

□ Procedure No.: PS/00352/2020

RESOLUTION OF PUNISHMENT PROCEDURE

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

FACTS

FIRST: A.A.A. (*hereinafter, the claimant) dated March 2, 2020

filed a claim with the Spanish Data Protection Agency. The

claim is directed against B.B.B. with NIF ***NIF.1 (hereinafter, the claimed one). The

reasons on which the claim is based are "the neighbors have installed several security cameras

video-surveillance focused on my property and in particular, a camera is

focusing directly on a bedroom window (...) -folio nº 1--.

Together with the claim, it provides documentary evidence (Annex I) that proves the
presence of video surveillance cameras.

SECOND: On 07/15/20 a reply is received from the respondent requesting

"Period extension"

"The cameras referred to in the requirement are cameras that are

installed directed solely at my farm, since they were continually forcing me

the door or accessing a booth where I keep things that belong to me. For the purpose of

be able to provide all the documentation to justify this point, we request that you

extend the deadline for one more month to provide all the required information".

THIRD: When the database of this Agency was consulted on 12/28/20, no

received any response accrediting the legality of the system in question.

FOURTH: On January 5, 2021, the Director of the Spanish Agency for Pro-

Data Protection agreed to initiate a sanctioning procedure against the defendant, in accordance with

the provisions of articles 63 and 64 of Law 39/2015, of October 1, on the Procedure

Common Administrative Procedure of Public Administrations (hereinafter, LPA-CAP), for the alleged infringement of Article 5.1.c) of the RGPD, typified in Article 83.5 of the GDPR.

FIFTH: The database of this Agency consulted on 02/04/21 has not been received any response, nor accreditation of the legality of the system has been produced.

SIXTH: On 02/04/21, a resolution proposal is issued confirming the infraction described, without any statement having been made in this regard.

SEVENTH: Attached as an annex is a list of documents in the procedure, remembering full accessibility to the administrative file.

Of the actions carried out in this procedure and the documentation in the file, the following have been accredited:

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PROVEN FACTS

First. The reasons on which the claim is based are "the neighbors have installed several video-surveillance cameras focused on my property and in particular, a camera it is focusing directly on a bedroom window (...) -folio nº 1--.

Second. The resident of the town Doña B.B.B..

Third. Consta confirms the presence of several cameras on top of a post that its features may be obtaining data from third parties without just cause.

Fourth. There is no evidence that the system has an information poster for legal purposes

pertinent, indicating where appropriate the data controller.

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 according to the provisions of articles 47 and 48 of the LOPDGDD, the Director of the Spanish Agency for Data Protection is competent to initiate and to resolve this procedure.

II

In the present case, the claim dated 03/02/20 is examined by me-- gave from which is transferred as the main fact:

“The neighbors have installed several video-surveillance cameras focusing towards my property and in particular, a camera is pointed directly at the window of a bedroom (...)--folio nº 1--.

It should be remembered that individuals are responsible for ensuring that the systems installed felled comply with current legislation, proving 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 sign. tive, indicating the purposes and 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 of the same without just cause.

With this type of device it is not possible to obtain image(s) of public space either. co, as this is the exclusive competence of the State Security Forces and Bodies ted.

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It should be remembered that even in the case of a "simulated" camera, the same must be oriented towards private space, since it is considered that this type of devices can affect the privacy of third parties, who are intimidated by the herself 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, outside the cases allowed in the regulations.

III

In accordance with the evidence available in this proceeding, penalty, it is considered that the defendant has a video-surveillance system that could affect the adjoining property in an unjustified manner.

The accused party has not proven its legality, providing all the necessary evidence for its analysis by this Agency.

The art. 83.5 RGPD provides the following: "Infringements of the following provisions will be sanctioned, in accordance with section 2, with administrative fines of 20 EUR 000,000 maximum or, in the case of a company, an equivalent amount. to a maximum of 4% of the total global annual turnover of the financial year above, opting for the highest amount:

a)

the basic principles for the treatment, including the conditions for the consent under articles 5, 6, 7 and 9;

IV

Without prejudice to the provisions of article 83 of the RGPD, the aforementioned Regulation provides

ne in your art. 58.2 b) the possibility of sanctioning with a warning, in relation to what stated in Recital 148:

“In the event of a minor offence, or if the fine likely to be imposed would constitute a disproportionate burden for a natural person, rather than a sanction. tion by means of a fine, a warning may be imposed. must, however, lend special attention to the nature, seriousness and duration of the infringement, its character intentional, to the measures taken to alleviate the damages suffered, to the degree liability or any relevant prior violation, to the manner in which the authority control authority has become aware of the infraction, compliance with measures measures ordered against the person in charge or in charge, adherence to codes of conduct and any other aggravating or mitigating circumstance.”

The individual status of the accused is taken into account, as well as the presence of previous infractions to impose a warning sanction.

The denounced party must prove the legality of the system providing all the precise evidence for this (eg screen printing, information poster, number of cameras, reason for installation, etc).

It is recalled that not meeting the requirements of this Agency may result in gar to the opening of a new sanctioning procedure for the infringement of art. 72

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section 1 letter m) LOPDGDD “Failure to comply with the resolutions issued by the competent data protection authority in the exercise of the powers conferred re Article 58.2 of Regulation (EU) 2016/679”.

The complaining party, in case the conduct persists, must transfer the "facts" to the State Security Forces and Bodies of the locality, so that they displaced to the scene of the events, prepare a report in this regard, which will be transferred to this body for the evaluation of the opening, if any, of a new penalty procedure.

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

FIRST: IMPOSE Doña B.B.B., with NIF ***NIF.1, for an infraction of Article 5.1.c) of the RGPD, typified in Article 83.5 of the RGPD, a sanction of warning I lie.

SECOND: NOTIFY this resolution to B.B.B. and REPORT the result of the proceedings to the A.A.A. claimant.

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 resents may optionally file an appeal for reconsideration before the Director of the Spanish Agency for Data Protection within a month from the date of the day following the notification of this resolution or directly contentious appeal before the Contentious-Administrative Chamber of the National High Court, in accordance with the provisions of article 25 and section 5 of the additional provision Final fourth of Law 29/1998, of July 13, regulating the Contentious Jurisdiction-administrative, within a period of two months from the day following the notification of this act, as provided for 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 interested party do states its intention to file a contentious-administrative appeal. Of being

In this case, the interested party must formally communicate this fact in writing addressed to the Spanish Agency for Data Protection, presenting it through the Re-Electronic registry of the Agency [<https://sedeagpd.gob.es/sede-electronica-web/>], or to 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 that proves the effective filing of the contentious-administrative appeal. If the Agency was not aware of the filing of the contentious-administrative appeal tive within two months from the day following the notification of this resolution, would end the precautionary suspension.

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Sea Spain Marti

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