

□ Procedure No.: PS/00361/2019

938-051119

RESOLUTION OF PUNISHMENT PROCEDURE

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

BACKGROUND

FIRST: On July 8, 2019, it had entry in this Spanish Agency of

Data Protection a document presented by Mrs. A.A.A. (hereinafter, the

claimant), through which he makes a claim against Doña B.B.B. with NIF

***NIF.1 (hereinafter, the one claimed), for the installation on the exterior door of your

housing of a video surveillance camera that focuses on the exit of the elevator and the

community landing, without permission from the Community. It is installed in ***ADDRESS.1,

There are indications of a possible breach of the provisions of the regulations of
Data Protection.

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).

The claim was transferred to the claimed one, on 07/22/19, and it is returned

for "absent cast" on 08/06/19. The transfer was reiterated, on 09/03/19, and was
returned for "absent delivery" on 09/24/19.

THIRD: The claim was admitted for processing by resolution of October 9
of 2019.

FOURTH: On January 7, 2020, the Director of the Spanish Agency for

Data Protection agreed to initiate a sanctioning procedure against the claimed, for the

alleged infringement of Article 5.1.c) of the RGPD, typified in Article 83.5 of the GDPR.

FIFTH: The respondent submitted a written statement of allegations to the initiation agreement stating, in summary, the following:

- Given the lack of knowledge of the data protection regulations, it placed the security camera.
- As soon as this procedure was known, the camera was removed.
- Photographs are provided in which it is seen that he has removed it from the door of his House.

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In view of everything that has been done, by the Spanish Protection Agency of Data in this procedure the following are considered proven facts,

PROVEN FACTS

FIRST: Mrs. B.B.B. had installed on the outside door of his home in a video surveillance camera that focused on the exit of the elevator and the landing community, without permission from the Community. It is installed at ***ADDRESS.1

SECOND: After knowing that this installation could breach the regulations of data protection, removed the camera, as can be seen in the photographs provided.

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 as established in arts. 47 and 48.1 of the LOPDGDD, the

Director of the Spanish Data Protection Agency is competent to resolve this procedure.

II

Article 85.1 of Law 39/2015, of October 1, on the Procedure

Common Administrative of Public Administrations, referring to the termination in sanctioning procedures, establishes the following:

"1. A sanctioning procedure has been initiated, if the offender acknowledges his responsibility, the procedure may be resolved with the imposition of the sanction let it proceed."

In the present case, the defendant acknowledges having installed the security camera video surveillance for security, by not knowing the data protection regulations; immediately proceeding to uninstall it. For this reason, proceeding to resolution of the procedure.

III

The defendant party recognizes the installation of the security camera system video-surveillance, stating the "uninstallation of the installed system", correcting on the occasion of the processing of this procedure any "irregular" that he could have committed for this purpose.

In support of his claim, he provides documentary evidence that allows verifying the uninstalling the cameras from their current location.

In such a way that the infraction object of imputation of this organismo, noting that they were installed for security reasons.

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Article 58.2 RGPD “Each Control Authority of all the following po-
corrective duties indicated below:

b) Punish any person responsible or in charge of the treatment with a warning.

when the processing operations have violated the provisions of the
this Regulation”.

The defendant is accused of committing an infraction for violation of the
Article 5.1.c) of the RGPD, which states that the processing of the data must be c) appropriate
appropriate, pertinent and limited to what is necessary in relation to the purposes for which
are processed ("data minimization").

The infringement is typified in Article 83.5 of the RGPD and is qualified, for the purposes of
of prescription in article 72.1.a) of the LOPDGDD.

IV

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 a sanction.
tion by means of a fine, a warning may be imposed. must, however, lend
special attention to the nature, seriousness and duration of the infringement, its character
intentional, to the measures taken to alleviate the damages suffered, to the degree
liability or any relevant prior violation, to the manner in which the authority
control authority has become aware of the infraction, compliance with measures
measures ordered against the person in charge or in charge, adherence to codes of con-
conduct and any other aggravating or mitigating circumstance.”

Given that in the case at hand, the accused party implicitly recognizes

his responsibility in the facts, but has proceeded to correct the situation after written, it is appropriate to agree to impose a sanction of Warning without imposition of measures any, in the terms of article 58.2 b) RGPD, since the camera has been withdrawn give immediately. Therefore, it is worth highlighting the willingness to collaborate with this Agency by the claimed.

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 Article 5.1.c) of the RGPD, typified in Article 83.5.a) of the RGPD, a sanction of warning.

SECOND: NOTIFY this resolution to Doña B.B.B.

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THIRD

in accordance with the provisions of article 77.5 of the LOPDGDD.

: COMMUNICATE this resolution to the Ombudsman,

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.

Finally, it is pointed out that in accordance with the provisions of art. 90.3 a) of the
LPACAP, the firm resolution may be provisionally suspended in administrative proceedings
if the interested party expresses his intention to file a contentious appeal-
administrative. If this is the case, the interested party must formally communicate this
made by writing to the Spanish Agency for Data Protection,
introducing him to
the agency
[<https://sedeagpd.gob.es/sede-electronica-web/>], or through any of the other
records provided for in art. 16.4 of the aforementioned Law 39/2015, of October 1. Also
must transfer to the Agency the documentation that proves the effective filing
of the contentious-administrative appeal. If the Agency were not aware of the
filing of the contentious-administrative appeal within two months from the
day following the notification of this resolution, it would end the
precautionary suspension.

Electronic Registration of
through the
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