

□ Procedure No.: PS/00187/2021

RESOLUTION OF PUNISHMENT PROCEDURE

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

FACTS

FIRST: LOCAL POLICE STATION OF PUERTO DEL ROSARIO (*hereinafter, the
claimant) on December 10, 2020 filed a claim with the Agency

Spanish Data Protection. The claim is directed against A.A.A. with NIF

***NIF.1 (hereinafter, the claimed one). The grounds on which the claim is based are

succinctly the following “in the establishment ***ESTABLISHMENT.1 has

installed a camera on the outside of the same focusing permanently towards

the public road with which it has recorded an operational control (...) thereby alerting of the

existence of a control” (folio No. X).

Together with the claim, it provides documentary evidence that proves the recording of space
public (Doc. n 1).

Likewise, a copy of the Act-Complaint for alleged infringement of the LO is provided.

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SECOND: On 02/11/21, the claim is TRANSFERRED to the claim

summoned to claim in law what he deems appropriate, without any manifestation

has not been done.

THIRD. The claim was admitted for processing on 04/23/21, by the

Director of this Agency in accordance with article 65 of the LOPDGDD.

FOURTH: On June 24, 2021, the Director of the Spanish Agency for

Data Protection agreed to initiate a sanctioning procedure against the claimant, for the

alleged infringement of Article 5.1.c) of the RGPD, typified in Article 83.5 of the

GDPR.

FIFTH: The database of this Agency consulted on 09/02/21 does not contain any allegation, nor has the system been regularized.

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. The facts bring cause for the claim dated 12/10/20 through the which is transferred as a fact "in the establishment *** ESTABLISHMENT.1 has installed a camera on the outside of the same focusing permanently towards the public road with which it has recorded an operational control (...) thereby alerting of the existence of a control" (folio No. X).

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Second. It is identified as the main person in charge Mr. A.A.A., with NIF

***NIF.1.

Third. The presence of a bad video-surveillance camera system oriented, affecting public transit area, without just cause.

Bedroom. The use of recordings obtained from the camera system of video-surveillance, affecting the personal data of the local police, without justified cause.

FOUNDATIONS OF LAW

I

By virtue of the powers that article 58.2 of the RGPD recognizes to each authority of

control, and according to the provisions of articles 47 and 48 of the LOPDGDD, the Director of the Spanish Agency for Data Protection is competent to initiate and to resolve this procedure.

II

The facts bring cause for the claim dated 12/10/20 by which transfers the “presence of video-surveillance cameras oriented towards public space co” (folio nº 1).

The art. 5.1 c) RGPD provides the following: The 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 felled comply with current legislation, proving 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 sign. tive, indicating the purposes and 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 intimidate neighboring neighbors with this type of device, as well as control areas transit of the same without just cause.

With this type of device it is not possible to obtain image(s) of public space either. co, as this is the exclusive competence of the State Security Forces and Bodies ted.

It should be remembered that even in the case of a "simulated" camera, the same should preferably be oriented towards private space, since it is considered

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that this type of device can affect the privacy of third parties, that they are intimated by it in the belief of being the subject 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.

III

In accordance with the evidence available in this proceeding, the defendant, as a public punisher, it is considered that the defendant has a video-surveillance system oriented towards public space without just cause.

Article 77 section 5 of Law 39/2015 (LPAC) provides the following: "The documents formalized by the officials who are recognized as authority and in which, observing the corresponding legal requirements, it is recognized that the facts verified by those will prove them unless it is accredited otherwise".

In the Official Letter dated 11/26/20, it is stated that "it has a camera installed of video-surveillance focusing permanently on the public thoroughfare with which an operational control installed nearby has been recorded (...) and an employee of the establishment has shared an image of the police control taken by the camera on social media (...)".

The known facts constitute an infraction, attributable to the claimant, made, for violation of the content of art. 5.1 c) GDPR.

IV

The art. 83.5 RGPD provides the following: "Infringements of the following provisions will be sanctioned, in accordance with section 2, with administrative fines of 20

EUR 000,000 maximum or, in the case of a company, an equivalent amount.

to a maximum of 4% of the total global annual turnover of the financial year

above, opting for the highest amount:

to)

the basic principles for the treatment, including the conditions for the

consent under articles 5, 6, 7 and 9;

When motivating the sanction, the following is taken into account:

- the nature, seriousness and duration of the offence, taking into account the nature

nature, scope or purpose of the treatment operation in question, as well as

the number of interested parties affected and the level of damages suffered

fired; (art. 83.2 a) RGPD).

- the intent or negligence in the infringement; (art. 83.2 b) RGPD), being

the same poorly oriented towards public transit area, negligently.

For all these reasons, a penalty of €2,000 is agreed, an infraction

on the lower scale for these types of infractions.

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All this without prejudice to regularizing the orientation of the camera and providing the

objective evidence accrediting such end.

Remember that the images obtained from the camera system should not use

be used for more purposes than those permitted in the regulations, being a punishable conduct

nable the use of the same in social networks (vgr, Facebook, etc).

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 Don A.A.A., with NIF ***NIF.1, for a violation of Article

5.1.c) of the RGPD, typified in Article 83.5 of the RGPD, a fine of €2,000 (two thousand euros).

SECOND: ORDER the regularization of the system within a month from the notification of this, in accordance with article 58.2 d) RGPD, providing the necessary evidence to this Agency.

THIRD: NOTIFY this resolution to Don A.A.A. and REPORT the result of the actions to the LOCAL POLICE STATION OF PUERTO DEL ROSARIO.

THIRD: 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 ES93 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

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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

Director of the Spanish Data Protection Agency

938-131120

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