

□ Procedure No.: PS/00339/2021

RESOLUTION OF PUNISHMENT PROCEDURE

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

FACTS

FIRST: A.A.A. (*hereinafter, the complaining party) dated January 19, 2021
filed a claim with the Spanish Data Protection Agency. The
claim is directed against COMMUNITY OF NEIGHBORS *** COMMUNITY.1 with CIF
H33314477 (hereinafter, the claimed part). The grounds on which the claim is based
are the following:

“some video-surveillance cameras have been installed for a month...the sign of
video-surveillance does not bring notice of the person responsible for the treatment of character data
personnel, in addition the President does not provide information on the video-
vigilance (...)” (folio nº 1).

Documentary evidence (Doc. No. 1) is provided as a photograph of a poster
informative that has not been filled in as to indicate the person responsible for the treatment
or where to exercise legally recognized rights.

SECOND: In accordance with article 65.4 of Organic Law 3/2018, of 5
December, of Protection of Personal Data and guarantee of digital rights (in
hereinafter LOPDGDD), said claim was transferred on 02/15/21 to the party
claimed, so that it proceeded to its analysis and inform this Agency in the pla-
period of one month, of the actions carried out to adapt to the foreseen requirements
cough in the data protection regulations.

On 04/15/21, this Agency received a first written response indicating-
do the following:

"The company failsafe.com CB just installed a video-surveillance formed by two fixed cameras, the images of these two cameras only mind are recorded in a recorder that is in a locked cabinet and that they do not have no remote access (...)"

"Therefore we state that the Community ***COMUNIDAD.1 (Oviedo) such and as indicated by the Law, it complies with the installation of video-surveillance cameras".

Documentary evidence material is attached, consisting of the minutes of the Board of owners approving the installation of the system or informative brochure of the type of camera Ra dome installed (Annex I).

THIRD: On 04/30/21 a new response is received from the one claimed in relation to tion to the facts described, arguments identical to the first, where it manifests

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"An image is attached where the poster clearly shows its content and the location of the same".

FOURTH: On 06/28/21 the Director of the Spanish Agency for the Protection of Data agreed to admit the claim filed by the claimant for processing.

FIFTH: On August 5, 2021, the Director of the Spanish Agency for Data Protection agreed to initiate a sanctioning procedure against the claimant, for the alleged infringement of Article 13 of the RGPD, typified in Article 83.5 of the RGPD.

SIXTH: When the database of this Agency was consulted on 10/04/21, no no response has been received, nor has any corrective measure been adopted for this purpose, despite the duly accredited double attempt at administrative notification and the

subsequent publication in the B.O.E on 09/03/21.

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. The facts bring cause of the claim dated 01/19/21 through the

which the presence of a camera system is transferred without the sign informing

duly from the data controller.

Documentary evidence (Doc. No. 1) is provided as a photograph of a poster

informative that has not been filled in as to indicate the person responsible for the treatment

or where to exercise legally recognized rights.

Second. It is accredited that the main person responsible for the installation is the

Entity: Community of Neighbors *** COMMUNITY.1.

Third. The presence of the video-surveillance cameras is accredited, without the

poster informs about the person in charge of the treatment or contains an effective address to

which to address in case of exercising the rights recognized in articles 15-22

GDPR.

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 according to the provisions of articles 47 and 48 of the LOPDGDD, the Director

of the Spanish Agency for Data Protection is competent to initiate and to re-

solve this procedure.

II

Before going into the substance of the matter, in the Initiation Agreement dated 08/05/21,

informed that in case of not making allegations, the same “may be considered

motion for a resolution”, not having made any statement in this regard,

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According to an accredited query to the database of this organization on 10/04/21, by which proceeds in the terms set forth.

Going into the merits of the matter, we proceed to examine the claim dated 01/19/21 through which the presence of a system is transferred as the main fact video-surveillance issue without being duly informed, lacking the device informative of the information required in this regard (vgr. responsible, purpose of the treatment-lie, etc.).

The aforementioned facts suppose a violation of article 13

RGPD "Information that must be provided when personal data is obtained Of the interested".

"When personal data relating to him is obtained from an interested party, the person in charge of treatment, at the time these are obtained, will provide you with all the information tion 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 presenter;

treatment schedule;

d) when the treatment is based on article 6, paragraph 1, letter f), the interests

legitimate ses of the person in charge or of a third party; e) recipients or categories of recipients of personal data, where appropriate;

f) where appropriate, the intention of the controller to transfer personal data to a third country or international organization and the existence or absence of a decision to adequacy of the Commission, or, in the case of the transfers indicated in the articles 46 or 47 or article 49, section 1, second paragraph, reference to guarantees adequate or appropriate and the means to obtain a copy of them or the fact of that have been lent (...)"

All data controllers who capture or record personal images identified or identifiable persons for surveillance purposes by means of cameras, video-cameras, or any other analogous technical means must have a distinctive informative duly homologated to the regulations in force.

The art. 22 section 4 LOPDGDD (LO 3/2018, December 5) provides: "The duty to inform mation provided for in article 12 of Regulation (EU) 2016/679 will be understood to comply by placing an informative device in a place that is sufficiently visible.

ble identifying, at least, the existence of the treatment, the identity of the person in charge and the possibility of exercising the rights provided for in articles 15 to 22 of the Regulations. ment (EU) 2016/679 (...)" (*bold belongs to this body).

So that the interested party (s) can be duly informed, the poster must be as large enough so that you can easily read it from a place where all is not yet being recorded, and it must be completed in the aspects essential cough.

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III

In accordance with the evidence provided by the claimant consisting of a photograph (evidence document No. 1), it is considered that the party claimed has proceeded to install a video-surveillance camera system without the proper information required by the data protection regulations, as the badge is incomplete in the aspects of the same: indication of the person in charge, address to which to go, etc.

The evidence provided determines that the poster is posted, although it is not duly conformed to be the spaces destined to indicate the information in white, so that it is not possible to determine the person responsible for the treatment or where to exercise the rights regulated in articles 15-22 RGPD.

The evidence provided by the respondent on 04/15/21 determines undoubtedly that there is a sign in the access area although it is not duly conformed in terms of the requirements demanded in the regulations in force, by not informing the data controller (vgr. Community of owners, etc), without any correction having been accredited before this Agency.

The known facts constitute an infraction, attributable to the party claimed, for violation of the content of article 13 RGPD previously indicated-do.

IV

The Supreme Court (Sentences of April 16 and 22, 1991) considers that of the element of culpability, it follows “that the action or omission, qualified as an infraction sanction administratively, must be, in any case, attributable to its author, by intent or recklessness, negligence or inexcusable ignorance.”

The mere commission of an administrative infraction—objective type—is not enough to time to proceed to impose an administrative sanction.

Guilt as reproach to the active subject of the injury of the legal interest protected, is evident when the subject voluntarily performs the typical behavior

intentionally directed to obtaining the unlawful result, which is sought and

Dear.

In the present case, due to "carelessness" or omission, the informative badge is incomplete, so that it does not fulfill its function of duly informing the responsible for the treatment or provide an effective address before which to exercise the rights recognized in the current RGPD, the conduct being considered as a slight negligence, easily remedied.

Article 83.5 RGPD provides the following:

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"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, alternatively,

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being from a company, of an amount equivalent to a maximum of 4% of the volume overall annual total turnover of the previous financial year, opting for the greater amount:

b) the rights of the interested parties according to articles 12 to 22;

When motivating the sanction, the following is taken into account:

-the nature, seriousness and duration of the offence, taking into account the nature nature, scope or purpose of the treatment operation in question as well as the number of affected parties and the level of damages they have suffered

(art. 83.2 a) RGPD); the installed sign does not allow the neighbors of the property to

recognize the person responsible for the processing of your data, nor the way to exercise the rights

legally recognized data for not having been completed with the required data.

-the intention or negligence in the infringement (art.83.2 b) RGPD).

The respondent had already been informed of a situation of "irregularity" of the internal cartel.

training to be the same without filling in legal form, for this reason it is considered that the

conduct described determines a slight negligence, given that he should have proceeded to correct

the situation denounced immediately, providing proof of it to this body.

nism.

For all the above, it is considered correct to impose a sanction encrypted in the

amount of €1,000 (one thousand euros), a sanction located on the lower scale for this type of

behaviors.

In accordance with art. 58.2 d) RGPD, the claimed party must prove in law

gal form that the poster(s) conforms to the regulations in force (vgr, photograph, date and

hour), as well as, that they comply with the rest of the requirements determined by the norm

tive in terms of data protection.

Therefore, in accordance with the applicable legislation and after assessing the graduation criteria

tion of the sanctions whose existence has been proven,

the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: IMPOSE the entity COMMUNITY OF NEIGHBORS ***COMMUNITY.1,

with CIF H33314477, for an infringement of article 13 of the RGPD, typified in the

Article 83.5 of the RGPD, a fine of €1,000 (one thousand euros).

SECOND: NOTIFY this resolution to COMMUNITY OF NEIGHBORS ***CO-

MUNIDAD.1 and REPORT the result of the proceedings to the claimant A.A.A.

THIRD: Warn the sanctioned party that he must make the imposed sanction effective once

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

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

of the Public Administrations (hereinafter LPACAP), within the term of payment

voluntary 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,

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of December 17, through its entry, 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, opened in the name of the Spanish Agency Department of Data Protection at the banking entity CAIXABANK, S.A.. In case of Otherwise, it will be collected during the executive period.

Received the notification and once executed, if the date of execution is between the 1st and 15th of each month, both inclusive, the term to make the payment will be until the 20th day of the following month or immediately after, and if is between the 16th and last day of each month, both inclusive, the term of the payment It will be valid until the 5th of the second following month or immediately after.

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 resents may optionally file an appeal for reconsideration before the Director of the Spanish Agency for Data Protection within a month from the date of the day following the notification of this resolution or directly contentious appeal before the Contentious-Administrative Chamber of the National High Court, in accordance with the provisions of article 25 and section 5 of the additional provision

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

administrative, 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 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 interested party

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

In this case, the interested party must formally communicate this fact in writing

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

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

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

that proves the effective filing of the contentious-administrative appeal. If the

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

tive within two months from the day following the notification of this

resolution, would end the precautionary suspension.

Sea Spain Marti

Director of the AEPD, P.O. the Deputy Director General for Data Inspection, Olga

Pérez Sanjuán, Resolution 4/10/2021

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