

□ File No.: PS/00494/2021

## RESOLUTION OF PUNISHMENT PROCEDURE

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

### BACKGROUND

FIRST: On 05/13/2021, 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 to B.B.B. with NIF \*\*\*NIF.1 (in  
hereinafter, the claimed party), for the installation of a video surveillance system  
located at \*\*\*ADDRESS.1, \*\*\*LOCALITY.1, with indications of a possible  
Non-compliance with the provisions of the data protection regulations  
staff.

The reasons that support the claim are the following, in relation to the  
Personal data protection matters:

[...]

I personally decide to inform the AEPD of the location of at least  
four cameras (at least localized) of permanent surveillance in a cafeteria that  
is located next to my business, and that is permanently recording  
exteriors, both street and parking lots and the \*\*\*ADDRESS.1. In the same way the  
cameras are not properly marked (...)"

Attached photographic report of the location of the cameras and the surfaces that  
they watch.

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), the claimant was notified on 05/21/2021 and 07/02/2021, to

to inform this Agency within a month of the actions carried out

to adapt to the requirements set forth in the data protection regulations. The

The first notification occurred on 06/02/2021, without this Agency receiving any reply.

However, upon receipt of the second notification, the respondent filed a written

allegations on 07/20/2021, in which it states, in summary, that the time of

conservation of the captured images is one week only having access to the

themselves the one claimed through a mobile device and that the cameras located in

the outside are disconnected. In addition, it provides a series of photographs in which

you can see the following:

-

The existence of an informative poster at the entrance of the premises, but it is not in accordance with the

Regulation (EU) 2016/679, of April 27, 2016, regarding the protection of

C/ Jorge Juan, 6

28001 – Madrid

[www.aepd.es](http://www.aepd.es)

[sedeagpd.gob.es](http://sedeagpd.gob.es)

2/11

natural persons with regard to the processing of personal data and

the free circulation of these data (hereinafter, RGPD), since it mentions the

repealed Organic Law 15/1999, of December 13, on Data Protection.

-

The installation of seven cameras inside the premises and the images that

captured as of 06/04/2021. It is observed that one of the cameras ("Bar

facade") records images of the sidewalk, as it can be seen that there is a car

parked.

On 08/05/2021, this Agency requests the respondent as additional information that provide images of the new field of vision of the camera that focuses on public roads and photographs of the updated informative poster. The first notification was "Returned to origin by Unknown", although it was sent to the same address of the two shipments previous; and the second notification was sent to the address that the respondent indicated in his writing, but it turns out to be "Returned to origin due to Surplus (not picked up at the office)", according to appears in the notices issued by the Post Office.

THIRD: On 10/08/2021, the Director of the Spanish Protection Agency

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

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

of Data agreed to initiate a sanctioning procedure against the claimed party, for the alleged infringement of article 5.1.c) of the RGPD and article 13 of the RGPD, typified in the article 83.5 of the RGPD.

FIFTH: After the period granted for the formulation of allegations to the agreement to initiate the procedure, it has been verified that no allegation has been received any by the claimed party.

Article 64.2.f) of Law 39/2015, of October 1, on Administrative Procedure

Common Public Administrations (hereinafter LPACAP) -provision of which

the party claimed was informed in the agreement to open the proceeding- establishes that if allegations are not made within the stipulated period on the content of the initiation agreement, when it contains a precise statement about the imputed responsibility, may be considered a resolution proposal.

In the present case, the agreement to initiate the disciplinary proceedings determined the facts in which the imputation was specified, the infraction of the RGPD attributed to the claimed and the sanction that could be imposed. Therefore, taking into account that the party complained against has made no objections to the agreement to initiate the file and

In accordance with the provisions of article 64.2.f) of the LPACAP, the aforementioned agreement of beginning is considered in the present case resolution proposal.

SIXTH: The agreement to initiate the procedure agreed in the third point of the part dispositive "INCORPORATE to the disciplinary file, for the purposes of evidence, the claims submitted by claimants and the information and documentation obtained by the Subdirector General for Data Inspection in the phase of information prior to the agreement for admission to processing of the claim".

C/ Jorge Juan, 6

28001 – Madrid

[www.aepd.es](http://www.aepd.es)

[sedeagpd.gob.es](http://sedeagpd.gob.es)

3/11

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

In this proceeding, the following are considered proven facts:

#### FACTS

FIRST: Installation of a video surveillance system made up of several cameras outside a cafeteria located at \*\*\*ADDRESS.1, \*\*\*LOCATION.1, which could be capturing images of the public road and that it does not have the proper poster informative of the existence of that system. The claimant provides a photographic report.

SECOND: Having notified the transfer, the respondent states that the exterior cameras are deactivated, capturing images only those installed inside the local, and that it does have an information poster.

Provide a signed statement of responsibility indicating that the cameras exteriors is not operational and some photographs of the images that are captured by the rest of the cameras, where it can be seen that one of them is focused towards the public thoroughfare, since the sidewalk and a parked car can be seen. Furthermore, the poster

video surveillance zone information mentions the repealed Organic Law 15/1999, of

Data Protection.

THIRD: The person responsible for the devices is B.B.B. with NIF \*\*\*NIF.1.

FOURTH: The Spanish Agency for Data Protection has notified the claimed

agreement to initiate this sanctioning procedure, but has not presented

allegations or evidence that contradicts the reported facts.

## FOUNDATIONS OF LAW

Yo

In accordance with article 58.2 of the RGPD and as established in articles 47 and

48.1 of Organic Law 3/2018, of December 5, on Data Protection

Personal and guarantee of digital rights (hereinafter, LOPDGDD), is

competent to initiate and resolve this procedure the Director of the Agency

Spanish Data Protection.

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 physical image of a person under article 4.1 of the RGPD is personal data

and its protection, therefore, is the subject of said Regulation. Article 4.2 of the GDPR

defines the concept of "treatment" of personal data.

C/ Jorge Juan, 6

28001 – Madrid

[www.aepd.es](http://www.aepd.es)

[sedeagpd.gob.es](http://sedeagpd.gob.es)

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.

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 regrettably 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 nests 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

C/ Jorge Juan, 6

28001 – Madrid

[www.aepd.es](http://www.aepd.es)

[sedeagpd.gob.es](http://sedeagpd.gob.es)

5/11

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

Pursuant to the foregoing, the processing of images through  
of a video surveillance system, to be in accordance with current regulations, must  
meet the following requirements:

- Respect the principle of proportionality.
- When the system is connected to an alarm center, you can only  
be installed by a private security company that meets the requirements  
contemplated in article 5 of Law 5/2014 on Private Security, of 4  
april.

-

Camcorders will not be able to capture images of people  
are outside the private space where the security system is installed.  
video surveillance, since the processing of images in public places only  
can be carried out, unless there is government authorization, by the  
Security Forces and Bodies. They cannot be captured or recorded  
spaces owned by third parties without the consent of their owners, or, in their  
case, of the people who are in them.

This rule admits some exceptions since, on some occasions, for the  
protection of private spaces, where cameras have been installed in  
facades or inside, it may be necessary to guarantee the purpose of  
security recording a portion of the public highway. That is, the cameras  
and video cameras installed for security purposes will not be able to obtain images  
of public roads unless it is essential for that purpose, or it is  
impossible to avoid due to their location and extraordinarily

The minimum space for said purpose will also be collected. Therefore, the



cameras could exceptionally capture the minimally necessary portion

for its intended security purpose.

- The duty to inform those affected provided for in articles

12 and 13 of the RGPD and 22.4 of the LOPDGDD.

- The person in charge must keep a record of treatment activities

carried out under their responsibility, including the information to which

refers to article 30.1 of the RGPD.

C/ Jorge Juan, 6

28001 – Madrid

[www.aepd.es](http://www.aepd.es)

[sedeagpd.gob.es](http://sedeagpd.gob.es)

6/11

-

The installed cameras cannot obtain images of private spaces.

third party and/or public space without duly accredited justified cause, or

may affect the privacy of passers-by who move freely through the

zone. It is not allowed, therefore, the placement of cameras towards the

private property of neighbors with the purpose of intimidating them or affecting their

private sphere without just cause.

- In no case will the use of surveillance practices be admitted beyond the

environment object of the installations and in particular, not being able to affect the

surrounding public spaces, adjoining buildings and vehicles other than those

access the guarded space.

In relation to the foregoing, to facilitate the consultation of interested parties, the Agency

Spanish Data Protection offers through its website

[<https://www.aepd.es>] access to data protection legislation

including the RGPD and the LOPDGDD (section “Reports and resolutions” / “regulations”), to the Guide on the use of video cameras for security and other purposes and the Guide for compliance with the duty to inform (both available in the “Guides and tools” section).

It is also of interest in the event that low-level data processing is carried out. risk, the free tool Facilita (in the “Guides and tools” section) that, through specific questions, it allows to assess the situation of the person in charge regarding the processing of personal data that it carries out and, where appropriate, generate various documents, informative and contractual clauses, as well as an annex with indicative security measures considered minimal.

#### IV

In the present case, the respondent has not presented arguments or evidence that contradict the facts denounced within the period given for it.

In accordance with the evidence available and which has not been distorted during the sanctioning procedure, the defendant has installed a video surveillance system in the cafeteria, located at \*\*\*ADDRESS.1, \*\*\*LOCATION.1, capturing images of the public highway one of the cameras placed inside the local. In addition, the informative poster of the video-monitored area does not comply with the regulations current since it mentions the repealed Organic Law 15/1999.

Based on the foregoing, the facts entail a violation of the provisions of articles 5.1 c) and 13 of the RGPD, which supposes a commission of both infractions typified in article 83.5 of the RGPD, which provides the following:

“The infractions of the following dispositions will be sanctioned, in accordance with the section 2, with administrative fines of a maximum of EUR 20,000,000 or, in the case of a company, an amount equivalent to 4% of the turnover global annual total of the previous financial year, choosing the highest amount:

C/ Jorge Juan, 6

28001 – Madrid

[www.aepd.es](http://www.aepd.es)

[sedeagpd.gob.es](http://sedeagpd.gob.es)

7/11

a) The basic principles for the treatment, including the conditions for the

consent under articles 5, 6, 7 and 9;

b) The rights of the interested parties according to articles 12 to 22;

(...)

h) The omission of the duty to inform the affected party about the processing of their data

personal in accordance with the provisions of articles 13 and 14 of the Regulation (EU)

2016/679 and 12 of this Organic Law;

(...)

v

The corrective powers available to the Spanish Agency for the Protection of

Data, as a control authority, is established in article 58.2 of the RGPD. Among

they find the power to direct a warning (art. 58.2 b)), the power

to impose an administrative fine in accordance with article 83 of the RGPD (art. 58.2 i)),

or the power to order the person in charge or in charge of the treatment that the

treatment operations comply with the provisions of the RGPD, where appropriate,

in a certain way and within a specified period (art. 58.2 d)).

According to the provisions of article 83.2 of the RGPD, the measure provided for in article 58.2

d) of the aforementioned Regulation is compatible with the sanction consisting of a fine

administrative.

With respect to the infringement of article 5.1 c) of the RGPD, based on the facts

exposed, it is considered that the sanction that should be imposed is a fine

administrative.

The fine imposed must be, in each individual case, effective, proportionate and dissuasive, in accordance with article 83.1 of the RGPD. In order to determine the fine to be imposed, the provisions of article 83.2 of the GDPR, which indicates:

"two. Administrative fines will be imposed, depending on the circumstances of each individual case, in addition to or as a substitute for the measures contemplated in the Article 58, paragraph 2, letters a) to h) and j). When deciding to impose a fine administration and its amount in each individual case will be duly taken into account:

a) the nature, seriousness and duration of the offence, taking into account the nature, scope or purpose of the processing operation in question, as well such as the number of interested parties affected and the level of damages that have suffered;

b) intentionality or negligence in the infringement;

c) any measure taken by the controller or processor to alleviate the damages suffered by the interested parties;

C/ Jorge Juan, 6

28001 – Madrid

[www.aepd.es](http://www.aepd.es)

[sedeagpd.gob.es](http://sedeagpd.gob.es)

8/11

d) the degree of responsibility of the person in charge or of the person in charge of the treatment, taking into account the technical or organizational measures that they have applied under of articles 25 and 32;

e) any previous infringement committed by the person in charge or the person in charge of the treatment;

f) the degree of cooperation with the supervisory authority in order to remedy the

infringement and mitigate the possible adverse effects of the infringement;

g) the categories of personal data affected by the infringement;

h) the way in which the supervisory authority became aware of the infringement, in

particular whether the person in charge or the person in charge notified the infringement and, if so, in what measure;

i) when the measures indicated in article 58, section 2, have been ordered

previously against the person in charge or the person in charge in question in relation to the same matter, compliance with said measures;

j) adherence to codes of conduct under article 40 or mechanisms of

certification approved in accordance with article 42,

k) any other aggravating or mitigating factor applicable to the circumstances of the case,

such as financial benefits obtained or losses avoided, directly or

indirectly, through the infringement.

For its part, in relation to letter k) of article 83.2 of the RGPD, the LOPDGDD, in

its article 76, "Sanctions and corrective measures", provides:

"1. The penalties provided for in sections 4, 5 and 6 of article 83 of the Regulation

(EU) 2016/679 will be applied taking into account the graduation criteria

established in section 2 of the aforementioned article.

2. In accordance with the provisions of article 83.2.k) of Regulation (EU) 2016/679

may also be taken into account:

a) The continuing nature of the offence.

b) The link between the activity of the offender and the performance of treatment of personal information.

c) The profits obtained as a result of committing the offence.

d) The possibility that the conduct of the affected party could have included the commission of the offence.

- e) The existence of a merger by absorption process subsequent to the commission of the infringement, which cannot be attributed to the absorbing entity
- f) Affectation of the rights of minors

C/ Jorge Juan, 6

28001 – Madrid

[www.aepd.es](http://www.aepd.es)

[sedeagpd.gob.es](http://sedeagpd.gob.es)

9/11

- g) Have, when not mandatory, a data protection officer.
- h) Submission by the person in charge or person in charge, on a voluntary basis, to alternative conflict resolution mechanisms, in those cases in which there are controversies between them and any interested party”.

In accordance with the precepts transcribed, in order to set the amount of the sanction of fine to be imposed in the present case for the infraction typified in article 83.5 a) of the RGPD, it is appropriate to graduate it according to the following aggravating factors:

- 
- 

The nature of the infringement. The claimed by having a system of video surveillance that is oriented to public roads without just cause, produces damages to all interested parties (art. 83.2 a) RGPD).

The intentionality or negligence in the infringement. With the system video surveillance carries out excessive control of the area without any justified cause, highlighting the poor orientation of the device (art. 83.2 b) RGPD).

- The degree of cooperation with this Agency in order to remedy the infringement. After having made two transfers to the person claimed for the purposes of being able to answer and two requests for additional information, the AEPD has only

received a reply to one of the transfers. Nor has it been obtained

any response, once the opening agreement has been notified (art. 83.2 f)

GDPR).

-

The way in which the supervisory authority became aware of the infringement. The

The way in which this Agency has become aware has been through the

presentation of the claim by the claimant (art. 83.2 h) RGPD).

The balance of the circumstances contemplated, with respect to the infringement of article

5.1 c) of the RGPD, allows a fine of 1,000 euros (one thousand euros) to be set.

Regarding the infringement of article 13 due to the absence of an informative poster according to the

RGPD, based on the exposed facts, it is considered that it is appropriate to direct a

warning. Despite the fact that the person claimed already has an informative badge in

the entrance of the premises, must be updated in accordance with the RGPD.

Therefore, in accordance with the applicable legislation and having assessed the criteria for

graduation of sanctions whose existence has been proven,

the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: IMPOSE B.B.B., with NIF \*\*\*NIF.1, for an infraction of article 5.1.c)

of the RGPD, typified in article 83.5 a) of the RGPD, a fine of €1,000 (one thousand euros).

SECOND: ADDRESS a warning to B.B.B., with NIF \*\*\*NIF.1, for an infraction

of article 13 of the RGPD, typified in article 83.5 b) of the RGPD.

C/ Jorge Juan, 6

28001 – Madrid

[www.aepd.es](http://www.aepd.es)

[sedeagpd.gob.es](http://sedeagpd.gob.es)

10/11

THIRD: ORDER to B.B.B., with NIF \*\*\*NIF.1 that, by virtue of article 58.2 d)

of the RGPD, within ten business days, take the following measures:

- Prove that you proceeded to remove the camera from the current location, or to reorientation of it towards its particular area.

- Prove that you have proceeded to place the informative poster in the areas video-monitored or to complete the information offered in it (you must identify, at least, the existence of a treatment, the identity of the responsible and the possibility of exercising the rights provided for in said precepts), locating this device in a sufficiently visible place, both in open and closed spaces.

- Prove that you keep the information to which it refers available to those affected. refers to the aforementioned RGPD.

FOURTH: NOTIFY this resolution to B.B.B. with NIF \*\*\*NIF.1.

FIFTH: Warn the sanctioned party that he must make the imposed sanction effective once

Once this resolution is enforceable, in accordance with the provisions of the art. 98.1.b) of Law 39/2015, of October 1, on Administrative Procedure

Common Public Administrations (hereinafter LPACAP), within the payment term voluntary 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, through its entry, 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, opened on behalf of the Agency Spanish Department of Data Protection in the banking entity CAIXABANK, S.A.. In case Otherwise, it will be collected in the executive period.

Received the notification and once executed, if the date of execution 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 month or immediately after, and if



between the 16th and last day of each month, both inclusive, the payment term

It will be until the 5th of the second following month or immediately after.

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.

C/ Jorge Juan, 6

28001 – Madrid

[www.aepd.es](http://www.aepd.es)

[sedeagpd.gob.es](http://sedeagpd.gob.es)

11/11

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->

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

Director of the Spanish Data Protection Agency

938-190122

C/ Jorge Juan, 6

28001 – Madrid

[www.aepd.es](http://www.aepd.es)

[sedeagpd.gob.es](http://sedeagpd.gob.es)