

□ File No.: EXP202102387

RESOLUTION OF SANCTIONING PROCEDURE

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

BACKGROUND

FIRST: On 09/18/2021, he entered this Spanish Agency for
Data Protection a document presented by A.A.A. (hereinafter, the part
claimant), through which he makes a claim against B.B.B. with NIF ***NIF.1 (in
below, the claimed party), for the installation of a video surveillance system
located at ***ADDRESS.1, there being indications of a possible breach of the
provided in the personal data protection regulations.

The reasons for the claim are the following:

“My neighbor has two video cameras installed that capture the space of my terrace and of
both my front doors and it has no warning signs anywhere on it.
the facade. They are wide angle camcorders and one of them is 360 degree rotatable and
many times he moves it towards my house.

[...]”

Attached photographic report of the location of the cameras.

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
forward LOPDGDD), on 09/24/2021 the claim was transferred to the party
claimed, so that it proceeds to its analysis and informs this Agency within the term
of one month, of the actions carried out to adapt to the foreseen requirements
in the data protection regulations; being notified on 10/01/2021, according to
It is stated in the Notice issued by Correos. To date, this Agency has not received

any answer.

THIRD: On 11/25/2021, in accordance with article 65 of the LOPDGDD,

The claim presented by the complaining party was admitted for processing.

FOURTH: On 06/09/2022, the Director of the Spanish Protection Agency

of Data agreed to initiate disciplinary proceedings against the claimed party, 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 violation of Article 5.1.c) of the GDPR and Article 13 of the

GDPR, typified in 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

C / Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

2/6

Public Administrations (hereinafter, LPACAP), on 06/29/2022 the claimed party

submitted a pleadings brief in which, in summary, it stated the following:

“[...]

It is absolutely false that Mr. B.B.B. does not have an informative badge

placed, nor is it true that video cameras capture the terrace space

and entrance doors of Mrs. A.A.A.. Likewise, Mr. B.B.B. has adequate the

installation of its cameras to the data protection regulations, being its last

review and adaptation on 10/06/2021.

[...]”

Attach the following documentation:

-

Photograph of the informative poster of the video-surveilled area and the document of the privacy and data protection policy, where it is listed as responsible of the C.C.C. treatment.

SIXTH: On 07/05/2022, the requested party is requested to provide an impression screen (date and time) to a suitable size of what the cameras in question they envision, making a brief explanation of what, if any, they are capturing; So such as photographs that allow to know where the informative poster of video surveillance area.

SEVENTH: On 07/20/2022, a response was received from the claimed party through the that provides a photograph of the location of the poster and of what it captures on 07/15/2022 a of the cameras (patio and exit door of your home).

EIGHTH: On 08/31/2022, the claimant submits a new document in which points out the following:

"I wanted to add to the file ***FILE.1 several photographs. I had to build a new wall and raise it as high as possible (which is allowed by the regulations of the council) so that the neighbor's video camera captures as little as possible from my house, but since it is rotating and elevated, it captures images and videos from the moment I enter my house and when I'm in the pool, the neighbor rotates the camera at will and this is making it unsustainable, to the point that I go into the pool with fear and when I enter and leave my house. It is a situation that I have been enduring for more than a year, because since that he put it and I told him to put it elsewhere and not capture my space and he refused, no I knew what to do, until one day the police told me that I had to report it to the aePd, but 6 months had already passed.

Attached photographic report of the exposed.

NINTH: On 11/21/2022, a resolution proposal was formulated in which the

proposed to order the filing of this sanctioning procedure for not being the
claimed the person responsible for the video surveillance system object of
claim.

C / Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

3/6

Notified of the aforementioned resolution proposal in accordance with the rules established in the
LPACAP and after the period granted for the formulation of allegations, it has been

It has been verified that no allegation has been received by the defendant.

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: On 09/18/2021, a claim against B.B.B. by

the installation of two video surveillance cameras outside your home, located in

*** ADDRESS.1, oriented towards the defendant's home. In addition, it is noted

of the lack of an informative poster of a video-surveilled area.

SECOND: The defendant denies capturing images of the claimant's property. TO

dated 07/15/2022, the camera installed in the built-in barbecue views the patio and door

exit to the claimant's home.

THIRD: It is identified as responsible for the video surveillance system

C.C.C., with NIF ***NIF.2. This point is proven with the photographs provided.

by the claimant of the informative poster of the video-surveilled area placed on the wall of

entrance to your home, as well as the privacy and protection policy document

of data

FOURTH: The claimant provides new photographs showing the construction of a new wall on their land and the placement of a green mesh on top.

FIFTH: This Agency has notified the claimant of the proposed resolution of the this disciplinary proceeding, but it has not presented allegations or evidence that contradicts the alleged facts.

FUNDAMENTALS OF LAW

Yo

In accordance with the powers that article 58.2 of Regulation (EU) 2016/679 (General Data Protection Regulation, hereinafter GDPR), grants each control authority and as established in articles 47, 48.1, 64.2 and 68.1 of the Organic Law 3/2018, of December 5, on the Protection of Personal Data and guarantee of digital rights (hereinafter, LOPDGDD), is competent to initiate and resolve this procedure the Director of the Spanish Protection Agency of data.

Likewise, article 63.2 of the LOPDGDD determines that: "The procedures processed by the Spanish Data Protection Agency will be governed by the provisions in Regulation (EU) 2016/679, in this organic law, by the provisions regulations dictated in its development and, insofar as they do not contradict them, with character subsidiary, by the general rules on administrative procedures."

C / Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

4/6

II

Article 5.1.c) of the GDPR "Principles relating to processing" provides that: "The

personal data will be:

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

This article enshrines the principle of data minimization in the treatment of personal information. It assumes that said treatment is adjusted and proportional to the purpose to which it is directed, and the processing of excessive data must be restricted or proceed to their deletion.

The relevance in the treatment of data must occur both in the field of collection of the data as well as in the subsequent treatment that is carried out of the same.

It should be remembered that individuals are responsible for ensuring that the systems installed comply with current legislation, certifying that it complies with all the requirements demanded by the regulations in force.

The installation of this type of device must have the mandatory sign informative, indicating the purposes and data controller, where appropriate of a personal nature. Specifically, article 22.4 of the LOPDGDD provides that:

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

These infractions are typified in article 83.5 of the GDPR:

Violations of the following provisions will be sanctioned, in accordance with the section 2, with administrative fines of a maximum of 20,000,000 EUR or, in the case of a company, an amount equivalent to 4% of the turnover

global annual total of the previous financial year, opting for the highest amount:

a) The basic principles for the treatment, including the conditions for the consent under articles 5, 6, 7 and 9;

b) The rights of the interested parties in accordance with articles 12 to 22;

For the purposes of the limitation period for infringements, they are considered very serious and prescribed after three years, in accordance with article 72.1 of the LOPDGDD, which states that:

C / Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

5/6

a) The processing of personal data in violation of the principles and guarantees established in article 5 of Regulation (EU) 2016/679;

(...)

h) The omission of the duty to inform the affected party about the processing of their data personal in accordance with the provisions of articles 13 and 14 of Regulation (EU) 2016/679 and 12 of this Organic Law".

II

This Agency is not aware that the defendant has submitted a written allegations or evidence against the proposed resolution.

However, as already indicated in the motion for a resolution, the agreement to initiate this sanctioning procedure, PS/00282/2022, identified as presumed responsible for the facts exposed above to Mr. B.B.B., with NIF ***NIF.1. He took considering that in the section "Data of the claimant 1" of the claim sent to this Agency, theirs were provided.

However, according to the allegations made by the defendant against the opening agreement and the documentation attached to it is accredited that the responsible for the video surveillance system is C.C.C., with NIF ***NIF.2. The Photographs provided from the informative poster of the video-surveilled area placed on the wall of entry to the house, located in ***ADDRESS.1, and the document of treatment of personal data record that Mr. B.B.B. lacks this condition.

At this point it should be remembered that the opening agreement of the present disciplinary procedure dealt with the existence of video surveillance cameras installed outside the aforementioned property, in which a collection was made disproportionately affecting the claimant's property and in which there was no there was no informative sign of a video-surveilled area. In this sense, it should It should be taken into consideration that the obligation to inform established in article 13 of the GDPR is imposed on the controller, which is defined in article 4.7 of the GDPR as "the natural or legal person, [...] who, alone or together with others, determines the purposes and means of processing; [...];". In addition, the data controller must ensure that the principles relating to treatment are respected, among which are Find the "data minimization".

Therefore, in accordance with the evidence available in this disciplinary procedure, it has been proven that the defendant is not the person responsible for the video surveillance system and that, therefore, it is not appropriate to attribute the responsibility of the verified facts to Mr. B.B.B..

Therefore, in accordance with the applicable legislation and assessed the criteria of graduation of sanctions whose existence has been accredited, the Director of the Spanish Data Protection Agency RESOLVES:

C / Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

6/6

FIRST: ORDER the FILING of this procedure to B.B.B., with NIF

***NIF.1, since the facts that are the object of the claim that are not attributable to him determined its opening.

SECOND: NOTIFY this resolution to B.B.B..

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 may optionally file an appeal for reversal before the

Director of the Spanish Agency for Data Protection within a period of one month from

count 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

Contentious-administrative jurisdiction, within a period of two months from the

day following the notification of this act, as provided for in article 46.1 of the

referred 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

The interested party expresses his intention to file a contentious-administrative appeal.

If this is the case, the interested party must formally communicate this fact through

writing addressed to the Spanish Data Protection Agency, presenting it through

of the Electronic Registry of the Agency [<https://sedeagpd.gob.es/sede-electronica->

web/], or 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 to the Agency the
documentation proving the effective filing of the contentious appeal-
administrative. If the Agency was not aware of the filing of the appeal
contentious-administrative proceedings within a period of two months from the day following the
Notification of this resolution would terminate the precautionary suspension.

Mar Spain Marti

Director of the Spanish Data Protection Agency

938-181022

C / Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es