

□ File No.: EXP202103983

RESOLUTION OF PUNISHMENT PROCEDURE

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

BACKGROUND

FIRST: On 10/14/2021, it had entry in this Spanish Agency of
Data Protection a document presented by A.A.A. (hereinafter the part
claimant) by which he makes a claim against B.B.B. with NIF ***NIF.1 (in
hereinafter, the claimed party), for the installation of a video surveillance system
located at ***ADDRESS.1, with indications of a possible breach of the
provided in the personal data protection regulations.

The reasons underlying the claim are as follows:

“I want to denounce the (...) for having two of his security cameras in his house
pointing directly at my house, said cameras are exterior at his house and
They capture and record my outdoor garden, depriving me of my privacy in my own home.
The rest of the cameras they have, about 5 exterior cameras, some of them I want
denounce that they are pointing towards the neighborhood street, where my youngest son plays
disabled, recording these images.

[...]”

Attach three photographs of the location of the video surveillance cameras and a copy of the
Resolution of recognition of the degree of disability of your child.

SECOND: Prior to admitting the claim for processing, this

The Agency mailed a Request for Information to the respondent on the date
11/05/2021 and 11/29/2021, resulting in both occasions “Returned to origin by
surplus (not withdrawn in the office). To date, this Agency has not received

any reply.

THIRD: On 01/14/2022, in accordance with article 65 of the LOPDGDD,

the claim filed by the claimant was admitted for processing.

FOURTH: On 04/12/2022, the Director of the Spanish Protection Agency

of Data agreed to initiate a sanctioning procedure against the claimed party, for the

alleged infringement of article 5.1.c) of the RGPD, typified in article 83.5.a) of the

GDPR.

FIFTH: An attempt was made to notify the opening agreement of this

sanctioning procedure by postal mail, which resulted in "Returned to origin by

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surplus (not picked up at the office)", according to the Notice issued by Correos on 05/10/2022.

In this way, the notification was produced by means of an announcement published in the

Official State Gazette on 05/17/2022 and a hearing period of

TEN WORKING DAYS to formulate allegations and present the evidence that

consider convenient, in accordance with the provisions of articles 73 and 76 of the

Law 39/2015, of October 1, of the Common Administrative Procedure of the

Public Administrations (hereinafter, LPACAP).

SIXTH: After the term granted for the formulation of allegations to the agreement

of the beginning of the procedure, it has been verified that no allegation has been received

by the claimed party.

Article 64.2.f) of Law 39/2015, of October 1, on Administrative Procedure

Common Public Administrations (hereinafter LPACAP) -provision of which

the party claimed was informed in the agreement to open the proceeding-
establishes that if allegations are not made within the stipulated period on the content of the
initiation agreement, when it contains a precise statement about the
imputed responsibility, may be considered a resolution proposal.

In the present case, the agreement to initiate the disciplinary proceedings determined the
facts in which the imputation was specified, the infraction of the RGPD attributed to the
claimed and the sanction that could be imposed. Therefore, taking into account that
the party complained against has made no objections to the agreement to initiate the file and
In accordance with the provisions of article 64.2.f) of the LPACAP, the aforementioned agreement of
beginning is considered in the present case resolution proposal.

SEVENTH: The agreement to open the procedure agreed in the fourth point of the
operative part "INCORPORATE to the disciplinary file, for the purposes of evidence, the
claims submitted by claimants and the information and documentation
obtained by the Subdirector General for Data Inspection in the phase of
information prior to the agreement for admission to processing of the claim".

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: Installation of a video surveillance system, made up of at least 4
cameras, outside the home of the respondent, located at ***ADDRESS.1,
that could capture images of the neighborhood street and the private garden on the
claimant.

This end is accredited with the photographic report provided by the
claimant where it is observed that the parcel of the claimed is delimited with fences
not dense and, therefore, the cameras could record images outside of their
property.

SECOND: It is identified as responsible for the B.B.B. with NIF

***NIF.1.

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THIRD: The Spanish Data Protection Agency has notified the claimant of the agreement to open this sanctioning procedure, but has not presented allegations or evidence that contradicts the reported facts.

FOUNDATIONS OF LAW

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In accordance with the powers that article 58.2 of Regulation (EU) 2016/679

(General Data Protection Regulation, hereinafter RGPD), grants each

control authority and as established in articles 47 and 48.1 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 procedures

processed by the Spanish Agency for Data Protection will be governed by the provisions

in Regulation (EU) 2016/679, in this organic law, by the provisions

regulations issued in its development and, as long as they do not contradict them, with a

subsidiary, by the general rules on administrative procedures.”

II

The image of a person, in accordance with article 4.1 of the RGPD, is personal data and its

protection, therefore, is the subject of said Regulation. In article 4.2 of the RGPD it is

defines the concept of “treatment” of personal data.

Article 22 of the LOPDGDD includes the specific rules for the treatment of data for video surveillance purposes and states the following:

"1. Natural or legal persons, public or private, may carry out the treatment of images through camera systems or video cameras with the purpose to preserve the safety of people and property, as well as its facilities.

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

However, it will be possible to capture public roads to a greater extent when necessary to guarantee the security of assets or strategic installations. services or infrastructures linked to transport, without in any case being able to put the capturing of images of the interior of a private home.

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 attend to have against the integrity of people, goods or facilities. In this case, the images must be made available to the competent authority within a maximum period of seventy-two hours since the existence of the recording became known.

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The blocking obligation provided for in art.

article 32 of this organic law.

4. The duty of information provided for in article 12 of Regulation (EU) 2016/679 is

understood to be fulfilled by placing an informative device in a sufficient place
ciently visible 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 articles 15
to 22 of Regulation (EU) 2016/679. It may also be included in the device information
I attach a connection code or internet address to this information.

In any case, the person in charge of the treatment must keep available to the
affected the information referred to in the aforementioned regulation.

5. Under article 2.2.c) of Regulation (EU) 2016/679, it is considered excluded
of its scope of application the treatment by a natural person of images that are
regretfully capture the interior of your own home.

This exclusion does not cover processing carried out by a private security entity.
given that she had been hired to guard a home and had access to the
images.

6. The processing of personal data from the images and sounds obtained
nests through the use of cameras and video cameras by the Forces and Corps
Security and by the competent bodies for surveillance and control in the centers
penitentiaries and for the control, regulation, surveillance and discipline of traffic, will be governed
by the legislation transposing Directive (EU) 2016/680, when the treatment
for purposes of prevention, investigation, detection or prosecution of violations
criminal offenses or the execution of criminal sanctions, including protection and prevention
against threats to public safety. Apart from these assumptions, said
treatment will be governed by its specific legislation and additionally by the Regulations
to (EU) 2016/679 and this organic law.

7. What is regulated in this article is understood without prejudice to the provisions of the Law
5/2014, of April 4, on Private Security and its development provisions.

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

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

III

In accordance with the foregoing, the processing of images through a system of video surveillance, 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 4 april.

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Camcorders will not be able to capture images of people are outside the private space where the security system is installed. video surveillance, since the processing of images in public places only can be carried out, unless there is government authorization, by the Security Forces and Bodies. They cannot be captured or recorded spaces owned by third parties without the consent of their owners, or, in their case, 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 in facades or inside, it may be necessary to guarantee the purpose of

security recording a portion of the public highway. That is, the cameras and video cameras installed for security purposes will not be able to obtain images of public roads unless it is essential for that purpose, or it is impossible to avoid due to their location and extraordinarily

The minimum space for said purpose will also be collected. Therefore, the cameras could exceptionally capture the minimally necessary portion for its intended security purpose.

- The duty to inform those affected provided for in articles 12 and 13 of the RGPD and 22.4 of the LOPDGDD.
- The person in charge must keep a record of treatment activities carried out under their responsibility, including the information to which refers to article 30.1 of the RGPD.

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The installed cameras cannot obtain images of private spaces.

third party and/or public space without duly accredited justified cause, or may affect the privacy of passers-by who move freely through the zone. It is not 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.

- In no case will the use of surveillance practices be admitted beyond the environment object of the installations and in particular, not being able to affect the surrounding public spaces, adjoining buildings and vehicles other than those access the guarded space.

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

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

including the RGPD and the LOPDGDD (section “Reports and resolutions” / “regulations”), to the Guide on the use of video cameras for security and other purposes and the Guide for compliance with the duty to inform (both available in the “Guides and tools” section).

It is also of interest in the event that low-level data processing is carried out.

risk, the free tool Facilita (in the “Guides and tools” section) that, through specific questions, it allows to assess the situation of the person in charge

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regarding the processing of personal data that it carries out and, where appropriate, generate various documents, informative and contractual clauses, as well as an annex with indicative security measures considered minimal.

IV

In the present case, the respondent has not presented arguments or evidence that contradict the facts denounced within the period given for it.

In accordance with the evidence available and which has not been distorted during the sanctioning procedure, the defendant has installed four video surveillance cameras outside the building, located in

***ADDRESS.1, which could capture images of the neighborhood street and the garden claimant's property.

Based on the foregoing, the facts entail a violation of the provisions of the article 5.1 c) of the RGPD, which supposes an infringement typified in article 83.5 a) of the RGPD, which provides the following:

“The infractions of the following dispositions will be sanctioned, in accordance with the section 2, with administrative fines of a maximum of EUR 20,000,000 or, in the case of a company, an amount equivalent to 4% of the turnover global annual total of the previous financial year, choosing the highest amount:

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

(...)

For the mere purposes of prescription, article 72.1 of the LOPDGDD qualifies as very serious:

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

(...)

v

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 them they have 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 person responsible or in charge of the treatment that the treatment operations comply with the provisions of the GDPR, where applicable, in a certain way and within a specified term -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.

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In the present case, based on the facts, it is considered that the sanction should be imposed is an administrative fine. The fine imposed must be, in each individual case, effective, proportionate and dissuasive, in accordance with the article 83.1 of the RGPD. In order to determine the administrative fine to be imposed, to observe the provisions of article 83.2 of the RGPD, which indicates:

"two. Administrative fines will be imposed, depending on the circumstances of each individual case, in addition to or as a substitute for the measures contemplated in the Article 58, paragraph 2, letters a) to h) and j). When deciding to impose a fine administration and its amount in each individual case will be duly taken into account:

- a) the nature, seriousness and duration of the offence, taking into account the nature, scope or purpose of the processing operation in question, as well such as the number of interested parties affected and the level of damages that have suffered;
- b) intentionality or negligence in the infringement;
- c) any measure taken by the controller or processor to alleviate the damages suffered by the interested parties;
- d) the degree of responsibility of the person in charge or of the person in charge of the treatment, taking into account the technical or organizational measures that they have applied under of articles 25 and 32;
- e) any previous infringement committed by the person in charge or the person in charge of the treatment;
- f) the degree of cooperation with the supervisory authority in order to remedy the infringement and mitigate the possible adverse effects of the infringement;
- g) the categories of personal data affected by the infringement;
- h) the way in which the supervisory authority became aware of the infringement, in

particular whether the person in charge or the person in charge notified the infringement and, if so, in what measure;

- i) when the measures indicated in article 58, section 2, have been ordered previously against the person in charge or the person in charge in question in relation to the same matter, compliance with said measures;
- j) adherence to codes of conduct under article 40 or mechanisms of certification approved in accordance with article 42,
- k) any other aggravating or mitigating factor applicable to the circumstances of the case, such as financial benefits obtained or losses avoided, directly or indirectly, through the infringement.

For its part, in relation to letter k) of article 83.2 of the RGPD, the LOPDGDD, in its article 76, "Sanctions and corrective measures", provides:

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"1. The penalties provided for in sections 4, 5 and 6 of article 83 of the Regulation (EU) 2016/679 will be applied taking into account the graduation criteria established in section 2 of the aforementioned article.

2. In accordance with the provisions of article 83.2.k) of Regulation (EU) 2016/679 may also be taken into account:

- a) The continuing nature of the offence.
- b) The link between the activity of the offender and the performance of treatment of personal information.
- c) The profits obtained as a result of committing the offence.

d) The possibility that the conduct of the affected party could have included the commission of the offence.

e) The existence of a merger by absorption process subsequent to the commission of the infringement, which cannot be attributed to the absorbing entity

f) Affectation of the rights of minors

g) Have, when not mandatory, a data protection officer.

h) Submission by the person in charge or person in charge, on a voluntary basis, to alternative conflict resolution mechanisms, in those cases in which there are controversies between them and any interested party”.

The balance of the circumstances contemplated, with respect to the infraction committed by violating the provisions of articles 5.1 c) of the RGPD, it allows setting a fine of €300 (three hundred euros).

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 NIF ***NIF.1, for an infraction of article 5.1.c) of the RGPD, typified in article 83.5.a) of the RGPD, a fine of €300 (three hundred euros).

SECOND: ORDER to B.B.B., with NIF ***NIF.1 that, by virtue of article 58.2.d) of the RGPD, within ten business days, take the following measures:

- Prove that you have proceeded to remove the devices in question by providing Documentary evidence with date and time that accredits such end, or, failing that, certifies the regularization of the cameras in accordance with the regulations valid.

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THIRD: NOTIFY this resolution to B.B.B., with NIF ***NIF.1.

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, 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 Department of Data Protection in the banking entity CAIXABANK, S.A.. In case

Otherwise, it will be collected in 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

voluntary will be until the 20th day of the following month or immediately after, and if

between the 16th and last day of each month, both inclusive, the payment term

It will be 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

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/](https://sedeagpd.gob.es/sede-electronica-web/)], or 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 proving the effective filing of the contentious appeal-
administrative. If the Agency was not aware of the filing of the appeal
contentious-administrative within a period of two months from the day following the
notification of this resolution would end the precautionary suspension.

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