

□ File No.: EXP202202679

## RESOLUTION OF SANCTIONING 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 claiming party) dated March 1, 2022

filed a claim with the Spanish Data Protection Agency. claims her-

tion is directed against B.B.B. with NIF \*\*\*NIF.1 (\*hereinafter, the claimed party). The

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

The claimant states that the defendant, a resident of the Community of Owners in which both have a home, has installed, without the prior agreement of said Community, a video surveillance camera in the access to the community roof, being capable of capturing images of common areas of the building, without authorization for it.

Provide two images with the location of the camera and a video zone sign.

camera installed by the defendant.

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 03/07/22, to proceed with its analysis and inform this Agency on the plan within one month, of the actions carried out to adapt to the foreseen requirements. enough in the data protection regulations.

After consulting the database of this Agency, the transfer of in accordance with the provisions of Law 39/2015 (October 1), receiving answers-reference to it on 04/12/22 arguing various "family problems", as well as

as security reasons for the installation of the camera for deterrent purposes.

THIRD: On June 1, 2022, in accordance with article 65 of the LO-

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

FOURTH: On September 2, 2022, the Director of the Spanish Agency for

Data Protection agreed to initiate disciplinary proceedings against the claimed party,

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

of the Common Administrative Procedure of Public Administrations (hereinafter

te, LPACAP), for the alleged infringement of Article 5.1.c) of the GDPR, typified in the

Article 83.5 of the GDPR.

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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 submitted a written

of allegations in which, in summary, he stated the following:

"First of all, state that there is no Community of

owners. This farm is currently managed by the Property Chamber

urban and we are pending the horizontal division, so it is impossible to ask

permission to any Community.

As owner and owner of my house I put a video-surveillance camera

to protect my family and my assets (...) given the continuous attacks to which so-

submitted by the complainant and his wife.

Currently, Court and Instruction No. 4 (\*\*LOCATION.1) has a large

recording made by the video-recorder where the vandalism of this

who denounces me smashing the glass of the door leading to the roof even knowing

dose recorded, since the camera is perfectly alerted as can be seen

with the recording and as ordered by the GDPR”.

“Out of the control of video surveillance, he roams freely doing what he wants.

it pleases, since it has already been transferred to the Urban Property Chamber, it places can-

dice as the laundromat's laundry, blocking the way to other users and serving

only the same amount of the roof area was used as a plant nursery (...) reaching a level

the cable of the stair lighting without any regard, etc... that is why he wants me to re-

throw away the installed camera to continue the damage”

SIXTH: On 10/15/22 <Proposed Resolution> was issued where after

analyze the broad allegations and specific circumstances of the facts exposed,

the presence of the installed camera was considered proportionate, proposing the

Archive of this procedure.

SEVENTH: Consulted the database of this Agency on 12/01/22, no

No response has been received, nor has any additional clarification been produced.

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 03/01/22 through the

which translates the following:

“presence of a video surveillance camera without prior agreement from the Community

of owners, in the area of access to the roof, being capable of capturing images.

common areas of the building”—folio no. 1-..

Second. It is accredited that the system is duly informed in a

visible in the area close to the home of the claimed party.

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Third. The presence of a camera with the possibility of recording is accredited, the images being temporarily destroyed, being located at the access door to the claimant's home in an area close to the only access door to the terrace torch.

Room. It is proven that the images of alleged criminal acts have been provided as evidence in the Court of Instruction No. 4

(\*\*\*LOCATION.1).

## 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 authority 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 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 examine the claim through which the moves "camera installation" that affects common areas without the support necessary legal do.

The above facts may affect the content of the article.

6.1 e) GDPR.

"The treatment is necessary for the fulfillment of a mission carried out in public interest or in the exercise of public powers conferred on the data controller treatment"

It should be remembered that the installation of cameras in Communities of owners, if common areas are affected, it must have the support of the Board of Owners, that authorizes the capture of said areas, by exceeding the private private sphere.

When installing security cameras in neighboring communities, it is necessary that the Community of Neighbors have the favorable vote of 3/5 of the totality totality of the owners who in turn represent 3/5 of the shares of participation as developed in article 17.1 of the Horizontal Property Law.

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Individuals are responsible for ensuring that the installed video surveillance systems are conform to current legislation, and must be in a position to prove such extremes. before the competent authority.

Cameras installed by individuals must be oriented towards their private space. vativo avoiding the capture of private area of third parties without just cause.

In no case will the use of surveillance practices be accepted beyond the objective environment.

of the installation and in particular, not being able to affect the surrounding public spaces.

dantes, adjoining buildings and vehicles other than those that access the monitored space.

Security cameras installed in private spaces will not be able to obtain images

of public spaces, the security function of public spaces corresponds to

exclusively to the State Security Forces and Bodies.

Likewise, in the case of false cameras, they must be oriented towards

private area avoiding intimidation of neighboring neighbors who are unaware

whether or not they process personal data.

Fake cameras can also affect the personal privacy of

the one claimed, in such a way that it is a criterion maintained by this Agency that the same

but limit their radius of action (orientation) towards a private area, respecting the tran-

quility of the private life of the affected person, who does not have to know the nature

of the system, but neither can he bear being intimidated by it in his personal sphere.

nal and/or domestic.

II

In general, to install a security camera(s) in Communities of

neighbors an agreement of the Board of owners is necessary in those legally

constituted as such, which is reflected in the corresponding point of the Order

of the day, after the express vote of the group of community members.

In this case, the statement of the defendant who argues

"that does not exist as such Community of owners on the farm", where the parties in

conflict we deduce they live on different floors of a building in common.

The claimed party acknowledges the installation of a video surveillance camera by

reasons of personal and family security, due to "bad relations" with the affected party.

clamant.

He argues that the system has an informative poster duly visible in-

formed by the person responsible for the processing of personal data, having provided images of acts of vandalism by the claimant in the Investigating Court no.

4 (\*\*LOCATION.1).

This body has spoken widely about the rejection of acts van-

Dalics of any nature, whether or not the people involved are relatives, consider

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making video surveillance cameras an ideal measure to try to prevent the themselves, in order to prove the alleged author of the same, which is limited to the see yourself recorded in the making of these.

In this case, the affected people maintain some type of kinship, space being limited and not affecting the privacy of the complaining party as it is a minimum transit area common to them, duly signposted.

Some of the conduct described by the complained party necessitates the presence of the device in question when affecting the area of access to your home, with regardless of the existence of a transit area shared with the complaining party, which is affected by it.

Remember that the images obtained with this type of device can be transfer to the State Security Forces and Corps or Investigating Judge closest, as a means of proof in order to prove certain behaviors behaviors not in accordance with the minimum standards of coexistence or even of a de-lawful

The recordings of the video surveillance cameras are valid evidence in the process

criminal and have the nature of documentary evidence.

Faced with situations such as those described, it is not possible to carry out a specific interpretation.

restrictive of the norm, which supposes a greater hardship for the victim of the attacks

poachers, which would lead the author of these to act again with total impunity in the belief

not be the object of any recording, inflicting new damages in or-

tend to impose their will or cause new damage or damage without justifiable cause

gives.

"Whoever causes damage to another's property not included in other titles of

this Code, will be punished with a fine of six to twenty-four months, given the

economic condition of the victim and the amount of the damage"—article 263 CP--.

So the presence of the camera is necessary to avoid damage to

communal and/or private areas, its scope is limited and may include

ve affect the access area if acts of vandalism take place there, the in-

third parties maintain a bad relationship, but share some kind of kinship,

there being no less restrictive measure to prove uncivil behaviors, complying with

even fulfilling a deterrent function against greater evils, which justifies the pro-

proportionality of the measure in question.

IV.

Based on the foregoing, it is considered that, having examined the circumstances of the case,

the measure is considered proportionate to the situation described, which justifies the maintenance

maintenance of the same in its current position, proceeding the File of the present pro-

procedure as the facts described are not considered an administrative offense.

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The parties are reminded of the importance of the rights at stake, and must redirect the relationship to the minimum rules of good neighborliness or settling where appropriate the differences that they could have in the opportune judicial instances.

Therefore, in accordance with the applicable legislation and assessed the criteria of graduation of sanctions whose existence has been accredited,

the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: ORDER the FILE of this procedure as there is no accredited the commission of any infraction in the matter at hand.

SECOND: NOTIFY this resolution to B.B.B..

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-web/>], or 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 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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