

□ Procedure No.: PS/00059/2021

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 claimant) dated October 1, 2020

filed a claim with the Spanish Data Protection Agency. The

claim is directed against COMMUNITY OF OWNERS R.R.R. (onwards,

the claimed). The reasons on which the claim is based are succinctly:

following:

“Installation of a video-surveillance camera system without the

authorized consent of the Board of Owners” (folio nº 1).

Together with the claim, it provides documentary evidence that proves what was stated by the
claimant.

SECOND: On 11/10/20, the claim is TRANSFERRED, without

any answer has been given by the denounced.

THIRD: On 11/27/20, the notification is reiterated by post, the

claim, without any response having been made in this regard to this

Agency.

FOURTH: On April 12, 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 5.1.c) of the RGPD, typified in Article 83.5 of the

GDPR.

FIFTH: The database of this AEPD consulted on 05/21/21 does not contain

any allegation in relation to the facts subject to transfer.

SIXTH: On 05/26/21, a "Resolution Proposal" is issued, being notified electronically to the claimed party, verifying the commission of the infraction art. 5.1 c) RGPD, by having a video-surveillance system, oriented towards private and/or public area without the reliable consent of the Board of owners, which is why a penalty of €1,500 was proposed.

SEVENTH

: Attached as an annex is a list of documents in the procedure, recalling the full availability of access to the file administrative.

EIGHTH: On 06/04/21, a brief of allegations was received in relation to the facts object of transfer by this Agency, providing the following documents:

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-Partial copy of the Minutes of the Owners' Meeting approving the installation of the ma of video-surveillance for reasons of vandalism.

-Copy of the Act of Voluntary Declaration before the National Police of the claim-message dated 03/03/20.

Of the actions carried out in this procedure and the documentation in the file, the following have been accredited:

PROVEN FACTS

First. The facts bring cause of the claim dated 10/01/21 through the which translates the following:

"Installation of a video-surveillance camera system without the

authorized consent of the Board of Owners” (folio nº 1).

Second. It is identified as the main person responsible for the installation

COMMUNITY OF OWNERS R.R.R..

Third. The informed consent of the Board of Owners is accredited,

providing part of a document with the handwritten signature of the owners of the property.

Fourth. The presence of an informative poster in the access area of the

property informing that it is a video-monitored area, being responsible for the treatment: ***COMPANY.1.

Fifth. It is verified that the installed camera focuses on the entrance area of the building, where the mailboxes are located, as well as the access door from the street, being this is a glass door.

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 resolve this procedure.

II

In the present case, the claim dated 10/01/20 will be analyzed by means of which is transferred as main fact:

“Installation of a video-surveillance camera system without the authorized consent of the Board of Owners” (folio nº 1).

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The facts are specified in the existence of a video-surveillance system oriented to the exclusive area of a neighbor of the Community of owners, without having a priori informative poster in visible area.

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

The exposed facts may suppose a violation of art. 5.1 c) GDPR,

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

It should be remembered that individuals are responsible for ensuring that the systems installed felled comply with current legislation. The installation of these types of devices is remember you must have the mandatory information poster, indicating the purposes and responsible of the treatment, if any, of personal data.

Article 22 section 4 LOPDGDD (LO 3/2018, December 5) provides:

"The duty of information provided for in article 12 of the Regulation (EU) 2016/679 will be understood to be fulfilled by placing an informative device in a sufficiently visible place 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 the Articles 15 to 22 of Regulation (EU) 2016/679. It may also be included in the informative site a connection code or internet address to this information.

In any case, the data controller must keep available to those affected the information referred to in the aforementioned regulation"

In any case, the cameras should preferably be oriented towards the space particular, avoiding intimidating neighboring neighbors with this type of device, as well

how to control their transit areas without just cause. The cameras of installed in private spaces will not be able to obtain images of the spaces public services, the security function of public spaces corresponds exclusively to goes to the State Security Forces and Bodies, not to the Security Companies Private.

III

On 06/04/21, a written statement was received from the respondent, stating that the Board of Owners has decided to install a video-surveillance camera due to different sos acts of vandalism occurred in the entrance area of the community.

Minutes of the Board are provided giving the approval to the facility to preserve the integrity of the property (Doc. No. 1 Written dated 06/04/21).

It is also accredited to have an informative poster in the access area to the property reporting that it is a video-monitored area (Doc. No. 2 Written date 06/04/21).

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This body has ruled in various resolutions on its rejection to acts of vandalism of any nature, which are carried out furtively within the belief that the material author of the same will not have any reproach guno; For this reason, the installation of this type of system is allowed as an element dissuasive avoiding new property damages carried out in bad faith in real estate. bles.

When installing security cameras in neighboring communities, it is necessary

that the Community of Neighbors has the favorable vote of 3/5 of the total of the owners who in turn represent 3/5 of the quotas of participation as developed in article 17.1 of the Horizontal Property Law.

In a real situation of danger, the purpose of protecting property against theft, theft or vandalism may constitute a legitimate interest for video surveillance.

there is a real danger situation, such as damage or serious incidents in the past, to start surveillance.

It is recalled that the capture with the same of acts of a criminal nature (vgr 263 CP) or presumed administrative infractions, obliges the person in charge (President of the Community) to transfer them to the Forces and Corps of security of the locality or to the Court of Instruction closest to the place of commission of the facts.

Current technology allows any citizen to have within their reach the possibility ability to record images, to later use their content in legal proceedings of various kinds.

The purpose that is pursued in the criminal process with the evidentiary activity, is “form the intimate conviction of the Court about the existence or not of the punishable act and the participation of the author, with all its circumstances, as it happened in the historical reality prior to the process”.

The cameras can only capture images of the common areas of the Community. nity, processing data of all those who pass through them, being warned two with the informative poster placed at the access to the property that indicates that it is of a "Video-surveillance zone", these zones not being reserved spaces by definition.

two to the intimacy of people.

IV

According to the above, it can be concluded that the installation of the camera in the area of

landing of the property is due to a legitimate cause, such as avoiding various acts
vandalism occurred in the property, the measure being supported by the group
of neighbors, which is why it is appropriate to order the Archive of this procedure
I lie.

Henceforth, it is advisable to respond to the requirements of this Agency.

ence, providing all those documents required and taking care of the contribution of materials

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sufficient evidence to support the allegations made, trying in the

As far as possible, explain clearly the facts that are imputed.

Finally, the parties are reminded of the importance of the rights at stake.

go, having to settle any neighborhood disagreement in the appropriate instances.

prickly pears, avoiding instrumentalizing this body in matters far removed from its framework

competence, being warned of the consequences of not following the recommendations

tions of this Agency in a misuse of the images (personal data) processed by

video-surveillance systems.

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: ORDER the ARCHIVE of this procedure since the

commission of any administrative infraction.

SECOND: NOTIFY this resolution to the COMMUNITY OF OWNERS

RRR and REPORT the result of the proceedings to the AAA claimant.

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

resorts 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.

Sea Spain Marti

Director of the Spanish Data Protection Agency

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