

□ File No.: EXP202205295

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. (*hereinafter, the complaining party) dated May 5, 2022

filed a claim with the Spanish Data Protection Agency. claims her-

The claim is directed against ***COMMUNITY OF OWNERS.1 with NIF ***NIF.1 (hereinafter
ante, the claimed party).

On May 5, 2022, the General Subdirectorate of Data Inspection

(SGID) received a written notification of a security breach from

the personal data sent by ***COMMUNITY OF OWNERS.1 with NIF

***NIF.1.

The claimant states that in the building where his home is located,

home, a video surveillance camera has been installed in common areas, by

the President of said Community, noting that said chamber is oriented towards access

to the home of the claimant, as well as that it is not duly indicated

by having an informative poster of a video-surveilled area that lacks information

of the person responsible for the treatment and to which address to address for the exercise of de-
rights.

Provide an image of the location of the camera that is the object of the claim and of the sign

information on the video-surveilled area with the sections referring to the data controller

information and to which address to address requests for rights, blank (Annex I).

SECOND: In accordance with article 65.4 of Organic Law 3/2018, of 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 05/09/22, 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
cas (hereinafter, LPACAP), without any access to the notification
telematics produced in due time and form, which is why it is understood as “rejected”.

THIRD: On June 10, 2022, in accordance with article 65 of the
LOPDGDD, the claim presented by the claimant party was admitted for processing.

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FOURTH: On July 29, 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,
LPACAP), for the alleged infringement of Article 5.1.c) of the GDPR, typified in the
Article 83.5 of the GDPR.

FIFTH: Notified of the aforementioned start-up agreement in accordance with the rules established in
Law 39/2015, of October 1, on the Common Administrative Procedure of
Public Administrations (hereinafter, LPACAP), the claimed party submitted a written
of allegations dated 08/13/22 in which, in summary, he stated the following:

-That the installation of the system is due to acts of vandalism caused in the

entrance gate to the Community by the owner of gate no. XX.

-That the installation of the system has been supported by the Community of owners providing a copy of the Minutes dated 12/03/2019.

A copy of the Minutes dated 12/03/19 is provided as documentary evidence (Annex I).
in which the installation of a video-surveillance system is approved on the occasion of various acts of vandalism that bring cause in the behavior of the owner of the door no. XX.

SIXTH: On 08/22/22 <Proposed Resolution> was issued where it was agreed propose a penalty in the amount of €300, by not proving that the poster(s) informative conforms to current legislation, nor have adopted corrective measures any in this sense, being notified in a timely manner by telematic means to the be a legal entity, as evidenced in the information system of this organism.

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 05/05/22 through the which is transferred as main fact the following:

“a video surveillance camera has been installed in common areas, by of the President of said Community, noting that said chamber is oriented towards accessing or to the home of the claimant, as well as that it is not duly signposted, as it has an informative poster of a video-surveilled area that lacks information training of the person in charge of the treatment and to which address to go for the exercise rights” (folio no. 1).

Second. It is accredited as the main person in charge ***COMMUNITY OF PRO-OWNERS.1.

Third. It is proven that the informative signage in the video-surveilled area lacks of the indication of the data controller or the way to exercise the rights.

Room. The legal support in the installation of video-vi-camera(s) is accredited.

vigilance for the protection of the property against various acts of vandalism of various nature.

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."

II

In the present case, the claim dated 05/05/22 is examined by means of gave from which the "camera installation is transferred to common and/or private areas

without justified cause".

For the installation of surveillance services in a community of owners, it is necessary to the votes in favor of 3/5 of the total owners, who must also represent at least 3/5 of the participation fees.

According to Article 17 of the Horizontal Property Law, to incorporate into the community services or improvements that are not essential for conservation, habitability and access stability of the property, such as video surveillance cameras, it will be necessary the favorable vote of three fifths of the owners, who in turn suppose three fifths of the participation fees.

The installation of this type of devices individually must have the approval of the group of owners of the community when affecting areas of community transit.

To determine if an area is common or not, we must review article 396 of the Code. go Civil. It contains the basic criteria by which to be governed, as well as a series of elements that are considered common areas.

Article 6 paragraph 1 GDPR letter e) provides "The treatment will only be lawful if at least one of the following conditions is met:

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- the processing is necessary for the fulfillment of a mission carried out in public interest or in the exercise of public powers conferred on the data controller treatment;

The installation of this type of device must be carried out with sufficient

caution when affecting the fundamental right(s) of third parties, who are intimidated by the same in his personal freedom, directly affecting his personal data in case of being treated without just cause, therefore having to be strict when to meet the requirements set by the regulations in force.

II

On 08/13/22, the defendant's allegations were received, stating that the installation of the system has the support of the Community of owners, providing having a copy of the Documentary Act accrediting such extreme due to various "acts vandalism".

This body has embodied in various resolutions the rejection of acts vandals of any nature sometimes covered in the belief that the furtive nature of the same will not have reprehensible legal consequences to the author of these.

They are reflected in the Minutes provided "various acts of vandalism by the owner door XX", being corroborated by the protests themselves. tions of the owners of the Community.

The installation of the cameras affects common areas, being the criteria of the majority legally embodied in a reliable document that a control of the same, thus avoiding "damages" to the Community of owners. rivers, being also a space not reserved for personal privacy, but for <use and enjoyment> of the set of commoners.

Therefore, apart from other legal considerations, the measure as proportionate to the intended purpose, which is none other than to prevent the reiteration of acts of vandalism by anyone who does not wish to respect the minimum rules of con-neighborhood experience, remembering that the images obtained can be contributed to the competent authorities to prosecute the nature of the facts that are captured with

the same.

IV.

It is considered, however, that the system lacks the corresponding information signage.

so that it is not reported that it is a video-surveilled area, therefore

that the conduct described is considered a second administrative infraction in the mar-

with the regulations that concern us.

Article 22 section 4 of the LOPDGDD (LO 3/2018) provides: "The duty to

information provided for in article 12 of Regulation (EU) 2016/679 shall be understood

accomplished by placing an informational device in a location sufficiently

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visible 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 the Re-

regulation (EU) 2016/679. A code may also be included in the information device.

go connection or internet address to this information".

The facts described above imply an affectation to the content of the article

13 GDPR, as the informative poster lacks an effective address to which power can be reached in

address your case, having informed the group of neighbors of the purpose

of the installation (vgr. protection of the installations, etc).

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 person in charge and, where appropriate, his representative; b) the contact details of the protection delegate of data, if applicable; c) the purposes of the processing for which the personal data is intended; personal data and the legal basis of the treatment (...).

Article 72 section 1 of the LOPDGDD (LO 3/2018, December 5) in relation 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.

Therefore, the infringement of article 13 GDPR is considered accredited, by fulfill the duty of information to those affected by the processing of their data, which are collected by the video surveillance system installed under its sole responsibility. ity, by having an irregular poster in the legally required information.

V

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 accordance with the foregoing, it is considered correct to impose a penalty of €300, when be of a Community of owners, lacking the poster of the corresponding sections corresponding to responsible and direction of exercise of rights, considering the conduct described at least gross negligence as a result of the facts described, sanction if-

uated on the lower scale for this type of behavior.

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The text of the resolution establishes which have been the infractions committed and the facts that have given rise to the violation of the data protection regulations from which it is clearly inferred what are the measures to be adopted, without prejudice to that the type of procedures, mechanisms or concrete instruments to implement treat them corresponds to the sanctioned party, since it is the person responsible for the treatment who fully knows your organization and has to decide, based on personal responsibility active and risk-focused, how to comply with the GDPR and the LOPDGDD.

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 ***COMMUNITY OF OWNERS.1, with NIF ***NIF.1, for a violation of Article 5.1.c) of the GDPR, typified in Article 83.5 of the GDPR, a fine of €300.

SECOND: TO ORDER the claimed entity, so that, within a period of 10 business days, them, counting from the following of the notification of this act, proceed:

-Change the informative poster, proceeding to place a new one in a visible area badge adjusted to the regulations in force, where the person responsible for the treatment is indicated. procedure and the way to exercise the rights within the framework of the current GDPR, having to accredit such point before this Agency.

THIRD: NOTIFY this resolution to ***COMMUNITY OF OWNERS-

RIVERS.1.

FOURTH: Warn the sanctioned party that he must enforce the sanction imposed

Once this resolution is enforceable, in accordance with the provisions of Article

art. 98.1.b) of Law 39/2015, of October 1, on Co-Administrative Procedure

public administrations (hereinafter LPACAP), within the term of payment vo-

lunteer 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, by means of its income, 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, open in the name of the Spanish Agency

ñola of Data Protection in the bank CAIXABANK, S.A.. In case of

Otherwise, it will proceed to its collection in the executive period.

Once the notification has been received and once executed, if the execution date is

between the 1st and 15th of each month, both inclusive, the term to make the payment

voluntary will be until the 20th day of the following or immediately following business month, and if

between the 16th and the last day of each month, both inclusive, the payment period is

It will run until the 5th of the second following or immediately following business month.

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

Resolution will be made public once the interested parties have been notified.

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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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