



File No.: EXP202202841

RESOLUTION OF SANCTIONING PROCEDURE

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

BACKGROUND

FIRST: On 03/08/2022, he entered this Spanish Agency for
Data Protection a document presented by A.A.A. (hereinafter, the part
claimant), through which he makes a claim against B.B.B. with NIF ***NIF.1 (in
below, the claimed party), for the installation of a video surveillance system
located at ***ADDRESS.1, there being indications of a possible breach of the
provided in the personal data protection regulations.

The reasons for the claim are the following:

"The neighbor of the adjoining house has installed a video surveillance camera type
dome. That, in the present case, the orientation of the camera towards the garden and the road
housing in which I live is considered suitable to generate in the
plaintiff the reasonable doubt of being observed and recorded in an environment
private (...).

It also focuses all the access to my home by recording the public thoroughfare (...)."

Attached photographic report of the location of the camera.

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), on 03/09/2022 the claim was transferred to the party
claimed, so that it proceeds to its analysis and informs this Agency within the term
of one month, of the actions carried out to adapt to the foreseen requirements

in the data protection regulations; resulting in “Returned to origin (not withdrawn in office)” on 03/30/2022. It was reiterated on 03/31/2022, obtaining the same result on 04/26/2022.

THIRD: On 04/29/2022, in accordance with article 65 of the LOPDGDD,
The claim presented by the complaining party was admitted for processing.

FOURTH: On 06/20/2022, the Director of the Spanish Protection Agency
of Data 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
Common Administrative Procedure of Public Administrations (hereinafter,
LPACAP), for the alleged infringement of article 5.1.c) of the GDPR, typified in the
Article 83.5.a) of the GDPR.

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FIFTH: On 07/02/2022 the claimed party is notified of the aforementioned initiation agreement
in accordance with the rules established in the LPACAP, and submits a written
allegations in which, in summary, he states the following:

“[...]

FIRST.- Nullity of actions for violation of essential rules of the
administrative Procedure. Defenselessness ex article 24 of the Spanish Constitution.

[...]

What is certain and true is the house I own located at ***ADDRESS.1 is
a second residence to which one goes punctually and occasionally, since my
habitual residence and tax domicile, for all purposes, is located in

*** LOCATION.1, at the address that appears at the top of this letter. By

For this reason, said communications are recorded as not withdrawn at the Post Office

(...).

[...]

I use, as the greatest of the premises, that a situation of

real and effective defenselessness against my person, since it has been omitted

improperly carrying out a previous action, clearly essential for the

clarification of the facts denounced, which could well have

legally unraveled this matter without the need to initiate proceedings

some.

[...]

SECOND.- Flat dismissal of the complaint: Absence of impairment

serious to the right to the protection of personal data through the installation of a

video surveillance system for personal and domestic security purposes.

[...]

Thus, without any rigor, reference is made to the alleged illegal installation of a camera

dome-type video surveillance in my home with orientations both towards the garden of the

neighbor, as well as the public highway, which generate Mr. A.A.A. "reasonable doubts of being

being watched and recorded in a private setting." Big mistake.

And, in proof of the foregoing, it is attached, solely and exclusively, a report

photography of the location of said camera, which cannot be erected as a solid

rational indication of the existence of infringement (...)."

Along with the letter, the following documentation is attached:

- Copy of the registration certificate at ***ADDRESS.2.

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- Copy of the security service contract signed with the company "Securitas

Direct" dated 03/31/2022, as well as the report made by it on

07/08/2022.

- Screenshots of different news about illegal occupation of

properties in the neighborhood (...).

- Photographic report of the location of the cameras.

SIXTH: On 07/18/2022, the requested party is requested to provide a printout of

screen (date and time) to a size suitable for what the cameras in question

they view, making a brief explanation of what is being captured in their case.

On 08/10/2022, a response is received from the claimed party in which it contributes

Captures of the viewing of the cameras on days 11, 26 and 31/07/2022, and 2 and

08/03/2022; as well as satellite and exterior images of Google Maps of the property on

which indicates the location of the cameras.

SEVENTH: On 09/27/2022, the requested party is requested to contribute

print screen (date and time) to a size suitable for what the camera types

domo visiona, making a brief explanation of what, in your case, is being

catching. Well, the photographs provided in your letter correspond to two cameras

white with solar panel, while the model of the device object of claim

It is of the dome type with a dome shape and black glass.

On 10/14/2022, a response was received from the claimed party in which

In summary, it states the following:

"[...]

It is presented on October 11, 2022 to the company Movistar Prosegur

Alarms a trade to indicate what happened with the alarm installed in the

*** ADDRESS.1 assuming as true all the affirmations that are assured in the brief submitted to the Agency, in subsequent processing a response of the company.

The property in the month of January decides to increase security (...), it is decided that the

The best solution is the installation of a camera that controls the interior perimeter of the housing and that focuses on the interior façade and the interior perimeter to control access unauthorized access to the housing plot. Therefore, about the month of February requests the installation of said camera that covered the security needs of the estate.

Once the property is installed, it detects that the cameras are not being viewed by the app that is installed and there are different calls requesting the solution of the incidence (...), the incidence of the impossibility of viewing the camera and installation control via app and it is decided to hire the services of the company Securitas Direct because Movistar Prosegur Alarmas was unable to solve the incident, on March 31, 2022 the new alarm is installed

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with two viewing cameras; and at that moment we do have images of the perimeter inside the housing plot.

[...]"

Attach the following documentation:

- Copy of the email, dated 10/11/2022, sent to the address

gestiondeclientes@movistarproseguralarmaas.com. The content is the following:

"Dear Mrs Movistar Prosegur Alarms:

I Don B.B.B. with DNI ***NIF.1 I contact you before the requirement by the AEPD received on October 7, 2022 in my home (...).

The aforementioned Dome camera was installed at the residence of the *** ADDRESS.1 on the month of February March 2022 and that through its customer service phone on numerous occasions I requested that they fix the incidence of not viewing the cameras by your APP, as you well know

At the end of April, I stopped being your client and canceled my contract with your company, since the incident was never solved.

Therefore, and by means of this official letter, it is requested to be able to contribute to the AEPD the soon as possible (...).

Subsequently, the claimed party submitted a new document stating that "on March 3, 2022, a Maintenance Order is provided indicating the incidence where it is attested that the cameras are not seen by the APP provided for such effect and where the company is already indicated that if the incident is not fixed we would proceed to terminate their services and the camera in question. finally this happened on March 31, 2022 where we terminated the Prosegur service and gave discharged that of the company Securitas Direct". He adds that "at no time images were taken with the camera of the company Prosegur Movistar Alarmas and in Consequently, an illegitimate interference could not be carried out." Attach the following documents:

- Copy of the "Maintenance Order" mentioned above.
- Copy of the email, dated 10/17/2022, sent from the address

gestiondeclientes@movistarproseguralarmas.com to the claimed party. He

content is as follows:

"Good morning, dear customer:

We inform you that we have already requested the documentation from the corresponding departments to send it to you as soon as possible possible.

We attach the technical parts that you have requested (...)".

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EIGHTH: On 01/20/2023, the instructing body of the disciplinary procedure formulated a resolution proposal, in which it proposes that the Director of the Agency The Spanish Data Protection Agency orders the file for not having been in operation of the video surveillance camera object of claim due to an error in the system, thus there being no data processing.

This proposed resolution that was notified to the claimed party in accordance with the standards established in the LPACAP, was delivered on 02/02/2023, as It appears in the acknowledgment of receipt that is in the file. To this day, there has not been received any allegation by the claimed party.

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: The claim of 03/08/2022 reveals the installation of a dome-type video surveillance camera on the exterior side of the property owned

of the claimed party, located at ***ADDRESS.1; which, due to its position and height, could

Capture images of the public road and the private garden of the claimant.

The existence of the dome-type camera is proven with the photographic report provided by the complaining party.

SECOND: It is identified as the main person responsible for the dome-type device

B.B.B. with NIF ***NIF.1.

THIRD: On 03/31/2022, the claimed party signs a service contract

of security with the company "Securitas Direct" by virtue of which they are installed in the exterior of the listed property two white video surveillance cameras with

small solar panel

FOURTH: On 07/08/2022, the aforementioned company issues a service report by "Mano work/displacement" in relation to the video surveillance system mentioned in

the above "Proven Fact". In the "Observations" section, it states the following: "the

cameras are installed under current regulations, complying with current legislation".

FIFTH: In response to the first test request of 07/18/2022, the party

claimed provides the images captured by the App Arlo of "Securitas Direct" the days

07/11, 26 and 31/2022, and 08/2 and 03/2022 by the two white chambers. are proven

the following extremes:

- "Door" camera: limited to capturing the private garden of the claimed party

up to the dividing wall that adjoins the claimant's property.

- "Pool" camera: focuses on the perimeter of the private pool at the back

claimed.

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***EMAIL.1

SIXTH: Following the second test request made on 09/27/2022, the party

Claimed provides a copy of the email sent on 10/11/2022 at 2:41 p.m.

from

electronics

gestiondeclientes@movistarproseguralarmas.com.

In it, he asks the company

"Movistar Prosegur Alarms" documentation related to the installation of the

dome-type camera (object of claim) in the month of February 2022 in

***ADDRESS.1, but that didn't work.

address

the

to

SEVENTH: On 10/17/2022 at 12:19, mail was sent to ***EMAIL.1 from the address

gestiondeclientes@movistarproseguralarmas.com in which an "Order of

maintenance" of 03/03/2022 in relation to an "outdoor domonial" camera

installed at ***ADDRESS.1. In the section "Description of work" it is indicated what

following: "After being in the installation, an attempt is made to configure the application on the phone

of the client and at the time of registering it gives us an error by putting a message that

contact Customer Service. I contact care

to the client notifying that I am a technician and that I have this incident and they tell me that

You already know the incidence of this client that we cannot solve since they have it

to solve the computer since it has a problem with the configuration of

the application. The client is informed and he gets angry, threatening to leave. Since he wears a

month and a half with the same problem and they are not solved. Tried to register again

user and even so it continues giving us a registration error communicating the same message

(...)”.

EIGHTH: It is documented that the type of video surveillance camera

dome has been removed and one of the white devices has been installed in its place

called "Gate".

NINTH: This Agency has notified the claimed party of the proposed resolution

of the present disciplinary procedure, but it has not presented allegations

against it.

FUNDAMENTALS OF LAW

Yo

In accordance with the powers that article 58.2 of Regulation (EU) 2016/679

(General Data Protection Regulation, hereinafter GDPR), grants each

control authority and as established in articles 47 and 48.1 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: "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.”

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In accordance with the provisions of article 4.1 of the GDPR, the physical image of a person is personal data and, therefore, its collection and conservation gives rise to a processing of personal data.

Article 5 of the GDPR lists the principles that must govern said treatment and, in

Specifically, section 1 letter c) provides that: "Personal data will be: c)

adequate, relevant and limited to what is necessary in relation to the purposes for which that are processed ("data minimization")." This means that in one treatment

In particular, only appropriate personal data may be processed, which is appropriate and

that are strictly necessary to fulfill the purpose for which they are

treaties; must carry out a treatment adjusted and proportional to the purpose to which

which is heading Therefore, the processing of excessive data should be restricted or

proceed to their deletion.

For its part, processing for video surveillance purposes is regulated in the

Article 22 of the LOPDGDD. In this sense, the aforementioned precept allows "the treatment

of images through systems of cameras or camcorders with the purpose of

preserve the safety of people and property, as well as its facilities"; but

"images of the public thoroughfare may only be captured to the extent that it is

essential for the purpose mentioned in the previous section. That is, the

Cameras and camcorders installed for security purposes may not obtain

images of the public thoroughfare, unless it is essential for said purpose or it is

impossible to avoid it due to their location. And, in such an extraordinary case,

cameras will only be able to capture the minimum portion necessary to preserve the

safety of people and property, as well as its facilities.

In no case can the installed cameras obtain images of private space

of a third party and/or public space without duly accredited justified cause, nor can they

affect the privacy of passers-by who move freely through the area. Also, don't the placement of cameras towards the private property of neighbors is allowed with the purpose of intimidating them or affecting their private sphere without just cause; and neither images may not be captured or recorded in spaces owned by third parties without the consent of their owners, or, where appropriate, of the people who are in them find.

It should be remembered that, even in the case of being a "simulated" camera, the itself should preferably be oriented towards private space, since it is considers that this type of device can affect the privacy of third parties, who are intimidated by it into the belief that they are being recorded permanent.

Violation of article 5.1.c) of the GDPR is typified in article 83.5.a) of the GDPR, which provides the following:

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

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

For the purposes of the limitation period for infringements, it is considered very

serious and prescribes after three years, in accordance with article 72.1.a) of the LOPDGDD, which states that:

a) The processing of personal data in violation of the principles and guarantees established in article 5 of Regulation (EU) 2016/679;

(...)"

II

This Agency is not aware that the claimed party has submitted a written of allegations against the proposed resolution.

However, as already indicated in the motion for a resolution, with respect to the allegations presented by the claimed party against the opening agreement of the this sanctioning procedure, it is necessary to carry out the following considerations:

☐ Regarding the fact that "the house I own located at ***ADDRESS.1 is a second residence to which one goes punctually and occasionally, since that my habitual residence and tax domicile, for all purposes, is in Madrid (...). Through this writing I assert that the only notification received by the AGENCY is the letter received last June 30th (...). I claim that there has been a situation of defenselessness real and effective against my person, since the carrying out a prior action, clearly essential for the clarification of the facts denounced (...); It should be noted that, in the moment of the transfer of the claim to the claimed party, this Agency only had the address provided by the complaining party and that matches with that of the property where the dome type camera was installed. That is why the Notification was attempted at that address in the absence of knowledge of another. In any case, article 65.4 of the LOPDGDD provides for the transfer of the

claim to the claimed party before deciding on the admission for processing

as an optional action of this Agency, not mandatory. Specifically, the

The 2nd paragraph of the aforementioned precept states that "The Spanish Agency for the Protection of

of Data may also send the claim to the person in charge or in charge

of the treatment (...)". Thus, the failure to carry out the act

administrative matter in question would not vitiate the disciplinary procedure or generate

an assumption of helplessness.

□ Regarding the "absence of serious impairment to the right to protection

personal data through the installation of a video surveillance system

for personal and domestic security purposes"; in the photographic report

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provided by the claimed party, the presence of two security cameras is observed.

white video surveillance placed on the exterior side of the property and

on one of the perimeter walls of your private pool. However, in the

claim speaks of a single dome-type chamber (dome-shaped and

black glass).

In the test phase, at first, a "screen print (date

and time) to an adequate size of what the cameras in question view, making

a brief explanation of what is being captured in your case". The claimed party

contributed the images captured by the Arlo App of "Securitas Direct" (subscribes contract

on 03/31/2022) on 11, 26 and 07/31/2022, and 2 and 08/03/2022 by both chambers

whites of which he speaks in his pleadings. In the viewing it is observed

described in the fifth section of the "Proven Facts", for which reason it is within the limits established by current regulations on the protection of Personal data.

Subsequently, a screen print was requested, but from what the camera captures dome-type video surveillance object of claim. In this sense, the defendant

You acknowledge having installed a device of these characteristics in your property with the company "Prosegur Movistar Alarmas" about the month of February, but that never produces viewing of the cameras by the app that is installed and there are different calls requesting the solution of the incident". Thus, in the "Maintenance Order" issued by the company quoted on 03/03/2022 in relation to an "outdoor domain" camera installed at ***ADDRESS.1, it is admitted that "After being in the installation, an attempt is made to configure the application on the client's phone and when registering it gives us an error putting a message that we contact customer service (...). HE tries to register a new user and still gives us registration error communicating the same message (...)".

Consequently, based on the tests carried out, it is considered that the camera type The dome object of the claim never came into operation due to an error in the system. In this way, the device could not obtain any image of a person physical identified or identifiable and, since there is no treatment of personal data staff, there can be no question of an administrative violation of article 5.1.c) of the GDPR. In addition, if the photographs provided by both parties are compared, it is notices that the camera in question has been removed.

It should be noted that "The interested parties will be responsible for the veracity of the documents that they present", in accordance with article 28.7 of the LPACAP.

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 to B.B.B., with NIF

***NIF.1, since the commission of the infraction of article 5.1.c) of the

GDPR for not having been in operation the camera object of claim.

SECOND: NOTIFY this resolution to B.B.B., with NIF ***NIF.1.

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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.

Mar Spain Marti

Director of the Spanish Data Protection Agency

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