

□ File No.: EXP202103408

RESOLUTION OF PUNISHMENT PROCEDURE

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

BACKGROUND

FIRST: On 10/18/2021, it had entry in this Spanish Agency of
Data Protection a document presented by A.A.A. (hereinafter referred to as the claimant),
through which he makes a claim against B.B.B. with NIF ***NIF.1 (hereinafter, the
claimed), for the installation of a video surveillance system installed in
*** ADDRESS.1 there are indications of a possible breach of the provisions of the
personal data protection regulations.

The reasons underlying the claim are as follows:

“On April 27, 2021, I received a sanctioning procedure resolution (...). A

Today and as evidenced by the attached photographs, there is still
a surveillance camera camouflaged between the latticework of the facade of the house
owned by Mr. B.B.B. that is focusing on the common areas and in the direction of the
parking lot of my property.

[...]

Attach, among others, the following documents:

- Copy of the Resolution of the sanctioning procedure that was processed against the
claimed, derived from the claim filed by the claimant.

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Three photographs of the location of the camera and the perspective it would capture.

SECOND: These facts have already been the subject of a claim before this Agency
processing file E/09743/2019 and, subsequently, PS/00019/2020 in the

that it was determined to direct a warning to the person claimed for an infraction of article 5.1 c) of Regulation 679/2016 (EU), of April 27, 2016, regarding the protection of natural persons with regard to the processing of personal data and the free circulation of these data (hereinafter, RGPD).

Prior to admitting this claim for processing, the Agency sent two Information requests to the respondent on 10/25/2021 and 11/15/2021, resulting in both cases "Returned to origin due to surplus (not picked up at the office)", according to It appears in the Notices issued by Correos on 11/11/2021 and 12/03/2021.

THIRD: The claim was admitted for processing by resolution of 12/09/2021.

FOURTH: On 03/02/2022, 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.

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FIFTH: The agreement to open this sanctioning procedure was attempted notify through postal mail, resulting in "Returned to Origin by Unknown", according to Notice issued by post on 03/14/2022. In this way, the notification produced by means of an announcement published in the Official State Gazette on 03/25/2022 and a hearing period of TEN WORKING DAYS is granted to him to formulate allegations and present the evidence it deems appropriate, in accordance with the prescribed in articles 73 and 76 of Law 39/2015, of October 1, of the Common Administrative Procedure of 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 camera in the latticework of the garage of the claimed, located at ***ADDRESS.1 that could capture images of the areas

of the urbanization, as well as the parking lot owned by the claimant.

This point is proven with the photographs provided by the claimant where observe that the device placed in the hole in the lattice is focusing towards the mentioned areas.

SECOND: It is identified as responsible for the device 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

Yo

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. tion.

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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 sufficiently 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 regrettably 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

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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).

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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

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 a

video surveillance camera in one of the holes in the latticework of his garage, located in

*** ADDRESS.1 with which you would be capturing images of the common areas of the

urbanization, as well as the parking lot owned by the claimant.

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 of the Spanish Agency for the Protection of Data, as a control authority, is established in article 58.2 of the RGPD. Among 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).

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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.

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.

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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”.

In accordance with the precepts transcribed, in order to set the amount of the penalty to impose in the present case for the infringement typified in article 83.5.a) of the RGPD,

The following aspects are considered concurrent as aggravating factors that reveal greater unlawfulness and/or culpability in the conduct of the defendant:

-

Any previous infraction committed by the person in charge or the person in charge of the treatment (article 83.2.e) RGPD). The defendant has already been sanctioned in PS/00019/2020, where it was determined that he had indeed installed two video surveillance cameras, one at the entrance of your home and another in the lattice of its car park, which captured images of common areas of the urbanization.

The balance of the circumstances contemplated, with respect to the infraction committed by violating the provisions of article 5.1 c) of the RGPD, it allows to set a fine of

€500 (five hundred euros).

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

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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 €500 (five 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 proceeded to remove the camera from the current location or to reorientation of this towards its particular area or that does not involve an uptake disproportionate

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

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.

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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-](https://sedeagpd.gob.es/sede-electronica-web/)

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.

Sea Spain Marti

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