

□ File No.: EXP202200866

## RESOLUTION OF SANCTIONING PROCEDURE

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

### BACKGROUND

FIRST: On 01/17/2022, he entered this Spanish Agency for Data Protection a document presented by A.A.A. (hereinafter, the part claimant), through which he makes a claim against B.B.B. with NIF \*\*\*NIF.1 (in below, the claimed party), for the installation of a video surveillance system located at \*\*\*ADDRESS.1, there being indications of a possible breach of the provided in the personal data protection regulations.

The reasons for the claim are the following:

"When buying a product, you see a camera in front of me inside the store recording me and there is no sign that warns me of my recording or address where claim, rectify or cancel said recording or the employee. neither the day 01/15/2022 when I come back again (...)."

Attach a copy of the purchase ticket dated 12/16/2022 and photographic report of the exterior of the premises and the location of the camera.

SECOND: In accordance with article 65.4 of Organic Law 3/2018, of 5 December, Protection of Personal Data and guarantee of digital rights (in forward LOPDGDD), on 01/27/2022 the claim was transferred to the party claimed, so that it proceeds to its analysis and informs this Agency within the term of one month, of the actions carried out to adapt to the foreseen requirements in the data protection regulations; but it was "Returned to origin for surplus (not withdrawn in office)", according to the Notice issued by Correos. The transfer was reiterated by

double entry on 02/18/2022, one to the address of the claimed party and another to his establishment “\*\*\*ESTABLISHMENT.1”, resulting in “Delivered” in both occasions on 03/01/2022 and 02/25/2022, respectively.

THIRD: On 03/18/2022, this Agency received a response from the claimed party in which he provides a copy of the contract formalized with the security company and photographic report of the location of the camera and the poster of the company of security.

On 03/21/2022, the claimed party is requested as additional information clear photographs of the poster and the monitor, among others; being notified on 03/31/2021. To date, this Agency has not received any response.

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FOURTH: On 04/17/2022, in accordance with article 65 of the LOPDGDD,

The claim presented by the complaining party was admitted for processing.

FIFTH: On 06/20/2022, the Director of the Spanish Agency for the Protection of

Datos agreed to initiate disciplinary proceedings against the claimed party, in accordance with the provided in articles 63 and 64 of Law 39/2015, of October 1, of the

Common Administrative Procedure of Public Administrations (hereinafter,

LPACAP), for the alleged infringement of article 13 of the GDPR, typified in article

83.5 of the GDPR.

SIXTH: On 06/30/2022 the claimed party is notified of the aforementioned initiation agreement

in accordance with the standards established in the LPACAP; and submits pleadings

in which, in summary, he states the following:

“[...]

Attached to this letter are photographs relating to the premises where it is reflected that both in the both inside and outside of it, mention is made that it is being recorded images.

That the recording of these images is done with the sole purpose of avoiding theft in the establishment, therefore the camera installed is by the security company that carries the trade security system.

That, for this reason, it was thought that with the sign located at the entrance where the existence of recording images so the client is aware of this circumstance, and in particular, in order to prevent robbery or theft.

That the poster clearly specifies that the owner of the commercial establishment is responsible for the processing of this data and, logically, it is before whom they must exercise the rights that assist clients. (...)”

Attached photographic report of the premises, the posters and the image captured by the video surveillance camera monitor.

SEVENTH: On 09/13/2022, the instructor of the procedure agreed to open of a period of practice of tests, taking as incorporated the actions prior investigation, EXP202200866, as well as the documents provided by the Claimed on 07/11/2022.

EIGHTH: On 09/20/2022, a resolution proposal was formulated in which the proposed to sanction with a fine of €300 the party claimed for the infringement of the Article 13 of the GDPR, for not having the appropriate signs in your establishment informative video surveillance area.

Also, it was ordered that, within ten business days from the date on which the resolution in which it so agrees is notified, the claimed party proceeds to adequately fill in the badges with the information required by the GDPR.

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NINTH: The proposed resolution was notified on 10/27/2022 to the claimed party at the address corresponding to your establishment through postal mail. A day of today, in this Agency there is no answer.

Of the actions carried out in this procedure and of the documentation

in the file, the following have been accredited:

#### PROVEN FACTS

FIRST: Installation of a video surveillance camera inside the

establishment "\*\*\*\* ESTABLISHMENT.1" belonging to the claimed party, located in

\*\*\*ADDRESS 1

SECOND: He is identified as the main person responsible for the B.B.B.

with NIF \*\*\*NIF.1.

THIRD: Existence of a "Zerovision Alarm with immediate intervention" sign

of the company "Securitas Direct" outside the premises indicating the following:

- Image recording.

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Blocks the vision of the intruder.

- Notice to Police 24 hours.

FOURTH: The yellow video surveillance area sign placed inside the

establishment states the following:

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"Responsible": B.B.B..

"You can exercise your data protection rights before": B.B.B..

"More information about the processing of your personal data": B.B.B..

FIFTH: This Agency has notified the claimed party of the proposed resolution of the present disciplinary procedure, but it has not presented allegations or evidence that contradicts the alleged facts.

## 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 GDPR), grants each control authority and as established in articles 47, 48.1, 64.2 and 68.1 of the Organic Law 3/2018, of December 5, on the Protection of Personal Data and guarantee of digital rights (hereinafter, LOPDGDD), is competent to

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initiate and resolve this procedure the Director of the Spanish Protection Agency of data.

Likewise, article 63.2 of the LOPDGDD determines that: "The procedures processed by the Spanish Data Protection Agency will be governed by the provisions in Regulation (EU) 2016/679, in this organic law, by the provisions regulations dictated in its development and, insofar as they do not contradict them, with character subsidiary, by the general rules on administrative procedures."

In this case, it is appropriate to examine the claim of 01/17/2022 filed in this Agency in which the existence of a chamber of video surveillance inside the establishment "\*\*\*\*ESTABLECIMIENTO.1", property of the claimed party, located at \*\*\*ADDRESS.1; without it being properly marked by means of the mandatory informative signs of the video-monitored area.

In accordance with the provisions of article 4.1 of the GDPR, the physical image of a person is personal data and, therefore, its collection and conservation gives rise to a processing of personal data.

Article 5 of the GDPR lists the principles that must govern said treatment and, in Specifically, section 1 letter a) provides that: "Personal data will be: a) processed in a lawful, loyal and transparent manner in relation to the interested party ("lawfulness, loyalty and transparency"). In this sense, article 12 of the GDPR indicates that whoever carries out processing of personal data, such as the capture of images by means of a video surveillance system, must provide the interested parties with the information indicated in articles 13 and 14 of the GDPR.

In order that the duty of information provided for in article 12 of the GDPR is complies in a concise and understandable manner for the affected party, article 22.4 of the LOPDGDD provides that: "it shall be understood to have been complied with by placing a 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 articles 15 to 22 of Regulation (EU) 2016/679. Also

A connection code or address may be included in the information device. internet to this information. In any case, the data controller must keep available to those affected the information referred to in the aforementioned regulation." This means that the duty of information will be understood fulfilled

by placing an information device in a sufficiently visible place, and

at least, in the accesses to the monitored areas, whether they are interior or exterior. In

In the event that the video-surveilled space has several accesses, it must be arranged

of said distinctive video-surveilled area in each one of them.

This infringement is typified in article 83.5.b) of the GDPR:

Violations of the following provisions will be sanctioned, in accordance with the

section 2, with administrative fines of a maximum of 20,000,000 EUR or,

in the case of a company, an amount equivalent to 4% of the turnover

global annual total of the previous financial year, opting for the highest amount:

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(...)

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

For the purposes of the limitation period for infringements, it is considered very

severe and prescribes after three years, in accordance with article 72.1.h) of the LOPDGDD, which

states that:

(...)

h) The omission of the duty to inform the affected party about the processing of their data

personal in accordance with the provisions of articles 13 and 14 of Regulation (EU)

2016/679 and 12 of this Organic Law.”

II

In accordance with the evidence available in this

disciplinary procedure, it is considered that the poster placed outside the

establishment, under the heading "Zerovision alarm with immediate intervention", lacks of the mandatory information required by the GDPR.

For its part, the yellow video surveillance zone sign cannot be seen in any of the photographs taken inside the premises. If you analyze the photograph that the part Claimed take a close look at the emblem, it can be seen that it is placed on a wall very similar to the one behind the counter. In this way, if compare that image with the rest of the photographs, that poster does not appear anywhere moment behind it. In addition, in the pleadings to the agreement of opening, the claimed party states that "it was thought that with the sign located in the entry where the existence of image recording is mentioned, so the client is aware of this circumstance"; so it could be understood that It only had the exterior poster in place at the time of the presentation of the claim considering that it was sufficient.

In any case, if it already existed at the time of initiating this procedure disciplinary action, the aforementioned poster lacks the information listed with previously since it only contains the following data:

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-  
-

"Responsible": B.B.B..

"You can exercise your data protection rights before": B.B.B..

"More information about the processing of your personal data": B.B.B..

Thus, none of the posters includes all the information required by the regulations, having to inform about the identity of the person in charge, not only his name, but also address; the possibility of exercising the rights recognized in Articles 15 to 22 of the GDPR and through which channel, as well as where you can obtain the



interested party the rest of the information required in accordance with the GDPR.

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Therefore, the duty of information of those affected is not covered by the presence of the two badges placed on the premises, as they are not duly completed; which is a violation of article 13 of the GDPR.

IV.

The corrective powers available to the Spanish Agency for the Protection of Data, as a control authority, are established in article 58.2 of the GDPR. Between them they have the power to impose an administrative fine in accordance with the article 83 of the GDPR -article 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 - article 58. 2 d).

In the present case, it is considered appropriate to sanction the party claimed by the infringement of article 13 of the GDPR for which he is responsible, with the imposition of a administrative fine that must be individual, effective, proportionate and dissuasive, of in accordance with article 83.1 of the GDPR. In order to determine the administrative fine to impose, the provisions of article 83.2 of the GDPR must be observed, which indicates:

"2. Administrative fines will be imposed, depending on the circumstances of each individual case, in addition to or in lieu of 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, as well as 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;
- d) the degree of responsibility of the controller or processor, 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 controller or processor;
- 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 extent;

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- i) when the measures indicated in article 58, paragraph 2, have been ordered previously against the person in charge or the person in charge 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 financial benefits obtained or 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 (UE) 2016/679 will be applied taking into account the graduation criteria established in section 2 of said 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 data processing. personal information.
- 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 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 it is not mandatory, a data protection delegate.
- h) Submission by the person responsible or in charge, on a voluntary basis, to 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 13 of the GDPR, it allows a fine of €300 to be set

(three hundred euros).

Likewise, under the provisions of article 58.2 d) of the GDPR, the claimed party that, within ten business days from the date on which the resolution in which it so agrees is notified, certifying:

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- Having completed the information on the badges in accordance with the requirements of the GDPR.

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 13 of the GDPR, typified in article 83.5.b) of the GDPR, a fine of €300 (three hundred euro).

SECOND: ORDER B.B.B., with NIF \*\*\*NIF.1 that, within TEN DAYS BUSINESS from the date on which the resolution in which it is so agreed is notified, certify:

- Having completed the information on the badges in accordance with the requirements of the GDPR.

THIRD: NOTIFY this resolution to B.B.B., with NIF \*\*\*NIF.1.

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 Administrative Procedure

Common of 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, 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

IBAN: ES00-0000-0000-0000-0000-0000 (BIC/SWIFT Code:

restricted no.

CAIXESBBXXX), opened on behalf of the Spanish Data Protection Agency in  
the banking entity CAIXABANK, S.A. Otherwise, it will proceed to its  
collection in 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 term  
It will be 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 may optionally file an appeal for reversal before the

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

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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 for in article 46.1 of the referred 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

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 through writing addressed to the Spanish Data Protection Agency, presenting it through

of the Electronic Registry of the Agency [<https://sedeagpd.gob.es/sede-electronica-web/>], or 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 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 proceedings within a period of two months from the day following the

Notification of this resolution would terminate the precautionary suspension.

Mar Spain Marti

Director of the Spanish Data Protection Agency

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