

□ File No.: PS/00133/2022

## RESOLUTION OF SANCTIONING 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 April 27, 2021  
filed a claim with the Spanish Data Protection Agency. claims her-  
tion is directed against the neighbor of the property B.B.B. with NIF \*\*\*NIF.1 (hereinafter, the  
claimed party). The reasons on which the claim is based are the following:  
"misplacement of video-surveillance camera affecting the right of third parties"  
ro without just cause without the proper authorization of the Board of Owners  
rivers" (folio no. 1).

SECOND: On 06/02/21, a brief qualified as Recourse for Repo-  
situation in which the claimant provides new evidence that allows verifying the affectation  
tion with the device of common areas of the part intended for the garage of the property,  
being estimated the same in legal form, giving rise to the present proceedings.

THIRD: On 02/04/22, a written request was received from the Tax Agency  
lie of this organism.

FOURTH: The Agency carries out preliminary investigation actions in  
within the framework of \*\*\*FILE.1, identifying Don B.- as the main person responsible  
B.B.

### RESULT OF INVESTIGATION ACTIONS

On 02/04/22, information was obtained from the INE on the address and ID of the claimant.  
mado B.B.B., whose data has been incorporated into the section of investigated entities.

Information requested from the referenced claimant, dated February 28, 2022

This Agency receives a response that includes the required photographs:

Place of installation of both cameras.

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- Captures, dated 02/27/2022, of the areas that remain within the field of view of both cameras.

- Informative poster of video-surveilled area where it is stated that you can exercise your rights before "B.B.B. \*\*\*ADDRESS.1" and refers to the "Organic Law 15/1999".

The system has an informative poster informing of the "responsible for the treatment" and an address although the ZIP Code is not indicated.

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FIFTH: On March 31, 2022, the Director of the Spanish Agency for Data Protection agreed to initiate disciplinary proceedings against the claimed party, 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 te, LPACAP), for the alleged infringement of Article 5.1.c) of the GDPR, typified in the Article 83.5 of the GDPR.

SIXTH: On 02/28/22, this agency received a written response to the Commencement Agreement, limiting itself to the provision of documentary evidence, where it is verified that the informative poster has not been changed and the orientation of the camera in question.

SEVENTH: On 06/24/22, a resolution proposal was issued in which the

considers the infraction committed by having a video-surveillance camera accredited misdirected affecting the rights of third parties, infringement typified in article 6 RCPD, lacking accredited legitimacy for the "processing of data of third parties".

EIGHTH: Consulted the database of this Agency on 09/16/22, there is no record any allegation of the claimed party, nor has any measure been accredited to the regard.

Of the actions carried out in this procedure and of the documentation in the file, the following have been accredited:

#### PROVEN FACTS

First. The facts bring cause of the claim dated 04/27/21 through the which translates the following:

"misplacement of video-surveillance camera affecting the right of third parties" without just cause without the proper authorization of the Board of Owners "rivers" (folio no. 1).

Second. It is identified as the main responsible B.B.B., who does not deny the their authorship.

Third. The presence of a video surveillance device in the garage area that has not been authorized by the Board of owners.

Room. There is evidence of the presence of an informative poster, although it refers to a regulation repealed mativa (LOPD) and an address without indicating the Postal Code or the number of floor to which to go.

Fifth. The images provided show the impact on the community area Rias without just cause, affecting the rights of third parties.

Sixth. The reasons for the presence of the device have not been exposed in order to a weighting by this body on the suitability of the adopted measure, nor

Supplementary documentation has been provided for this purpose.

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FUNDAMENTALS 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 au-

control authority and as established in articles 47, 48.1, 64.2 and 68.1 of the Law

Organic 3/2018, of December 5, 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

Data processed by the Spanish Data Protection Agency will be governed by the dis-

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

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

subsidiary character, by the general rules on administrative procedures

you."

II

In the present case, the claim is examined through the

which is transferred the bad placement of a video-surveillance camera that affects de-

rights of third parties without having the proper authorization in this regard.

An agreement from the Board of Owners is necessary for the installation of the

video surveillance cameras, in addition this agreement must be reflected in the minutes

of said board.

For the installation of surveillance services in a community of owners

the votes in favor of 3/5 of the total owners are needed, who must also represent

pay at least 3/5 of the participation fees—art. 17 BPH--.

It should be remembered that individuals are responsible for ensuring that the systems

more installed comply with current legislation, certifying that it complies with

all the requirements demanded by the regulations in force.

The installation of this type of device must have the mandatory sign

informative, indicating the purposes and data controller, where appropriate

of a personal nature.

In any case, the cameras must be oriented towards the particular space,

avoiding intimidating neighboring neighbors with this type of device, as well as controlling

lar transit areas of the same without just cause.

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It is not possible to obtain image(s) of space either with this type of device.

public cio, as this is the exclusive competence of the Security Forces and Bodies

of the State.

II

In accordance with the evidence available in the proceeding

disciplinary, it is considered that the claimed party has committed a violation of art.

6.1 e) GDPR, when installing a camera that affects community areas of third parties without

the proper authorization.

"The treatment is necessary for the fulfillment of a mission carried out in public interest or in the exercise of public powers conferred on the data controller treatment;"

The camera is placed on a community pillar having manifested the or-governing bodies of the same their opposition to such measure, affecting the right of third parties rivers without just cause that are affected by the angle of capture of the same.

From the photographic evidence provided, it is possible to verify the presence of the dis-positive, partially affecting a community area, without the community pro-owners have authorized the presence of the camera, nor has it been minimally justified. the reason(s) for its presence.

There is no record that the defendant has authorization from it to proceed der in a proportionate way to place a device that allows you to control the parked vehicle, being the installation deficient by affecting common areas of ter-zeros; nor have specific criteria been argued that allow considering the installation as adjusted to right.

The known facts are therefore constitutive of an infringement, attributable to the claimed party, for violation of the content of art. 6.1 e) GDPR, formerly mentioned.

IV.

The art. 83.5 GDPR provides the following: "Violations of the provisions following will be sanctioned, in accordance with section 2, with administrative fines EUR 20,000,000 maximum or, in the case of a company, an equal amount equivalent to a maximum of 4% of the total global annual turnover of the financial year previous financial statement, opting for the one with the highest amount:

a) The basic principles for the treatment including the conditions for the consent in accordance with articles 5,6,7 and 9 (...)"

In accordance with the foregoing, it is considered appropriate to impose a penalty of

€1000, by having a poorly oriented video surveillance device, without having the

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authorization of the Board of Owners, affecting the right of third parties that transit

in the area, although it is taken into account that it is a natural person with "es-

cases" knowledge in the matter at hand, a sanction located on the lower scale

rior for this type of behavior.

The obvious bad orientation of the device in question makes us consider the

conduct as negligence at least serious, when being aware of the disturbance to the de-

right of third parties without just cause, as well as having a sign that refers to

reference to a repealed regulation such as the LOPD, the current one being the Organic Law

3/2018, of December 5 (LOPDGDD) and the disregard of the recommendations of the

Guiding wins of the community of owners.

For mere prescription purposes, article 72.1.b) of the LOPDGDD qualifies

very serious "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; (...)"

V

The corrective powers available to the Spanish Protection Agency

of Data, as control authority, are established in article 58.2 of the GDPR.

These include the power to impose an administrative fine under

to article 83 of the GDPR (art. 58.2 i)), or the power to order the person responsible or

processor that the processing operations comply with the provisions of the GDPR, where applicable, in a certain way and within a certain specified term (art. 58.2 d)).

According to the provisions of article 83.2 of the GDPR, the measure provided for in the Article 58.2 d) of the aforementioned Regulation is compatible with the sanction consisting of administrative fine.

The fine imposed must be, in each individual case, effective, proportionate and dissuasive, in accordance with article 83.1 of the GDPR. For the purpose of determine the administrative fine to be imposed, the provisions of the Article 83.2 of the GDPR, which indicates:

"2. Administrative fines will be imposed, depending on the circumstances of each individual case, as an addition to or substitute for the measures contemplated in article 58, paragraph 2, letters a) to h) and j). When deciding to impose a fine administration and its amount in each individual case shall 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 such as the number of interested parties affected and the level of damages that have suffered;

b) intentionality or negligence in the infraction;

c) any measure taken by the controller or processor to alleviate the damages and losses suffered by the interested parties;

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- d) the degree of responsibility of the controller or the person in charge of the processing, taking into account the technical or organizational measures that have been applied under articles 25 and 32;
- e) any previous infringement committed by the person in charge or in charge of the treatment;
- f) the degree of cooperation with the supervisory authority in order to put a remedy to the breach and mitigate the potential adverse effects of the breach;
- 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 extent;
- i) when the measures indicated in article 58, paragraph 2, have been previously ordered 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 to 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 the financial benefits obtained or the losses avoided, directly or indirectly, through the infringement".

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

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

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

- a) The continuing nature of the offence.
- b) Linking the activity of the offender with the performance of processing of personal data.
- c) The benefits obtained as a consequence of the commission of the infraction.
- d) The possibility that the conduct of the affected party could have led to the commission of the offence.
- e) The existence of a merger process by absorption after the commission of the infringement, which cannot be attributed to the absorbing entity.

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- f) The affectation of the rights of minors.
- g) Have, when it is not mandatory, a data protection delegate data.
- h) The submission by the person in charge or in charge, with character voluntary, alternative conflict resolution mechanisms, in those cases in which there are controversies between those and any interested party”.

The balance of the circumstances contemplated, with respect to the infraction committed by violating the provisions of article 6 of the GDPR, allows setting a fine of €1,000 (one thousand euros).

The text of the resolution establishes which have been the infringements committed and the facts that have given rise to the violation of the protection regulations of data, from which it is clearly inferred what are the measures to be adopted, without detrimental to the type of procedures, mechanisms or specific instruments for

implement them corresponds to the sanctioned party, since it is responsible for the treatment who fully knows his organization and has to decide, based on the response proactive responsibility and risk approach, how to comply with the GDPR and the LO-PDGDD.

Therefore, in accordance with the applicable legislation and assessed the criteria of graduation of sanctions whose existence has been accredited,

The Director of the Spanish Data Protection Agency RESOLVES:

FIRST: IMPOSE B.B.B., with NIF \*\*\*NIF.1, for a violation of Article 6.1 e) of the GDPR, typified in Article 83.5 of the GDPR, a fine of €1,000.

SECOND: TO ORDER the claimed party so that, within a period of 10 business days from count from the following to the notification of this act, proceed as follows manner:

-Withdrawal of the camera from its current location, proceeding to documentary proof of this point before this body (vgr. photograph dated and time of before/after withdrawal).

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

FOURTH: Warn the sanctioned party that he must enforce the sanction imposed

Once this resolution is enforceable, in accordance with the provisions of Article art. 98.1.b) of Law 39/2015, of October 1, on Co-Administrative Procedure public administrations (hereinafter LPACAP), within the term of payment volunteer 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, by means of its income, 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, open in the name of the Spanish Agency

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Otherwise, it will proceed to its collection in the executive period.

Once the notification has been received and once executed, if the execution date 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 or immediately following business month, and if

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

It will run until the 5th of the second following or immediately following business month.

In accordance with the provisions of article 50 of the LOPDGDD, this

Resolution will be made public once the interested parties have been notified.

Against this resolution, which puts an end to the administrative process in accordance with art. 48.6 of the

LOPDGDD, and in accordance with the provisions of article 123 of the LPACAP, the interested parties

Respondents may optionally file an appeal for reinstatement before the Director

of the Spanish Agency for Data Protection within a period of one month from the

the day following the notification of this resolution or directly contentious appeal

before the Contentious-Administrative Chamber of the National Court,

in accordance with the provisions of article 25 and section 5 of the additional provision

fourth clause of Law 29/1998, of July 13, regulating the Contentious Jurisdiction-

administration, 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 noted 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-

As the case may be, the interested party must formally communicate this fact in writing addressed to the Spanish Data Protection Agency, presenting it through the Re-Electronic registry of the Agency [<https://sedeagpd.gob.es/sede-electronica-web/>], or to through any of the other registries provided for in art. 16.4 of the aforementioned Law 39/2015, of October 1. You must also transfer the documentation to the Agency proving the effective filing of the contentious-administrative appeal. if the Agency was not aware of the filing of the contentious-administrative appeal treatment within two months from the day following notification of this resolution, would terminate the precautionary suspension.

Mar Spain Marti

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