

□ File No.: ***FILE.1

RESOLUTION OF SANCTIONING PROCEDURE

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

BACKGROUND

FIRST: Don A.A.A. (*hereinafter, the complaining party) dated December 28 of 2021 filed a claim with the Spanish Agency for Data Protection. The claim is directed against B.B.B. with NIF ***NIF.1 (hereinafter, the party claiming gives). The reasons on which the claim is based are the following:

“(…) a video surveillance camera is installed at ***ADDRESS.1. Suspect that captures public road areas and of course my home. Documentation attached (Doc_1). Photographs taken from public roads and from my own home. Instalada under the acropolis sign and as can be seen in the documentation (Doc_1), very close to my property”

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 01/18/21 and 02/07/22, to proceed with its analysis and inform this Agency within a month, of the actions carried out to adapt to the requirements provided for in the data protection regulations.

On 02/03/22, a letter was received from the claimed party confirming the transfer of the facts and stating the following:

1-Full electronic access to the file ***FILE.1 2-The suspension extension of the term to respond to this request until the supporting documentation is known. nested in the file in question. 3-That all notifications be in digital format

gital, in Spanish and through the unique authorized electronic address (DEHU).

It is recorded in the computer system of this body that on 02/17/22 the
gave to "Notify" the transfer of the facts described to the defendant so that she could allege in
right what he deems appropriate.

On 03/11/22, this Agency received a written response indicating the
succinctly the following:

- That, in terms of informative posters, there are 4 clearly visible and 3 of them
with the identity data of the person in charge and address of the same. Attached photograph
clear fia with all the information.
- Camera 1 reaches the parking lot, the terrace and the farm that can be seen in the background,
all owned by Rovedra. The field of vision and the marking of the lines are attached.

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ownership limits, everything inside the red lines is owned by Rove-
dr

-Camera 2 reaches the access corridor to the rear of the building and the
house, stairs and farm in front, also owned by Rovedra. Mark is attached
tion property boundaries, everything within the red lines is owned by Ro-
vedra

THIRD: On March 15, 2022, in accordance with article 65 of the
LOPDGDD, the claim presented by the claimant party was admitted for processing.

FOURTH: On May 19, 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.

FIFTH: Notified of the aforementioned start-up agreement in accordance with the rules established in Law 39/2015, of October 1, on the Common Administrative Procedure of Public Administrations (hereinafter, LPACAP), the claimed party submitted a written of allegations in which, in summary, he stated the following:

“We are therefore faced with a generic and stereotyped motivation, which can be used in any case and with everything administered, and that it is not enough sufficient to comply with the requirement of motivation of the administrative acts collected established in article 35 of Law 39/2015, of October 1, on the Administrative Procedure Common objective of Public Administrations (LPAC).

This determines its full nullity in accordance with the provisions of the article 47.1 sections a) and e) of said Law, by infringing the rights and freedoms eligible for constitutional protection and the resolution having been issued disregarding all and absolutely of the legally established procedure.

As can be seen in the photographs included in the letter pre-seated in compliance with the request made, only two of the cameras focused a minimal portion of the public road immediately adjacent to the access road. or to the buildings whose security is the object of the installed cameras.

Regarding the informative poster, the one that does not state the person responsible for the treatment of the data, it was already placed in November 2018 as a deterrent since on said date no video camera had been installed in the building. Office located at c/ Aloques 43.

What is essential, then, is the accreditation of facts that support a judgment.

Reasonable grounds for guilt, and a specific motivation is presented. He
subjective assumption of guilt is constituted by the cognitive elements
volitional and volitional that have occurred on the occasion of the concurrent circumstances
in the commission of the alleged commission of the administrative crime; guilt comes
configured by the psychological causal relationship between the imputable action and the

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fraction of the administrative provisions, and for the reproach it is necessary that
certify that the subject could have acted differently than he did, which
requires an assessment of the specific factual circumstances of each case (judgment of the Tribunal
Supreme Court of 04/24/2007”.

SIXTH: On 08/22/22, the "Proposed Resolution" is issued, in which it is proposed
a penalty of €600 (€300+€300) for violation of art. 5.1 c) GDPR and 13 GDPR, al
have a camera system poorly oriented and not legally signposted
in accordance with the regulations in force.

SEVENTH: Consulted the database of this organization on 09/07/22 no
there is evidence that any allegation has been made or any measure adopted in relation to the
legalization of the system.

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 dated 12/28/21 through the
which translates the following:

“(…) a video surveillance camera is installed at ***ADDRESS.1,. Suspect that captures public road areas and of course my home. Documentation attached (Doc_1). Photographs taken from public roads and from my own home. Instalada under the acropolis sign and as can be seen in the documentation (Doc_1), very close to my property”

Second. It is accredited as the main responsible B.B.B., who confirms the presence of cameras capturing portion of public space.

Third. The irregularity has been accredited in the informative sign indicating the area video-surveilled, as confirmed by the evidence provided by the defendant herself without indication of the way to exercise the rights, limiting itself to informing without further ado that it is a “video-surveilled area” (doc. photograph February 26, 2022).

Room. It is proven that the cameras in question capture a public area, not specifying the exact portion claimed despite the requirement of this body mine.

FUNDAMENTALS OF LAW

Yo

Before going into the merits of the matter, it is convenient to answer the alleged “helplessness” used by the claimed party, as grounds for nullity of the proceeding itself.

It should be noted that the “facts” far from being denied coincide with those exposed by the complaining party, since the defendant itself confirms the installation of four chambers under its sole responsibility.

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The number of cameras available to the defendant is indifferent, since that has to accredit the legality of the system as a whole, provided with a monitor in where various areas classified as public space are captured.

This body in the Initiation Agreement is limited to specifying the facts, without that there has still been any manifestation of the claim in relation to the therefore, defenselessness cannot be claimed when the party is still in the procedural moment in which we find ourselves can make all the allegations deems accurate and even to the point of lacking the truth or availing himself of his right not to clarify.

Therefore, it is appropriate to dismiss the claim for nullity put forth, since that the defendant can prove to this Agency the legality of the system object of claim, using the legally valid means of evidence that it deems precisos.

II

In accordance with the powers that article 58.2 of Regulation (EU) 2016/679 (Regulation General Data Protection Regulation, hereinafter GDPR), grants each authority 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 subsidario, by the general rules on administrative procedures."

II

In the present case, the claim dated 12/28/21 is examined by means of

gave from which the following is transferred as the main fact:

“...installation of a video-surveillance camera in a public space without just cause
fied (...)”

Documentation (Doc_1) is attached. Photographs taken from the public road and from
my own home Installed under the acropolis sign and as can be seen in
the documentation (Doc_1), very close to my property.

The facts are specified in the alleged excessive capture of public space,
as well as the deficient informative signage, in the claimant's opinion, placed in the place
gar of access, considering the irregular situation for the reasons stated.

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

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“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
felled 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

IV.

In accordance with the allegations of the defendant in relation to the facts object
transfer, it denies excessive capture of public space considering
that "helplessness" is being produced, although he does not contribute an impression of
screen with date and time that proves what is captured with them.

The essential thing is that the defendant herself states in writing dated 06/10/22
that "only two cameras focus on a minimal portion of public space" immediately
adjacent to the access road to the properties whose security is the object of the
cameras installed.

The known facts constitute an infringement, attributable to the party

Claimed for violation of the content of art. 5.1 c) GDPR, previously mentioned

I swim.

After examining the informative poster provided by the defendant, it did not show

confirms the person responsible for data processing, in breach of the provisions of the regulations in force.

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

2016/679 will be understood to have been complied with by placing an informative device

in a sufficiently visible place identifying, at least, the existence of the treatment,

the identity of the person responsible 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

informative device a connection code or internet address to this informa-

tion" (article 22 section 4 of the LOPDGDD 3/2018, December 5).

So that the facts described suppose an affectation to the content of the

Article 13 GDPR, regarding the obligation to inform in the case of data processing

third party cough.

V

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 (...)"

b) The rights of the interested parties in accordance with articles 12 to 22 (...).

In accordance with the foregoing, it is considered correct to agree on a penalty of €300, having a poorly oriented video surveillance device(s), visible from the outside later, affecting the rights of third parties that pass through the area, although it is taken into account note that it is a natural person with "little" knowledge in the matter 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.

Likewise, a penalty in the amount of €300 is agreed, for having of an informative poster(s) that does not comply with current legislation, as it lacks of the identification of the "responsible for the treatment", being considered the conduct as slight negligence by not having corrected it in accordance with the requirements required lies.

All informative signage must comply with the provisions of the regulations reviewed, in such a way that at least one of them is placed in a visible place informing command that it is a video-surveilled area, indicating the person in charge, finalizing treatment and effective way to exercise the rights recognized in the articles Articles 15-22 GDPR.

Consequently, a total penalty of €600 (€300+€300) is agreed, being the same individual ones based on the articles mentioned, located on the lower scale

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for this type of behavior, taking into account the initial collaboration of the
claimed with this agency.

SAW

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.

Remember that as the main person responsible for the system, you must adopt the measures
measures necessary for the legalization of the same, in such a way that a new claim
information about the same facts, could be assessed with a view to opening a new pro-
disciplinary action in this regard.

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 B.B.B., with NIF ***NIF.1, for a violation of Article 5.1.c)
of the GDPR, typified in Article 83.5 a) of the GDPR, a fine of €300.

SECOND: IMPOSE B.B.B., with NIF ***NIF.1, for a violation of Article 13
of the GDPR, typified in Article 83.5 b) of the GDPR, a fine of €300.

THIRD: ORDER the defendant so that, within a period of 15 business days from
the day following the notification of this administrative act, proceed:

-Place informative poster(s) adjusted to the regulations in force, accrediting such
extreme before this organism.

-Proceed to mask or redirect, if applicable, the cameras in question towards

exclusive private area, not affecting the public area and/or private space of third parties.

ro.

FOURTH: NOTIFY this resolution to B.B.B..

FIFTH: 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

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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-

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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