

□ File No.: EXP202201474

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 claiming party) dated January 28,
2022 filed a claim with the Spanish Data Protection Agency. The re-
outcry is directed against B.B.B. with NIF ***NIF.1 (hereinafter, the claimed party).

The reasons on which the claim is based are the following:

(...) the defendant, tenant of a house located in the Community of
Owners in which the claimant resides, has arranged next to the house that has
rented, without authorization from the Community of Owners, a video surveillance camera
lances oriented to common areas, without said device being properly
marked by means of the mandatory informative posters of the video surveillance area.
gives.

Together with the notification, documentary evidence is provided (Annex I) that proves the
presence of a device installed on the dividing wall, pointing towards the area
corridor of the 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 02/10/22 and 03/09/22, 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.

The transfer, which was carried out in accordance with the regulations established in Law 39/2015, of

October 1, of the Common Administrative Procedure of Public Administrations

cas (hereinafter, LPACAP), without receiving any response from the party

claimed to date.

THIRD: On April 28, 2022, in accordance with article 65 of the LO-

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

FOURTH: On July 7, 2022, the Director of the Spanish Agency for Pro-

Data Protection agreed to initiate a sanctioning procedure against the claimed party, with

in accordance with the provisions of articles 63 and 64 of Law 39/2015, of October 1, of

Common Administrative Procedure of Public Administrations (hereinafter,

LPACAP), for the alleged infringement of Article 6.1.e) of the GDPR, typified in the

Article 83.5 of the GDPR.

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2/7

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 has not made

any manifestation to date, nor has it proven that the system conforms to the

current legislation.

SIXTH: On 08/22/22, <Proposed Resolution> was issued confirming the

infringement of articles 5 and 13 GDPR, by having a video device

surveillance, without proper signage, affecting the rights of third parties of the

property when obtaining your data, proposing a penalty of €600 (€300+€300), being

notified to the address that appears in the file, leaving the mandatory "notice" after

the double attempt of notification at home.

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 01/28/22 through the

which translates the following:

“has arranged next to the house that he has rented, without authorization from the Co-

Community of Owners, a video surveillance camera aimed at common areas,

without said device being duly marked by means of the precepts

you informative posters of video-surveilled area”.

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

Third. The installation of a video-surveillance camera without authorization is accredited.

tion of the Board of owners, affecting the right of third parties without just cause.

Room. There is no record that the installed system has an informative sign indicating

that it is a "video-surveilled area" nor the way to exercise the rights within the framework

current regulations.

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 authori-

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

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3/7

comments dictated in its development and, insofar as they do not contradict them, with a subsidiary, by the general rules on administrative procedures."

II

In the present case, we proceed to analyze the claim dated 01/28/22 by means of which the following is transferred as the main "fact":

"...he has a camera installed at the door of the house where he rents-

and that it uses as an office, which records the exterior of the house, which is an element common instrument (...)"—folio no. 1-.

The "facts" materialize in the presence of a device installed on the wall of the community oriented towards a common area, without the proper authorization of the board of owners (as), lacking an informative poster warning that it is about a video-monitored area.

The installation of cameras in Communities of owners, especially if it is in a common element must have the express authorization of the set of owners.

Owners (as) duly informed in this regard, in accordance with the LPH.

Video surveillance systems allow data (images) to be obtained from third parties, so they must comply with current regulations on the matter.

It is necessary to have the necessary support in accordance with article 17.3 of the Law of Horizontal Property, so it is possible to install or remove security services such as concierge, surveillance or other common services of general interest, provided

that the necessary quorum has been obtained, which is three fifths of the total

of the owners who in turn represent 3/5 parts of the participation quotas

or that 60% is the same.

The aforementioned agreement must be recorded in the Minutes where the support for the individual and/or collective measure, depending on the case, by the group of owners when affecting to a common area.

The second of the requirements is to put a distinctive plate that warns of the presence of video surveillance cameras in the neighborhood community. This is nothing more than a poster notice informing that a video surveillance area is accessed where it is indicated

that who has been the person who has installed the camera and the data of before whom

In addition to where we can go to exercise the rights contained in the data protection regulation 3/2018, so it is very important to comply with the duty to inform.

Even in the case of being a "simulated" device, it is necessary to adopt certain precautions when placing it, especially if it exceeds the private or personal area to the one that affects it.

II

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4/7

Based on the evidence available in this proceeding sanctioning party, it is considered that the claimed party has a device for image capture, devoid of signage facing the outside of its property affecting the rights of the owners of the property that are treated

your data without just cause.

Photographic evidence is provided (ANNEX I) confirming the presence of a camera-like device placed on the communal wall near the home of the claimed.

The known facts constitute an infringement, attributable to the party claimed, for violation of article 6 letter e) GDPR.

Article 72 section 1 LOPDGDD (LO 3/2018) "Depending on what is established in article 83.5 of Regulation (EU) 2016/679 are considered very serious and pres- Offenses that involve a substantial violation of the articles mentioned therein and, in particular, the following:

b) The processing of personal data without the fulfillment of any of the conditions purposes of legality of treatment established in article 6 of the Regulation (EU) 2016/679.

IV.

Similarly, the device lacks an informative sign indicating that it is a video-surveilled area, so we are faced with an alleged affectation of the article 13 GDPR.

"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 information" (*bold type belongs to this body)—art. 22 section 4 of the LOPDGDD--.

The AEPD, in a related report, stipulates that it is not necessary for the cartels to be sit just below the cameras. It is enough to do it in a visible place and include

open and closed spaces where the video camera circuit is operational.

Article 13 GDPR "Information that must be provided when personal data are obtained from the interested party"

1. When personal data relating to him or her is obtained from an interested party, the person responsible of the treatment, at the moment in which these are obtained, it will provide you with all the information information indicated below: a) the identity and contact details of the responsible and, where appropriate, his representative; b) the contact details of the delegate of pro-data protection, if applicable; c) the purposes of the processing for which the data is intended personal information and the legal basis of the treatment (...).

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5/7

Article 72 section 1 of the LOPDGDD (LO 3/2018, December 5) in relation to tion to the limitation period of very serious infractions "will prescribe three years" and in particular the following:

h) The omission of the duty to inform the affected party about the treatment of their personal data in accordance with the provisions of articles 13 and 14 of the Regulation (UE) 2016/679 and 12 of this organic law.

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 (...)."

the rights of the interested parties in accordance with articles 12 to 22;

b)

In accordance with the foregoing, a penalty in the amount of €600 is imposed.

(300+300) due to the impact on the content of articles 6 and 13 GDPR, by having

an external device in the form of a camera without proper signage, affecting zoos

common areas not having the authorization of the Board of owners, conduct

considered negligent in ignoring the recommendations of the agencies

we rectors of the Community.

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.

The presence of the device outside the property is considered a

intimidating element to the rest of the neighbors (as) who see themselves restricted in their freedom

wandering through the common areas, without justifying the presence of the same

therefore, the presence of this is considered not in accordance with the law, and must be

yield to the withdrawal of the same from its current location.

Lastly, it is recalled that the governing bodies of the Community have

the necessary means to also communicate the result of this procedure

must prove if the infraction persists that they have been transferred

the facts by any of the means of notification of the LPH, affecting the aspects agreed by this body, in such a way that the agreement can be accredited. seeing and receiving it.

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6/7

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 6.1.e)

of the GDPR, typified in Article 83.5 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 of the GDPR, a fine of €300.

THIRD: ORDER the claimed party so that, within 10 business days

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

-Remove the video surveillance device from its current location,

providing a photograph to this body (vgr. with date and time) that proves the before and

after the action taken.

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

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

tion of this act, as provided for in article 46.1 of the aforementioned Law.

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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

938-120722

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