

□ File No.: EXP202201307

RESOLUTION OF SANCTIONING PROCEDURE

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

BACKGROUND

FIRST: On January 25, 2022, he entered this Spanish Agency
of Data Protection a document presented by A.A.A. (hereinafter, the part
claimant) by means of which he makes a claim against B.B.B. with NIF ***NIF.1 (in
below, the claimed party), for the installation of a video surveillance system
located at ***ADDRESS.1, ***LOCATION.1, with indications of a possible
breach of the provisions of the data protection regulations
staff.

The reasons for the claim are the following:

“Since a few years ago, our neighbors installed video surveillance cameras
that focus on our inner courtyard. In addition, to install another camera of
video surveillance that focuses on the public road on the other side of the house.

Our backyard adjoins the wall of our neighbors, their house has two
windows that overlook our inner courtyard.

(...)

Beyond, wanting to exercise our right to intimacy and privacy, since it is
being invaded, we would like to express our intention to abide by the judgment
of the Supreme Court, STS (Room 1a) of November 7, 2019, rec. 5187/2017. for which,
We have the right to peace of mind in our private life, which includes not having
have to endure permanent uncertainty as to whether the forward-facing camera
our yard is operational or not.

For this reason, we would like you to intercede for us so that the neighbors remove the cameras. Also the one that focuses on the public highway, which also focuses on the houses of the other side of the street. That camera is also invading the privacy of the people who live in front of them. (...) . At some point, the Civil Guard even came and He made it known, but they have repeatedly ignored it. have been notified and informed many times, that they cannot have those cameras there. but they do disregard. (...)"

Attach three photographs of the location of the video surveillance cameras and one Street map image showing the location of both houses.

SECOND: Prior to the admission of the claim for processing, in

In accordance with article 65.4 of Organic Law 3/2018, of December 5, of

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Protection of Personal Data and guarantee of digital rights (hereinafter LOPDGDD), said claim was transferred to the claimed party, so that proceed to its analysis and inform this Agency within a month of the actions carried out to adapt to the requirements established in the regulations of Data Protection.

For this purpose, this Agency sent by postal mail a Request for Information to the party claimed on February 9 and March 8, 2022, resulting in both occasions "Returned to origin due to excess (not withdrawn in the office)."

THIRD: On March 31, 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 Protection Agency of Data agreed to initiate disciplinary proceedings against the claimed party, for the alleged violation of Article 5.1.c) of the GDPR, typified in Article 83.5 a) of the GDPR.

FIFTH: On June 1, 2022, it was entered in the General Registry of this Agency a document presented by C.C.C., in which, in summary, the following is indicated:

“First: inform them that B.B.B. passed away more than three years ago.

Second: no one lives at the address where you send the letters, it is a second housing (we are only in summer).

Third: as the plaintiff rightly says, the civil guard came to see the cameras and buy they proved that they are fake (they neither record nor do anything at all) and they told us the guards calendar days that we could have them on without problems.”

SIXTH: Subsequently, on June 13, 2022, it was entered in the Registry General of this Agency a brief of allegations presented by D.D.D. in which stated the following:

(...), we collected the NOTIFICATION in the name of B.B.B.,

DECEASED ON ***DATE.1. reason why the previous ones have not been collected notifications.

Since this is the second home of residence and we only come every other day.

I am the heir and owner of this house.

(...) TWO YEARS ago the CIVIL GUARD came to my home and commented on the complaint from a neighbor about the reason for the video surveillance cameras.(...)

(...), they were made to pass and VERIFY THAT THE VIDEO SURVEILLANCE CAMERAS,

They are FICTIONAL, without any recording device.

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Which we made the AGENTS on record that, both in the works of the neighboring yard, as in the back, they can enter the house and we have SUFFERED several broken pots and furniture, bikes etc.....

Verified these facts SHOWN THAT THEY ARE FICTIONAL the CIVIL GUARD has not opened any type of file against us, which is a review of CHECK and Absolutely nothing happens.

In fact, I have asked them again and they have told me that so prove that they are fictitious in SPANISH DATA PROTECTION AGENCY is more than enough.

That being said, MORE THAN 2 YEARS AGO THIS EVENT HAPPENED AND NO ONE ELSE HE HAS NEVER ASKED ME, OR COMPLAINED FOR THIS REASON.

(...)

I bring you the photographs of the fictitious video surveillance cameras.

(...)

I comment again that no neighbor has complained and I am suffering inconvenience for part of this neighbor.”

SEVENTH: In view of the allegations presented, on July 21, 2022, wrote to D.D.D. in which he was requested to provide a copy of the certificate of death of B.B.B. to, where appropriate, proceed to file the disciplinary file.

EIGHTH: On August 18, 2022, it was entered in the General Registry of the AEPD, through a letter sent by D.D.D., a copy of the death certificate of B.B.B. in which the death of the same is recorded on *** DATE.1.

In view of all the proceedings, by the Spanish Agency for Data Protection

In this proceeding, the following are considered proven facts:

PROVEN FACTS

FIRST: On January 25, 2022, he entered this Spanish Agency of Data Protection a document presented by A.A.A. through which he formulated claim against B.B.B., for the installation of a video surveillance system located at ***ADDRESS.1, ***LOCATION.1.

SECOND: From the documentation in the file it can be deduced that the cameras are simulated, that is, they do not obtain any image of a physical person identified or identifiable.

THIRD: That according to the copy of the death certificate provided by D.D.D., B.B.B. died on DATE.1.

FUNDAMENTALS OF LAW

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In accordance with the powers that article 58.2 of the RGPD grants to each authority of control and as established in articles 47 and 48.1 of Organic Law 3/2018, of December 5, Protection of Personal Data and guarantee of 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: "Procedures processed by the Spanish Data Protection Agency will be governed by the provisions in Regulation (EU) 2016/679, in this organic law, by the provisions regulations dictated in its development and, insofar as they do not contradict them, with character

subsidiary, by the general rules on administrative procedures.”

II

The physical image of a person, according to article 4.1 of the GDPR, is data
personnel and their protection, therefore, is the subject of said Regulation. In article 4.2
of the GDPR defines the concept of "processing" of personal data:

"processing": any operation or set of operations performed on data
personal data or sets of personal data, either by procedures
automated or not, such as the collection, registration, organization, structuring,
conservation, adaptation or modification, extraction, consultation, use,
communication by transmission, diffusion or any other form of authorization of
access, collation or interconnection, limitation, deletion or destruction;

Article 28.7 of Law 39/2015, of October 1, on Administrative Procedure

Common for Public Administrations (LPACAP, hereinafter) provides: "The
Interested parties will be responsible for the veracity of the documents they present.

It should be noted that individuals can install cameras on their private property
false, although they must be oriented exclusively towards your property,
avoiding intimidating third parties with said devices.

When installing this type of "simulated" device, care must be taken
necessary to avoid intimidating with them third parties who are unaware of the nature
"fictitious" of these, who may believe they see themselves recorded by them, in such a way that they
it must avoid its orientation towards public space.

Pursuant to the foregoing, and by virtue of the allegations and documentation
provided, it is considered that the cameras are simulated, that is, that they do not obtain
any image of an identified or identifiable natural person and, consequently, does not
having produced a processing of personal data, the claimed facts do not
would be subject to administrative sanction by this Agency as they are not

included in its scope of competence.

II

In order to assess the consequences of the death of the claimed party

In the processing of this disciplinary file, it is necessary to analyze in

treatment of this question by the jurisprudence:

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The second legal basis of the Constitutional Court Judgment num.

18/1981, of June 8, establishes:

"(...) the inspiring principles of the criminal order are applicable, with certain nuances,

to the sanctioning administrative law, given that both are manifestations of the

punitive order of the State, as reflected in the Constitution itself (article 25,

principle of legality), and a very reiterated jurisprudence of our Court

Supreme Court (Sentences of the Fourth Chamber of September 29, November 4 and 10,

1980, among the most recent)." (underlining is ours).

Consequently, the analogical application of the extinction criterion of

responsibility for the death of the accused, in application of the penal norms and

from the "mors omnia solvit" principle, to the field of administrative sanctions

pecuniary, considering that these must be understood as extinguished and, therefore,

unenforceable when the interested party dies before they have been effectively

satisfied.

Likewise, it is necessary to refer to the fifth legal foundation of the

Judgment of the Supreme Court of September 20, 1996 (appeal:

3606/1996), reproduced in the third legal foundation of the Judgment of the

National Court of June 10, 2005 (rec. 82/2005), which highlights:

"(...) when it comes to the liability of a natural person derived from

administrative infractions, (...), the non-transferability of sanctions and the extinction

of these for the death of the person responsible, provided for the penalties in the Penal Code

(art. 112.1 of the previous text and art. 130.1 of the current one) and for the sanctions in the

most characteristic sectorial areas of the administrative sanctioning law of

our legal system, it is unavoidable to preserve one of the essential values

on which the exercise of the «ius puniendi» of the State is based, as is the principle of

personality of penalties and sanctions (STS November 8, 1990) and that of the

responsibility that is based on individual guilt, without the sanctions

administrative obligations can be assimilated, for these purposes, to a civil pecuniary obligation,

regardless of whether or not a firm sanctioning resolution has been issued to the

time of the offender's death, since such a circumstance does not undermine his

punitive nature." (underlining is ours).

In conclusion, the death of the claimed party determines the extinction of

any possible infringing responsibility on the part of the same in the plane

administrative and, consequently, the filing of this disciplinary file.

Therefore, in accordance with the applicable legislation, the Director of the Agency

Spanish Data Protection

RESOLVES:

FIRST: ORDER the FILE of this procedure as a consequence

of the death of B.B.B.

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SECOND: NOTIFY this resolution to D.D.D..

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 may optionally file an appeal for reversal before the

Director of the Spanish Agency for Data Protection within a period of one month from

count 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 for in article 46.1 of the

referred 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

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 through

writing addressed to the Spanish Data Protection Agency, presenting it through

of the Electronic Registry of the Agency [[https://sedeagpd.gob.es/sede-electronica-](https://sedeagpd.gob.es/sede-electronica-web/)

web/], or through any of the other registries provided for in art. 16.4 of the

mentioned 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 proceedings within a period of two months from the day following the

Notification of this resolution would terminate the precautionary suspension.

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Director of the Spanish Data Protection Agency

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