

□ File No.: EXP202201503

RESOLUTION OF SANCTIONING PROCEDURE

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

BACKGROUND

FIRST: A.A.A. (*hereinafter, the complaining party) dated February 1, 2022
filed a claim with the Spanish Data Protection Agency. claims her-
tion is directed against B.B.B. with NIF ***NIF.1 (hereinafter, the claimed party). The
The reasons on which the claim is based are the following:

"Presence of cameras are at the entrance of an establishment of the
that the claimed entity is responsible are facing abroad, being
capable of capturing both the public thoroughfare and neighboring premises (...)"

Provide Police Report dated September 16, 2021 issued by the POLI-
LOCAL COMPANY OF SAN BARTOLOMÉ DE TIRAJANA and Notarial Act dated July 19
of 2021.

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
hereafter LOPDGDD), said claim was transferred to the party claimed on fe-
date 02/10/22, to proceed with its analysis and inform this Agency on the plan
within one month, of the actions carried out to adapt to the foreseen requirements.
cough in the data protection regulations.

THIRD: On 02/21/22, a response was received from the claimed party requesting
copy of the file and arguing that they are victims of crimes as justifiable cause
It goes from the presence of the system in question.

"First as an interested party I have involved without knowing that,

I demand access to the file for which my name has been placed with said entity, and my registration address that is not my residence address since it is in Las Palmas de Gran Canaria”

“It has facilitated access to the National Police, the cameras only have access on owner and is encrypted by password that only he owns, factory only allows 28-day storage, access from a Tablet that also has protection for power on, and access key to the surveillance program.

Both this person and I here, the undersigned, are under the protection of tion of the victim agency (...), as well as on his mobile phone a program that

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connects you 24 hours a day with the national police giving your position and in case of attempted aggression sends an alarm signal to the nearest units, we have had to violate slow down our privacy to be able to overcome the continuous fear, that they will attack again against our integrity, by people who think (...), a single ideology and who They do have the freedom to do what they freely decide (...)"

FOURTH: On March 31, 2022, in accordance with article 65 of the

LOPDGDD, the claim presented by the claimant party was admitted for processing.

FIFTH: On June 1, 2022, the Director of the Spanish Agency for

Data Protection agreed to initiate disciplinary proceedings against the claimed party, for the alleged infringement of Article 5.1.c) of the GDPR, typified in Article 83.5 of the GDPR.

In accordance with the provisions of Law 39/2015 (October 1), we proceeded to

try the notification at the address associated with the claimant (a), appearing in the information service associated with this body as Absent after first attempt of notification from the Official Postal service and as "not withdrawn" after leaving the corresponding notice the address, without it having been established as unknown by the Official Postal Service.

SIXTH: On 06/27/22, notification notice was published in the B.O.E of June 23, 2022 in procedure PS/00161/2022.

Consequently, since the practice of notifying of the act indicated below, the Spanish Data Protection Agency publishes this notice by which the corresponding administrative act is notified tooth to the indicated procedure. Act Type: Opening Agreement.

SEVENTH: Consulted the database of this Agency on 09/13/22, there is no record any allegation of the claimed party, nor corrective measure has been accredited in relation to the facts described.

In view of all the proceedings, by the Spanish Agency for Data Protection

In this proceeding, the following are considered proven facts:

PROVEN FACTS

First. The facts bring cause of the claim dated 02/01/22 through the which translates the following:

"Presence of cameras are at the entrance of an establishment of the that the claimed entity is responsible are facing abroad, being capable of capturing both the public thoroughfare and neighboring premises (...)"

Second. It is accredited as the main person in charge B.B.B., with NIF ***NIF.1.

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Third. There is evidence of the presence of a video-surveillance system with palm-orientation towards the outside area, affecting the treatment of passers-by the area, without just cause.

Room. It has been accredited in the opinion of the acting force displaced to the place of the crimes. choos, which several of the outer chambers affect due to their orientation and mobile character to areas beyond your terrace area.

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 authority 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 subsidario, by the general rules on administrative procedures."

II

The facts bring cause of the claim dated 02/01/22 through which transfers as main fact the following:

"existence of a system of video-surveillance cameras that could affect public space (...)"

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 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, 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 of transit of the same without justified cause.

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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.

The recording of personal conversations both in companies and in communities of owners (as), supposes an invasion of the privacy of the user, for what with the exception that there is prior judicial authorization and the recordings are made by the competent people to do so, this type of behavior is not allowed.

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 and/or traffic of third parties, outside the cases allowed in the normative.

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

II

In accordance with the "evidence" available in this proceeding, disciplinary action, it is considered that the claimed party has a system of video surveillance cameras that could affect public space.

The claimed party has several cameras located on the façade of a establishment, which, according to the intervention of the acting force, are poorly oriented, The performance of the person responsible for their installation is not collaborative.

"That it is the opinion of the Agents that the cameras that are in the upper part end of the covered terrace as they are mobile and focus on the area of the main stage of the Yumbo Shopping Center could be found recording anywhere other than the private terrace" (Local Police Act dated 09/16/21 Annex I Doc. No. 3).

The claimed party had initial knowledge of the "facts" when it was notified of the same this body, although the arguments and evidence provided are considered insufficient to clarify the legality of the system, focusing on aspects not related to the protection of personal data.

Article 64.2 letter f) Law 39/2015 (October 1) provides:

"f) Indication of the right to make allegations and to the hearing in the procedure.

and the deadlines for its exercise, as well as an indication that, in the event of not making allegations within the stipulated period on the content of the initiation agreement,

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This may be considered a resolution proposal when it contains a pronouncement of an accurate statement about the imputed responsibility (...).

The set of evidence provided, giving the appropriate weight in the assessment of the proof to the criterion exposed by the acting force displaced to the place of the facts, as well as the non-contribution of the screen prints of the system, allow concluding that irregularities in the system, it being reasonable for it to affect areas of third parties who are intimidated by the device(s) in question, performing a treatment of excessive data retention.

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

According to article 72 section 1 of the LOPDGDD (LO 3/2018, December 5) "Infractions considered very serious" "the infractions that suppose a substantial violation of the articles mentioned therein and, in particular, the following (...)

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

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, a penalty of €300 is agreed, as it is a person legal entity with a low level of income, which has made an initial response to this Agency, although the negligent orientation towards public area without cause is valued justified, sanction located in the lower scale for this type of sanctions.

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,

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the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: IMPOSE B.B.B., 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 claimed party so that, within 10 business days,

counting from the day following the notification of this act, proceed:

-Provide screen print (date and time) of what is captured with all the

cameras of the system, indicating in its case in a location plan the private areas

you go from your ownership.

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

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.

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 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-

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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

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