

□ File No.: EXP202201907

RESOLUTION OF SANCTIONING PROCEDURE

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

BACKGROUND

FIRST: CIVIL GUARD - ***POINT.1 (*hereinafter, the complaining party) with
date 02/07/22 filed a claim with the Spanish Data Protection Agency
cough. The claim is directed against who identifies as A.A.A. with NIF ***NIF.1 (in
forward, the denounced party). The reasons on which the claim is based are the following:
following:

“carrying out patrol work, the presence of a camera is observed in a window
tana of a private individual who, according to guidance, is affecting public space” (folio no.
1).

Together with the notification, documentary evidence is provided that proves the presence of the device.
positive (Annex I).

SECOND: On 02/15/22, in accordance with article 65 of the LOPDGDD,

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

THIRD: On March 30, 2022, the Director of the Spanish Agency for
Data Protection agreed to initiate disciplinary proceedings 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
te, LPACAP), for the alleged infringement of Article 5.1.c) of the GDPR, typified in the
Article 83.5 of the GDPR.

FOURTH: Notification of the aforementioned initiation agreement in accordance with the established norms
in Law 39/2015, of October 1, of the Common Administrative Procedure of the

Public Administrations (hereinafter, LPACAP), no response has been received
some about it.

FIFTH: On 05/23/22, the Resolution Proposal is issued in which it is agreed
propose an encrypted sanction in the amount of €300, when having a device
oriented towards public space on the balcony of your property without just cause,
violating article 5.1 c) GDPR.

SIXTH: On 08/12/22, a written statement of allegations was received from the denounced party
confirming the presence of the camera that acts as a video intercom for the
parking zone control of your vehicle.

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"That he was unaware of the Agreement to Initiate the procedure to which
refers to although I received a letter from the AEPD when I was carrying out
organization and selection of cardboard (...) After his last letter when closing the folder, after
place your notification, the hole left allowed me to see the happy letter (...)

"The camera is not intended for video surveillance, it is my video intercom and a
great help that improves my quality of life (...) and for which no one is responsible
because they were unaware of the virus"

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 on 02/07/22 through the
which is transferred as main fact the following:

“carrying out patrol work, the presence of a camera is observed in a window
tana of a private individual who, according to guidance, is affecting public space” (folio no.
1).

Second. It is accredited as the main responsible A.A.A., with NIF ***NIF.1.

Third. The presence of a device installed by the defendant is accredited
with clear orientation towards public space without justified cause.

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 authori-
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 sub-
sisidario, by the general rules on administrative procedures.”

II

In the present case, we proceed to analyze the Complaint of the date where the
the "presence of a camera in a window of an individual who, according to orientation, is
affecting public space” (folio no. 1).

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

“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

fulfilled 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

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

nas of transit of the same without justified 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, outside the cases allowed in the regulations.

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

Based on the evidence available in this proceeding

disciplinary action, it is considered that the denounced party has a video-vi-

poorly oriented surveillance, which could affect public transit area.

Article 77 section 5 of Law 39/2015 (October 1) provides: "5. The documents

formalized by officials who are recognized as authoritative

and in which, observing the corresponding legal requirements, the

facts verified by the former will prove the latter unless the con-

trario".

The record provided (02/03/22) confirms the presence of the device, as well as the

affectation in the opinion of the acting force of the width of the public sidewalk without justifiable cause

each.

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The defendant himself confirms the "operability" of the camera, although he does not provide

screen impression of what is captured with it, also lacking

of any information indicating that it is a video-surveilled area.

The arguments used are not considered adjusted to a measure

proportionate to the purpose pursued, given that the location of the camera placed

surreptitiously creates a situation of neighborhood discomfort, as evidenced by

the complaint sent by the State Security Forces and Corps, and must in

In your case, the defendant seek a better installation of the system or looking for

professional guidance to the intended purpose, which is not duly explained

gives in his statement of allegations.

It is recalled that this type of device must consider the possible affectation rights of third parties and be in accordance with the intended purpose, which is none other than the protection of the home, residents and their belongings, and must in any case be informed Armed with an informative poster that allows knowing that it is a video-surveilled area, indicating the person responsible and the purpose of the "treatment".

The defendant alleges that it is not a video surveillance system but a a video intercom. Certainly, in those cases in which the use of videopor- teros is limited to its function of verifying the identity of the person who called the doorbell, as well as facilitating access to housing, the regulations on pro- data protection. But in the alleged case, it should be remembered that the system installed side is not a video intercom in the sense indicated, since the viewing is not temporary, nor limited to the space that is intended to be observed when activated by calling the access door, allowing continuous "data processing" and its ulte- upper storage; so the installed camera cannot act as this.

The infraction materializes in the wrong orientation of the installed camera, when know this body initially if the camera was fictitious or if it could even be correctly oriented towards private area.

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

IV.

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 (...)"

In accordance with the foregoing, it is considered correct to impose a penalty of €300, having a poorly oriented video surveillance device, visible from the outside above, affecting the rights of third parties passing through the area, although it is taken into account

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note that this is a natural person with "little" knowledge on the subject that concerns us, a sanction located on the lower scale for this type of behavior. cough.

The obvious bad orientation of the device in question makes us consider the conduct as negligence at least serious, when being aware of the disturbance to the de-right of third parties without just cause, apart from not being duly informed in legal form.

V

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.

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:

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 €300.

SECOND: TO ORDER the defendant so that within 15 business days from the

notification of this administrative act proceed as follows:

-Removal of the camera from the current location or regularization

of the system, ensuring that it fully conforms to the current legal framework,

accrediting this point to this Agency through irrefutable evidence (vgr. old photograph).

tes and later with date and time).

THIRD: NOTIFY this resolution to A.A.A. and report the result of

proceedings to the complaining party.

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 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.

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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-administration, 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 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

Director of the Spanish Data Protection Agency

938-120722

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