

□ Procedure No.: PS/00097/2020

RESOLUTION OF PUNISHMENT PROCEDURE

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

BACKGROUND

FIRST: On November 12, 2019, he entered this Agency

Spanish Data Protection, a document presented by A.A.A. (hereinafter the
claimant), through which he makes a claim against B.B.B. with NIF ***NIF.1 (in
hereinafter, the claimed), for the installation of a video surveillance system installed
***ADDRESS.1 (GIRONA) with indications of a possible breach of the
provided in the data protection regulations.

The reasons that support the claim and, where appropriate, the documents provided
by the claimant are as follows:

“Last October Mr. B.B.B. installed a video surveillance camera
records image and sound as can be seen in the built-in microphone, in
the wall of your house. The orientation of the camera is the public road and the entrance of
my house. For this reason I make this complaint.

Mr. B.B.B. has an alarm system installed with cameras that operate inside
your property and in the access portal, it also has the sign indicating the area of
company recording.

This camera is foreign to the aforementioned system. [...]”

Attach photographs of the camera in question, of the presumed angle of capture of the
same, of the video surveillance system installed in another area of the farm and the cartography
cadastral where the property of the claimant and claimed are identified.

SECOND: Prior to the acceptance of this claim for processing, it is

transferred the claimed, in accordance with the provisions of article 65.4 of the Law Organic 3/2018, of December 5, on the Protection of Personal Data and guarantee of digital rights (hereinafter, LOPDGDD). The aforementioned transfer was returned by “unknown” on 12/17/2019.

Given the possibility that the address provided by the claimant was not correct, the

On 12/19/2019, a new transfer of the claim was made, taking into account the street number that appears in one of the attached photographs to the claim. This new transfer was delivered on 01/16/2020.

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No response has been received from the respondent.

THIRD: The claim was admitted for processing by resolution of March 13 of 2020.

FOURTH: On June 9, 2020, 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 Regulation (EU) 2016/679 (Regulation General Data Protection, hereinafter RGPD), typified in article 83.5 of the same legal text.

FIFTH: On July 1, 2020, it has entry to the Spanish Protection Agency of written Data of the claimed person presenting allegations to the initiation agreement. in them essentially reveals the following:

"[...]two. The recording system to which the applicant refers in its written claim [...] It is not a recording system, or video surveillance, nor does it

no built-in microphone.

3. It is an ultrasound anti-bark system, installed and already removed [...]

[...]"

Accompany the following documents:

1. Photograph of the device and its packing box.
2. Photocopy of the technical specifications of the device.

SIXTH: The instructor of the procedure agreed, on August 7, 2020, to open

of a period of practice of tests, considering incorporated the claim

presented by the claimant and his documentation, the documents obtained by the

Subdirector General for Data Inspection and the allegations presented by the
reclaimed.

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: According to the photographs provided by the claimant in his letter of

November 12, 2020, on the perimeter wall of the defendant's farm,

an outward-facing device with the appearance of a
camera.

SECOND: The respondent states in his pleadings brief which device is

an ultrasonic anti-bark system that has been removed from its location. In

The photographs that accompany the writing can be seen:

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1. The "Ultpeak" brand device in question together with a packing box that shows a photo of the same model. The nature of the device responds to being a ultrasonic anti-bark device. The appearance of this device is corresponds to the image collected in the photographs provided by the claimant.
2. The technical specifications of the "Ultpeak" device that affect its nature.

FOUNDATIONS OF LAW

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By virtue of the powers that article 58.2 of the RGPD recognizes to each authority of control, and as established in arts. 47 and 48.1 of the LOPDGDD, the Director of The Spanish Agency for Data Protection is competent to resolve this process.

II

The facts object of the claim filed with the Spanish Protection Agency of Data motivated the beginning of the present sanctioning procedure for assuming a possible violation of article 5.1.c) of the RGPD that indicates that personal data shall be "adequate, relevant and limited to what is necessary in relation to the purposes for those that are processed ("data minimization")".

These infractions are typified in Article 83.5 of the RGPD, which considers as such:

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

- a) the basic principles for the treatment, including the conditions for the consent under articles 5, 6, 7 and 9;

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III

The present sanctioning procedure brings its cause in the presumed illegality of the installation of a device, with the appearance of a camera, located on the exterior wall of the farm located at the address indicated in the first antecedent and in the fact first of this writing. This device could be capturing images of the road public and pedestrians disproportionately and even of the housing that is located on the other side of the public road.

The proven facts show the existence at the time of the claim of a device that, according to the allegations and the images Photographs of the device presented by the respondent in his answer brief to the agreement to initiate this proceeding, it was an anti-barking system by ultrasound.

IV

According to the above, the device in question is not equipped with the capacity to obtain or record any image, so that by not being able to determine the existence of effective data processing, it is not possible to speak of infringing conduct within the scope of the regulatory framework of data protection, reason why which proceeds to file this procedure.

Therefore, in accordance with the legislation, the Director of the Spanish Agency for Data Protection RESOLVES:

FIRST: ORDER the FILE of this procedure as there is no accredited administrative infraction.

SECOND: NOTIFY this resolution to B.B.B. and inform A.A.A.

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.

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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

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