

□ File No.: EXP202206378

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 29, 2022

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

The petition is directed against COMMUNITY OF OWNERS *** COMMUNITY.1 with NIF

***NIF.1 (hereinafter, the claimed party). The reasons on which the claim is based
are the following:

"The claimed party is President of the Community of Owners in which
resides and declares that, using his condition, he has installed a video camera
surveillance on the landing of the floor where he lives, capturing images
common areas, without prior agreement of the Community of Owners, which in
dated August 27, 2020 approved the installation of cameras only in areas of
parking and community portal.

It also states that the camera is not properly signposted by means of
give you the mandatory informative posters of the video-surveilled area"

Provide a copy of the Agreement of the Meeting of Owners of August 27, 2020 and images
nes of the location of the camera object of claim.

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 06/06/22, 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.

THIRD: On 07/11/22, a response was received from the defendant in which she expounded the following:

-The number of cameras installed amounts to 8 cameras and their distribution and in-

Jib corresponds to the photographs that are included in document No. 1.

-Attached as Doc. No. 2 photographs of the posters found in the entrance of the Community, warning of access to a guarded area (...)

-Additional photographs of the informative posters are attached as Document No. 6.

indicative of the presence of the video-surveillance system in different enclaves of the in-furniture.

C / Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

2/7

FOURTH: On July 14, 2022, in accordance with article 65 of the LO-

PDGDD, the claim presented by the claimant party was admitted for processing.

FIFTH: On August 22, 2022, the Director of the Spanish Agency for

Data Protection agreed to initiate disciplinary proceedings against the claimed party,

for the alleged violation of Article 13 of the GDPR, typified in Article 83.5 of the

GDPR.

SIXTH: Notified the aforementioned start agreement in accordance with the rules established in

Law 39/2015, of October 1, on the Common Administrative Procedure of Admi-

Public administrations (hereinafter, LPACAP) and after the period granted for the

formulation of allegations, it has been verified that no allegation has been received

by the claimed party.

The aforementioned Initiation Agreement was subject to electronic notification to the entity mentioned on 08/23/22 resulting in <Expired> in terms of access to it, as 10 calendar days have elapsed without access to its content.

Article 64.2.f) of the LPACAP -provision of which the claimed party was informed in the agreement to open the procedure- establishes that if no allegations are made- within the period provided for the content of the initiation agreement, when it contains has a precise pronouncement about the imputed responsibility, it may be considered motion for resolution. In the present case, the agreement to start the ex-disciplinary action determined the facts in which the accusation was specified, the infringement of the GDPR attributed to the defendant and the sanction that could be imposed. Therefore, taking into consideration that the defendant has not made allegations to the agreement to initiate the file and in accordance with the provisions of article 64.2.f) of the LPACAP, the aforementioned initiation agreement is considered in the present case resolution proposal.

In view of all the proceedings, by the Spanish Agency for Data Protection

In this proceeding, the following are considered proven facts:

PROVEN FACTS

First. The facts bring cause of the claim dated 05/29/12 through the which translates the following:

"The claimed party is President of the Community of Owners in which resides and declares that, using his condition, he has installed a video camera surveillance on the landing of the floor where he lives, capturing images common areas, without prior agreement of the Community of Owners, which in dated August 27, 2020 approved the installation of cameras only in areas of parking and community portal.

It also states that the camera is not properly marked

through the mandatory informative posters of the video-monitored area”—folio no. 1--.

C / Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

3/7

Second. It is identified as the main responsible Community of Owners

***COMMUNITY.1, NIF ***NIF.1.

Third. There is evidence of the deficiencies in the informative signage by not indicating the responsible for the treatment or the way to exercise the rights within the framework of the mativa in force

The evidence provided by the defendant herself makes it possible to prove that the charges

TVs only indicate that it is a "video-surveilled area" but are not approved by

the regulations in force.

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 authori-

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 sub-

sisidario, by the general rules on administrative procedures."

II

In the present case, the complaining party transfers the fact of installing a camera
mara lacking an informative sign(s) indicating that it is, in its case, a
video-surveilled area or the way to exercise the rights recognized in the normative framework
current matative.

"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 information device
in a sufficiently visible place identifying, at least, the existence of the treatment.
to, the identity of the person in charge and the possibility of exercising the rights provided for in
Articles 15 to 22 of Regulation (EU) 2016/679.

A connection code or address may also be included in the information device.

Internet access to this information" (*bold font belongs to this organization)—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.

C / Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

4/7

The facts described above may affect the content of the
article 13 RGPD, as it lacks an informative poster placed in a visible area, having to
have informed all the owners of the purpose of the installation (vgr.
protection of facilities, etc.).

Article 13 GDPR "Information that must be provided when personal data

are obtained from the interested party"

"When personal data relating to him is obtained from an interested party, the person responsible of the treatment, at the time they are obtained, will provide you with all the information indicated below:

to)

the identity and contact details of the person in charge and, where appropriate, their representative; b) the contact details of the data protection officer, in your case; c) the purposes of the processing for which the personal data is intended purposes and the legal basis of the processing (...).

Article 72 section 1 of the LOPDGDD (LO 3/2018, December 5) in relation to the period of prescription of very serious infractions "will prescribe after 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.

II

Based on the evidence available in this proceeding disciplinary action, it is considered that the claimed party has proceeded to install a system of video-surveillance that presents "irregularities" in the informative billboard warning that it is a "video-surveilled" area.

Therefore, the "facts" were limited to the irregularities presented by the cartel (is) informative that do not comply with the provisions of the regulations in force, since Among the evidence provided by the defendant, there is an Act of the Community of owners supporting the placement of a camera in a "conflictive" area due to facts that the claimant is accused of a criminal nature.

After analyzing the statements of the defendant made in writing dated 07/11/22, although the system is informed, the informative poster(s) does not indicate the person responsible for the treatment (vgr. Community of owners X) or the mode of exercise the rights if necessary (for example, through effective address to the that we can address in your case).

No statement has been made by the claimed party nor has it been proceeded to correct the situation described, accrediting it before this body reliably, recalling the obligation that notifications with the aforementioned entity and the public Administration are through electronic means in a mandatory (art- 14.2 Law 39/2015, October 1).

C / Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

5/7

The known facts are therefore constitutive of an infringement, attributable to the claimed party, for violation of article 13 GDPR, previously transcribed.

IV.

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 this case, the initial allegations of the defendant are taken into account, as well as

as the absence of previous infractions, being also a measure supported by the Community of owners for the sake of protection against acts of a criminal nature, to establish a penalty of €300, for the affectation of article 13 GDPR, before previously mentioned; offense located on the lower scale for this type of commitment behaviors, since the correction exposed in the signage has not been carried out informative.

IV.

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.

Finally, the importance of the rights at stake is recalled,

The instrumentalization of this Agency for situations of bad neighbor relations should be avoided. or transfer facts that may constitute uncivil acts that justify the presence of cameras to control acts of this nature.

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 ***COMMUNITY.1, with NIF ***NIF.1, for a violation of Article 13 of the GDPR, typified in Article 83.5 of the GDPR, a fine of €300.

SECOND: ORDER the entity COMMUNITY OF OWNERS *** COMMUNITY DAD.1, so that, within a period of 10 business days, you want the next one from the

notification of this act, proceed to adapt the informative posters to the regulations

it is valid, sending a photographic document (date and time) that proves such end.

C / Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

6/7

THIRD: NOTIFY this resolution to COMMUNITY OF OWNERS

***COMMUNITY.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 IBAN number: ES00 0000 0000 0000 0000 0000, open in the name of the Agency

Spanish Data Protection Agency at the bank CAIXABANK, S.A.. In the event

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.

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.

C / Jorge Juan, 6

28001 – Madrid

938-181022

www.aepd.es

sedeagpd.gob.es

7/7

Mar Spain Marti

Director of the Spanish Data Protection Agency

C / Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es