

□ File No.: PS/00447/2021

RESOLUTION OF PUNISHMENT PROCEDURE

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

BACKGROUND

FIRST: On 05/31/2021, it had entry in this Spanish Agency of
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
hereinafter, the defendant), due to the existence of a video surveillance system
installed in AVENIDA ***ADDRESS.1, ***LOCALITY.1, with signs of a
possible breach of the provisions of the data protection regulations of
personal character.

The reasons underlying the claim are as follows:

“He has placed at least two video surveillance cameras on the sides of his home
located at ***ADDRESS.1, ***LOCATION.1. They focus and record the access to the orchard
of my mother through a passage next to the aforementioned house. They also record part
from my mother's garden.

Various members of the family (and other villagers who also use said
access to go to other areas) have been recorded by these cameras. we have also
been recorded being in our orchard.

[...]

He provides two recordings from the cameras and a photograph.

SECOND: In accordance with article 65.4 of Organic Law 3/2018, of 5
December, of Protection of Personal Data and guarantee of digital rights (in
hereinafter LOPDGDD), was transferred on 06/10/2021, 07/03/2021 and 08/09/2021

of said claim to the claimed party, so that he proceeded to analyze it and inform this agency within a month, of the actions carried out to adapt to the requirements set forth in the data protection regulations.

THIRD: On 09/03/2021, the Director of the Spanish Protection Agency

Data agreed to admit the claim filed by the claimant for processing.

FOURTH: On 11/24/2021, the Director of the Spanish Protection Agency

of Data agreed to initiate a sanctioning procedure against the claimed party, in accordance with the provisions of 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 5.1.c) of the RGPD, typified in the article 83.5 of the RGPD.

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FIFTH: Once the agreement to open this sanctioning procedure has been notified, the Respondent, by means of a document dated 12/15/2021, made allegations to the initiation of the file, the content of which was already indicated in the writing of the proposal for resolution.

SIXTH: On 01/13/2022, the instructor of the procedure agreed to open a evidence practice period, taking into account the previous actions of investigation, E/06800/2021, as well as the documents provided by the respondent on 12/15/2021.

SEVENTH: On 01/19/2022, a resolution proposal was formulated in which proposed to direct a warning to the defendant, for the violation of article 5.1 c) of the

RGPD, since one of the video surveillance cameras installed outside your housing captures images of the adjoining farm, owned by the mother of the claimant.

Likewise, in accordance with article 58.2 of the RGPD, the claimed party was ordered to proceed to the withdrawal of the same or its reorientation avoiding the capture of third party properties.

With respect to the camera that focuses on the area that the claimant calls "passage contiguous", it was proven that there is no excess capture. That portion of land forms part of the parcel of the claimed, being the device oriented towards your private property.

EIGHTH: The respondent submitted a brief of allegations to the proposed resolution on 02/04/2022 where he states that "he has requested a visit from the company in charge of the installation and maintenance of the video surveillance system, to comply with the measures" and "that he is going to proceed with the placement of an opacity system on the fence that delimits both plots. He adds that, "every time the company makes a visit to reorient the camera and avoid capturing images of the neighbor; as well as the placement of an opacity system, a photographic report will be transferred to them".

On 02/15/2022, it sends a new letter to this Agency in which it communicates that "it has been attended by the installation company of the video surveillance system, for the camera reorientation; and that concealment mesh has been placed". attached Photo report.

In view of everything that has been done, by the Spanish Data Protection Agency

In this proceeding, the following are considered proven facts:

PROVEN FACTS

FIRST: Installation of a video surveillance system outside the building located in AVENIDA ***ADDRESS.1, ***TOWN.1, which would capture images of a

access used by the neighbors (“contiguous step”) and the adjoining farm, owned by the claimant's mother.

SECOND: It is identified as the main responsible B.B.B. with NIF ***NIF.1.

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THIRD: Analyzed the cadastral documentation attached to the brief of allegations to the opening agreement, it is hereby accredited that the portion of land designated by the claimant as “adjoining step” is within property boundaries of the claimed.

FOURTH: The defendant has ordered to modify the position of the camera that focuses to the farm of the claimant's mother, having already been reoriented.

In addition, in one of the photos it provides, it can be seen that the concealment mesh has been placed on the fence that separates his land from the aforementioned farm.

FOUNDATIONS OF LAW

Yo

In accordance with the powers that article 58.2 of Regulation (EU) 2016/679

(General Data Protection Regulation, hereinafter RGPD), grants each

control authority and as established in articles 47 and 48.1 of the Law

Organic 3/2018, of December 5, on the 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 Agency for Data Protection will be governed by the provisions

in Regulation (EU) 2016/679, in this organic law, by the provisions

regulations issued in its development and, as long as they do not contradict them, with a subsidiary, by the general rules on administrative procedures.”

II

The image of a person, in accordance with article 4.1 of the RGPD, is personal data and its protection, therefore, is the subject of said Regulation. In article 4.2 of the RGPD it is defines the concept of “treatment” of personal data.

Article 22 of the LOPDGDD includes the specific rules for the treatment of data for video surveillance purposes and states the following:

- "1. Natural or legal persons, public or private, may carry out the treatment of images through camera systems or video cameras with the purpose to preserve the safety of people and property, as well as its facilities.
2. Images of public roads may only be captured to the extent that it is indispensable for the purpose mentioned in the previous section.

However, it will be possible to capture public roads to a greater extent when necessary to guarantee the security of assets or strategic installations. services or infrastructures linked to transport, without in any case being able to put the capturing of images of the interior of a private home.

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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 attend to have against the integrity of people, goods or facilities. In this case, the images

must be made available to the competent authority within a maximum period of seventy-two hours since the existence of the recording became known.

tion.

The blocking obligation provided for in art.

article 32 of this organic law.

4. The duty of information provided for in article 12 of Regulation (EU) 2016/679 is understood to be fulfilled by placing an informative device in a sufficient place

ciently visible 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. It may also be included in the device information

I attach a connection code or internet address to this information.

In any case, the person in charge of the treatment must keep available to the affected the information referred to in the aforementioned regulation.

5. Under article 2.2.c) of Regulation (EU) 2016/679, it is considered excluded of its scope of application the treatment by a natural person of images that are

regretfully capture the interior of your own home.

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

given that she had been hired to guard a home and had access to the images.

6. The processing of personal data from the images and sounds obtained

nesses through the use of cameras and video cameras by the Forces and Corps Security and by the competent bodies for surveillance and control in the centers penitentiaries and for the control, regulation, surveillance and discipline of traffic, will be governed

by the legislation transposing Directive (EU) 2016/680, when the treatment for purposes of prevention, investigation, detection or prosecution of violations criminal offenses or the execution of criminal sanctions, including protection and prevention

against threats to public safety. Apart from these assumptions, said

treatment will be governed by its specific legislation and additionally by the Regulations

to (EU) 2016/679 and this organic law.

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

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

8. The treatment by the employer of data obtained through camera systems

cameras or video cameras is subject to the provisions of article 89 of this organic law.”

III

In this case, we proceed to examine the issue raised in the claim

of 05/31/2021 in relation to the video surveillance camera installed outside the

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the home of the respondent, located at AVENIDA ***ADDRESS.1, ***LOCATION.1, which

records "part of my mother's orchard".

Article 5.1 c) of the RGPD provides 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)”.

It should be remembered that individuals are responsible for ensuring that the systems

installed comply with current legislation.

The cameras must be oriented towards the particular space, avoiding intimidating

neighboring neighbors with this type of device, as well as control transit areas

of them without just cause.

The infringement of the aforementioned precept is typified in article 83.5 a) of the RGPD, precept

which establishes: “Infringements of the following provisions will be sanctioned, in accordance with section 2, with administrative fines of EUR 20,000,000 as maximum or, in the case of a company, an amount equivalent to 4% of the volume of total global annual business of the previous financial year, opting for the higher amount:

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

(...)”

In turn, article 72.1 a) of the LOPDGDD, under the heading "Infringements considered very serious" provides:

“They are considered very serious and the infractions that suppose a substantial violation of the articles mentioned in that and, in particularly the following:

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

(...)”

IV

On 02/04/2022, a written statement of allegations to the proposed resolution was received by by means of which the respondent states that he has contacted the installation company of the cameras for its reorientation and that it is going to “proceed to place a opacity system in the fence that delimits both plots”. On 02/15/2022 communicates to this Agency for having adopted the measures mentioned and attached a report photographic.

Therefore, in accordance with the applicable legislation and taking into account that the reorientation of the camera and the installation of a concealment mesh on the fence that separates both estates occurred during the processing of this proceeding,

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maintains awareness. Well, before making the aforementioned corrections, the camera was recording part of the adjoining farm, as can be seen in the recordings and photographs provided by the claimant. However, they are not required complementary measures having been adopted.

the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: ADDRESS B.B.B., with NIF ***NIF.1, for a violation of article 5.1.c) of the RGPD, typified in article 83.5 of the RGPD, a warning.

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

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.

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

[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.

Sea Spain Marti

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