

□ File No.: EXP202104792

RESOLUTION OF PUNISHMENT PROCEDURE

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

BACKGROUND

FIRST: A.A.A. (*hereinafter, the complaining party) dated November 8,
2021 filed a claim with the Spanish Data Protection Agency. the re-
outcry is directed against those who identify as B.B.B. with NIF ***NIF.1 (hereinafter,
the claimed party). The grounds on which the claim is based are as follows:

“We have a video-surveillance camera oriented towards our plot of land.
parking when it is supposed to be oriented towards the road (...)”-folio nº 1-.

Documentary evidence is provided that accredits the presence of a device
ted to the area outlined by the claimant (Doc. No. 1) where he states that he parked
ca your vehicle.

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 to the claimed party in fe-
cha 11/22/21 and 12/30/21, to proceed to its analysis and inform this Agency
within a month, of the actions carried out to adapt to the requirements
provided for in the data protection regulations.

THIRD: On February 8, 2022, in accordance with article 65 of the
LOPDGDD, the claim filed by the claimant was admitted for processing.

FOURTH: When the database of this Agency was consulted on 03/15/22, no
received any response to the previous requirements, not even a minimum explanation has been
produced clarifying the legality of the system.

FIFTH: On April 27, 2022, the Director of the Spanish Agency for Pro-Data Protection agreed to initiate sanctioning proceedings against the claimed party, with in accordance with the provisions of articles 63 and 64 of Law 39/2015, of October 1, of the Common Administrative Procedure of Public Administrations (hereinafter, LPACAP), for the alleged infringement of Article 5.1.c) of the RGPD, typified in the Article 83.5 of the RGPD.

SIXTH: After consulting the database of this Agency, the publication in the BOE is confirmed dated XX/05/22 the Opening Agreement associated with PS/00074/2022.

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SEVENTH: The database of this Agency consulted on 06/23/22 does not contain any allegation, or statement about the requirements made has been produced to prove the legality of the system.

EIGHTH: On 06/24/22, <Proposed Resolution> was issued in which it was proposed the imposition of an administrative sanction in the amount of €300 for the infringement of art. 5.1 c) RGPD, by having a poorly oriented video surveillance camera affecting de-right of third parties without just cause.

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 of entry date 08/11/21 by means of which the following fact is transferred:

“We have a video-surveillance camera oriented towards our plot of land.

parking when it is supposed to be oriented towards the road (...)”-folio nº 1-.

Documentary evidence is provided that accredits the presence of a device
ted to the area outlined by the claimant (Doc. No. 1) where he states that he parked
ca your vehicle.

Second. It is identified as the main responsible B.B.B. with NIF ***NIF.1.

Third. There is evidence of the presence of a poorly oriented camera affecting de-
rights of third parties without just cause.

Fourth. The respondent party has not clarified any aspect related to the provision
tive nor has it accredited the legality of the system.

Fifth. There is no evidence that there is an informative poster(s) or form(s) available.
tion of third parties that may require it.

FOUNDATIONS OF LAW

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In accordance with the powers that article 58.2 of Regulation (EU) 2016/679 (Re-
General Data Protection Regulation, hereinafter RGPD), grants each authori-
control and as established in articles 47, 48.1, 64.2 and 68.1 of the Law
Organic 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 Data Protection Agency.

Likewise, article 63.2 of the LOPDGDD determines that: "The formal procedures
ted by the Spanish Agency for Data Protection will be governed by the provisions of
Regulation (EU) 2016/679, in this organic law, by the regulatory provisions

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dictated in its development and, as long as they do not contradict them, with a subsidiary, by the general rules on administrative procedures."

II

In the present case, the claim dated 11/08/21 is examined by me-
gave from which the following is transferred as the main fact:

"We have a video-surveillance camera oriented towards our plot of land.
parking when it is supposed to be oriented towards the road (...) "-folio n° 1

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The art. 5.1 c) RGPD provides the following: The personal data will be:

"adequate, relevant 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, proving that it complies with all
the requirements demanded by the regulations in force.

The installation of this type of device must have the mandatory informative sign.
tive, indicating the purposes and responsible for the treatment, where appropriate, of the data of each
personal character.

In any case, the cameras must be oriented towards the particular space, avoiding
intimidate neighboring neighbors with this type of device, as well as control areas
transit of the same without just cause.

With this type of device it is not possible to obtain image(s) of public space either.
co, as this is the exclusive competence of the State Security Forces and Bodies
ted.

It should be remembered that even in the case of a "simulated" camera, the same
should preferably be oriented towards private space, since it is considered

that this type of device can affect the privacy of third parties, that they are intimidated by it in the belief of being the subject of permanent recording.

On the part of individuals, it is not possible to install devices for obtaining images of public space, outside the cases allowed in the regulations.

III

In accordance with the ample "evidence" available in this proceduralizing procedure, it is considered that the claimed party has at least one imaging device disproportionately oriented toward the area where the claimants carry out activities in principle reserved for their privacy, being able with the same "process personal data" without cause justified.

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The presence of the cameras must be informed in legal form, through the presence of informative poster(s) placed in a visible area or in the document contract that, where appropriate, confirms the services to be provided, being a measure that must weigh the possible affectation to other rights of third parties, which should not be seen intimidated with them in areas initially reserved for their personal privacy and/or family.

The facts are considered accredited with the documentary evidence provided that allows to prove the presence of the camera with clear orientation towards the area reserved of the complaining party, without any explanation or measure has been adopted to correct the above.

Article 64.2.f) of the LPACAP - provision of which the respondent was informed in the agreement to open the procedure- establishes that if no allegations are made- within the stipulated period on the content of the initiation agreement, when it contains has a precise statement about the imputed responsibility, it may be considered motion for a resolution. In the present case, the agreement to start the ex-sanctioning pending determined the facts in which the accusation was specified, the violation of the RGD attributed to the claimed and the sanction that could be imposed. Therefore, taking into consideration that the respondent has not made any allegations to the agreement to initiate the file and in accordance with the provisions of article 64.2.f) of the LPACAP, the aforementioned initiation agreement is considered in the present case resolution proposal.

The known facts constitute an infraction, attributable to the party claimed, for violation of the content of article 5.1 c) RGD, when a data processing disproportionately affecting the device in issue to areas reserved for the claimant's privacy.

IV

The art. 83.5 RGD provides the following: "Infringements of the following provisions will be sanctioned, in accordance with section 2, with administrative fines of 20 EUR 000,000 maximum or, in the case of a company, an equivalent amount. to a maximum of 4% of the total global annual turnover of the financial year above, 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;

When motivating the sanction, it is taken into account that the "facts" described suppose an affectation to a "reserved" area without just cause where personal data is processed

third parties when carrying out leisure activities, as well as the absence of prior sanctions for part of this body, although the conduct described involves "serious" negligence by not complying with the parameters required for this type of system; reasons that justify a penalty of €300, a penalty located on the lower scale for this type of behaviors.

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Among the corrective powers contemplated in article 58 of the RGPD, in its section 2 d) establishes that each control authority may “order the person in charge responsible or in charge of the treatment that the treatment operations comply with the provisions of this Regulation, where appropriate, in a certain way and within a specified period...”. The imposition of this measure is compatible with the sanction consisting of an administrative fine, as provided in art. 83.2 of the GDPR.

The party claimed must adopt the necessary measures to adjust the mara installed to the current legality, informing this body in a reliable manner cient.

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 B.B.B., 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 €300.

SECOND: ORDER the person claimed so that, within ONE MONTH from the non-

tification of this agreement, take the following measures:

- Place an informative sign in a visible area indicating that it is a live area.

deo-vigilada, indicating the way to exercise the rights within the framework of the current

GDPR.

- Inform the group of clients (users) of the facilities of the reason for the

presence of the camera(s).

- Indicate to this body the cause/reason for the installation of the camera, as well as

How to justify its presence?

THIRD: NOTIFY this resolution to B.B.B..

FOURTH: 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,

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

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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.

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Director of the Spanish Data Protection Agency

938-120722

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