

□ Procedure No.: PS/00273/2019

938-051119

RESOLUTION OF PUNISHMENT PROCEDURE

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

FACTS

FIRST: COMMUNITY OF OWNERS OF DEMELZA BEACH (hereinafter, the
claimant) dated April 9, 2019 filed a claim with the Agency

Spanish Data Protection. The claim is directed against A.A.A. with NIF

***NIF.1 (hereinafter, the claimed one).

The reasons that support the claim and, where appropriate, the documents provided
by the claimant are as follows:

“Place cameras on the facade aimed at common areas, stairs and corridors,
recording all the community members who pass by” (folio nº 1).

SECOND: In view of the facts denounced in the claim and the documents
data provided by the claimant, the Subdirector General for Data Inspection pro-
vided to carry out preliminary investigation actions for the clarification
of the facts in question, by virtue of the powers of investigation granted to the
control authorities in article 57.1 of Regulation (EU) 2016/679 (Regulation
General Data Protection, hereinafter RGPD), and in accordance with the provisions
in Title VII, Chapter I, Second Section, of Organic Law 3/2018, of 5
December, of Protection of Personal Data and guarantee of digital rights (in
hereinafter LOPDGDD).

As a result of the research actions carried out, it is confirmed
that the data controller is the claimed party.

THIRD: On December 17, 2019, the Director of the Spanish Agency of Data Protection agreed to initiate a sanctioning procedure against the claimed, for the alleged infringement of Article 5.1.c) of the RGPD, typified in Article 83.5 of the GDPR.

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

In this proceeding, the following are considered proven facts:

PROVEN FACTS

First. On 04/09/19, a claim from the Community is received at this Agency of owners—Demelza Beach—which is specified in the following facts:

“Place cameras on the facade aimed at common areas, stairs and corridors, recording all the community members who pass by” (folio nº 1).

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Second

A.A.A.

. The neighbor of the same has been identified as the main responsible

Third. The installation of a video-surveillance system oriented to common areas without just cause.

Fourth. It is clear that the informative poster does not indicate the person in charge before whom exercise, where appropriate, the rights recognized in articles 15 to 22 RGPD.

FOUNDATIONS OF LAW

Yo

By virtue of the powers that article 58.2 of the RGPD recognizes to each authori-

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 solve this procedure.

II

In the present case, the claim dated 04/09/19 is examined by me-
gave from which the following is transferred as the main fact:

“Place cameras on the facade aimed at common areas, stairs and corridors,
recording all the community members who pass by” (folio nº 1).

The physical image of a person, in accordance with article 4.1 of the RGD, is a
personnel and their protection, therefore, is the subject of said Regulation. In article 4.2
of the RGD defines the concept of "treatment" of personal data.

It is, therefore, pertinent to analyze whether the processing of personal data (image
natural persons) carried out through the video surveillance system denouncing
ciated is in accordance with the provisions of the RGD.

The cameras installed by individuals cannot be oriented towards the area
private third parties, obtaining images/sound of third party conversations, by
affect their privacy, regardless of the fact that there are less invasive protection measures
of the property, if necessary.

The facts described suppose an affectation to article 5.1 c) RGD “The data
personal could will be:

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

Individuals who install this type of device are responsible for ensuring that
it conforms to current legislation, and must comply with the requirements established
also determined in the Horizontal Property Law (LPH).

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III

In accordance with the above, the treatment of images through a system subject of video surveillance, to be in accordance with current regulations, you must comply with the following requirements:

- 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 established 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 where the video surveillance system is installed. since the treatment of images in public places can only be carried out, unless there is government authorization, by the Security Forces and Bodies.

Nor can spaces owned by third parties be captured or recorded without the consent of their owners, or, where appropriate, of the people who are in them.

This rule admits some exceptions since, on some occasions, for the protection of private spaces, where cameras have been installed on facades or in the inside, it may be necessary to ensure the security purpose the recording of a portion of the public road. That is, cameras and camcorders installed with fi- security officers will not be able to obtain images of public roads unless it is indispensable for said purpose, or it is impossible to avoid it due to the location of those and, extraordinarily, the minimum space for said financing will also be collected. ity. Therefore, the cameras could exceptionally capture the minimum portion-

mind necessary for the intended security purpose.

- The duty to inform those affected provided for in the articles must be complied with.

12 and 13 of the RGPD, resulting from application -by not contradicting the provisions of the aforementioned Regulation-, the manner provided for in article 3 of Instruction 1/2006, of 8 of November, of the Spanish Agency for Data Protection, on the Treatment of Personal Data for Surveillance Purposes through Camera Systems or Videochambers.

Specifically, at least one distinction must be placed in video-monitored areas.

informative display located in a sufficiently visible place, both in open spaces

as closed, which will identify, 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. Likewise, the information must be kept available to those affected.

to which the aforementioned RGPD refers.

- The person in charge must keep a record of treatment activities

carried out under its responsibility, including the information to which it makes

reference article 30.1 of the RGPD.

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- The installed cameras cannot obtain images from private space of

third party and/or public space without duly accredited justified cause, nor can

affect the privacy of passers-by who move freely through the area. It's not per-

mitigated, therefore, the placement of cameras towards the private property of neighbors with

the purpose of intimidating them or affecting their private sphere without just cause.

- In no case will the use of surveillance practices beyond the en-
object of the installation and in particular, not being able to affect the public spaces
surrounding spaces, adjoining buildings and vehicles other than those accessing the space.
guarded man

In relation to the foregoing, to facilitate the consultation of interested parties, the Agency
Spanish Data Protection Agency offers through its website

[<https://www.aepd.es>] access to legislation on personal data protection

regulations, including the RGPD and the LOPDGDD (section "Reports and resolutions" / "nor-
tive"), as well as the Guide on the use of video cameras for security and other finances.

ities, as well as the Guide for compliance with the duty to inform (both available
ble in the "Guides and tools" section).

It is also of interest, in case of carrying out data processing of low
risk, the free tool Facilita (in the "Guides and tools" section), which
through specific questions, it allows to assess the situation of the person in charge
aspect of the processing of personal data that it carries out, and where appropriate, generate di-
verses documents, informative and contractual clauses, as well as an annex with
indicative security measures considered minimal.

IV

The claim is based on the installation of a video-surveillance system with
presumed orientation towards common areas, without the authorization of the Board
of owners and without having the duly approved information poster.

The neighbor of the
property referenced above.

The known facts constitute an infraction, attributable to the claimant.
mado, for violation of art. 5.1 c) RGPD, previously described.

In addition, the claimant warns that the property reviewed does not have a sign

in which the presence of the cameras and the identity of the responsible for data processing, so that interested persons can exercise the rights provided for in arts. 15 to 22 of the GDPR.

Article 83.5 RGPD provides the following: "Infringements of the provisions

The following will be sanctioned, in accordance with section 2, with administrative fines.

amounts of EUR 20,000,000 maximum or, in the case of a company, an amount equivalent to a maximum of 4% of the total global annual turnover for the year previous financial agreement, opting for the highest amount:

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a)

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

v

The corrective powers of the Spanish Protection Agency

of Data, as a control authority, are established in article 58.2 of the RGPD. In-

Among them are the power to sanction with a warning -article 58.2 b)-,

the power to impose an administrative fine in accordance with article 83 of the RGPD

-article 58.2 i)-, or the power to order the controller or processor

that the treatment operations comply with the provisions of the RGPD, when

appropriate, in a certain way and within a specified period -article 58. 2

d)-.

According to the provisions of article 83.2 of the RGPD, the measure provided for in article

Article 58.2 d) of the aforementioned Regulation is compatible with the sanction consisting of a fine administrative.

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 a sanction. tion by means of a fine, a warning may be imposed. must, however, lend special attention to the nature, seriousness and duration of the infringement, its character intentional, to the measures taken to alleviate the damages suffered, to the degree liability or any relevant prior violation, to the manner in which the authority control authority has become aware of the infraction, compliance with measures measures ordered against the person in charge or in charge, adherence to codes of conduct and any other aggravating or mitigating circumstance.”

In the present case, it is considered that the community of owners has warned denounced, about the "disagreement" of the Board of owners, being able to do have given at least the precise explanations to avoid denouncing the "facts" to this organism, the cameras according to the provided indications affect common areas and are not properly marked, which justifies the imposition of a sanction in the amount of €2,000 (Two Thousand Euros), taking into account the absence of prior infractions pathways and its particular character.

It should be remembered that the installation of this type of system must be oriented oriented preferably towards the access points to be protected (eg door and window particular) and should not be oriented towards common areas or traffic of neighbors (as), it must also have the corresponding informative device, informing

It is a video-monitored area.

The denounced party must clarify the cause/reason for the installation of the camera.

camera, as well as its technical characteristics, providing photographs with fe-

date and time of what it captures with it in a situation plan, or failing that

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has proceeded to remove it from the scene of the events (e.g. providing photographs

set before/after date and time).

It is warned that not meeting the requirements of this organization may be

considered as a new administrative infraction in accordance with the provisions of the

RGPD, typified as an infringement in its article 83.5 and 83.6, being able to motivate such con-

ducts the opening of a subsequent sanctioning administrative proceeding.

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: IMPOSE A.A.A., with NIF ***NIF.1, for an infraction of article 5.1.c)

of the RGPD, typified in article 83.5 of the RGPD, a fine of €2,000 (two thousand

euros).

SECOND: NOTIFY this resolution to A.A.A. and REPORT the result

of the actions to the denouncing party COMMUNITY OF OWNERS

DEMELZA BEACH

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, on Administrative Procedure

Common Public Administrations (hereinafter LPACAP), within the payment term 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, 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 on behalf of the Agency Spanish Data Protection at Banco CAIXABANK, S.A. Otherwise, it will be collected during the executive period.

Received the notification and once executed, if the date of execution is is between the 1st and 15th of each month, both inclusive, the term to carry out the voluntary 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 will be until the 5th of the second following month or immediately after.

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

month 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

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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, the firm resolution may be provisionally suspended in administrative proceedings if the interested party expresses his intention to file a contentious appeal-administrative. If this is the case, the interested party must formally communicate this made by writing to the Spanish Agency for Data Protection, introducing him to the agency

[<https://sedeagpd.gob.es/sede-electronica-web/>], or through any of the other records provided for in art. 16.4 of the aforementioned Law 39/2015, of October 1. Also must transfer to the Agency the documentation that proves the effective filing of the contentious-administrative appeal. If the Agency were not aware of the filing of the contentious-administrative appeal within two months from the day following the notification of this resolution, it would end the precautionary suspension.

Electronic Registration of
through the

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Director of the Spanish Data Protection Agency

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