

□ File No.: EXP202100754

RESOLUTION OF PUNISHMENT PROCEDURE

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

BACKGROUND

FIRST: On 07/19/2021, it had entry in this Spanish Agency of
Data Protection a document submitted by A.A.A. (hereinafter, the claimant),
through which he makes a claim against B.B.B. with NIF ***NIF.1 (hereinafter, the
claimed), for the installation of a video surveillance system installed in
*** ADDRESS.1, there being indications of a possible breach of the provisions of
the personal data protection regulations.

The reasons that support the claim, in relation to the matter of protection
of personal data, are the following:

“My neighbor next door has installed a robotic wifi camera with a microphone in his
balcony with the camera about 3 meters from mine. right now he has it
looking out over her balcony, but I feel my intimacy and privacy are threatened because I don't
I know if through the application you can listen to my conversations or be recorded (...)
I've already caught him once with the camera looking out of his balcony.

[...]

Attach photographic report of the camera, document that lists the characteristics
of the camera and a copy of the mail sent to the administrator in which it indicates that
These types of cameras are not allowed in it.

SECOND: In accordance with the provisions of article 65.4 of the Organic Law
3/2018, of December 5, on the Protection of Personal Data and guarantee of the
digital rights (hereinafter, LOPDGDD), was transferred on 07/29/2021 to

claimed, to inform this Agency within a month of the actions carried out to comply with the requirements set forth in the regulations of Data Protection. The notification was delivered on 08/18/2021, according to the Notice issued by Correos, without this Agency receiving any reply.

THIRD: On 10/14/2021, the Director of the Spanish Protection Agency

Data agreed to admit the claim filed by the claimant for processing.

FOURTH: On 12/16/2021, the Director of the Spanish Protection Agency

of Data agreed to initiate a sanctioning procedure against the claimed party, for the alleged infringement of article 5.1.c) of the RGPD, typified in article 83.5 of the GDPR.

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2/8

FIFTH: On 12/28/2021, the claimant was notified of the agreement to open the sanctioned in this proceeding and granted a hearing period of TEN

WORKING DAYS to formulate the allegations and present the evidence that consider convenient, in accordance with the provisions of articles 73 and 76 of the Law 39/2015, of October 1, on the Common Administrative Procedure of the Public Administrations (hereinafter, LPACAP).

SIXTH: After the term granted for the formulation of allegations to the agreement of the beginning of the procedure, it has been verified that no allegation has been received by the claimed party.

Article 64.2.f) of Law 39/2015, of October 1, on Administrative Procedure Common Public Administrations (hereinafter LPACAP) -provision of which

the party claimed was informed in the agreement to open the proceeding-
establishes that if allegations are not made within the stipulated period on the content of the
initiation agreement, when it contains a precise statement about the
imputed responsibility, may be considered a resolution proposal.

In the present case, the agreement to initiate the disciplinary proceedings determined the
facts in which the imputation was specified, the infraction of the RGPD attributed to the
claimed and the sanction that could be imposed. Therefore, taking into account that
the party complained against has made no objections to the agreement to initiate the file and
In accordance with the provisions of article 64.2.f) of the LPACAP, the aforementioned agreement of
beginning is considered in the present case resolution proposal.

SEVENTH: The agreement to initiate the procedure agreed in the third point of the
operative part "INCORPORATE to the disciplinary file, for the purposes of evidence, the
claims submitted by claimants and the information and documentation
obtained by the Subdirector General for Data Inspection in the phase of
information prior to the agreement for admission to processing of the claim".

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: Installation of a video surveillance camera with a recording system of
voice on the balcony of the defendant's home, located at ***ADDRESS.1, which would capture
audios from the adjoining property owned by the claimant. Well, it has
built-in microphone, as indicated in the characteristics of the model of the
camera provided by the claimant.

Sometimes the camera is arranged in such a way that it would focus on areas
other than the property of the claimed. This extreme is accredited when observing the
photographs provided by the claimant, since the camera appears in two positions

different, one facing your balcony and the other looking outside.

SECOND: The person responsible for the device is B.B.B. with NIF ***NIF.1.

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3/8

THIRD: The Spanish Data Protection Agency has notified the claimant of the agreement to open this sanctioning procedure, but has not presented allegations or evidence that contradicts the reported facts.

FOUNDATIONS OF LAW

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

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

control authority and as established in articles 47 and 48.1 of the Law

Organic 3/2018, of December 5, on the 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: “The procedures

processed by the Spanish Agency for Data Protection will be governed by the provisions

in Regulation (EU) 2016/679, in this organic law, by the provisions

regulations issued in its development and, as long as they do not contradict them, with a

subsidiary, by the general rules on administrative procedures.”

II

The voice and image of a person, in accordance with article 4.1 of the RGPD, is a data

personnel and their protection, therefore, is the subject of said Regulation. In article 4.2

of the RGPD defines the concept of "treatment" of personal data.

Article 22 of the LOPDGDD includes the specific rules for the treatment of data for video surveillance purposes and states the following:

"1. Natural or legal persons, public or private, may carry out the treatment of images through camera systems or video cameras with the purpose to preserve the safety of people and property, as well as its facilities.

2. Images of public roads may only be captured to the extent that it is indispensable for the purpose mentioned in the previous section.

However, it will be possible to capture public roads to a greater extent when necessary to guarantee the security of assets or strategic installations. services or infrastructures linked to transport, without in any case being able to put the capturing of images of the interior of a private home.

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 attend to have against the integrity of people, goods or facilities. In this case, the images must be made available to the competent authority within a maximum period of seventy-two hours since the existence of the recording became known.

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4/8

The blocking obligation provided for in art.

article 32 of this organic law.

4. The duty of information provided for in article 12 of Regulation (EU) 2016/679 is

understood to be fulfilled by placing an informative device in a sufficient place
ciently visible 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 articles 15
to 22 of Regulation (EU) 2016/679. It may also be included in the device information
I attach a connection code or internet address to this information.

In any case, the person in charge of the treatment must keep available to the
affected the information referred to in the aforementioned regulation.

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

This exclusion does not cover processing carried out by a private security entity.
given that she had been hired to guard a home and had access to the
images.

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

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

8. The treatment by the employer of data obtained through camera systems

cameras or video cameras is subject to the provisions of article 89 of this organic law.

III

In accordance with the foregoing, the processing of images through a system of video surveillance, 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 4 april.

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5/8

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Camcorders will not be able to capture images of people are outside the private space where the security system is installed. video surveillance, since the processing of images in public places only can be carried out, unless there is government authorization, by the Security Forces and Bodies. They cannot be captured or recorded spaces owned by third parties without the consent of their owners, or, in their case, of the people who are in them.

This rule admits some exceptions since, on some occasions, for the protection of private spaces, where cameras have been installed in facades or inside, it may be necessary to guarantee the purpose of

security recording a portion of the public highway. That is, the cameras and video cameras installed for security purposes will not be able to obtain images of public roads unless it is essential for that purpose, or it is impossible to avoid due to their location and extraordinarily

The minimum space for said purpose will also be collected. Therefore, the cameras could exceptionally capture the minimally necessary portion for its intended security purpose.

- The duty to inform those affected provided for in articles 12 and 13 of the RGPD and 22.4 of the LOPDGDD.
- The person in charge must keep a record of treatment activities carried out under their responsibility, including the information to which refers to article 30.1 of the RGPD.

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The installed cameras cannot obtain images of private spaces. third party and/or public space without duly accredited justified cause, or may affect the privacy of passers-by who move freely through the zone. It is not 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 installations and in particular, not being able to affect the surrounding public spaces, adjoining buildings and vehicles other than those access the guarded space.

In relation to the foregoing, to facilitate the consultation of interested parties, the Agency Spanish Data Protection offers through its website

[<https://www.aepd.es>] access to data protection legislation

including the RGPD and the LOPDGDD (section “Reports and resolutions” / “regulations”), to the Guide on the use of video cameras for security and other purposes and the Guide for compliance with the duty to inform (both available in the “Guides and tools” section).

It is also of interest in the event that low-level data processing is carried out.

risk, the free tool Facilita (in the “Guides and tools” section) that, through specific questions, it allows to assess the situation of the person in charge

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6/8

regarding the processing of personal data that it carries out and, where appropriate, generate various documents, informative and contractual clauses, as well as an annex with indicative security measures considered minimal.

IV

In the present case, the respondent has not presented arguments or evidence that contradict the facts denounced within the period given for it.

In accordance with the evidence available and which has not been distorted during the sanctioning procedure, the defendant has installed a video surveillance camera on the balcony of his home, located at ***ADDRESS.1, that can capture audio from the adjoining apartment owned by the claimant and sometimes images not limited to their property.

Based on the foregoing, the facts entail a violation of the provisions of the article 5.1 c) of the RGPD, which supposes an infringement typified in article 83.5 a) of the RGPD, which provides the following:

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

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

(...)

For the mere purposes of prescription, article 72.1 of the LOPDGDD qualifies as very serious:

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

(...)

v

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 find the power to direct a warning (art. 58.2 b)), the power to impose an administrative fine in accordance with article 83 of the RGPD (art. 58.2 i)), or the power to order the person in charge or in charge of the treatment that the treatment operations comply with the provisions of the RGPD, where appropriate, in a certain way and within a specified period (art. 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.

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In the present case, taking into account the special circumstances that concur in the allegedly responsible for the infringement and making an interpretation of the criterion inspired by Recital 148 of the RGPD, according to which when the fine likely to be imposed would constitute a disproportionate burden

A warning may be imposed instead of the sanction of a fine, at this stage of the procedure, it is estimated that due to the infringement of article 5.1 c) of the RGPD, direct a warning.

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: ADDRESS 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 warning.

SECOND: ORDER to B.B.B., with NIF ***NIF.1 that, by virtue of article 58.2 d) of the GDPR, within ten days, take the following measures:

- Prove that you proceeded to withdraw the camera from the current place, or to its installation in a site that does not capture images outside its property or that allows capturing audio from neighboring homes.

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

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-](https://sedeagpd.gob.es/sede-electronica-web/)
web/], or 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 proving the effective filing of the contentious appeal-

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8/8

administrative. If the Agency was not aware of the filing of the appeal
contentious-administrative within a period of two months from the day following the
notification of this resolution would end the precautionary suspension.

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