

□ File No.: EXP202206136

RESOLUTION OF SANCTIONING PROCEDURE

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

BACKGROUND

FIRST: D.A.A.A. (hereinafter, the claiming party) on May 29,
2022 filed a claim with the Spanish Data Protection Agency against
14 INDOOR, S.L. (MAE WEST) with NIF B93634087 (hereinafter, the claimed party),
for the installation of a video surveillance system located in the SHOPPING CENTER
B.B.B., *** ADDRESS.1, there being indications of a possible breach of the
provided in article 13 of Regulation (EU) 2016/679 (General Regulation of
Data Protection, hereinafter GDPR).

The complaining party states that the complained party is responsible for a
establishment that has a video surveillance system inside, without
is duly signposted by means of the mandatory informative signs of
video surveillance area.

Provide images of the location of the cameras.

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
forward LOPDGDD), said complaint was forwarded to the claimed party, for
to proceed with 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.

The transfer, which was carried out in accordance with the regulations established in Law 39/2015, of
October 1, of the Common Administrative Procedure of the Administrations

Public (hereinafter, LPACAP) by electronic notification, was not collected by the person in charge, within the period of availability, understood as rejected in accordance with the provisions of article 43.2 of the LPACAP on June 11, 2022, as stated in the certificate that is in the file.

Although the notification was validly made by electronic means, assuming that carried out the procedure in accordance with the provisions of article 41.5 of the LPACAP, under newsletter, a copy was sent by post, which was returned by the emails with the annotation "Returned to origin due to excess (not withdrawn in office)" in dated June 30, 2022. In said notification, he was reminded of his obligation to interact electronically with the Administration, and were informed of the media of access to said notifications, reiterating that, in the future, you will be notified exclusively by electronic means.

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THIRD: On July 13, 2022, in accordance with article 65 of the LOPDGDD, the claim presented by the claimant party was admitted for processing.

FOURTH: On September 26, 2022, the Director of the Spanish Agency of Data Protection agreed to initiate disciplinary proceedings against the claimed party, for the alleged infringement of article 13 of the GDPR, typified in article 83.5 of the GDPR.

FIFTH: Once the aforementioned initiation agreement was notified, the defendant filed a document in the which, in summary, stated that "(...) is responsible for an establishment that

It has a video surveillance system inside, which is located

duly marked by means of the mandatory informative signs in places sufficiently visible, as well as at the entrances and exits of the facilities, photos are attached."

SIXTH: On October 25, 2022, the procedure instructor agreed to the opening of a test practice period, being considered reproduced, for the purposes of evidence the claim filed by the claimant and its documentation, the documents obtained and generated by the Sub-directorate General of Inspection of Data and allegations presented by the defendant.

SEVENTH: On October 27, 2022, a resolution proposal was formulated in the that, in accordance with the evidence available in this disciplinary procedure, it was considered that there are cartels, duly completed, reporting the installation of cameras.

Based on the foregoing, it was appropriate to propose the filing of the claim filed by the alleged infringement of article 13 of the GDPR.

In this proposal, a period of 10 days was granted so that the defendant could allege whatever he considers in his defense as well as present the documents and information that it considers pertinent, in accordance with article 89.2 of the LPACAP, with no response received.

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 May 29, 2022, he entered this Spanish Agency for Data Protection a claim that shows that the claimed party is responsible for an establishment that has an internal security system video surveillance, without being duly marked by means of the Mandatory informative posters of video-surveilled area.

SECOND: Existence of informative posters of the video-monitored area in the CENTER

COMMERCIAL B.B.B., ***ADDRESS.1.

THIRD: The claimed party has provided various photographs of the posters
informative.

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FUNDAMENTALS OF LAW

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In accordance with the powers that article 58.2 of the GDPR grants to each authority of
control and as established in articles 47 and 48.1 of the LOPDGDD, it is
competent to initiate and resolve this procedure the Director of the Agency
Spanish Data Protection.

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

On May 29, 2022, he entered this Spanish Protection Agency
of Data a claim that shows that the claimed party is
person in charge of an establishment that has an internal security system
video surveillance, without being duly marked by means of the
Mandatory informative posters of video-surveilled area.

Article 5.1 c) GDPR provides that personal data shall be "adequate, pertinent 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.

The cameras should be oriented towards the particular space, avoiding intimidating neighboring neighbors with this type of device, as well as control transit areas of the same without just cause.

On the part of individuals, it is not possible to install imaging devices of public space, outside the cases allowed by the regulations, as this is exclusive competence of the State Security Forces and Corps.

The treatment of images through a video surveillance system, to be

In accordance with current regulations, it must meet the following requirements:

- Respect the principle of proportionality.
- When the system is connected to an alarm center, it can only be installed by a qualified private security company contemplated in article 5 of Law 5/2014 on Private Security, of April 4.
- The camcorders will not be able to capture images of the people who are outside the private space where the video surveillance system is installed, since

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Image processing in public places can only be performed, unless there is government authorization, by the Security Forces and Bodies. Neither

spaces owned by third parties may be captured or recorded without the consent of their owners, or, where appropriate, the people who are in them.

This rule admits some exceptions since, on some occasions, for the protection of private spaces, where cameras have been installed on facades or inside, it may be necessary to guarantee the security purpose the recording of a portion of the public road. That is, cameras and camcorders installed for the purpose of security will not be able to obtain images of the public thoroughfare unless it is essential for said purpose, or it is impossible to avoid it due to the location of the those and extraordinarily the minimum space for said purpose. Therefore, the cameras could exceptionally capture the portion minimally necessary for the intended security purpose.

- The duty to inform those affected provided for in articles 12 and 13 of the GDPR and 22.4 of the LOPDGDD.

Specifically, in the video-surveilled areas, at least one badge must be placed informative located in a sufficiently visible place, both in open spaces and closed, which will identify, at least, the existence of a treatment, the identity of the person responsible and the possibility of exercising the rights provided for in said precepts. Likewise, the information must be kept available to those affected. to which the aforementioned GDPR refers.

- The controller must keep a record of processing activities carried out under his responsibility in which the information to which he makes reference article 30.1 of the GDPR.

- Installed cameras cannot get images from third-party proprietary space and/or public space without duly accredited justified cause, nor can they affect the privacy of passers-by who move freely through the area. It is not allowed, for therefore, the placement of cameras towards the private property of neighbors with the purpose of

to intimidate them or affect their private sphere without just cause.

- In no case will the use of surveillance practices be accepted beyond the environment object of the installation and in particular, not being able to affect public spaces surroundings, adjoining buildings and vehicles other than those that access the space guarded.

II

The defendant, in his pleadings to the initiation agreement, has stated that

It has informative posters of a video-surveilled area, providing several photographs.

IV.

In the present case, it is necessary to analyze the presumed illegality of the installation of a video surveillance system in B.B.B. SHOPPING CENTER, ***ADDRESS.1.

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The proven facts show that there are informative signs for the area video surveillance

V

Examining the file as a whole, the existence of no violation.

Therefore, according to the above,

the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: TO ORDER the ARCHIVE of the present proceedings as there are no accredited the commission of any administrative infraction.

SECOND: NOTIFY this resolution to 14 INDOOR, S.L. (MAE WEST).

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 article 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 article 90.3 a) of the LPACAP,

The firm resolution may be temporarily 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 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 records provided for in article 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.

Mar Spain Marti

Director of the Spanish Data Protection Agency

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