

□ Procedure No.: PS/00312/2019

938-300320

RESOLUTION OF PUNISHMENT PROCEDURE

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

FACTS

FIRST: Don A.A.A. (*hereinafter, the claimant) dated May 10, 2019

filed a claim with the Spanish Data Protection Agency. The

claim is directed against B.B.B. with NIF ***NIF.1 (hereinafter, the claimed one).

The reasons on which the claim is based are "installation of a video camera-
surveillance against their will" (folio nº 1).

"The dwelling of Mr. A.A.A. is owned by Mr. B.B.B., being the
first inhabiting this as a tenant, along with his family. both estates
they are rural farms, with land that is not physically delimited.

One of the two cameras is focusing directly on the house and the
garden of Mr. A.A.A. (...). The other focuses on the entrance gate of Mr.

BBB (...)" In the complaint filed, he saw how an operator installed two cameras
of video-surveillance on a mast and nailed it inside his garden (photographs nº 1 and 2).

Along with the claim, provide documentary evidence (photographs) that prove the
installation of a camera oriented towards the tenant's access area and garden,
being able to control the accesses (entrances/exits) of the same.

SECOND: In view of the facts denounced in the claim and the documents
data provided by the claimant, the Subdirector General for Data Inspection pro-
vided to carry out preliminary investigation actions for the clarification
of the facts in question, by virtue of the powers of investigation granted to the

control authorities in article 57.1 of Regulation (EU) 2016/679 (Regulation General Data Protection, hereinafter RGPD), and in accordance with the provisions ed in Title VII, Chapter I, Second Section, of Organic Law 3/2018, of 5 December, of Protection of Personal Data and guarantee of digital rights (in hereinafter LOPDGDD).

As a result of the research actions carried out, it is confirmed that the data controller is the person claimed: Don B.B.B.

THIRD. On December 4, 2019, the Director of the Spanish Agency for Data Protection agreed to initiate a sanctioning procedure against the defendant, with glo to the provisions of articles 63 and 64 of Law 39/2015, of October 1, of the Pro- Common Administrative Procedure of Public Administrations (hereinafter, LPA- C/ Jorge Juan, 6

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

FOURTH: On 02/24/20, collaboration is requested from the Security Forces and Corps State Security for the purposes of specifying an effective domicile for the purposes of notifications of the mentioned denounced.

FIFTH: On 04/28/2020, a response was received from the Coordinator of the Office d'Atenció al Ciutadà ABP Alt Empordà – Roses--, providing the following data:

“B.B.B. born on February 26, 1951 in Barcelona, son of C.C.C. and of

D.D.D., with DNI (Spain) number ***NIF.1; residing at ***ADDRESS.1 telephone

phone ***PHONE.1. I inform you that according to data from the DGT, you have this same

home; in any case expanding the information would be ***LOCALIDAD.1 municipal term-

***LOCALIDAD.2 zip code ***C.P.”.

SIXTH: Attached as an annex is a list of documents in the

procedure, remembering full accessibility to the administrative file.

SEVENTH: On 05/12/20, a Resolution Proposal is issued, being subject to

notification in a timely manner, to the address of the accused, proposing a sanction

of €2,000 (Two Thousand Euros) for the verified infraction of article 5.1 c) RGPD, to the

have a video-surveillance system that obtains images in a way

disproportionate from the adjoining farm.

EIGHTH: When the database of this organization was consulted on 07/27/20, no

confirms the realization of any allegation in relation to the facts object of

transfer.

Of the actions carried out in this procedure and of the document

information in the file, the following have been accredited:

PROVEN FACTS

First. On 05/10/19, this agency received a complaint through which

The following is transferred as the main fact:

“One of the two cameras is focusing directly on the house and the

garden of Mr. A.A.A. (...). The other focuses on the entrance gate of Mr.

BBB (...).” In the complaint filed, he saw how an operator installed two cameras

of video-surveillance on a mast and nailed it inside his garden (photographs nº 1 and 2).

Second. It is identified as the main responsible Mr. B.B.B., with DNI

***NIF.1.

Third. It has accredited the installation of a video-surveillance camera oriented

towards the area of the complainant, who at the same time is a tenant of the same, without just cause.

each, exercising excessive control of the private area of the same.

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Fourth. There is no record of the presence of an informative poster, nor that the complainant was informed of the reasons for the installation, nor of the way to exercise their rights.

Fifth: A patrol of the State Security Forces and Corps moves

to the scene of the events, the Caporal del cos de Mossos d'Esquadra, both TIP ***TIP.1 and the

Mosso del cos de Mossos d'Esquadra, both TIP ***TIP.2, drew up the minutes that were ad-
together with the following content:

“existence of a mast about two meters high with two cameras. East

Mast is located inside the garden of the house of Mrs. E.E.E. and installed it, in
against the will of Mrs. E.E.E.”

“They are cameras that record and that he visualizes the images through his te-
mobile phone”

Sixth: It is confirmed by the State Security Forces and Bodies, the following
address, which matches the one on the driver's license: ***ADDRESS.2

FOUNDATIONS OF LAW

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By virtue of the powers that article 58.2 of the RGPD recognizes to each authori-
control, and according to the provisions of articles 47 and 48 of the LOPDGDD, the Di-
rector of the Spanish Agency for Data Protection is competent to initiate and
to solve this procedure.

II

On 05/10/19, this Agency received a complaint sent by the autonomous police

mica of Catalonia, by means of which the following is transferred as fact:

“...Mr. A.A.A. go to the premises of the Mossos d Police Station

‘Squad of ***LOCALIDAD.3 to file a Complaint against his neighbor, for having

installed some video-surveillance cameras against their will”

“The dwelling of Mr. A.A.A. is owned by Mr. B.B.B., being the

first inhabiting this as a tenant, along with his family. both farms

they are rural farms, with land that is not physically delimited”—folio nº 1--.

Therefore, the facts are specified in the installation of a video device

surveillance that is permanently oriented towards the area of use and enjoyment

of the accused, thereby affecting their privacy and having had to report the

made before the regional police.

It should be noted that individuals can install video-surveillance cameras, although

They are responsible for ensuring that they comply with current legislation.

With this type of device, the privacy of third parties cannot be affected,

as close neighbors who can be intimidated by them.

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The facts described above suppose an affectation to the content of art.5.1 c)

GDPR. “Personal data will be:

c) adequate, pertinent and limited to what is necessary in relation to the purposes for those that are processed ("data minimization").

III

In accordance with the "evidence" available in this pro-

sanctioning procedure, it is considered that the defendant has installed a camera system video-surveillance cameras that could affect the personal (family) privacy of the complainant without just cause, treating data of the same, through the reporting system ciated.

The known facts constitute an infraction, attributable to the claimant.

mado, for violation of art. 5.1 c) GDPR.

The position of lessor entails a series of rights and obligations, which

They are detailed mainly in the Civil Code.

The main obligation of the lessor is to assign the use and enjoyment of the leased property.

given.

The installation of home security measures must be compatible

with respect for the right to privacy of the tenant, so that it is not seen free

half in their freedom when enjoying the leased property.

With the device installed, the privacy of the device is directly affected.

mo, without the proportionality of the measure having been justified, there being

less harmful to preserve, where appropriate, the security of the property owned by them,

thus avoiding the "data processing" of third parties.

The presence of the installed device is accredited, as well as the operability of the

same, according to a telephone conversation of the State Security Forces and Bodies

ted with the defendant himself.

"They are cameras that record and that he visualizes the images through his te-mobile phone"

Article 77 section 5 of Law 39/2015 (October 1) provides the following:

"The documents formalized by the officials who are recognized as

condition of authority and in which, observing the corresponding legal requirements,

teeth the facts verified by those are collected will prove them except

prove the contrary”.

The art. 58.2 RGPD provides: "Each control authority will have all the following corrective powers indicated below:

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i) impose an administrative fine pursuant to article 83, in addition to or instead of any of the measures mentioned in this section, according to the circumstances of each particular case (...)."

The art. 83.5 a) RGPD provides the following: "Infringements of the provisions

The following will be sanctioned, in accordance with section 2, with administrative fines.

amounts of EUR 20,000,000 maximum or, in the case of a company, an amount equivalent to a maximum of 4% of the total global annual turnover for the year previous financial agreement, opting for the highest amount:

a)

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

When motivating the sanction, the following is taken into account:

-the nature of the damages caused, having installed video-surveillance disproportionately, affecting the privacy of the tenant, who is controlled in spaces reserved for their personal/family privacy, trying to access your data without just cause (art. 83.2 a) RGPD).

-the intentionality or negligence of the infraction, since there are less harmful means of protection of the property, not having informed the tenant of the works to

perform, exercising excessive control over areas contractually assigned to its

use and enjoyment and lacking an informative poster (art. 83.2 b) RGPD).

Therefore, based on the foregoing, it is considered correct to impose a

pecuniary sanction encrypted in the amount of €2,000, for having installed a system of

video-surveillance cameras, affecting the right to privacy of third parties without cause

justified, proceeding to "process data of third parties" without any apparent justification.

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

considered as a new administrative infraction in accordance with the provisions of the

RGPD, typified as an infringement in its article 83.5 and 83.6, being able to motivate such con-

ducts 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:

FIRST: IMPOSE Don B.B.B., with NIF ***NIF.1, for a violation of Article

5.1.c) of the RGPD, typified in Article 83.5 of the RGPD, a fine of €2,000 (Two

A thousand euros).

SECOND: ORDER the denounced B.B.B., the reorientation of the cameras towards the

exclusive area of its property, accrediting such extreme before this organism, of

in accordance with article 58.2 d) RGPD.

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

result of the actions to the complainant Mr. A.A.A.

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THIRD: Warn the sanctioned party that he must make the imposed sanction effective once

Once this resolution is enforceable, in accordance with the provisions of the

art. 98.1.b) of Law 39/2015, of October 1, on Administrative Procedure

Common Public Administrations (hereinafter LPACAP), within the payment term

voluntary established in art. 68 of the General Collection Regulations, approved

by Royal Decree 939/2005, of July 29, in relation to art. 62 of Law 58/2003,

of December 17, through its entry, indicating the NIF of the sanctioned and the number

of procedure that appears in the heading of this document, in the account

restricted number ES00 0000 0000 0000 0000 0000, opened on behalf of the Agency

Spanish Department of Data Protection in the banking entity CAIXABANK, S.A.. In case

Otherwise, it will be collected in the executive period.

Received the notification and once executed, if the date of execution is

is between the 1st and 15th of each month, both inclusive, the term to carry out the

voluntary payment will be until the 20th day of the following month or immediately after, and if

is between the 16th and last day of each month, both inclusive, the term of the

payment will be until the 5th of the second following month or immediately after.

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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