, the complaining party(ies)) dated December 21,
January 2022 filed a claim with the Spanish Data Protection Agency
cough. The claim is directed against the entity PLANET COSTA DORADA SOCIE-
DAD LIMITADA with NIF B02898583 (hereinafter, the claimed party). The motives
on which the claim is based are the following:

"The claimed entity owns a property close to the residence of the
claimant and that it has installed a plurality of video surveillance cameras in said
property, being oriented both to the public road, and to the housing of the re-
complainant, without having authorization to do so and without being duly marked
The cameras are posted using the mandatory informative posters of the video-surveillance zone.
da"-folio nº 1--.

Provide as documentary Expert Report dated December 1, 2021 and
Notarial act dated November 11, 2021 (Annex I).

SECOND: On 01/24/22, a new letter was received from one of the claiming parties.
tes transferring diverse photographs that accredit the presence of the cameras in the
indicated address (Annex I), considering that it is a "serious interference in this
public space" without justified cause, estimating that it also affects reserved areas.
Vados to your personal and/or family privacy.

THIRD: In accordance with article 65.4 of Organic Law 3/2018, of December 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 01/28/22, 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), not containing any response to the requirement made
by this Agency.

FOURTH: On April 21, 2022, in accordance with article 65 of the LO-
PDGDD, the claim presented by the claimant party was admitted for processing.

FIFTH: On June 20, 2022, the Director of the Spanish Agency for Pro-
Data Protection agreed to initiate a sanctioning procedure against the claimed party, with
in accordance with the provisions of articles 63 and 64 of Law 39/2015, of October 1, of
Common Administrative Procedure of Public Administrations (hereinafter,

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LPACAP), for the alleged infringement of Article 5.1.c) of the GDPR, typified in the
Article 83.5 of the GDPR.

SIXTH: On 07/06/22, the claimant's pleadings letter was received
succinctly stating the following:

"Due to acts of vandalism in the property, the installation of
four cameras in the building with a closed circuit system within the
private facilities.

For that reason it was decided to install cameras that are inside the property focusing on the pool, garden and corridor. Our purpose is to guarantee the property security. The Activities Register has been developed, including the video surveillance treatment.

Signs that are sufficiently visible have been posted in the access to video-surveilled areas (...) and where to obtain more information in the data protection matter”.

"Access to the images will be exclusively for the person responsible for the system without that can be accessed by different people”.

SEVENTH: On 10/17/22 <Proposed Resolution> is issued proposing a penalty of €1,200, as it had a video surveillance system that captured space public, having proceeded to signaling after the transfer of the made by this Agency, being accredited the violation of articles 5 and 13 GDPR.

EIGHTH: On 10/28/22, the claimant's pleadings brief was received stating the following in relation to the "Proposal" formulated by this body:

"Due to acts of vandalism that occur in the house by Mr.

A.A.A. since 2020, and after a complaint to the security forces and bodies of the state, it is recommended by the police that security cameras be installed in the affected areas as a preventive and dissuasive measure to prevent further acts against the house.

Although (...) is an adjoining neighbor of the house, none of the cameras installed captures your property, the property is located at ***ADDRESS.1 and Mr.

A.A.A. ***ADDRESS.2. Due to the seriousness of the acts and following the recommendation of the police, the cameras were temporarily installed inside the property, feeling with the sole objective of the safety of both the home and the clients who rent

said property as a tourist rental.

A complaint is attached so that all the acts carried out can be verified

by Mr. A.A.A. against the house.

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Of the actions carried out in this procedure and of the documentation

in the file, the following have been accredited:

PROVEN FACTS

First. The facts bring cause of the claim dated 01/21/22 through the

which translates the following:

"The claimed entity owns a property close to the residence of the

claimant and that it has installed a plurality of video surveillance cameras in said

property, being oriented both to the public road, and to the housing of the re-

complainant, without having authorization to do so and without being duly marked

The cameras are posted using the mandatory informative posters of the video-surveillance zone.

da"-folio nº 1--.

Second. Planet Costa Dorada S.L. is accredited as the main responsible party.

with NIF B02898583

Third. It is accredited, as stated by the defendant, "that the

placement of informative posters" (written dated 07/06/22) so the action is

after the claim before this body.

Room. After analyzing the photographs provided, it is verified the capture of public space

co adjacent without masking, as well as the entire pool area is displayed as

"reserved" area for the privacy of the clients of the property.

Fifth. There is evidence of the performance of various acts of vandalism, the object of complaint to the State Security Forces and Corps, indicating as alleged author of the same to one of the claimants, against whom there are proceedings in Instruction Court No. 4 (DP XXXX/XXXX).

"With danger when pouring used motor oil, without prejudice to other liquids in inside the pool and other places in the house"

FUNDAMENTALS OF LAW

Yo

In accordance with the powers that article 58.2 of Regulation (EU) 2016/679 (Re-General Data Protection Regulation, hereinafter GDPR), grants each authority quality 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.

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."

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II

In the present case, the claim dated 01/21/22 is examined by means of
gave from which the alleged wrong orientation of a set of security cameras is transferred
video surveillance installed in a building, devoid of an informative sign(s)
when it is a video-surveilled area.

The facts initially materialize in the alleged excessive capture of space
public and/or private, as well as the deficient informative signage, in the opinion of the claimant.
considering the irregular situation for the reasons stated.

The art. 5.1 c) GDPR provides the following: Personal data will be:
“adequate, relevant and limited to what is necessary in relation to the purposes
for those who are processed ("data minimization").

It should be remembered that individuals are responsible for ensuring that the systems installed
felled comply with current legislation, certifying that it complies with all
the requirements demanded by the regulations in force.

The installation of this type of device must have the mandatory informative poster
tive, indicating the purposes and person responsible for the treatment, where appropriate, of the data of each
personal character.

In any case, the cameras must be oriented towards the particular space, avoiding
to intimidate neighboring neighbors with this type of device, as well as control areas
nas of transit of the same without justified cause.

Neither with this type of device can you obtain an image(s) of public space.
since this is the exclusive competence of the Security Forces and Bodies of the State
tado.

It should be remembered that even if it is a "simulated" camera, the same
should preferably be oriented towards private space, since it is considered
that this type of device can affect the privacy of third parties, who are intimate
measured by it in the belief of being the object of permanent recording.

On the part of individuals, it is not possible to install devices for obtaining

images of public space, outside the cases allowed in the regulations.

The purpose of this type of device must be the security of the property and

its inhabitants, avoiding the affectation of the rights of third parties who are intimidated

two with the same

II

The defendant party in writing dated 07/06/22 argues that the "placement of the

cameras is due to acts of vandalism in the building, installing four cameras with

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a closed-circuit video surveillance system" focusing on the pool, garden and patio.

chair.

Item, considers that the presence of the cameras is due to an "exception" to the

consider that there is no better location for their presence.

Having examined the frames provided, it can be concluded that the cameras capture

adjacent (unmasked) road area initially disproportionately

da, as well as the pool area, a space that must be free of cameras as it is

an area reserved for the recreation of the clients of the property.

It should be remembered that the installation of this type of device must be carried out

in such a way that it weighs the rights of third parties, considering this Agency that the

system does not comply with current legislation, remembering that there are areas reserved for the

privacy in which this type of cameras cannot be installed.

The intended purpose of property protection is achieved by co-

location of cameras perpendicular to the façade, which avoids occupation in your case of the property, with the corresponding damage insurance in case of damage to the clients of the property, but preserving the freedom and privacy of the same in certain areas (eg pool area).

The new statements and documentary provided by the defendant on the date 10/28/22, the initial consideration of the proposal varies, since the measure is considered proportionate to the nature of the vandalism attacks exposed and the seriousness of the same, not being considered excessive a greater angle of capture of the cameras, if this prevents furtive attacks carried out from the immediate vicinity of the property.

IV.

The claimant(s) also states in its claim that the system pre-supposedly it lacks informative signage in this regard, since the sign is not displayed (en) that report the video-surveilled area.

"The duty of information provided for in article 12 of Regulation (EU) 2016/679 will be understood to have been complied with by placing an informative device in a sufficiently visible place identifying, at least, the existence of the treatment, the identity of the person responsible and the possibility of exercising the rights provided for in 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" (*bold type belongs to this body)—art. 22 section 4 of the LOPDGDD--.

The AEPD, in a related report, stipulates that it is not necessary for the cartels to be sit just below the cameras. It is enough to do it in a visible place and include open and closed spaces where the video camera circuit is operational.

The claimed party in writing dated 07/06/22 states "that it has proceeded to the placement of posters in the visible area" indicating that it is a video zone.

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monitored, although they were not in place at the time the events occurred.

chos described, but have been placed later.

The above facts affect the content of article 13 GDPR,

lacking the information poster system (s) with an effective address to which to be able to

If applicable, contact or indicate, where appropriate, the main person responsible for the treatment of the data.
data.

Article 13 GDPR "Information that must be provided when the data per-
personal data are obtained from the interested party"

1. When personal data relating to him or her is obtained from an interested party, the person responsible of the treatment, at the moment in which these are obtained, it will provide you with all the information information indicated below: a) the identity and contact details of the responsible and, where appropriate, his representative; b) the contact details of the delegate of pro-data protection, if applicable; c) the purposes of the processing for which the data is intended personal information and the legal basis of the treatment (...).

Article 72 section 1 of the LOPDGDD (LO 3/2018, December 5) in relation to
tion to the limitation period of very serious infractions "will prescribe three
years" and in particular the following:

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
(UE) 2016/679 and 12 of this organic law.

V

This body has spoken widely in recent years about the actions
vandalism carried out furtively in the belief that they do not have
will have no consequence, allowing a certain flexibility in the measures adopted.
given precisely to avoid unfair situations on the victims of the same.

According to the defendant, some of the attacks suffered by the house were
focus on the pool area, by launching some kind of liquid, at a
prudential distance, in order to cause damages in the same.

The evidence obtained by the cameras, even temporarily "hidden"
are a legally valid means of proof to prove alleged crimes against the
patrimony of third parties, corresponding to the jurisdictional bodies the examination and
location of the same.

"Whoever causes damage to another's property not included in other titles of
this Code, will be punished with a fine of six to twenty-four months, given the
economic condition of the victim and the amount of the damage" (Article 263 of the Penal Code).

In this procedural phase, extensive documentation is provided, which proves the
coherence with the offense of the facts exposed by the defendant (Document De-
Mosos de Esquadra-Interior Department nunciant) recounting the "launching of boats-

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llas de aceite" determined as the main author of the same to one of the related parties.
clamoring.

Likewise, photographs are provided that prove the realization of graffiti in
the pool area, on the ground and facade of the property (frames 2-3 Annex II Written

10/28/22).

Therefore, if the behaviors described persist, a relaxation of the measures is allowed.

measures, being able in coordination with the Security Forces and Corps to adopt the necessary measures to avoid the acts of vandalism described, having to make available position of the Investigating Court closest to the images obtained.

SAW

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:

to)

the rights of the interested parties in accordance with articles 12 to 22;

In the present case, it is taken into account that it is a legal entity, with a

wealth estimated at more than €700,000, taking into account the circumstances described

by the claimed party, although taking into account that they were devoid of

informative billboards, which justifies a minimum penalty in the amount

of €300, for the infringement of article 13 of the GDPR, sanction located on the lower scale

for this type of behavior, but taking into account the negligent conduct of the

claimed (a), not proceeding the imposition of any measure to have been corrected

for the present proceeding.

VII

In accordance with the foregoing, this body proceeds to impose a minimum penalty for

the temporary absence of informative signage, considering the measure proportional

adopted for capturing an area of public space, given the nature of the attacks

exposed, produced from a certain distance, with a clear purpose of damaging

patrimonial year, allowing according to the factual circumstances a certain flexibility.

ity in the adoption of housing measures and its inhabitants.

Finally, the claimant(s) is warned about the importance of the

rights at stake, and the exercise of any action must be governed by the rules

of <good faith> (Article 7 Civil), in such a way that being part "investigated" as

alleged material author of some facts is in court where he has to proceed to

defend themselves against them, avoiding instrumentalizing this body in matters

away from the competence framework of the same or with a purpose other than a real guardianship.

that of their rights.

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Therefore, in accordance with the applicable legislation and assessed the graduation criteria

tion of the sanctions whose existence has been accredited,

the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: IMPOSE the entity PLANET COSTA DORADA SOCIEDAD LIMITA-

DA with NIF NIF B02898583, for a violation of Article 13 of the GDPR, typified in

Article 83.5 b) of the GDPR, a fine of €300.

SECOND: NOTIFY this resolution to the entity PLANET COSTA DORA-

DA LIMITED PARTNERSHIP.

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

Respondents may optionally file an appeal for reinstatement before the Director

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

the day following the notification of this resolution or directly contentious appeal

before the Contentious-Administrative Chamber of the National Court,

in accordance with the provisions of article 25 and section 5 of the additional provision

fourth clause of Law 29/1998, of July 13, regulating the Contentious Jurisdiction-

administration, within a period of two months from the day following the notification

tion of this act, as provided for in article 46.1 of the aforementioned Law.

Finally, it is 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 interested party

do states its intention to file a contentious-administrative appeal. If it is-

As the case may be, the interested party must formally communicate this fact in writing

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

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

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 the documentation to the Agency

proving the effective filing of the contentious-administrative appeal. if the

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

treatment within two months from the day following notification of this

resolution, would terminate the precautionary suspension.

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