

□ Procedure No.: PS/00186/2021

RESOLUTION OF PUNISHMENT PROCEDURE

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

BACKGROUND

FIRST: On November 23, 2020, he entered this Agency

Spanish Data Protection, a document presented by A.A.A. (hereinafter the
claimant 1), through which he makes a claim against B.B.B. with NIF ***NIF.1 and
C.C.C. with NIF ***NIF.2 (hereinafter, those claimed), for the installation of a
video surveillance system installed in *** ADDRESS.1, with signs of a
possible breach of the provisions of the protection regulations
of personal data.

The claim is based on the fact that the defendants have installed a security camera
video surveillance in his home, oriented to a strip of land of which he is
co-owner claimant 1 and to the public highway.

Provides cadastral certificate, images where you can see what seems to be a
camera oriented to a path or highway, and a sentence of recognition of
possession of a land that was subject in its day, of limitation by the neighbors of the
claimant.

SECOND: Prior to the acceptance of this claim for processing, it is
transferred to B.B.B., 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).

This transfer was returned by the postal service with the annotation "Unknown"

THIRD: On January 31, 2021, it had entry in this Spanish Agency

of Data Protection a document presented by D.D.D. (hereinafter the claimant 2), through which he makes a claim against those claimed by the same facts.

FOURTH: On February 3, 2021, the claim was transferred to the two claimed, both being received on February 17, without No response is recorded in this Agency.

FIFTH: The claim was admitted for processing by means of a resolution dated April 23, 2021.

SIXTH: On July 5, 2021, the Director of the Spanish Agency for Data Protection agreed to initiate a sanctioning procedure against those claimed, for the alleged infringement of article 5.1.c) of the RGPD, typified in article 83.5 of the GDPR.

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There is no evidence that, at the present time, the defendants have submitted a written allegations to the same, for which what is stated in article 64 of the Law 39/2015, of October 1, of the Common Administrative Procedure of the Public Administrations (hereinafter, LPACAP), which in its section f) establishes that in case of not making allegations within the stipulated period on the content of the initiation agreement, this may be considered a resolution proposal when contains a precise statement about the imputed responsibility, therefore that a Resolution is issued.

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: With dates November 23, 2020 and January 31, 2021 they had entry in this Agency two claims of A.A.A. and D.D.D. against the claimed for having installed a video surveillance system installed in their home, oriented to a strip of land co-owned by Claimants 1 and 2, and to the public road.

SECOND: Photographs of the location of the camera are provided, as well as cadastral certificate, and a sentence of recognition of possession of a land that it was subject in its day, to limitation by the neighbors of the claimants.

FOUNDATIONS OF LAW

Yo

By virtue of the powers that article 58.2 of the RGPD recognizes to each authority of control, and according to the provisions of articles 47 and 48.1 of the LOPDGDD, the Director of the Spanish Agency for Data Protection is competent to resolve this process.

II

The physical image of a person under article 4.1 of the RGPD is personal data and its protection, therefore, is the subject of said Regulation. Article 4.2 of the GDPR defines the concept of "treatment" of personal data.

Article 22 of the LOPDGDD establishes the specificities of data processing for video surveillance purposes, indicating the following:

"1. Natural or legal persons, public or private, may carry out the processing of images through camera systems or video cameras with the purpose of preserving the safety of people and property, as well as their installations.

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2. Images of public roads may only be captured to the extent that

is essential for the purpose mentioned in the previous section.

However, it will be possible to capture the public road in an extension

superior when necessary to guarantee the security of goods or

strategic installations or infrastructures linked to transport, without

In no case may it involve capturing images of the interior of a home

private.

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 threaten the integrity of persons, property or facilities. In that

case, the images must be made available to the competent authority in

within a maximum period of seventy-two hours from the date of knowledge of the

existence of the recording.

The blocking obligation provided for in

article 32 of this organic law.

4. The duty of information provided for in article 12 of the Regulation (EU)

2016/679 will be understood to be fulfilled by placing an 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 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.

In any case, the data controller must keep available to

those affected the information referred to in the aforementioned regulation.

5. Under article 2.2.c) of Regulation (EU) 2016/679, it is considered

excluded from its scope of application the treatment by a natural person of images

that they only capture the interior of their own home.

This exclusion does not cover processing carried out by a security entity

private that had been contracted for the surveillance of a home and had access

to the images.

6. The processing of personal data from the images and

sounds obtained through the use of cameras and video cameras by the Armed Forces

and Security Bodies and by the competent bodies for surveillance and control in

penitentiary centers and for the control, regulation, vigilance and discipline of the

traffic, will be governed by the legislation transposing Directive (EU) 2016/680,

when the treatment is for the purposes of prevention, investigation, detection or

prosecution of criminal offenses or execution of criminal sanctions, including

protection and prevention against threats to public safety. Outside

In these cases, said treatment will be governed by its specific legislation and

additionally by Regulation (EU) 2016/679 and this organic law.

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7. What is regulated in this article is understood without prejudice to the provisions of

Law 5/2014, of April 4, on Private Security and its development provisions.

8. The treatment by the employer of data obtained through information systems cameras or video cameras is subject to the provisions of article 89 of this law organic.”

III

In accordance with the foregoing, the processing of images through a video surveillance system, 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 contemplated in article 5 of Law 5/2014 on Private Security, of April 4.
- The video cameras will not be able to capture images of the people who are outside the private space where the security system is installed.

video surveillance, since the processing of images in public places can only be carried out, unless there is government authorization, by the Forces and Corps of Security. Nor can spaces owned by third parties be captured or recorded without the consent of their owners, or, as the case may be, of the persons who are find.

This rule admits some exceptions since, on some occasions, for the protection of private spaces, where cameras have been installed on facades or inside, it may be necessary to guarantee the security purpose the recording of a portion of public road. That is, cameras and video cameras installed for the purpose of security will not be able to obtain images of public roads unless it is essential for said purpose, or it is impossible to avoid it due to the location of those and, extraordinarily, the minimum space for said purpose. Therefore, the cameras could exceptionally capture the portion

minimally necessary for the intended security purpose.

- The duty to inform those affected provided for in the

articles 12 and 13 of the RGPD, and 22 of the LOPDGDD, in the terms already indicated.

- The person in charge must keep a record of treatment activities

carried out under its responsibility, including the information to which it makes

reference article 30.1 of the RGPD.

- The installed cameras cannot obtain images from private space of

third party and/or public space without duly accredited justified cause, nor can

affect the privacy of passers-by who move freely through the area. No this

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.

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- In no case will the use of surveillance practices be admitted beyond the

environment object of the installation and in particular, not being able to affect the spaces

surrounding public, adjoining buildings and vehicles other than those accessing the

guarded space.

In summary and to facilitate the consultation of interested parties, the Spanish Agency for

Data Protection offers through its website [<https://www.aepd.es>] access to

the legislation on the protection of personal data, including the RGPD and the

LOPDGDD (section “Reports and resolutions” / “regulations”), as well as the Guide

on the use of video cameras for security and other purposes, as well as the Guide

for compliance with the duty to inform (both available in the section “Guides

and tools”).

It is also of interest, in the event of carrying out low-risk data processing, the facilitates free tool (in the “Guides and tools” section), which, through specific questions, allows to assess the situation of the person in charge with respect to the treatment of personal data that it carries out, and where appropriate, generate various documents, informative and contractual clauses, as well as an annex with measures guidelines considered minimum.

IV

In the present case, the claim was filed because the defendants have installed a video surveillance system installed in your home, aimed at a strip of land of which claimants 1 and 2 are co-owners, and to the public thoroughfare.

As proof of these statements, the claimants provided the evidence indicated in the “Facts” section of this agreement.

The corrective powers available to 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 issue a warning -article 58.2.b)-, 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 controller or processor that the treatment operations comply with the provisions of the RGPD, when appropriate, in a certain way and within a specified period -article 58. 2 d)-.

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.

Without prejudice to the provisions of article 83 of the RGPD, the aforementioned Regulation has in its art. 58.2 b) the possibility of directing a warning, in relation to what

indicated in Recital 148: "In the event of a minor infraction, or if the fine likely to be imposed would constitute a disproportionate burden on a natural person, instead of sanctioning by means of a fine, a warning. However, special attention must be paid to the nature, gravity and duration of the infringement, its intentional nature, the measures taken to mitigate the damages and losses suffered, to the degree of responsibility or to any

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pertinent previous infraction, to the way in which the control authority has had knowledge of the infraction, compliance with measures ordered against the responsible or in charge, adherence to codes of conduct and any other aggravating or mitigating circumstance.

v

In accordance with the evidence available and which has not been distorted in the sanctioning procedure, those claimed have installed a video surveillance system that could be capturing images from third parties, so It is considered that these facts violate the provisions of article 5.1.c) of the RGPD, which implies the commission of an infringement typified in article 83.5 of the RGPD, which provides the following:

"Infringements of the following provisions shall be sanctioned, in accordance with 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; [...].”

For the purposes of the limitation period for infractions, the infraction indicated in the previous paragraph is considered very serious and prescribes after three years, in accordance with Article 72.1 of the LOPDGDD, which establishes that:

"According to the provisions of article 83.5 of Regulation (EU) 2016/679 are considered very serious and will prescribe after three years the infractions that suppose a substantial violation of the articles mentioned therein and, in particular, the following:

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

b) 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.

(...)»

SAW

In the present case, it is considered that it corresponds to issue a warning, in accordance with the provisions of article 58.2 b) of the RGPD, in relation to the indicated in Considering 148, cited above.

In addition, the following elements have been taken into account, in particular.

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that they are individuals whose main activity is not linked with the processing of personal data.

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that there is no recidivism, because the commission is not recorded, in the term of one year, of more than one infraction of the same nature.

7th

However, as already indicated in the initial agreement and in accordance with the established in the aforementioned article 58.2 d) of the RGD, according to which each authority of control may "order the person responsible or in charge of processing that the processing operations comply with the provisions of this Regulation, where appropriate, in a certain manner and within a specified period [...]."

Respondents are required to take the following steps:

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provide the images that are observed with the device in question, indicating on a location map the parts that correspond to its private property.

prove that they proceeded to withdraw the camera from the current location, or to the reorientation of it towards its particular area.

It is warned that not meeting the requirements of this organization may be considered as an administrative offense in accordance with the provisions of the RGD, typified as an infraction in its article 83.5 and 83.6, being able to motivate such conduct the opening of a subsequent sanctioning administrative proceeding.

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: ADDRESS A WARNING to B.B.B. with NIF ***NIF.1 and C.C.C. with NIF ***NIF.2, for an infringement of article 5.1.c) of the RGPD, typified in article 83.5 of the GDPR.

SECOND: ORDER B.B.B. with NIF ***NIF.1 and C.C.C. with NIF ***NIF.2 which, in under article 58.2.d) of the RGPD, within ten days, adopt the following measures:

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provide the images that are observed with the device in question, indicating on a location map the parts that correspond to its private property.

prove that they proceeded to withdraw the camera from the current location, or to the reorientation of it towards its particular area.

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

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.

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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.

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

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Mar Spain Martí Director of the AEPD, P.O. the Deputy Director General of Inspection
of Data, Olga Pérez Sanjuán, Resolution 4/10/2021

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