

□ Procedure No.: PS/00338/2020

RESOLUTION OF PUNISHMENT PROCEDURE

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

BACKGROUND

FIRST: On June 10, 2020, it had entry in this Spanish Agency of
Data Protection a document presented by A.A.A. (hereinafter referred to as the claimant),
through which he makes a claim against B.B.B. with NIE ***NIE.1 (hereinafter, the
claimed), for the installation of a video surveillance system installed in
urbanization

***ADDRESS.1, ***TOWN.1,

There are indications of a possible breach of the provisions of the regulations of
Personal data protection.

***URBANIZATION.1,

street

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

«First.- That my client shares a meter and a half dividing wall
approximately with the claimed one, so each of them lives in a house
semi-detached house.

Second.- That the defendant, after unilaterally extending the party wall and
without respecting the urban legality, has decided to install two cameras of
continuous video surveillance assisted by solar energy and operated by mobile device.

Third.- That unnecessarily for the purposes of surveillance of access to your
housing and without any signage, one of these cameras focuses directly on the

access door and window of my clients.[...]»

Attach photographic report of the location of the cameras.

SECOND: Prior to the acceptance of this claim for processing, it is

transferred the claimed, in accordance with the provisions of article 65.4 of the Law

Organic 3/2018, of December 5, on the Protection of Personal Data and guarantee of digital rights (hereinafter, LOPDGDD).

The shipment was returned to this Spanish Agency for Data Protection by the service

post office with the annotation "Absent in delivery". For this reason, said shipment was reiterated, with the same result.

THIRD: The claim was admitted for processing by means of a resolution dated 23 September 2020.

FOURTH: On December 18, 2020, the Director of the Spanish Agency for

Data Protection agreed to initiate a sanctioning procedure against the claimant, for the

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alleged infringement of Article 5.1.c) of the RGPD, typified in Article 83.5 of the GDPR.

FIFTH: On January 15, 2021, the notification was returned to this Agency

of the Agreement to Start the Sanctioning Procedure with the annotation "Surplus (No withdrawn in the office)", for which it was sent to the Single Edictal Board (TEU), being published on January 21, 2021.

There is no record that, at the present time, the respondent has submitted a written allegations to the same, for which what is stated in article 64 of the

Law 39/2015, of October 1, of the Common Administrative Procedure of the Public Administrations (hereinafter, LPACAP), which in its section f) establishes that in case of not making allegations within the stipulated period on the content of the initiation agreement, this may be considered a resolution proposal when contains a precise statement about the imputed responsibility, therefore that a Resolution is issued.

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: On June 20, 2020, a claim for

A.A.A. against the defendant) for having installed a video surveillance system facing your property and could be recording the interior of your property.

SECOND: Photographs of the location of the camera are provided.

THIRD: The transfer of the claim that was made to the claimed party was returned to this Agency with the annotation "Absent in distribution".

In said transfer, he was asked to send:

- The name and surname of the person in charge of the installation, as well as the NIF and the contact telephone number of the person in charge.

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In the event that you have contracted with a security company the installation, maintenance and/or management of the video surveillance system, you must provide a copy of the contract signed with the security company and, where possible, a technical report of the video surveillance system made by that company.

The number of cameras that the surveillance system has, providing the

photographs of all these devices, as well as photographs of the monitor, mobile screen or equivalent system, which is used to view the images, in which the areas that remain within the field of camera view. The cameras must not, in any case, record or allow the vision of adjoining land of other owners, nor of the interior of the dwellings or any other private or reserved space, nor

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of the public thoroughfare, except for the portion of the public thoroughfare that is minimally necessary for its intended security purpose.

If the cameras capture public roads, you must also provide photographs of the poster or posters that warn of the existence of a video-monitored area, in which clearly shows the information contained in the poster, as well as like its location.

If you have installed the cameras in the parking garage community, you must provide the minutes of the Homeowners' Meeting in which approve, by the majority required in article 17.3 of Law 49/1960, of July 21, on Horizontal Property, the installation of the cameras.

You must also provide the photographs of the poster or posters that warn of the existence of a video-monitored area with the detail indicated above.

If the surveillance system records the images, indicate the period of time conservation of these.

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- If the cameras are fictitious, provide the invoice, purchase receipt or any another document that serves to prove that they are fictitious, or, failing that, provide a sworn statement from the president of the Community in which declare under oath or promise that the cameras are fictitious and that, therefore, they do not allow the viewing or recording of images.

- Any other information that you consider of interest and that may serve to Assess the adequacy of the video surveillance system to the regulations of Data Protection.

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 as established in arts. 47 and 48.1 of the LOPDGDD, the Director of The Spanish Agency for Data Protection is competent to resolve this process.

II

The physical image of a person under article 4.1 of the RGPD is personal data and its protection, therefore, is the subject of said Regulation. Article 4.2 of the GDPR defines the concept of “treatment” of personal data.

Article 22 of the LOPDGDD establishes the specificities of data processing for video surveillance purposes, indicating the following:

"1. Natural or legal persons, public or private, may carry out the processing of images through camera systems or video cameras with the purpose of preserving the safety of people and property, as well as their installations.

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2. Images of public roads may only be captured to the extent that is essential for the purpose mentioned in the previous section.

However, it will be possible to capture the public road in an extension superior when necessary to guarantee the security of goods or strategic installations or infrastructures linked to transport, without In no case may it involve capturing images of the interior of a home private.

3. The data will be deleted within a maximum period of one month from its collection, except when they had to be kept to prove the commission of acts that threaten the integrity of persons, property or facilities. In that case, the images must be made available to the competent authority in within a maximum period of seventy-two hours from the date of knowledge of the existence of the recording.

The blocking obligation provided for in article 32 of this organic law.

4. 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 device 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.

5. Under article 2.2.c) of Regulation (EU) 2016/679, it is considered

excluded from its scope of application the treatment by a natural person of images

that they only capture the interior of their own home.

This exclusion does not cover processing carried out by a security entity

private that had been contracted for the surveillance of a home and had access

to the images.

6. The processing of personal data from the images and

sounds obtained through the use of cameras and video cameras by the Armed Forces

and Security Bodies and by the competent bodies for surveillance and control in

penitentiary centers and for the control, regulation, vigilance and discipline of the

traffic, will be governed by the legislation transposing Directive (EU) 2016/680,

when the treatment is for the purposes of prevention, investigation, detection or

prosecution of criminal offenses or execution of criminal sanctions, including

protection and prevention against threats to public safety. Outside

In these cases, said treatment will be governed by its specific legislation and

additionally by Regulation (EU) 2016/679 and this organic law.

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7. What is regulated in this article is understood without prejudice to the provisions of

Law 5/2014, of April 4, on Private Security and its development provisions.

8. The treatment by the employer of data obtained through information systems

cameras or video cameras is subject to the provisions of article 89 of this law

organic.”

III

In accordance with the foregoing, the processing of images through a video surveillance system, to be in accordance with current regulations, 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 contemplated 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 security system is installed.

video surveillance, since the processing of images in public places can only be carried out, unless there is government authorization, by the Forces and Corps of Security. Nor can spaces owned by third parties be captured or recorded without the consent of their owners, or, as the case may be, of the persons who are find.

This rule admits some exceptions since, on some occasions, for the protection of private spaces, where cameras have been installed on facades or inside, it may be necessary to guarantee the security purpose the recording of a portion of public road. That is, cameras and video cameras installed for the purpose of security will not be able to obtain images of public roads unless it is essential for said purpose, or it is impossible to avoid it due to the location of those and, extraordinarily, the minimum space for said purpose. Therefore, the cameras could exceptionally capture the portion minimally necessary for the intended security purpose.

- The duty to inform those affected provided for in the

articles 12 and 13 of the RGPD, and 22 of the LOPDGDD, in the terms already indicated.

- 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.

- 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. No this

allowed, 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.

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- In no case will the use of surveillance practices be admitted beyond the

environment object of the installation and in particular, not being able to affect the spaces

surrounding public, adjoining buildings and vehicles other than those accessing the

guarded space.

In summary and to facilitate the consultation of interested parties, the Spanish Agency for

Data Protection offers through its website [<https://www.aepd.es>] access to

the legislation on the protection of personal data, including the RGPD and the

LOPDGDD (section “Reports and resolutions” / “regulations”), as well as the Guide

on the use of video cameras for security and other purposes, as well as the Guide

for compliance with the duty to inform (both available in the section “Guides

and tools”).

It is also of interest, in the event of carrying out low-risk data processing, the facilitates free tool (in the “Guides and tools” section), which, through specific questions, allows to assess the situation of the person in charge with respect to the treatment of personal data that it carries out, and where appropriate, generate various documents, informative and contractual clauses, as well as an annex with measures guidelines considered minimum.

IV

In the present case, the claim was filed because the respondent has installed a video surveillance camera that could be capturing images of the interior of the adjoining property of the claimant.

As proof of these statements, it provided the evidence indicated in the “Facts” section, first point, of this agreement.

The corrective powers available to the Spanish Agency for the Protection of Data, as a control authority, is established in article 58.2 of the RGPD. Among they have 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 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 infraction, or if the fine

likely to be imposed would constitute a disproportionate burden on a natural person, instead of sanctioning by means of a fine, a warning. However, special attention must be paid to the nature, gravity and duration of the infringement, its intentional nature, the measures taken to mitigate the damages and losses suffered, to the degree of responsibility or to any

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pertinent previous infraction, to the way in which the control authority has had knowledge of the infraction, compliance with measures ordered against the responsible or in charge, adherence to codes of conduct and any other aggravating or mitigating circumstance.

v

In accordance with the evidence that is available and that has been accredited in the sanctioning procedure, the defendant has a camera installed of video surveillance that captures images of the interior of the adjoining property of the claimant, so it is considered that these facts violate the provisions of the article 5.1.c) of the RGPD, which implies the commission of infractions typified in the article 83.5 of the RGPD, which provides the following:

"Infringements of the following provisions shall be sanctioned, in accordance with paragraph 2, with administrative fines of a maximum of EUR 20,000,000 or, in the case of a company, an amount equivalent to a maximum of 4% of the global total annual turnover of the previous financial year, opting for the largest 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 according to articles 12 to 22;

[...].”

For the purposes of the limitation period for infractions, the infraction indicated in the

previous paragraph is considered very serious and prescribes after three years, in accordance with

Article 72.1 of the LOPDGDD, which establishes that:

"According to the provisions of article 83.5 of Regulation (EU) 2016/679

are considered very serious and will prescribe after three years the infractions that suppose

a substantial violation of the articles mentioned therein and, in particular, the

following:

a) The processing of personal data violating the principles and guarantees

established in article 5 of Regulation (EU) 2016/679.

b) The processing of personal data without the concurrence of any of the

conditions of legality of the treatment established in article 6 of the

Regulation (EU) 2016/679.

(...)

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 (EU) 2016/679 and 12 of this Organic Law.

(...)»

SAW

In the present case, it is considered that the corresponding sanction to be imposed is that of

warning, in accordance with the provisions of article 58.2 b) of the RGPD, in

in relation to what is stated in Considering 148, cited above.

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In addition, the following elements have been taken into account, in particular.

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that it is an individual whose main activity is not linked to

the processing of personal data.

that there is no recidivism, because the commission is not recorded, in the term of

one year, of more than one infraction of the same nature.

7th

However, as already indicated in the initial agreement and in accordance with the

established in the aforementioned article 58.2 d) of the RGPD, according to which each authority of

control may "order the person responsible or in charge of processing that the

processing operations comply with the provisions of this Regulation,

where appropriate, in a certain manner and within a specified period [...]."

The respondent is required to take the following steps:

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provide the images that are observed with the devices in question,

indicating on a location map the parts that correspond to its

private property.

certify having proceeded to withdraw the cameras from the places

current, or to the reorientation of the same towards their particular area.

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

considered as an administrative offense in accordance with the provisions of the RGPD,
typified as an infraction in its article 83.5 and 83.6, being able to motivate such conduct 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 B.B.B. with NIE ***NIE.1, for a violation of article 5.1.c)
of the RGPD, typified in article 83.5.h) of the RGPD, a sanction of warning.

SECOND: REQUIRE B.B.B. with NIE ***NIE.1, so that within a month

From the notification of this resolution, certify:

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provide the images that are observed with the device in question,

indicating on a location map the parts that correspond to its

private property.

certifies having proceeded to withdraw the camera from the current place, or

to the reorientation of it towards its particular area.

THIRD

: NOTIFY this resolution to B.B.B. with NIE ***NIE.1.

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.

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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 month from counting 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 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 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 by writing addressed to the Spanish Agency for Data Protection, presenting it through Electronic Register of the Agency [<https://sedeagpd.gob.es/sede-electronica-web/>], or through any of the other registers provided for in art. 16.4 of the cited LPACAP. You must also transfer to the Agency the documentation that proves the effective filing of the contentious-administrative appeal. If the agency does not was aware of the filing of the contentious-administrative appeal in the period of two months from the day following the notification of this resolution, would terminate the precautionary suspension.

Sea Spain Marti

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