

□ Procedure No.: PS/00090/2021

RESOLUTION OF PUNISHMENT PROCEDURE

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

BACKGROUND

FIRST: On October 28, 2020, it had entry in this Spanish Agency of Data Protection a document presented by A.A.A. (hereinafter, the claimant), through which he makes a claim against B.B.B. with NIF ***NIF.1 (in hereinafter, the claimed), for the installation of a video surveillance system installed on street ***ADDRESS.1, ***LOCALITY.1, ***PROVINCE.1, with signs of a possible breach of the provisions of the data protection regulations of personal character.

The claim is based on the claimant having installed a video surveillance with recording. The system has cameras on public roads (street and road) and another camera directly to the claimant's home (garage, plot, pool and terrace).

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).

On February 17, 2021, the allegations of the claimed, in which it states that:

- The company Securitas Direct S.A.U. manages the alarm system but not the video surveillance system.

- The number of cameras is 4, providing photographs of them.
- Provides images captured from the devices.
- Attach photographs of the informative posters located at the two entrances of
- Images are kept for 15 days. They are real and they are in

home.

functioning.

Photographs are provided of the images captured by the cameras in which

It follows that images of his property appear and in some of them spaces

external annexes to them of public roads. In one of them, you can see a house of

neighbor to the left. In another, a property is observed that it is not known if it is his or

no.

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

2/10

Photographs of the existence of informative posters identifying the

responsible.

THIRD: The claim was admitted for processing by means of a resolution of 22

February 2021.

FOURTH: On March 25, 2021, the Director of the Spanish Agency for

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

alleged infringement of articles 5.1.c) and 13 of the RGPD, typified in article 83.5

of the GDPR.

FIFTH: Having been notified of the aforementioned initiation agreement, the respondent submitted a written

allegations in which, in summary, he stated that, in relation to recording the

neighboring property, "(...) having the authorization of the tenant and representative of the property to record part of the property in order to maintain the security of both farms, we can affirm that it is a legitimate, pertinent and suitable for the purpose to be achieved".

It provides authorizations from the neighbors of the two adjoining houses, one on each side, for one of its cameras to record those properties.

Likewise, it indicates that, as can be seen in the photographs that it provided in February 2021, "In the third image, you can see the back of the farm that overlooks the swamp nearby, the upper right part corresponding to sports facilities of the farm, the upper central part with the ford that allows the entry of boats to the property that is an integral part of it and in the upper left part visualizes a limited strip of the exterior behind the bars of the fence. We consider that the camera complies with the principles of limitation and adequacy since the space engraving is not a public road, so the passage of people is scarce, in addition the bars of the fence limit the identification of passers-by and finally it is necessary to ensure the safety of the premises that access to the gate and fences are monitored. In the fourth image, pointing in the direction of the street Colón, you can see the fence of the farm that leads to the outside, reinforced with a mesh that prevents the identification of third parties so that the anonymity of the pedestrians and it would be possible to guarantee safety while limiting the treatment. (...)"

Likewise, the respondent has attached photographs where several posters can be seen informative of the existence of said cameras.

No images have been provided of what is captured by the fourth camera installed on the exterior fence and which, according to the claimant, engraves all of his property, so it is not possible to assess whether the recording of said camera complies with the provisions of the regulations

of data protection or is excessive.

SIXTH: On July 19, 2021, the instructor of the procedure agreed to the opening of a period of practice of tests, taking for reproduced, for purposes evidence of the claim filed by the claimant and its documentation, the documents obtained and generated by the Subdirector General for Inspection of Data and allegations presented by the respondent.

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

3/10

SEVENTH: On July 21, 2021, a resolution proposal was formulated, proposing that a warning be addressed to the defendant, for an infraction of the article 5.1.c) of the RGPD, typified in article 83.5 of the RGPD. In this proposal, granted a period of 10 days for the respondent to be able to allege be considered in his defense as well as to present the documents and information that considered pertinent, in accordance with article 89.2 of Law 39/2015, of 1 October, of the Common Administrative Procedure of the Public Administrations (in hereafter, LPACAP).

Likewise, regarding the lack of informative signs in the video-monitored area, since the respondent has provided two photographs in which two posters can be seen video-monitored area news, complying with the provisions of article 13 of the RGPD, the file is proceeded with respect to said breach.

EIGHTH: There is no evidence that, at the present time, the respondent has submitted any allegation to the proposed resolution, which was duly notified by appearance of the respondent on July 21, 2021, as recorded in the

confirmation of receipt of the electronic notification that was placed at your provision.

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: Existence of four video surveillance cameras installed on the street

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

- One of them records the adjoining houses on both sides of your property, with the authorization of the owners for said recording.

- Another captures only the pool of the claimed.

- A third camera oriented towards the back of the farm, capturing a exterior strip recording an area where people pass.

- Regarding the fourth camera, no images of what it captures have been provided.

SECOND: The person in charge of the video surveillance system is B.B.B. with NIF ***NIF.1.

THIRD: The respondent has provided photographs of the information signs in the area

video surveillance in which the name, surnames, DNI and full address of the

responsible for the system; the purpose of the video surveillance system; and where to go for the exercise of rights.

FOURTH: There is no record in this Agency that the respondent has presented allegations

to the Resolution Proposal that was duly notified, dated

appearance July 21, 2021, as stated in the confirmation of receipt of the notification.

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

FOUNDATIONS OF LAW

By virtue of the powers that article 58.2 of the RGPD recognizes to each authority of control, and according to the provisions of articles 47 and 48.1 of the LOPDGDD, the Director of the Spanish Agency for Data Protection is competent to resolve this process.

I

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:

"one. 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 facilities.

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.

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

5/10

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. Out of In these cases, said treatment will be governed by its specific legislation and additionally by Regulation (EU) 2016/679 and this organic law.

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.

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

6/10

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.

- 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 system with recording with several cameras oriented to the road public (street and highway) and another camera directly to the claimant's home (garage, plot, pool and terrace), without an information sign for the area video surveillance.

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

7/10

As proof of these statements, the claimant provided the evidence indicated in the "Facts" section 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. Between they have the power to issue 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 directing a warning, in relation to what indicated in Recital 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 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 available in this sanctioning procedure, it is considered that the claimed party has arranged four misguided video surveillance cameras, two of which capture images not only of its property, but that appear, in the images provided by the claimed, the public highway and adjoining areas.

As for the other two cameras that capture the adjoining farms on both sides, has provided authorization from the owners of these farms for said collection. It has also provided two photographs showing two posters informative video surveillance area.

According to this evidence, it is considered that these facts violate the established in article 5.1.c) of the RGPD, which implies the commission of an infringement typified in 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,

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

8/10

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.

(...)»

In the initial assessment, the following have been considered:

-

-

The nature of the offense by having a video surveillance system that

is oriented towards public transit areas without just cause, trying to

data of identifiable natural persons (art. 83.5 a) RGPD.

The intentionality or negligence of the infraction, the cameras are oriented to the outside of your property (83.2.b) RGPD).

Based on the above:

-

Regarding the lack of informative signs in the video-monitored area, the requested has provided two photographs in which two informative posters of the area can be seen video surveillance, complying with the provisions of article 13 of the RGPD, which is why the file is proceeded with respect to said non-compliance.

Regarding the breach of the provisions of article 5.1.c) of the RGPD, it is

-

considers that the corresponding sanction is to direct a warning, in accordance with what is established in article 58.2 b) of the RGPD, in relation to what is indicated in the Considering 148, cited above.

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

9/10

SAW

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:

-

-

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

indicating on a location map the parts that correspond to its

private property.

certifies having proceeded to remove the cameras from the current locations, or

or to the reorientation of the same towards their particular zone.

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: ADDRESS A WARNING TO B.B.B. with NIF ***NIF.1, for one

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

SECOND: ORDER the FILE of this procedure regarding the possible

commission of infringement of article 13 of the RGPD, typified in article 83.5 of the

GDPR.

THIRD: ORDER B.B.B. with NIF ***NIF.1 which, by virtue of article 58.2.d) of the

GDPR, within ten days, take the following measures:

-

-

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

indicating on a location map the parts that correspond to its

private property.

certifies having proceeded to remove the cameras from the current locations, or

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

FOURTH: NOTIFY this resolution to B.B.B. with NIF ***NIF.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.

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

10/10

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.

Sea Spain Marti

Director of the Spanish Data Protection Agency

938-131120

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es