

□ File No.: EXP202101337

RESOLUTION OF PUNISHMENT 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 August 2, 2021

filed a claim with the Spanish Data Protection Agency. The

claim is directed against B.B.B. with NIF ***NIF.1. (hereinafter the part

claimed). The grounds on which the claim is based are as follows:

“The security cameras of this establishment focus towards the outside

where they captured my uncle, who has a recognized mental disability and spread these

images to the press, with the sole purpose of defaming and denigrating his person in order to

they get the attention of the public and gain public and/or fame (...)”—folio nº 1--.

Various images of a man with a mask in front of the stairway are attached.

parate of the art gallery (Annex I).

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), said claim was transferred to the claimed party in fe-

cha 08/20/21 and 09/09/21, to proceed to 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 10/25/21, this Agency received a written response indicating the following-

following:

“We have two video-surveillance systems because our activity

It is an art gallery where works of great value are usually found.

(...)

The first security system is contracted with the security company

Securitas Direct, for this a series of sound sensors (...) and other

two image recording sensors, one located in the area of public use and another

(...)

As established by law, there is a yellow plate that warns "Zone Vi-

deo-vigilada" located at the reception of the entrance of the premises, in a visible place where

all users can see it clearly.

For more than four days a person with a suspicious attitude passed

morning and evening glued to the window of my art gallery. He was masturbating in front

me, in front of my establishment in the middle of the street, with people passing by him

(...)

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The images that appear in the media do NOT belong to the

Images captured by cameras are photographs taken with a digital camera.

such.

Nor did he care that I took the photographs because he saw me with the camera and in

He never stopped masturbating."

Documentary evidence is attached that accredits the presence of the cameras, as well as

as an informative poster with reference to a repealed regulation such as the LOPD

(LO 15/99, December 13).

THIRD: On November 11, 2021, the Director of the Spanish Agency

of Data Protection agreed to admit for processing the claim presented by the party claimant.

FOURTH: On January 10, 2022, the Director of the Spanish Agency for Data Protection agreed to initiate a sanctioning procedure against the claimed party, for the alleged infringement of Article 13 of the RGPD, typified in Article 83.5 of the GDPR. The initiation agreement was duly notified to the respondent party on the date January 24, 2022.

FIFTH: The Registry entries of this body were consulted on 02/21/22 there is no record, except for error or omission, presentation of any writing or explanation has been made in relation to the detailed facts.

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

In this proceeding, the following are considered proven facts:

PROVEN FACTS

First. The facts bring cause of the claim dated 08/02/21 through the which translates the following:

“The security cameras of this establishment focus towards the outside where they captured my uncle, who has a recognized mental disability and spread these images to the press, with the sole purpose of defaming and denigrating his person in order to they get the attention of the public and gain public and/or fame (...)”—folio nº 1--.

Second. It is identified as the main responsible B.B.B..

Third. It confirms the installation of a video-surveillance camera system that is operational, obtaining images provided from the outside of the establishment.

I lie.

Fourth. There is no evidence of the presence in the access area of the establishment of a homo-Logged to the regulations in force, informing that it is a video-monitored area, as well as in your case of the data controller.

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Fifth. There is no accredited availability of information form(s) available

tion of the clients (users) who, in their case, may require it.

FOUNDATIONS OF LAW

Yo

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

Before going into the substance of the matter, remember that in the Initiation Agreement of the present procedure it was mentioned that, in the case of not making any allegation to the itself, this could be considered a “resolution proposal”.

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- established that if allegations are not made within the stipulated period on the content of the agreement, initiation document, when it contains a precise statement about the response imputed responsibility, may be considered a resolution proposal. In the present

In this case, the agreement to initiate the sanctioning file determined the facts in which that the imputation was specified, the infraction of the RGPD attributed to the claimed one and the sanction that could be imposed. Therefore, taking into consideration that the claimant

mada has not formulated allegations to the agreement of beginning of the file and in attention to established in article 64.2.f) of the LPACAP, the aforementioned initial agreement is considered in the present case proposed resolution.

III

In the present case, the facts bring cause for the claim dated 08/02/21 by means of which the alleged "dissemination of images of an individual" taken given as stated by the claimant from the camera system of the establishment object of claim.

The above facts will be limited to the "irregularity" of the information poster placed in the front area of the showcase of the art gallery, since it is not conforms to the regulations in force, as well as in the one located inside the same information. I command that it is a video-monitored area.

The defendant herself provides a photograph where what is verified is the company installer Securitas Direct, but it does not indicate that it is a video-surveillance zone. nor of the purpose and/or responsible for the processing of personal data. nal.

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To adapt to current regulations, the AEPD published

the new obligatory poster

rio to be located in collective spaces that are subject to video surveillance

Inc. This action was intended, in its day, to scrupulously comply with the

GDPR approved by the European Parliament in 2016.

Reporting on video surveillance according to RGPD is an obligation contained in our legislative framework—art. 13 GDPR--.

To adapt to current regulations, the AEPD published the new mandatory poster
river that must be located in spaces that are subject to video surveillance.

Article 22 section 4 of the LOPDGDD (LO 3/2018, December 5) provides:

“The duty of information provided for in article 12 of the Regulation (EU) 2016/679 will be understood to be fulfilled by placing a computerized device in a sufficiently visible place identifying, at least, the existence of the treatment to, the identity of the person in charge and the possibility of exercising the rights foreseen 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 information
tion”.

IV

In accordance with the evidence available in this proceeding
sanctioning party, it is considered that the claimed party has a video system
surveillance that is not duly informed in accordance with the regulations in
vigor.

The known facts constitute an infraction, attributable to the party
claimed, for violation of art. 13RGPD, as there is no adapted information poster
to the current regulations in force.

v

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:

b)

the rights of the interested parties under articles 12 to 22;

SAW

Without prejudice to the provisions of article 83 of the RGPD, art. 58.2 b) provides the following-
following:

“2 Each control authority will have all the following corrective powers in-
listed below:

(...)

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b) send a warning to any person responsible or in charge of the treatment when the
treatment operations have violated the provisions of this Regulation;”

In this case, the nature of the facts described is taken into account,

as well as the absence of previous infractions and the initial collaboration with this organization.

mo, sufficing with the placement of a poster in a visible area adapted to the regulations

in force, as well as proving that it has a form (s) available to customers.

gallery tees if required; these reasons that justify a warning

as an initial sanction.

7th

Among the corrective powers contemplated in article 58 of the RGPD, in its section 2

d) it is established that each control authority may “order the person in charge or

of the treatment that the treatment operations comply with the provisions

of this Regulation, where appropriate, in a certain way and within

a specified period...". The imposition of this measure is compatible with the sanction consisting of an administrative fine, as provided in art. 83.2 of the GDPR.

The claimed party must change the signs (interior/exterior) adapting them to the regulations in force, as well as you must prove that you have a form (s) in the interior of the establishment available to customers who may require it, adapting them from the informative models that this Agency has on the page web www.aepd.es "Areas of action-Video surveillance" where you have a copy of the poster template.

In the case of the forms, the person responsible for the treatment must state, an address to which you can go, as well as the way to exercise your rights (vgr. cancellation, access) of the images obtained, being able to make them in format Word in case of estimating it precise.

Therefore, in accordance with the applicable legislation and after assessing the graduation criteria of the sanctions whose existence has been proven, the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: ADDRESS B.B.B., with NIF ***NIF.1., for a violation of Article 13 of the RGPD, typified in Article 83.5 of the RGPD, a WARNING.

SECOND: ORDER the respondent so that within ONE MONTH in accordance with article 58.2 d) RGPD, it is appropriate to place a sign (s) approved to the norm in force, as well as to prepare the corresponding form(s) available to the users of the establishment.

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

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.

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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 resents may optionally file an appeal for reconsideration before the Director of the Spanish Agency for Data Protection within a month from the date of the day following the notification of this resolution or directly contentious appeal before the Contentious-Administrative Chamber of the National High Court, in accordance with the provisions of article 25 and section 5 of the additional provision Final fourth of Law 29/1998, of July 13, regulating the Contentious Jurisdiction-administrative, 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.

Sea Spain Marti

Director of the Spanish Data Protection Agency

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