

□ Procedure No.: PS/00357/2021

## RESOLUTION OF PUNISHMENT PROCEDURE

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

### FACTS

FIRST: A.A.A. (\*hereinafter, the complaining party) dated March 12, 2021

filed a claim with the Spanish Data Protection Agency. The

claim is directed against B.B.B. with NIF \*\*\*NIF.1 (hereinafter, the part

claimed). The reasons on which the claim is based are succinctly:

following:

“presence of a camera” that presumably could lack the signaling

necessary and be oriented disproportionately towards the public thoroughfare,

considering that "it affects your privacy" reason why you request the withdrawal of the  
same (folio nº 1).

Along with the claim, provide documentary evidence (s) consisting of Note

simple of the house nº 30, property according to the claimant, as well as a

site plan indicating its exact location.

SECOND: In accordance with article 65.4 of Organic Law 3/2018, of 5

December, of Protection of Personal Data and guarantee of digital rights (in

hereinafter LOPDGDD), transfer was given on 04/05/21 and 04/21/21 of said claim.

to the party complained against, so that it could proceed with its analysis and inform this Agency

within a month, of the actions carried out to adapt to the requirements

sites provided for in the data protection regulations.

On 05/25/21, this Agency received a written response to the claim.

message indicating that it has a video-surveillance camera for security reasons.

ity, that it has an informative poster (attached photograph nº 1) being the in-  
logging of the same proportionate to the purpose pursued, which is the protection of the  
access area to your property.

THIRD: On July 6, 2021, the Director of the Spanish Agency for Pro-  
Data protection agreed to admit for processing the claim presented by the claimant party.  
keep.

FOURTH: On September 7, 2021, the Director of the Spanish Agency for  
Data Protection agreed to initiate a sanctioning procedure against the claimant, for the  
alleged infringement of Article 13 of the RGPD, typified in Article 83.5 of the RGPD.

FIFTH: The respondent did not make any objections to the agreement to initiate the procedure.  
Article 64.2.f) of the LPACAP -provision of which the one claimed was reported in the  
agreement to open the procedure- establishes that if no allegations are made  
within the term established on the content of the initiation agreement, when it contains  
make a precise pronouncement about the imputed responsibility, it may be

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considered motion for a resolution. In the present case, the agreement to initiate the  
sanctioning tooth determined the facts in which the accusation was specified, the  
infringement of the RGPD attributed to the claimed and the sanction that could be imposed. By  
this, taking into consideration that the respondent has not made allegations to the  
agreement to initiate the file and in accordance with the provisions of article 64.2.f)  
LPACAP, the aforementioned initiation agreement is considered in the present case as a proposal for  
resolution.

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. The facts bring cause of the claim dated 03/12/21 through the

which is transferred by the claimant the following:

“presence of a camera” that presumably could lack the signaling

necessary and be oriented disproportionately towards the public thoroughfare,

considering that "it affects your privacy" reason why you request the withdrawal of the

same (folio nº 1).

Second. The claimed B.B.B. is identified as the main responsible party.

Third. The presence of at least one video-surveillance camera is accredited

devoid of the mandatory informative distinctive indicating that it is a zone

video-monitored and incomplete when indicating the person responsible for the treatment or form

to exercise the rights recognized in the RGD.

## FOUNDATIONS OF LAW

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By virtue of the powers that article 58.2 of the RGD recognizes to each authority of

control, 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 re-

solve this procedure.

II

Before going into the substance of the matter, in the Initiation Agreement dated 09/07/21,

informed that in case of not making allegations, the same “may be considered

motion for a resolution”, not having made any statement in this regard,

According to an accredited query to the database of this organization on 10/05/21, by

which proceeds in the terms set forth.

In the present case, the claim dated 03/12/21 is examined by me-

which translates as the main fact the "presence of a camera" that precedes

It could simply lack the necessary signage and be oriented in a wrong way.

disproportionate towards public roads.

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From the documentation provided by the respondent (Proof No. 3), this

The Agency cannot consider that the installed sign conforms to current legislation, to the

not be appreciated the person in charge of the treatment, nor an effective direction where in his

case the legally recognized rights can be exercised.

The above facts suppose an infringement of the content of art. 13 RGPD, to care

have an informative badge indicating that it is a video-monitored area, not informing

command of the data controller, the purpose of the use given to the images captured

tada, etc.

Reporting on video surveillance according to RGPD is an obligation contained in this framework.

legislative co.

An informative device must be available in a visible area (eg access door)

indicating that it is a video-monitored area, it must indicate:

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the existence of the treatment.

the identity of the person responsible.

possibility of exercising the rights provided for in articles 15 to 22

of Regulation (EU) 2016/679.

The image of a person to the extent that it identifies or can identify the person constitutes personal data, which may be processed to di-  
various purposes.

Article 22 of Organic Law 3/2018 (December 5)-LOPDGDD- provides:

"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 to preserve the safety of people and property, as well as its installations.  
nes.

The AEPD, in a related report, stipulates that it is not necessary for cartels to be stand right below the cameras. It is enough to do it in a visible place and that it includes open and closed spaces where the video camera circuit is operational.

This badge will be displayed in a visible place, and at least, at the entrances to the areas guarded whether indoors or outdoors. In the event that the video-monitored space has has several accesses, said video-surveillance area badge must be available in each one of them.

III

In accordance with the evidence available in this proceeding sanctioning party, it is considered that the claimed party has a video system surveillance, whose informative badge presents irregularities as the responsible for the treatment or an effective address where to exercise the rights legally regulated.

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Although the installed camera partially captures part of a road, it can be indicate that it does so minimally, being able to adjust to the requirement of need to the protection of the home, so that only in case of approaching the gate of entry of the requested dwelling may be affected the right to data protection of a third party lurking nearby.

The known facts are therefore constitutive of an infraction, attributable to the part claimed for violation of the content of art. 13 RGD, by not adjusting the informative sign installed to those required marked by regulations.

#### IV

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

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

#### v

Without prejudice to the provisions of article 83 of the RGD, the aforementioned Regulation provides ne in your art. 58.2 b) the following:

"2 Each control authority will have all the following corrective powers in-listed below:

(...)

b) send a warning to any person responsible or in charge of the treatment when the treatment operations have violated the provisions of this Regulation;"

It should be noted that the respondent has actively collaborated with this Agency, which denotes that their will is not to violate current regulations, as well as the absence of previous infractions, which added to his condition as an individual advises a mere sanction of warning; in case of deficiency in the informative signage provided together with your written claim, and must send it duly conformed with in accordance with the regulations set forth (eg photograph with date and time) by virtue of what is determined in art. 58.2 d) GDPR.

If after a reasonable period (e.g. about four weeks) from the notification of this act should the situation described continue, the claimant may claim file a new claim providing a photograph (date and time) that proves that no The informative signage has been corrected, and a new procedure may be initiated by the events described.

Therefore, in accordance with the applicable legislation and after assessing the graduation criteria of the sanctions whose existence has been proven:

The Director of the Spanish Data Protection Agency RESOLVES:

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FIRST: ADDRESS B.B.B., with NIF \*\*\*NIF.1, for an infraction of Article 13 of the RGPD, typified in Article 83.5 b) of the RGPD, a sanction of WARNING.

SECOND: ORDER the claimed, in accordance with art. 58.2 d) RGPD, for that within a period of ONE MONTH proceed to the regularization of the informative badge, submitting documentary evidence to this Agency for incorporation into the administrative file treatment.

THIRD: NOTIFY this resolution to B.B.B. and REPORT the result

of the actions to the claimant A.A.A.

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

resorts may optionally file an appeal for reconsideration before the Director

of the Spanish Agency for Data Protection within a month from the date of

the day following the notification of this resolution or directly contentious appeal

before the Contentious-Administrative Chamber of the National High Court,

in accordance with the provisions of article 25 and section 5 of the additional provision

Final fourth of Law 29/1998, of July 13, regulating the Contentious Jurisdiction-

administrative, within a period of two months from the day following the notification

tion of this act, as provided for 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 interested party

do states its intention to file a contentious-administrative appeal. If it is-

In this case, the interested party must formally communicate this fact in writing

addressed to the Spanish Agency for Data Protection, presenting it through the Re-

Electronic registry of the Agency [<https://sedeagpd.gob.es/sede-electronica-web/>], or to

through any of the other registers provided for in art. 16.4 of the aforementioned Law

39/2015, of October 1. You must also transfer to the Agency the documentation

that proves the effective filing of the contentious-administrative appeal. If the

Agency was not aware of the filing of the contentious-administrative appeal

tive within two months from the day following the notification of this

resolution, would end the precautionary suspension.



Sea Spain Marti

Director of the AEPD, P.O. the Deputy Director General for Data Inspection, Olga

Pérez Sanjuán, Resolution 4/10/2021

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