

□ Procedure No.: PS/00266/2020

## RESOLUTION OF PUNISHMENT PROCEDURE

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

### BACKGROUND

FIRST: On January 13, 2020, it had entry in this Spanish Agency of  
Data Protection a document presented by A.A.A. (hereinafter referred to as the claimant),  
by means of which he formulates a claim against the ASSOCIATION OF PROPRIETORS  
RRR with NIF \*\*\*NIF.1 (hereinafter, the claimed one), for the installation of a system  
of video surveillance installed in \*\*\*ADDRESS.1, regarding which there are indications of  
a possible breach of the provisions of the data protection regulations.

One of the reasons underlying the claim is:

“[...] The posters are obsolete and, furthermore, they do not contain the  
information necessary for the user [...].”

Attach photographs of two posters located in \*\*\*LOCALIDAD.1. The date of taking  
of the image that appears in the screenshot of the device with which they have been  
performed is "today" at 5:48 p.m. and 5:53 p.m.

SECOND: Prior to admitting this claim for processing, the  
Subdirector General for Data Inspection directed, on March 5, 2020, a  
request for information to the respondent in which he was informed that the Agency of  
Data Protection had been aware of the existence of security cameras  
video surveillance located at the address indicated in the first event that could be  
violating the data protection regulations and in which it was requested that, in the  
period of one month, accredit the conformity of the aforementioned facility with the aforementioned  
normative

Given the rejection of the electronic notification because ten days have elapsed since made available, a new request for information was reiterated on the 23rd of March 2020 by mail. In this reiteration, the respondent was reminded that, in compliance with article 14.2 of Law 39/2015 of October 1, of the Procedure Common Administrative of Public Administrations (hereinafter, LPACAP), the legal persons and entities without legal personality, as well as those who represent obligated subjects, among others, they will be obliged to relate to the Public Administrations through electronic means. The notification of the reiteration was returned by Sobrante (not withdrawn in office) on June 22, 2020

THIRD: The claim was admitted for processing by means of a resolution of 17 August 2020.

THIRD: On December 10, 2020, the Director of the Spanish Agency of Data Protection agreed to initiate a sanctioning procedure against the claimed, for the alleged infringement of article 13 of Regulation (EU) 2016/679 (Regulation [www.aepd.es](http://www.aepd.es)

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General Data Protection, hereinafter RGPD), typified in article 83.5 of the same standard.

FOURTH: The electronic notification of the initiation agreement was made available to the claimed on December 14, 2020 through the Notification Service

Electronic and Enabled Electronic Address without the former accessing its content within 10 calendar days. In accordance with the provisions of article 43.2 of the LPACAP, the aforementioned notification must be understood as rejected.

FIFTH: Formal notification of the initiation agreement, the respondent has not submitted brief of allegations, for which what is stated in article 64.2.f) of the LPACAP, which establishes that if claims are not made within the term foreseen on the content of the initiation agreement, it may be considered motion for a resolution when it contains a precise pronouncement on the imputed responsibility, for which a Resolution is issued.

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

In this proceeding, the following are considered proven facts:

#### FACTS

FIRST: \*\*\*ADDRESS.1 has a video surveillance system for the buildings that are part of said urbanization.

SECOND: In accordance with the images provided in the claim, the posters are of two types:

1. Poster of the company Domo Activa in which the only information is the responsible section, being, in this case, Princess Park.
2. Yellow poster that responds to Organic Law 15/1999, of 13 December, Protection of Personal Data.

#### FOUNDATIONS OF LAW

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By virtue of the powers that article 58.2 of the RGPD recognizes to each authority of control, and as established in arts. 47 and 48.1 of the Organic Law 3/2018, of 5 December, Protection of Personal Data and guarantee of digital rights (hereinafter, LOPDGDD), the Director of the Spanish Agency for Data Protection is competent to resolve this procedure.

II

The defendant is imputed the commission of an infraction for violation of article 13

of the RGPD, which states the following:

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"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 of the treatment;

d) when the treatment is based on article 6, paragraph 1, letter f), the interests legitimate 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 party country or international organization and the existence or absence of a decision to adequacy of the Commission, or, in the case of transfers indicated in the Articles 46 or 47 or Article 49, paragraph 1, second paragraph, reference to the adequate or appropriate warranties and the means to obtain a copy of these or to the fact that they have been borrowed.

2. In addition to the information mentioned in section 1, the person responsible for the treatment will facilitate the interested party, at the moment in which the 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 it is 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 relating to the interested party, and its rectification or deletion, or the limitation

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

of the data;

c) when the treatment is based on article 6, paragraph 1, letter a), or 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 prior to its 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 obliged to provide

personal data and is informed of the possible consequences of not

provide such data;

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f) the existence of automated decisions, including profiling, to which

referred to in article 22, sections 1 and 4, and, at least in such cases, information

about applied logic, as well as the importance and consequences

provisions of said treatment for the interested party.

3. When the controller plans the further processing of data

personal data for a purpose other than that for which they were collected, you will provide the interested party, prior to such further processing, information on that other purpose and any additional information relevant under paragraph 2.

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

The aforementioned infractions are typified in article 83.5 of the RGPD, which provides the following:

“The infractions of the following dispositions will be sanctioned, in accordance with the 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 pursuant to articles 12 to 22 [...]

This infringement is typified in article 83.5 of the RGPD, which provides:

“The infractions of the following dispositions will be sanctioned, in accordance with the 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:

- [...] b) the rights of the interested parties according to articles 12 to 22; [...]».

For the purposes of the limitation period of the infraction, article 74 of the LOPDGDD establishes:

“They are considered minor and the remaining infractions of a legal nature will prescribe after a year.

merely formal of the articles mentioned in paragraphs 4 and 5 of article 83

of Regulation (EU) 2016/679 and, in particular, the following:

a) Failure to comply with the principle of transparency of information or the right to information of the affected party for not providing all the information required by articles 13 and 14 of Regulation (EU) 2016/679. [...]”

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III

Article 13 of the RGPD —in compliance with the duty of information contained in the preceding article 12 of the same legal text- regulates the information that must be provided when the personal data is obtained from the interested party, a situation that occurs in cases in which images are captured by a system of video surveillance. In this sense, article 22.4 of the LOPDGDD establishes that "The duty of information provided for in article 12 of Regulation (EU) 2016/679 is understood fulfilled by placing an informative device instead sufficiently visible identifying, at least, the existence of the treatment, the identity of the person in charge and the possibility of exercising the rights foreseen 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 the present case, the assessment of the set of factual elements in the the sanctioning procedure shows that COMMONWEALTH OF PROPIETARIOS R.R.R., as the data controller through the

video surveillance system, it does not have adequate informative posters for the data protection regulations. Thus, the signs with the company logo DOMO ACTIVA only identify the claimant, but do not provide information about the exercise of the rights provided for in articles 15 to 22 of the GDPR. The other types of posters respond to a model appropriate to the previous Law 15/1999, so they should be adapted to the regulations currently in force and proceeding to update the information provided to the extent that it is accurate.

#### IV

Without prejudice to the provisions of article 83.5, sections a) and b), of the RGPD, its art. 58.2 b) establishes the possibility of sanctioning with a warning, in relation to what stated in Recital 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.”

In the present case, when deciding the sanction to be imposed, it has been taken into account account, in particular, that it is an entity whose main activity is not linked to the processing of personal data and that the alleged infringement is considered mild by the LOPDGDD.



For all these reasons, it is considered that the appropriate sanction to be imposed is warning, in accordance with the provisions of article 58.2 b) of the RGD, in relation to what is stated in Considering 148, cited above.

On the other hand, in accordance with the provisions of article 58.2 d) of the RGD, according to the which each control authority may "order the person in charge or in charge of the treatment that the treatment operations comply with the provisions of the this Regulation, where appropriate, in a certain way and within a specified period [...]", the person in charge must prove, within a period of (1) month, the following ends:

- ☐ Having proceeded to complete the information contained in the devices informative (it must be identified, at least, the existence of a treatment, the identity of the person in charge and the possibility of exercising the rights foreseen in said precepts), locating this device in a sufficiently visible place, both in open and closed spaces.
  - ☐ That it keeps the information referred to in the document available to those affected.
- quoted GDPR.

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 RGD, 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.

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

Spanish Data Protection Agency RESOLVES:

FIRST: IMPOSE the ASSOCIATION OF OWNERS R.R.R., with NIF

\*\*\*NIF.1 for an infringement of article 13 of the RGPD, typified in article 83.5 of the

RGPD, a sanction of WARNING.

SECOND: ORDER COMMONWEALTH OF PROPRIETORS R.R.R., with NIF

\*\*\*NIF.1, which certifies, within a maximum period of ONE MONTH from the notification of the

this resolution, the following extremes:

☐ Having proceeded to complete the information contained in the devices  
informative (it must be identified, at least, the existence of a treatment, the  
identity of the person in charge and the possibility of exercising the rights foreseen in said  
precepts), locating this device in a sufficiently visible place, both in  
open and closed spaces.

☐ That it keeps the information referred to in the document available to those affected.  
quoted GDPR.

THIRD: NOTIFY this resolution to the COMMONWEALTH OF

OWNERS R.R.R. and inform the claimant.

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

Finally, it is pointed out 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 by writing addressed to the Spanish Agency for Data Protection, presenting it through Electronic Register of the Agency [<https://sedeagpd.gob.es/sede-electronica-web/>], or through any of the other registers 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 within a period of two months from the day following the notification of this resolution would end the precautionary suspension.

Sea Spain Marti

Director of the Spanish Data Protection Agency

938-131120

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