

□ File No.: EXP202102995

## RESOLUTION OF PUNISHMENT PROCEDURE

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

### BACKGROUND

FIRST: Ms. A.A.A. (hereinafter, the complaining party), dated December 30,  
September 2021, filed a claim with the Spanish Agency for the Protection of  
Data. The claim is directed against D. B.B.B. with NIF \*\*\*NIF.1 (hereinafter, the  
claimed party), for the installation of a video surveillance system located in  
\*\*\*ADDRESS.1, there being indications of a possible breach of the provisions of  
Article 5.1.c) of the General Data Protection Regulation (hereinafter,  
GDPR).

The reasons underlying the claim are as follows:

The claimant party states that the claimed party has disposed, in a farm  
property of said party claimed, three video surveillance cameras oriented towards a  
access road to the claimant's home, without authorization  
for it. Provide photographs of the location of the cameras.

The documents provided are:

- Photo report

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, to  
to proceed with its analysis and inform this Agency within a month of the  
actions carried out to adapt to the requirements set forth in the regulations of  
Data Protection.

The transfer, which was carried out in accordance with the regulations established in Law 39/2015, of October 1, of the Common Administrative Procedure of the Administrations Public (hereinafter, LPACAP), was collected on October 27, 2021, as appears in the acknowledgment of receipt.

In the absence of a response from the requested party, the transfer is reiterated, which is delivered on December 20, 2021.

No response has been received to this transfer letter, despite having been notified the same on two occasions to the claimed party: on October 27 and December 20 of 2021.

THIRD: On December 30, 2021, in accordance with article 65 of the LOPDGDD, the claim presented by the claimant was admitted for processing.

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FOURTH: On April 22, 2022, the Director of the Spanish Agency for Data Protection 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 of the GDPR.

FIFTH: Notification of the aforementioned start-up agreement in accordance with the rules established in the LPACAP, and after the term granted for the formulation of allegations, it has been verified that no allegation has been received by the respondent.

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 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  
beginning of the sanctioning file determined the facts in which the  
imputation, the infraction of the RGPD attributed to the claimed party and the sanction that  
could be imposed. Therefore, taking into consideration that the respondent has not  
formulated allegations to the agreement to initiate the file and in attention to what  
established in article 64.2.f) of the LPACAP, the aforementioned initial agreement is  
considered in this case proposed resolution.

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: The complaining party states that the claimed party has arranged, in  
a farm owned by said claimed party, three video surveillance cameras  
oriented to an access road to the claimant's home, not counting  
with permission to do so. Provide photographs of the location of the cameras.

SECOND: The Spanish Data Protection Agency has notified the party  
claimed the Agreement to Start this Sanctioning Procedure, without said  
Respondent has presented arguments or evidence that contradicts the facts  
denounced.

#### FOUNDATIONS OF LAW

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Competition

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, 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.

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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 is a personal data

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

The images generated by a camera or video camera system are data from personal nature, so its treatment is subject to the protection regulations of data.

It is, therefore, pertinent to analyze whether the processing of personal data (image of the natural persons) carried out through the reported video surveillance system is in accordance with the provisions of the RGPD.

## III

alleged infringement

Article 6.1 of the RGPD establishes the assumptions that allow the legalization of the treatment of personal data.

Regarding the treatment for video surveillance purposes, article 22 of the LOPDGDD establishes that natural or legal persons, public or private, may carry out carry out the processing of images through camera systems or video cameras in order to preserve the safety of people and property, as well as their installations.

The processing of personal data is subject to the rest of the principles of the treatment contained in article 5 of the RGPD. We will highlight the principle of minimization of data contained in article 5.1.c) of the RGPD that provides that the personal data will be “adequate, relevant and limited to what is necessary in relation to for the purposes for which they are processed”.

This means that in a specific treatment only the data can be processed. timely personal, that come to the case and that are strictly necessary to fulfill the purpose for which they are processed. The treatment must be adjusted and proportional to the purpose to which it is directed. The relevance in the treatment of data must occur both at the time of data collection and in the subsequent treatment of the same.

In accordance with the above, the processing of excessive data must be restricted or proceed to their removal.

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The application of the principle of data minimization in the field of video surveillance

entails that images cannot be captured from public roads, since the

treatment of images in public places, unless authorized

governmental, can only be carried out by the Security Forces and Bodies.

On some occasions, for the protection of private spaces, where

installed cameras on facades or inside, it may be necessary to ensure the

security purpose the recording of a portion of the public highway.

That is, cameras and video cameras installed for security purposes may not

obtain images of public roads unless it is essential for that purpose, or

it is impossible to avoid it due to their location. And in that case

extraordinary, the cameras will only be able to capture the minimum portion necessary to

preserve the safety of people and property, as well as its facilities.

In no case will the use of surveillance practices beyond the environment be allowed.

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

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

guarded.

Installed cameras cannot get images from third-party proprietary space

and/or public space without duly accredited justified cause, nor can they affect

the privacy of passers-by who move freely through the area.

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 cause

justified.

Nor can images be captured or recorded in spaces owned by third parties.

without the consent of their owners, or, as the case may be, of the people who

find.

Likewise, it is disproportionate to capture images in private spaces, such

such as changing rooms, lockers or worker rest areas.

#### IV

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:

1.- Individuals or legal entities, public or private, can establish a system video surveillance in order to preserve the safety of people and property, as well as its facilities.

It must be assessed whether the intended purpose can be achieved in another less intrusive to the rights and freedoms of citizens. personal data only should be processed if the purpose of the processing could not reasonably be achieved by other means, considering 39 of the RGPD.

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2.- The images obtained cannot be used for a later purpose incompatible with the one that motivated the installation of the video surveillance system.

3.- The duty to inform those affected provided for in articles 12 and 13 of the RGPD, and 22 of the LOPDGDD.

In this sense, article 22 of the LOPDGDD provides in relation to video surveillance a system of “layered information”.

The first layer must refer, at least, to the existence of the treatment (video surveillance), the identity of the person in charge, the possibility of exercising the rights provided for in articles 15 to 22 of the RGPD and where to obtain more information about the

treatment of personal data.

This information will be contained in a device placed in a sufficiently visible and must be supplied in advance.

Second layer information should be readily available in one place accessible to the affected party, whether it is an information sheet at a reception, cashier, etc., placed in a visible public space or in a web address, and must refer to the rest of the elements of article 13 of the RGD.

4.- The treatment of images through the installation of camera systems or video cameras must be lawful and comply with the principle of proportionality and that of minimization of data, in the terms already indicated.

5.- The images may be kept for a maximum period of one month, except in those cases in which they must be kept to prove the commission of acts that threaten the integrity of people, goods or facilities.

In this second case, they must be made available to the authority competent within a maximum period of 72 hours from the knowledge of the existence of the recording.

6.- 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 RGD.

7.- The person in charge must carry out a risk analysis or, where appropriate, an evaluation of impact on data protection, to detect those derived from the implementation of the video surveillance system, assess them and, where appropriate, adopt the measures of appropriate security.

8.- When a security breach occurs that affects the processing of cameras for security purposes, whenever there is a risk to the rights and freedoms of natural persons, you must notify the AEPD within a maximum period of



72 hours.

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A security breach is understood as the accidental or intentional destruction, loss or alteration of illicit of personal data transmitted, conserved or treated in another way, or the unauthorized communication or access to said data.

9.- When the system is connected to an alarm center, it 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 Spanish Agency for Data Protection offers through its website

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

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the legislation on the protection of personal data, including the

RGPD and the LOPDGDD (section “Reports and resolutions” / “regulations”),

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

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.

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#### Possible administrative infraction

In accordance with the evidence available and which has not been distorted during the sanctioning procedure, it is considered that the facts tested violate the provisions of article 5.1.c) of the RGPD, so they could suppose the commission of 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 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;

For the purposes of the limitation period for infractions, the infraction indicated in the previous paragraph is considered very serious in accordance with article 72.1 of the LOPDGDD, which states that:

“Based on the provisions of article 83.5 of Regulation (EU) 2016/679, 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:

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

SAW

sanction proposal

Article 58.2 of the RGPD establishes:

“Each supervisory authority shall have all of the following corrective powers listed below:

(...)

d) order the person responsible or in charge of treatment that the operations of treatment comply with the provisions of this Regulation, where appropriate, in a certain way and within a specified period;

(...)

i) impose an administrative fine under article 83, in addition to or instead of the measures mentioned in this section, according to the circumstances of each particular case”.

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.

With respect to the infringement of article 5.1.c) of the RGPD, based on the facts proven, it is considered that the sanction that should be imposed is a fine administrative.

The fine imposed must be, in each individual case, effective, proportionate and dissuasive, in accordance with the provisions of article 83.1 of the RGPD.

In order to determine the administrative fine to be imposed, 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;

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- 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:

"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 infractions committed by violating the provisions of article 5.1 c) of the RGPD, allows you to set a fine of 300 euros (three hundred euros).

7th

## Measures

The text of the resolution establishes the infractions committed and the facts that have given rise to the violation of the regulations for the protection of data, from which it is clearly inferred what measures to adopt, without prejudice that the type of specific procedures, mechanisms or instruments for implement them corresponds to the sanctioned party, since it is responsible for the treatment who fully knows your organization and has to decide, based on the proactive responsibility and risk approach, how to comply with the RGPD and the LOPDGDD.

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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.

conclusion

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 B.B.B. that, by virtue of article 58.2 d) of the RGPD, in the

within ten business days, take the following steps:

- Prove that you proceeded to remove the cameras in question, providing

Documentary evidence with date and time that accredits such end, or, failing that,

accredits the regularization of the cameras, in accordance with the current regulations

people and that it does not record the access road to the adjoining houses.

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, 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

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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 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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