

□ Procedure No.: PS/00413/2019

RESOLUTION OF PUNISHMENT PROCEDURE

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

BACKGROUND

FIRST: On July 26, 2019, 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 on his plot of land.

***ADDRESS.1, regarding which there are indications of a possible breach of the
provided in the data protection regulations. The aforementioned system would be oriented
towards the claimant's property and towards the public road that serves as access to
that and also would not have an information poster.

The claimant attaches a photographic report.

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).

The aforementioned claim was returned due to "absent distribution" on 10/01/2019,
reiterating the transfer on 10/09/2019, reiteration again returned by
"delivery absent" on 10/25/2019.

THIRD: The claim was admitted for processing by means of a resolution of 14
November 2019.

FOURTH: On February 18, 2020, the Director of the Spanish Agency for
Data Protection agreed to initiate a sanctioning procedure against the claimant, for the

alleged infringements of articles 5.1.c) and 13 of Regulation (EU) 2016/679

(General Data Protection Regulation, hereinafter RGPD), typified in the

article 83.5 of the aforementioned standard.

FIFTH: Since the notification of the initiation agreement was unsuccessful,

proceeded to publish an announcement of notification in the Single Edictal Board of the Bulletin

State Official on June 5, 2020, in accordance with the provisions of the

Article 44 of Law 39/2015, of October 1, on Administrative Procedure

Common Public Administrations (hereinafter, LPACAP).

SIXTH: On July 31, 2020, the instructor of the procedure agreed to the

opening of a period of practice tests, requiring the Aspe City Council

so that, prior to transfer to the scene of the events, the Local Police issued the

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corresponding report confirming the effective address of the person claimed, the

existence of the video surveillance system, the orientation of the cameras and the

collection of these with the timely delimitation of the public or private nature of the

mentioned catchment area as well as the existence or not of an information poster.

Aspe City Council has not responded to the request made.

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: In the photographs provided by the claimant together with his letter of 26

July 2019, some camera-shaped devices can be seen found

located on the farm located in *** ADDRESS.1 with orientation towards the outside of the estate.

SECOND: The respondent has not presented arguments.

THIRD: The Aspe City Council has not issued the requested report in the period test practice.

FOUNDATIONS OF LAW

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By virtue of the powers that article 58.2 of the RGPD recognizes to each authority of control, and as established in arts. 47 and 48.1 of the LOPDGDD, the Director of The Spanish Agency for Data Protection is competent to resolve this process.

II

The defendant is charged with the commission of an infraction for violation of article 5.1.c) of the RGPD, which states that personal data will be "adequate, relevant and limited to what is necessary in relation to the purposes for which they are processed ("data minimization")." This article enshrines the principle of minimization of data in the processing of personal data. Assume that such treatment is adjusted and proportional to the purpose to which it is directed, and the treatment of excessive data or proceed to the deletion of the same.

Likewise, the commission for violation of article 13 of the RGPD, regarding the information that must be provided when the data is obtained from the interested party, which establishes that:

"1. When personal data relating to him is obtained from an interested party, the responsible for the treatment, at the time these are obtained, will provide all the information indicated below:

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a) the identity and contact details of the person in charge and, where appropriate, of their representative;

b) the contact details of the data protection delegate, if applicable;

c) the purposes of the treatment to which the personal data is destined and the legal basis of the treatment;

d) when the treatment is based on article 6, paragraph 1, letter f), the interests legitimate of the person in charge or of a third party;

e) the recipients or the categories of recipients of the personal data, in their case;

f) where appropriate, the intention of the controller to transfer personal data to a third party country or international organization and the existence or absence of a decision to adequacy of the Commission, or, in the case of transfers indicated in the Articles 46 or 47 or Article 49, paragraph 1, second paragraph, reference to the adequate or appropriate warranties and the means to obtain a copy of these or to the fact that they have been borrowed.

2. In addition to the information mentioned in section 1, the person responsible for the treatment will facilitate the interested party, at the moment in which the data is obtained personal, the following information necessary to guarantee data processing fair and transparent

a) the period during which the personal data will be kept or, when it is not possible, the criteria used to determine this period;

b) the existence of the right to request from the data controller access to the

personal data relating to the interested party, and its rectification or deletion, or the limitation of its treatment, or to oppose the treatment, as well as the right to portability of the data;

c) when the treatment is based on article 6, paragraph 1, letter a), or article 9, paragraph 2, letter a), the existence of the right to withdraw consent in any time, without affecting the legality of the treatment based on the consent prior to its withdrawal;

d) the right to file a claim with a supervisory authority;

e) if the communication of personal data is a legal or contractual requirement, or a necessary requirement to sign a contract, and if the interested party is obliged to provide personal data and is informed of the possible consequences of not provide such data;

f) the existence of automated decisions, including profiling, to which referred to in article 22, sections 1 and 4, and, at least in such cases, information about applied logic, as well as the importance and consequences provisions of said treatment for the interested party.

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3. When the controller plans the further processing of data

personal data for a purpose other than that for which they were collected, you will provide the interested party, prior to such further processing, information on that other purpose and any additional information relevant under paragraph 2.

4. The provisions of sections 1, 2 and 3 shall not apply when and in the

to the extent that the interested party already has the information.”

The relevance in the processing of the data must occur both in the field of collection of the data as well as in the subsequent treatment that is carried out on them.

Infractions are typified in article 83.5 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;
- b) the rights of the interested parties according to articles 12 to 22; [...].”

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III

In the present case, it is appropriate to analyze the presumed illegality of the installation of a video surveillance system composed of several cameras facing the outside of the farm located at ***ADDRESS.1.

The facts of this sanctioning procedure reveal the existence of some devices with the appearance of cameras oriented towards the outside of the farm that could respond to security purposes. Regarding the possibility of having video surveillance cameras, article 22 of the LOPDGDD, regarding treatments with video surveillance purposes, provides that, in order to ensure the security of

people and property, images of public thoroughfares may be captured "to the extent that is essential", in accordance with the principle of data minimization established in article 5.1.c) of the RGD.

Taking into account the foregoing, in the event that it is a question of guaranteeing the security of an area of access to a property or its perimeter, the area of public roads captured should be kept to a minimum. This means that, to ensure the safety of the access to the farm, the images can reach a part or portion of the road public, but it would not be considered proportionate to capture even the entirety of a path of access or the affectation of adjoining properties.

On the other hand, with regard to compliance with the duty of information contained in the article 12 of the RGD, article 13 of the same legal text provides the information that must be provided when the personal data is obtained from the interested party, situation that occurs in cases of image capture by a system of video surveillance. In this sense, article 22.4 of the LOPGDD establishes that "The duty of information provided for in article 12 of Regulation (EU) 2016/679 is understood fulfilled by placing an informative device instead sufficiently visible identifying, at least, the existence of the treatment, the identity of the person in charge and the possibility of exercising the rights foreseen 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."

Notwithstanding what is stated in the preceding paragraphs, in this proceeding there has been no It has been possible to prove that the indicated devices are in operation or its field of recording, so the principle of the right to information must come into play presumption of innocence, recognized as a fundamental subjective right in the article 24 of the Spanish Constitution.

The aforementioned right to the presumption of innocence is also included in a expressed in article 53.2.b) of the LPACAP, which establishes that:

"two. In addition to the rights provided for in the previous section, in the case of administrative procedures of a punitive nature, the alleged responsible will have the following rights:

[...]b) To the presumption of non-existence of administrative responsibility while the contrary is proven."

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This right prevents the imposition of an administrative sanction when no and verified a supporting evidence of the facts that motivate the imputation or intervention in the same of the alleged offender. In this sense, the Constitutional Court in its Judgment 76/1990, of April 26, considers that the right to the presumption of innocence entails: "that the sanction be based on acts or evidence of charge or incriminating of the reproached conduct; that burden of proof corresponds to the person who accuses, without anyone being obliged to prove his own innocence; and that any insufficiency in the result of the tests practiced, freely valued by the sanctioning body, must be translated into a acquittal pronouncement."

IV

Based on the foregoing, in this case it has not been possible to determine the carrying out any infringing conduct within the framework of the matter at hand, reason why it is appropriate to order the Archive of this procedure.

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: ORDER the FILE of this procedure as there is no accredited administrative infraction.

SECOND: NOTIFY this resolution to B.B.B. with NIF ***NIF.1 and

REPORT the result of the AAA actions.

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.

Sea Spain Marti

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