

□ File No.: EXP202202519

RESOLUTION OF SANCTIONING PROCEDURE

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

BACKGROUND

FIRST: CITY COUNCIL OF ***LOCATION—LOCAL POLICE-- (*hereinafter,
the complaining party) on February 28, 2022 filed a claim with the
Spanish Data Protection Agency. The claim is directed against A.A.A. with
NIF ***NIF.1 (hereinafter, the denounced party). The reasons on which the claim is based
tion are the following:

“presence of video surveillance cameras that are oriented towards space
public without proper signage”

"(...) We inform you that the two cameras you have cannot focus on the
public highway and that you can place them in another way (...) "The Agents tell you that
will be proposed for sanction for the improper use of the images and for focusing towards
public thoroughfare” (folio no. 1).

Along with the notification, the Act (Complaint) dated 02/19/22 is provided, in which the
documentary evidence of the presence of two cameras misoriented towards public space
war.

SECOND: On 03/02/22, a "Reminder" type letter of compliance is sent.
compliance with the obligations required in terms of video surveillance, recalling the publicity
of the criteria on the website of this Agency "Video Surveillance Area".

THIRD: On 03/15/22, this body received a response to the claim
named (a) in the following terms "I am up to date with my obligations in
data protection matter”.

FOURTH: On 04/13/22, a new communication is received from the City Council (Poli-local company *** LOCATION) confirming the presence of the cameras despite the re-recommendations of the acting force, noting the wrong orientation and the null collaboration of the person claimed "it is not a matter of the Police what each individual does ce at your home" (folio no. 1 written by the Local Police dated 04/02/22).

FIFTH: On June 7, 2022, the Director of the Spanish Agency for Pro-Data Protection agreed to initiate a sanctioning procedure against the claimed party, with in accordance with the provisions of articles 63 and 64 of Law 39/2015, of October 1, of Common Administrative Procedure of Public Administrations (hereinafter, LPACAP), for the alleged infringement of Article 5.1.c) and 13 of the GDPR, typified in the Article 83.5 letters a) and b) of the GDPR.

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SIXTH: On 07/11/22, a written statement of allegations was received from the party claimed ma-stating the following:

"It is true that in the house where he lives he has some cameras that ONLY EN-FOCAN to your property, without at any time invading public area or property private other than your patio and private entrance.

It is noted that the undersigned has not been a collaborator, with the agents of the Local Police, a fact totally uncertain, or rather false, since who has been the agent of the Local Police, who at all times was intimidating and disrespectful to the accused, by starting to take photos with his mobile phone after from his personal patio, without having any reason, without having indicated anything about what he is-

he was doing and within another performance that was already denounced.

That, its cameras comply with current legislation, and complies with all requirements demanded by the regulations in force.

It is indicated in the letter submitted that a copy of the complaint filed is attached, without that it is attached to the letter, so that by means of this letter, it is requests that you give or send a complete copy of the file ***FILE.1, to the opportune effects”.

SEVENTH: On 07/12/22 it is agreed to send a copy of the required documentation by the denounced party for the appropriate legal purposes, stating the same as "Notified" in the computer system of this body.

EIGHTH: On 09/05/22, a resolution proposal is issued, confirming the violations of article 5.1 c) and 13 GDPR, by having a system of poorly oriented video surveillance, without adequate information in this regard, proposing a penalty of €1,200 (€900+€300).

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 02/28/22 through the which the following COMPLAINT is transferred by the Security Forces and Bodies of the location.

“presence of video surveillance cameras that are oriented towards space public without proper signage”

"(...) We inform you that the two cameras you have cannot focus on the public highway and that you can place them in another way (...) "The Agents tell you that will be proposed for sanction for the improper use of the images and for focusing towards public thoroughfare” (folio no. 1).

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Along with the notification, the Act (Complaint) dated 02/19/22 is provided, in which the documentary evidence of the presence of two cameras misoriented towards public space war.

Second. The neighbor A.A.A. with NIF

***NIF.1.

Third. It is accredited in the opinion of the acting force that the defendant is making a misuse of video surveillance systems proceeding to capture public space without just cause, processing data from third parties, which has caused the their intervention at the residence of the defendant.

Room. There is evidence of the absence of an informative poster in a visible area informing that it is a video-surveilled area, as well as that it lacks an informative form(s). information about it if required.

FUNDAMENTALS OF LAW

Yo

In accordance with the powers that article 58.2 of Regulation (EU) 2016/679 (Re-General Data Protection Regulation, hereinafter GDPR), grants each authority quality of control 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 processed

by the Spanish Data Protection Agency will be governed by the provisions of Regulation (EU) 2016/679, in this organic law, by the regulations comments dictated in its development and, insofar as they do not contradict them, with a subsidiary, by the general rules on administrative procedures."

II

In the present case, the claim dated 02/28/22 is examined by means of gave of which the following is transferred as the main fact by the acting force:

"presence of video surveillance cameras that are oriented towards space public without proper signage" (folio no. 1).

The facts are verified by the Local Police *** LOCATION that sends Minutes (complaint) dated 02/19/22 upon being warned of "irregular" practices with dispositive video surveillance by the defendant who, after warning him "makes disregard of the recommendations" regarding data protection, noting the "absence of informative badge".

The art. 5.1 c) GDPR provides the following: Personal data will be:

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"adequate, relevant and limited to what is necessary in relation to the purposes for those who are processed ("data minimization").

It should be remembered that individuals are responsible for ensuring that the systems installed felled 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 informative poster

tive, indicating the purposes and person responsible for the treatment, where appropriate, of the data of each personal character.

In any case, the cameras must be oriented towards the particular space, avoiding intimidate neighboring neighbors with this type of device, as well as control areas transit thereof without just cause.

Neither with this type of device can you obtain an image(s) of public space.

since this is the exclusive competence of the Security Forces and Bodies of the State tado.

It should be remembered that even if it is a "simulated" camera, the same should preferably be oriented towards private space, since it is considered that this type of device can affect the privacy of third parties, who are intimate measured by it in the belief of being the object of permanent recording.

On the part of individuals, it is not possible to install devices for obtaining images of public space and/or traffic of third parties, outside the cases allowed in the normative.

The purpose of this type of device must be the security of the property and its inhabitants, avoiding the affectation of the rights of third parties who are intimidated two with the same

II

In accordance with the evidence provided that is available in this pro-disciplinary procedure, it is considered that the claimed party has a camera (s) that is processing data outside the cases permitted by the regulations affecting public space without just cause.

The video surveillance camera(s) must be oriented towards private space of the defendant (a) without it being able to affect with it the reserved scope of third parties and/or public space.

Article 77 section 5 of Law 39/2015 (October 1) provides the following:

"The documents formalized by the officials to whom the condition of authority and in which, observing the corresponding legal requirements teeth, the facts verified by the former shall be collected, they shall prove the latter except prove otherwise"

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The known facts constitute an infringement, attributable to the party claimed, for violation of article 5.1 c) GDPR.

According to article 72 section 1 LOPDGDD (LO 3/2018, December 5) "Infractions considered very serious" "infractions involving a substantial violation of the articles mentioned therein and, in particular, the following (...)

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

IV.

In the Act (Complaint) sent by the Local Police ***LOCATION it is also noted- due to the absence of an informative sign indicating that it is a video-surveillance zone. da, as well as the bad practice carried out with the images obtained from the system in response to a neighborhood complaint (folio nº 1 Complaint Record Evidence Annex).

"The duty of information provided for in article 12 of Regulation (EU) 2016/679 will be understood to have been complied with by placing an informative device in a sufficiently visible place identifying, at least, the existence of the treatment,

the identity of the person responsible 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 informative device a connection code or internet address to this information" (*bold type belongs to this body)—art. 22 section 4 of the LOPDGDD--.

The AEPD, in a related report, stipulates that it is not necessary for the cartels to be sit just below the cameras. It is enough to do it in a visible place and include open and closed spaces where the video camera circuit is operational.

The facts described above imply an affectation to the content of the article 13 GDPR, as the informative poster lacks an effective address to which power can be reached in address your case, having informed the group of neighbors of the purpose of the installation (vgr. protection of the installations, etc).

Article 13 GDPR "Information that must be provided when the data personal data are obtained from the interested party"

1. When personal data relating to him or her is obtained from an interested party, the person responsible of the treatment, at the moment in which these are obtained, it will provide you with all the information information indicated below: a) the identity and contact details of the responsible and, where appropriate, his representative; b) the contact details of the delegate of pro-data protection, if applicable; c) the purposes of the processing for which the data is intended personal information and the legal basis of the treatment (...).

Article 72 section 1 of the LOPDGDD (LO 3/2018, December 5) in relation to tion to the limitation period of very serious infractions "will prescribe three years" and in particular the following:

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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 (UE) 2016/679 and 12 of this organic law.

V

The art. 83.5 GDPR provides the following: "Violations of the following provisions These will be penalized, in accordance with section 2, with administrative fines of 20 000 000 EUR maximum or, in the case of a company, an equivalent amount to a maximum of 4% of the overall annual total turnover of the financial year previous year, 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 (...)".

the rights of the interested parties in accordance with articles 12 to 22;

b)

In the present case, it is taken into account that it is an individual who has been fully informed by the competent authority of the need to report the presence of video surveillance cameras as well as the wrong orientation of the themselves, so he must be aware of the requirements made, being a system that is affecting areas that exceed their private space, a reason that justifies imposing a penalty of €1,200 (€900+€300), for the alleged violation of art.

5.1 c) GDPR and 13 GDPR, by having a camera system without proper signage. information oriented towards public and/or private space of third parties without justified, sanction located in the lower scale for this type of behavior, but taking into account the negligent conduct of the defendant.

SAW

The text of the resolution establishes which have been the infractions committed and

the facts that have given rise to the violation of the data protection regulations from which it is clearly inferred what are the measures to be adopted, without prejudice to that the type of procedures, mechanisms or concrete instruments to implement treat them corresponds to the sanctioned party, since it is the person responsible for the treatment who fully knows your organization and has to decide, based on personal responsibility active and risk-focused, how to comply with the GDPR and the LOPDGDD.

The installed system must be oriented exclusively to your property particular, without affecting a public area, if the cameras are visible from the outside, it is recommended to place an informative sign indicating that it is video-surveilled area, trying to collaborate with the acting force in case of a new visual inspection of the same, whose indications must be followed for the sake of compliance with current legislation.

Therefore, in accordance with the applicable legislation and assessed the graduation criteria tion of the sanctions whose existence has been accredited, the Director of the Spanish Data Protection Agency RESOLVES:

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FIRST: IMPOSE A.A.A., with NIF ***NIF.1, for a violation of Article 5.1.c) of the GDPR, typified in Article 83.5 of the GDPR, a fine of €900.

SECOND: IMPOSE A.A.A., with NIF ***NIF.1, for a violation of Article 13 of the GDPR, typified in Article 83.5 b) of the GDPR, a fine of €300.

THIRD: ORDER the defendant so that, within 15 business days from from the date of notification of this act, proceed as follows:

-Provide screen print with date and time of what is captured with the camera

gang(s) installed on their private property proceeding to redirect and/or withdraw of them in such a way that it proves the capture of their particular space outside exclusively.

-Installation, where appropriate, of an informative poster indicating the person responsible for the treatment-information and effective address to which rights requests can be directed.

FOURTH: NOTIFY this resolution to A.A.A. and report the results of the present performances CITY COUNCIL OF ***LOCALITY (LOCAL POLICE ***LOCATION).

FIFTH: 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 vo-

lunteer 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

ñola of Data Protection in the bank CAIXABANK, S.A.. In case of

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-

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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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