

Procedure No.: PS/00228/2019

938-0419

RESOLUTION OF PUNISHMENT PROCEDURE

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

FACTS

FIRST: OASIS DE FAÑABE I OWNERS COMMUNITY (hereinafter, the
claimant) dated March 19, 2019 filed a claim with the Agency

Spanish Data Protection, motivated by the treatment of data carried out to
through cameras of a video surveillance system whose owner identifies as A.A.A.
with NIF ***NIF.1 (*hereinafter claimed) installed in ***ADDRESS.1.

The reasons on which the claim is based are "installation of a video camera-
surveillance" disproportionately, which could be obtaining images of
common areas of the urbanization without just cause.

Along with the claim, provide documentary evidence that proves the presence of the
device object of complaint, being the same oriented towards the entrance door
of your home, being able to capture images of common areas.

SECOND: In view of the reported facts, in accordance with the evidence
that is available, the Data Inspection of this Spanish Agency for the Protection of
Data considers that the treatment of personal data that is carried out by the
denounced through the chambers to which the complaint refers, does not meet the
conditions imposed by the regulations on data protection, for which reason the
opening of this sanctioning procedure.

THIRD: On 03/29/19, the claim filed was TRANSFERRED
to the reported entity for the appropriate legal purposes, appearing as "notified"

in the computer system of this organization.

FOURTH: On September 3, 2019, 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.

FIFTH: When the database of this Agency was consulted on 10/30/19, there is no any allegation in this regard in relation to the facts subject to transfer.

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

In this proceeding, the following are considered proven facts:

FACTS

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First. On 03/19/19 a claim was filed motivated by the presence of a video surveillance camera that could be obtaining images in a way disproportionate share of common space of third parties, seeing these affected in their privacy.

Second. It is identified as the main responsible A.A.A., which has been repeatedly warned by the administrator of the Community about the “irregularities” in the installation of the camera(s).

Third. The installation of a video-surveillance device with presumed orientation towards common areas and public space without just cause.

Fourth. To date, no allegation has been made by the accused party, so that the lack of collaboration with this body is confirmed.

Fifth. There is no evidence that it has an information poster indicating that it is a video-monitored area for the appropriate legal purposes.

FOUNDATIONS OF LAW

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By virtue of the powers that article 58.2 of the RGPD recognizes to each control authority, and as established in art. 47 of the Organic Law 3/2018, of December 5, Protection of Personal Data and guarantee of rights (hereinafter LOPDGDD), the Director of the Spanish Agency for Data Protection is competent to initiate and resolve this procedure.

II

In the present case, we proceed to examine the claim dated 03/19/19 by means of which the following is transferred as the main fact:

"installation of video-surveillance cameras" disproportionately.

The facts therefore materialize in the installation of some type of device that is affecting, according to the complainant, her personal and/or family privacy without just cause.

Article 5 c) RGPD provides the following: "Personal data will be:

c) adequate, pertinent and limited to what is necessary in relation to the purposes for those that are processed ("data minimization").

It should be remembered that individuals can install video-surveillance cameras even if assume the responsibilities that they comply with the provisions in force in the matter.

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This type of device cannot be used to disturb the privacy of third parties alien to your particular property, and should preferably be oriented towards your private area.

III

For information purposes only, it is worth remembering some of the requirements that must comply with the processing of images through a video surveillance system to comply with current regulations:

- 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 contemplated 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 since the treatment of images in places public can only be carried out, where appropriate, by the Forces and Bodies of Security. Nor can spaces owned by third parties be captured or recorded without the consent of their owners, or, as the case may be, of the persons who are find.
- The duty to inform those affected provided for in article 12 of the RGPD 2016/679, of April 27, 2016, in the terms referred to both in the cited article, as in articles 13 and 14 of said rule, resulting from the application -by not contradicting the provisions of the aforementioned Regulation-, the manner provided in the Article 3 of Instruction 1/2006, of November 8, of the Spanish Agency for Data Protection, on the Processing of Personal Data for the Purpose of Surveillance through Camera Systems or Video Cameras (Instruction 1/2006, of 8 of November, of the Spanish Data Protection Agency).

Specifically, it must:

1. Place at least one informative badge in the video-monitored areas

located in a sufficiently visible place, both in open spaces and closed.

In accordance with the provisions of articles 13 and 14 of the Regulation (EU)

2016/679, of April 27, 2016, in the informative sign previously

mentioned must identify, at least, the existence of a treatment, the

identity of the person in charge and the possibility of exercising the rights provided in these precepts.

2. Keep the information to which it refers available to those affected

the aforementioned Regulation (EU) 2016/679, of April 27, 2016.

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In accordance with the evidence available in this

sanctioning procedure, and without prejudice to what results from the investigation,

considers that the requested party has a video-surveillance device that could

not comply with current legislation.

The known facts could constitute an infraction, attributable to the

claimed, for violation of article 5.1 c) RGPD.

This infringement affects the reporting principles of the RGPD, as it is considered a

disproportionate measure (in the case of a camera), and may be

considered very serious in accordance with the provisions of article 83.5 RGPD.

“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 of greater amount:

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

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Without prejudice to the provisions of article 83 of the RGPD, the aforementioned Regulation has in its art. 58.2 b) 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 sanction by means of a fine, a warning may be imposed. must however Special attention should be paid to the nature, seriousness and duration of the infringement, its intentional nature, to the measures taken to alleviate the damages suffered, the degree of liability or any relevant prior violation, the manner in which that the control authority has been aware of the infraction, compliance of measures ordered against the person responsible or in charge, adherence to codes of conduct and any other aggravating or mitigating circumstance.”

The accused party must explain if he has a video camera-surveillance, even if it is of a simulated nature, must specify the cause/reason for the installation and that it meets all the required requirements legally (eg providing screen print with date/time.

In case of reorientation of the same, it must also prove such extreme before this Agency with a photograph with date and time that accredits such end.

Specify that if within a month from the notification of this act, the denounced persists in his conduct, the Community of owners (through its President, you can send him a new communication warning him for the last time of the withdrawal/reorientation of the camera, for example with sending a burofax or letter

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certified, attaching where appropriate a copy of this resolution so that you have knowledge of it.

If he persists in his actions, a new complaint must be filed with this

Agency, which will proceed to open a sanctioning procedure of a financial, assessing the lack of collaboration with this body.

All this without prejudice to transferring the facts, if deemed appropriate to the State Security Forces and Bodies or to the Investigating Court more close to the place of commission of the acts, in case of affectation to zones “reserved” for neighbors.

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 (PS/00228/2019) the accused A.A.A. for the infringement of art. 5.1 c) RGPD, by having a video surveillance camera installed in the common area, without an informative poster, disproportionately oriented, typified in the art. 83.5 a) RGPD, being punishable in accordance with art. 58.2 GDPR.

SECOND: REQUIRE A.A.A. so that within a month from this act of

notification, proceed:

☐

Report on the installation of the device in question, providing a printout of screen (date/time) of what is captured with it, as well as all documentation that proves its legality.

☐ Proceed, where appropriate, to the removal/reorientation of the installed camera, accrediting it before this organism.

THIRD: NOTIFY this resolution to the defendant Mr. A.A.A. and

REPORT the result of the proceedings to the denouncing party COMMUNITY OF OWNERS OASIS OF FAÑABE I.

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

LOPDPGDD, and in accordance with the provisions of article 123 of the LPACAP, the

Interested parties may optionally file an appeal for reconsideration before the

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

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

contentious-administrative appeal before the Contentious-Administrative Chamber of the

National Court, in accordance with the provisions of article 25 and section 5 of

the fourth additional provision of Law 29/1998, of July 13, regulating the

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.

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