

□ Procedure No.: PS/00131/2021

RESOLUTION OF PUNISHMENT PROCEDURE

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

BACKGROUND

FIRST: On November 18, 2019, he entered this Agency

Spanish Data Protection, a document presented by A.A.A. (hereinafter, the
claimant), through which he makes a claim against B.B.B. with NIF ***NIF.1 and
against C.C.C. with NIF ***NIF.2 (hereinafter, those claimed), for the installation of a
video surveillance system installed in urbanization

***URBANIZATION.1,

***LOCALIDAD.1, ***PROVINCIA.1, with indications of possible non-compliance
of the provisions of the personal data protection regulations.

The reasons underlying the claim are that the neighbor of apartment 10 has
installed, without authorization from the Community of Owners or the affected neighbors and
without placing an information poster, various video surveillance cameras outside his
living place. That these cameras are oriented both to the landing of the stairs and
focusing directly on the entrance of your home and any other neighbor that
walk up the stairs.

Photo report is provided.

SECOND: Prior to the acceptance of this claim for processing, it is
transferred the claimed, in accordance with the provisions of article 65.4 of the Law
Organic 3/2018, of December 5, on the Protection of Personal Data and guarantee of
digital rights (hereinafter, LOPDGDD), being returned by the service of
mail with the annotation "returned to origin due to surplus (Not picked up at the office)".

Therefore, said transfer was reiterated, being returned again for the same reason.

THIRD: The claim was admitted for processing after the report of actions prior dated March 22, 2021.

FOURTH: On April 12, 2021, the Director of the Spanish Agency for Data Protection agreed to initiate a sanctioning procedure against those claimed, for the alleged infringement of articles 5.1.c) and 13 of the RGD, typified in article 83.5 of the GDPR.

FIFTH: On April 16, 2021, the notification of the Agreement to Start the Sanctioning Procedure, for which it was sent to the Board Single Edict (TEU), being published on April 21, 2021.

There is no evidence that, at the present time, the defendants have submitted a written allegations to the same, for which what is stated in article 64 of the

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Law 39/2015, of October 1, of the Common Administrative Procedure of the Public Administrations (hereinafter, LPACAP), which in its section f) establishes that in case of not making allegations within the stipulated period on the content of the initiation agreement, this may be considered a resolution proposal when contains a precise statement about the imputed responsibility, therefore that a Resolution is issued.

In view of everything that has been done, by the Spanish Data Protection Agency

In this proceeding, the following are considered proven facts:

FACTS

FIRST: On November 18, 2019, he entered this Agency

AAA claim against those claimed for having installed several security cameras

video surveillance outside your home, oriented both to the landing of the

stairway as focusing directly on the entrance of your home and any other

neighbor walking down the stairs. It also indicates that there is no sign

informative of the existence of said cameras.

SECOND: Photographs of the location of the cameras are provided.

THIRD: The transfer of the claim that was made to the claimed party was returned by the

postal service with the annotation "Surplus (not picked up at the office)". Therefore, it

He reiterated the transfer, being returned again for the same reason.

In that transfer, you were asked to:

1. Documentation accrediting your employment or contractual relationship with D. D.D.D.

2. Identification of the person in charge of the video surveillance system (Name and NIF or company name and CIF), postal address and contact telephone numbers.

3. Information on the identity of the person or company that made the installation of the video surveillance system and relationship with the person in charge of the system. In

If it is a third party, attach a copy of the installation contract.

4. Clearly explain the causes that have motivated the installation of the aforementioned cameras and what is the purpose of their installation.

5. Information provided on the existence of a video-monitored area through photographs of the poster or informative posters in which it is possible to appreciate both its location as the data shown.

6. Number and characteristics of the cameras. In the event that it is fictitious cameras must provide the invoice, purchase receipt or any other document that serves to prove that they are fictitious.

7. Scope of the cameras and places where they are installed, accrediting

by means of photography of the images captured by the cameras, as displayed on the monitor or equivalent system, that the space for catchment so as not to affect adjoining land and houses, public roads or any other other alien or reserved space.

8. Detail of the people who can access the video surveillance system installed. If access is allowed to third parties, attach a copy of the contract correspondent.

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9. Indicate the term of conservation of the registered images.

10. If the video surveillance system is connected to an alarm center:

a. Identification of the security company that has carried out the installation of the video cameras and a copy of the contract for the provision of services signed with it.

b. Copy of the supporting documentation that the company security is authorized by the competent administrative body of the Ministry of the Interior as a private security company and number of accreditation. c. Copy of documentation that allows verification that the security company has notified the characteristics of the said facility to the competent authority in matters of security private.

11. In the event that the person responsible for the installation is a company or a commercial establishment, you must also:

- a. Provide a copy of the communications sent to the employees or their representatives to inform of the purpose of the installation of the cameras.
- b. Indicate the term of conservation of the registered images, together with the detail of the measures adopted to guarantee that only the authorized personnel access the recordings.

12. Copy of the Minutes of the Community of Owners in which it is agreed to install the video surveillance system.

FOUNDATIONS OF LAW

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By virtue of the powers that article 58.2 of the RGPD recognizes to each authority of control, and as established in arts. 47 and 48.1 of the LOPDGDD, the Director of The Spanish Agency for Data Protection is competent to resolve this process.

II

The physical image of a person under article 4.1 of the RGPD is personal data and its protection, therefore, is the subject of said Regulation. Article 4.2 of the GDPR defines the concept of “treatment” of personal data.

Article 22 of the LOPDGDD establishes the specificities of data processing for video surveillance purposes, indicating the following:

- "1. Natural or legal persons, public or private, may carry out the processing of images through camera systems or video cameras with the purpose of preserving the safety of people and property, as well as their installations.
2. Images of public roads may only be captured to the extent that is essential for the purpose mentioned in the previous section.

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However, it will be possible to capture the public road in an extension

superior when necessary to guarantee the security of goods or

strategic installations or infrastructures linked to transport, without

In no case may it involve capturing images of the interior of a home

private.

3. The data will be deleted within a maximum period of one month from its

collection, except when they had to be kept to prove the commission of

acts that threaten the integrity of persons, property or facilities. In that

case, the images must be made available to the competent authority in

within a maximum period of seventy-two hours from the date of knowledge of the

existence of the recording.

The blocking obligation provided for in

article 32 of this organic law.

4. The duty of information provided for in article 12 of the Regulation (EU)

2016/679 will be understood to be fulfilled by placing an informative device

in a sufficiently visible place identifying, at least, the existence of the treatment,

the identity of the person in charge and the possibility of exercising the rights provided for in the

Articles 15 to 22 of Regulation (EU) 2016/679. It may also be included in the

informative device a connection code or internet address to this

information.

In any case, the data controller must keep available to

those affected the information referred to in the aforementioned regulation.

5. Under article 2.2.c) of Regulation (EU) 2016/679, it is considered excluded from its scope of application the treatment by a natural person of images that they only capture the interior of their own home.

This exclusion does not cover processing carried out by a security entity private that had been contracted for the surveillance of a home and had access to the images.

6. The processing of personal data from the images and sounds obtained through the use of cameras and video cameras by the Armed Forces and Security Bodies and by the competent bodies for surveillance and control in penitentiary centers and for the control, regulation, vigilance and discipline of the traffic, will be governed by the legislation transposing Directive (EU) 2016/680, when the treatment is for the purposes of prevention, investigation, detection or prosecution of criminal offenses or execution of criminal sanctions, including protection and prevention against threats to public safety. Outside In these cases, said treatment will be governed by its specific legislation and additionally by Regulation (EU) 2016/679 and this organic law.

7. What is regulated in this article is understood without prejudice to the provisions of Law 5/2014, of April 4, on Private Security and its development provisions.

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8. The treatment by the employer of data obtained through information systems cameras or video cameras is subject to the provisions of article 89 of this law

organic.”

III

In accordance with the foregoing, the processing of images through a video surveillance system, to be in accordance with current regulations, must comply with the following requirements:

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

video surveillance, since the processing of images in public places can only be carried out, unless there is government authorization, by the Forces and Corps of Security. Nor can spaces owned by third parties be captured or recorded without the consent of their owners, or, as the case may be, of the persons who are find.

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 public road. That is, cameras and video cameras installed for the purpose of security will not be able to obtain images of public roads unless it is essential for said purpose, or it is impossible to avoid it due to the location of 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 the

articles 12 and 13 of the RGPD, and 22 of the LOPDGDD, in the terms already indicated.

- The person in charge must keep a record of treatment activities

carried out under its responsibility, including the information to which it makes reference article 30.1 of the RGPD.

- The installed cameras cannot obtain images from private space of

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

affect the privacy of passers-by who move freely through the area. No this

allowed, therefore, the placement of cameras towards the private property of neighbors

with the purpose of intimidating them or affecting their private sphere without just cause.

- In no case will the use of surveillance practices be admitted beyond the

environment object of the installation and in particular, not being able to affect the spaces

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surrounding public, adjoining buildings and vehicles other than those accessing the

guarded space.

In summary and to facilitate the consultation of interested parties, the Spanish Agency for

Data Protection offers through its website [<https://www.aepd.es>] access to

the legislation on the protection of personal data, including the RGPD and the

LOPDGDD (section “Reports and resolutions” / “regulations”), as well as the Guide

on the use of video cameras for security and other purposes, as well as the Guide

for compliance with the duty to inform (both available in the section “Guides

and tools”).

It is also of interest, in the event of carrying out low-risk data processing, the

facilitates free tool (in the “Guides and tools” section), which, through specific questions, allows to assess the situation of the person in charge with respect to the treatment of personal data that it carries out, and where appropriate, generate various documents, informative and contractual clauses, as well as an annex with measures guidelines considered minimum.

IV

In the present case, the claim was filed because the defendants have installed several video surveillance cameras outside your home, aimed at both the stair landing as if looking directly at the entrance to your home and any other neighbor walking down the stairs. It also indicates that there is no informative poster of the existence of these cameras.

As proof of these statements, the claimant provided the evidence indicated in the “Facts” section of this agreement.

The corrective powers available to the Spanish Agency for the Protection of Data, as a control authority, is established in article 58.2 of the RGPD. Among them they have the power to issue a warning -article 58.2.b)-, the power to impose an administrative fine in accordance with article 83 of the RGPD -article 58.2 i)-, or the power to order the controller or processor that the treatment operations comply with the provisions of the RGPD, when appropriate, in a certain way and within a specified period -article 58. 2 d)-.

According to the provisions of article 83.2 of the RGPD, the measure provided for in article 58.2 d) of the aforementioned Regulation is compatible with the sanction consisting of a fine administrative.

Without prejudice to the provisions of article 83 of the RGPD, the aforementioned Regulation has in its art. 58.2 b) the possibility of directing a warning, in relation to what

indicated in Recital 148: "In the event of a minor infraction, or if the fine likely to be imposed would constitute a disproportionate burden on a natural person, instead of sanctioning by means of a fine, a warning. However, special attention must be paid to the nature, gravity and duration of the infringement, its intentional nature, the measures taken to mitigate the damages and losses suffered, to the degree of responsibility or to any

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pertinent previous infraction, to the way in which the control authority has had knowledge of the infraction, compliance with measures ordered against the responsible or in charge, adherence to codes of conduct and any other aggravating or mitigating circumstance.

v

In accordance with the evidence available and which has not been distorted in the sanctioning procedure, the defendants have installed several video surveillance cameras outside your home, aimed at both the stair landing as if looking directly at the entrance of your home, that could be capturing images from third parties, and also lacks a poster informative of the existence of said cameras, for which it is considered that these facts violate the provisions of articles 5.1.c) and 13 of the RGPD, which implies the commission of offenses typified in article 83.5 of the RGPD, which provides the

Next:

"Infringements of the following provisions shall be sanctioned, in accordance

with paragraph 2, with administrative fines of a maximum of EUR 20,000,000 or, in the case of a company, an amount equivalent to a maximum of 4% of the global total annual turnover of the previous financial year, opting for the largest amount:

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

b) the rights of the interested parties according to articles 12 to 22;

[...].”

For the purposes of the limitation period for infractions, the infractions indicated in the previous paragraph are considered very serious and prescribe after three years, in accordance with Article 72.1 of the LOPDGDD, which establishes that:

"According to the provisions of article 83.5 of Regulation (EU) 2016/679

are considered very serious and will prescribe after three years the infractions that suppose a substantial violation of the articles mentioned therein and, in particular, the following:

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

b) The processing of personal data without the concurrence of any of the conditions of legality of the treatment established in article 6 of the Regulation (EU) 2016/679.

(...)

h) The omission of the duty to inform the affected party about the treatment of their personal data in accordance with the provisions of articles 13 and 14 of the Regulation (EU) 2016/679 and 12 of this Organic Law.

(...)»

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SAW

In the present case, it is considered that the corresponding sanction is to direct a warning, in accordance with the provisions of article 58.2 b) of the RGPD, in relation to what is stated in Considering 148, cited above.

In addition, the following elements have been taken into account, in particular.

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that it is an individual whose main activity is not linked to

the processing of personal data.

that there is no recidivism, because the commission is not recorded, in the term of one year, of more than one infraction of the same nature.

7th

However, as already indicated in the initial agreement and in accordance with the established in the aforementioned article 58.2 d) of the RGPD, according to which each authority of control may "order the person responsible or in charge of processing that the processing operations comply with the provisions of this Regulation, where appropriate, in a certain manner and within a specified period [...]."

The respondent is required to take the following measures:

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provide the images that are observed with the devices in question,

indicating on a location map the parts that correspond to its

private property.

certify having proceeded to withdraw the cameras from the places

current, or to the reorientation of the same towards their particular area.

certifies having proceeded to the placement of the informative device in the

video-monitored areas or to complete the information offered in the same

(must identify, at least, the existence of a treatment, the identity

of the person in charge and the possibility of exercising the rights foreseen in

said precepts), locating this device in a sufficiently

visible, both in open and closed spaces.

certifies that it keeps the information available to those affected

referred to in the aforementioned RGPD.

It is warned that not meeting the requirements of this organization may be

considered as an administrative offense in accordance with the provisions of the RGPD,

typified as an infraction in its article 83.5 and 83.6, being able to motivate such conduct the

opening of a subsequent sanctioning administrative proceeding.

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:

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FIRST: ADDRESS A WARNING to B.B.B. with NIF ***NIF.1 and C.C.C. with

NIF ***NIF.2 for an infringement of articles 5.1.c) and 13 of the RGPD, typified in the articles 83.5.a) and 83.5.b) of the RGPD.

SECOND: REQUIRE B.B.B. with NIF ***NIF.1 and C.C.C. with NIF ***NIF.2, for that within a month from the notification of this resolution:

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provide the images that are observed with the devices in question, indicating on a location map the parts that correspond to its private property.

certify having proceeded to withdraw the cameras from the places current, or to the reorientation of the same towards their particular area.

certifies having proceeded to the placement of the informative device in the video-monitored areas or to complete the information offered in the same

(must identify, at least, the existence of a treatment, the identity of the person in charge and the possibility of exercising the rights foreseen in said precepts), locating this device in a sufficiently visible, both in open and closed spaces.

certifies that it keeps the information available to those affected referred to in the aforementioned RGPD.

THIRD

: NOTIFY this resolution to B.B.B. and C.C.C.

In accordance with the provisions of article 50 of the LOPDGDD, 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 month from counting 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.

Finally, it is pointed out 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 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 cited LPACAP. You must also transfer to the Agency the documentation that proves the effective filing of the contentious-administrative appeal. If the agency does not was aware of the filing of the contentious-administrative appeal in the period of two months from the day following the notification of this resolution, would terminate the precautionary suspension.

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