

□ Procedure No.: PS/00150/2020

938-300320

RESOLUTION OF PUNISHMENT PROCEDURE

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

FACTS

FIRST: A.A.A. (*hereinafter, the claimant) dated September 7, 2019

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 "installation of an exterior camera with alleged
orientation towards public space" (folio nº1).

Together with the claim, it provides several photographs (Annex Doc. I, II and III) that
prove the installation of a camera installed in the exterior window of a terrace
oriented in principle towards public space.

SECOND: On 10/17/19 and 02/17/20, the claim was TRANSFERRED

to the denounced party, so that he could allege in law what he deems appropriate, without
no statement has been made in this regard.

THIRD: On June 17, 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.

FOURTH: The database of this body was consulted on 09/04/20, no

There is no allegation regarding the facts that are the subject of the complaint.

FOUNDATIONS OF LAW

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By virtue of the powers that article 58.2 of the RGPD recognizes to each control authority, and according to the provisions of articles 47 and 48 of the LOPDGDD, The Director of the Spanish Agency for Data Protection is competent to initiate and to solve this procedure.

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II

In the present case, we proceed to examine the claim dated 09/07/19 by means of which the following is transferred as the main fact:

“existence of a video-surveillance camera outside a balcony, with orientation towards public space” (folio nº1).

The complainant provides a copy of the Burofax sent to the accused, expressing his disagreement with the presence of the camera, which he considers is misoriented.

The art. 5.1 c) RGPD provides the following: The personal data will be: “adequate, relevant and limited to what is necessary in relation to the purposes for which they are processed ("data minimization").

It should be remembered that individuals are responsible for ensuring that the systems installed comply with current legislation, proving that it complies with all the requirements demanded by the regulations in force.

The installation of this type of device must have the mandatory sign informative, indicating the purposes and responsible for the treatment in your case of the data of a personal nature.

In any case, the cameras must be oriented towards the particular space, avoiding intimidate neighboring neighbors with this type of device, as well as control areas transit of the same without just cause.

Also with this type of device it is not possible to obtain image(s) of space public, as this is the exclusive competence of the Security Forces and Bodies of the Condition.

It should be remembered that even in the case of a "simulated" camera, the same should preferably be oriented towards private space, since it is considered that this type of device can affect the privacy of third parties, which are seen intimidated by it in the belief of being the subject of permanent recording.

On the part of individuals, it is not possible to install devices for obtaining images of public space, outside the cases allowed in the regulations.

The camera can fulfill a dissuasive function for housing protection, while making sure not to get images from public/private third party space without justified cause.

III

In accordance with the evidence available in this sanctioning procedure, it is considered that the defendant has a camera of video-surveillance oriented towards public space, without just cause.

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The installation of video surveillance cameras in the street corresponds only and exclusively to the State Security Forces and Bodies in compliance

of security features.

The known facts constitute an infraction, attributable to the claimed, for violation of article 5.1 c) RGPD.

The "evidence" provided confirms the presence of the device in question, as well as the orientation towards public space without just cause, considering the sufficient to prove the administrative infraction described.

The art. 83.5 RGPD provides the following: "Infringements of the provisions following will be sanctioned, in accordance with section 2, with administrative fines EUR 20,000,000 maximum or, in the case of a company, an amount equivalent to a maximum of 4% of the total global annual turnover of the previous financial year, opting for the highest amount:

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

Without prejudice to the provisions of article 83 of the RGPD, the aforementioned Regulation has in its art. 58.2 b) the possibility of sanctioning with a warning, in relation with what is stated in Considering 148:

"In the event of a minor offence, or if the fine likely to be imposed would constitute a disproportionate burden for a natural person, rather than sanction by means of a fine, a warning may be imposed. must however Special attention should be paid to the nature, seriousness and duration of the infringement, its intentional nature, to the measures taken to alleviate the damages suffered, the degree of liability or any relevant prior violation, the manner in which that the control authority has been aware of the infraction, compliance of measures ordered against the person responsible or in charge, adherence to codes of conduct and any other aggravating or mitigating circumstance."

The denounced party must report the technical characteristics of the

installed camera or documentary evidence of the removal of its current place of location, arguing everything necessary to prove the legality in your case installation (eg screen print, orientation, reason for installation, poster informative, etc.)

In case of persisting in the behavior described, the facts can be transferred to the State Security Forces and Bodies (vgr. Local Police) to verify documents the facts, and may, where appropriate, be the subject of a new procedure by this Agency.

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

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the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: IMPOSE Don B.B.B., with NIF ***NIF.1, for a violation of Article 5.1.c) of the RGPD, typified in article 83.5 of the RGPD, a sanction of Warning.

SECOND: REQUIRE the accused, so that according to art. 58.2 d) GDPR, legalize the situation described by proceeding to reorient the camera towards space Exclusively exclusive, accrediting such end before this Agency in legal form.

THIRD: NOTIFY this resolution to Don B.B.B. and REPORT the result of the performances to Don A.A.A.

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.

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 period of

month 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.

Sea Spain Marti

Director of the Spanish Data Protection Agency

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