

□ Procedure No.: PS/00021/2020

938-300320

RESOLUTION OF PUNISHMENT PROCEDURE

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

FACTS

FIRST: Don A.A.A. (hereinafter, the claimant) dated January 16, 2020

filed a claim with the Spanish Data Protection Agency. The

claim is directed against B.B.B. with NIF ***NIF.1 (hereinafter, the claimed one).

The reasons on which the claim is based are persistence in the maintenance
of a video-surveillance camera oriented towards common areas without just cause,
issue that is generating great anxiety.

Together with the claim, it provides documentary evidence (photograph No. 1) that proves the
device presence.

SECOND: In view of the facts denounced in the claim and the documents
data provided by the claimant, the Subdirector General for Data Inspection pro-
vided to carry out preliminary investigation actions for the clarification
of the facts in question, by virtue of the powers of investigation granted to the
control authorities in article 57.1 of Regulation (EU) 2016/679 (Regulation
General Data Protection, hereinafter RGPD), and in accordance with the provisions
ed in Title VII, Chapter I, Second Section, of Organic Law 3/2018, of 5
December, of Protection of Personal Data and guarantee of digital rights (in
hereinafter LOPDGDD).

As a result of the research actions carried out, it is confirmed
that the data controller is the claimed party.

THIRD: After consulting the database of this body, it is associated with the announced a previous procedure with reference number PS/00178/2019 where proceeded to warn it, for the installation of a device that may not be correctly installed, violating current legislation.

“WARN (PS/00178/2019) to Doña B.B.B. for the infringement of art. 5.1 c)

RGPD, having installed a video-surveillance device oriented towards the entrance of the dwelling without just cause affecting the privacy of the complainant, infraction typifies in art. 83.5 letter a) RGPD, being punishable in accordance with art. 58.2 GDPR.

2.- REQUEST Doña B.B.B. so that, within a month from this act of non-certification, proceed in the following terms:

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-Explain if you have a video-surveillance device, explaining the characteristics of the same, and must accompany, where appropriate, photographs) of what is observed. goes with the same

-Provide a photograph with date and time that proves that you have a poster in your case approved video-surveillance.

-In case of removal/relocation of the camera, you must provide documentary proof mental (photograph with date/time) that accredits both aspects. (...).”.

FOURTH: On June 8, 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 the RGPD, typified in Article 83.5 of the

GDPR.

FIFTH: On 08/04/20 collaboration was requested from the Security Forces and Corps

Security of the locality (Local Police *** LOCATION.1) so that they could move to the

place of the facts in order to determine by means of the corresponding Act the

legality of the system, not receiving any response to date.

SIXTH: The database of this body was consulted, there is no allegation

In relation to the facts that are the subject of the complaint, no measure has been accredited to

correct the described situation.

PROVEN FACTS

First. It is accredited as reported Doña B.B.B.

Second. The presence of a video-surveillance device in the

housing shared between the parties, which affects areas of free transit of the

complainant without just cause.

Third. The notification of the Start Agreement of PS/00021/20 is accredited

through its publication in the B.O.E (date 08/11/20).

Fourth. No explanation has been made in relation to the device in question or

on the legality of the system, no corrective measure has been adopted for this purpose.

FOUNDATIONS OF LAW

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By virtue of the powers that article 58.2 of the RGPD recognizes to each authori-

control, and according to the provisions of articles 47 and 48 of the LOPDGDD, the Di-

rector of the Spanish Agency for Data Protection is competent to initiate and

to solve this procedure.

II

In the present case, the claim dated 01/16/20 is examined by me-

gave of which the complainant transfers as fact the continuity of a device of

video-surveillance that affects common areas of the house that he shares with his ex-father
fence, ignoring the "warnings" of this body.

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It should be noted that a prior resolution of Ape-
receipt (PS/00178/19), to prove the legality of the installed system, without ex-
any application or measure has been adopted in this regard.

In the initial complaint (02/01/19) the complainant transferred the installation of a
camera in the house they share after a judicial decision, being focused towards
common and/or private areas of the complainant, affecting their privacy and exerting
excessive control of their entrances/exits of the house.

Article 73 LOPDGDD (LO 3/2018, December 5):

“Based on the provisions of article 83.4 of Regulation (EU) 2016/679
are considered serious and will prescribe after two years the infractions that suppose a
substantial violation of the articles mentioned therein and, in particular, the following
following:

o) Failure to cooperate with the control authorities in the performance of their functions.
in cases not provided for in article 72 of this organic law.

The Resolution dated 10/08/19 is recorded in the computer system of this
Agency as "Notified" as verified by the Official Postal Service, coinciding
with the address provided by the complainant, being the habitual residence of both.

Article 31 RGPD provides the following: "The person in charge and the person in charge of the
treatment and, where appropriate, their representatives will cooperate with the supervisory authority

upon request in the performance of their duties.

III

In accordance with the evidence available in this proceeding, sanctioning procedure, it is considered that the defendant (a) has a device of video-surveillance that affects common areas of the house, without having adopted any measure or in response to the requirements of this Agency.

Article 58.2 RGD provides: "Each control authority will have all the following corrective powers indicated below:

i) impose an administrative fine pursuant to article 83, in addition to or instead of any of the measures mentioned in this section, according to the circumstances of each particular case; (...)"

When motivating the sanction, the following is taken into account:

-This type of device affects the "data processing" generating an intimacy measurement, on the person who suffers from it, who feels in control at all times. to--(art. 83.2 a) RGD).

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-the defendant has not made any allegation, nor has she adopted any measure to palliate the situation transferred by this body, nor has it accredited the legality of the system. theme--(art. 83.2 b) RGD)--.

The facts described determine a "neglect" on the part of the accused, that has been ignoring the warnings of this Agency, in order to accredit consider the legality of the system or the justification for its presence.

For all these reasons, a penalty of €1,500 (One Thousand Five Hundred Euros) is imposed, for not repeatedly attend to the requirements of this Agency, in order to certify

Check the legality of the installed system.

In order to avoid new complaints about the same "facts", it is recommended

in case the behavior described persists, the transfer of the same to the Court of Ins-nearest construction or transfer them to the Security Forces and Corps

of the State.

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

the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: IMPOSE Doña B.B.B., with NIF ***NIF.1, for an infraction of art. 73

letter o) LOPDGDD, a penalty of €1,500, being punishable in accordance with the

art. 58.2 GDPR.

SECOND: NOTIFY this resolution to Doña B.B.B. and REPORT the re-

result of the proceedings to the complainant Mr. A.A.A.

THIRD: Warn the sanctioned person that he must make the imposed sanction effective

Once this resolution is enforceable, in accordance with the provisions of

the art. 98.1.b) of Law 39/2015, of October 1, of the Administrative Procedure Co-

of the Public Administrations (hereinafter LPACAP), within the term of payment

voluntary 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, through its entry, 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, opened in the name of the Spanish Agency

Department of Data Protection at the banking entity CAIXABANK, S.A.. In case of

Otherwise, it will be collected during the executive period.

Received the notification and once executed, if the date of execution is
is between the 1st and 15th of each month, both inclusive, the term to carry out the
voluntary payment will be until the 20th day of the following month or immediately after, and if
is between the 16th and last day of each month, both inclusive, the term of the
payment will be until the 5th of the second following month or immediately after.

In accordance with the provisions of article 50 of the LOPDGDD, the

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 LPA-

CAP, the interested parties may optionally file an appeal for reconsideration before

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

counting from the day following the notification of this resolution or directly

contentious-administrative case before the Contentious-administrative Chamber of the Au-

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 Jurisdiction

Contentious-administrative diction, within a period of two months from the day following

Following the notification of this act, as provided in article 46.1 of the aforementioned

Law.

Finally, it is pointed out that in accordance with the provisions of art. 90.3 a) of the LPA-

CAP, the firm resolution may be provisionally suspended 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-web/>], or through any of the other registers provided for in art. 16.4 of the city tada Law 39/2015, of October 1. You must also transfer to the Agency the documentation certifying the effective filing of the contentious-administrative appeal. Yes the Agency was not aware of the filing of the contentious-administrative appeal nistrative within two months from the day following the notification of the pre- This resolution would end the precautionary suspension.

Sea Spain Marti

Director of the Spanish Data Protection Agency

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