

□ File No.: PS/00336/2020

RESOLUTION OF PUNISHMENT PROCEDURE

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

BACKGROUND

FIRST: On June 1, 2020, it had entry in this Spanish Agency of
Data Protection a document presented by A.A.A. (hereinafter first
claimant), through which he makes a claim against B.B.B. with NIF ***NIF.1 (in
hereinafter, the claimed), for the installation of a video surveillance system installed
in the building located at ***ADDRESS.1, there being indications of a possible
breach of the provisions of the data protection regulations. The same day
a document filed by C.C.C. (hereinafter the second claimant),
through which he makes a claim against the same claimed in relation to the
same video surveillance system.

The reasons that substantiate the claims are the following (both written
are identical):

“Claim that security cameras have been installed in this community of neighbors
without our consent and without being informed of it, you were verbally informed and
by the burofax of said information and his response continued with adding more cameras
security, always without our consent, we do not agree that
let's be recorded in this community, since they are getting into my privacy
of said act

[...]

FIRST.- That the defendant installed two video surveillance cameras months ago in
the common areas of the building that give access to the garages, without:

"1. Have authorization from the rest of the owners of the building or from the community.
2. Install any informative poster indicating that the area is under video surveillance and without offer those affected the mandatory basic information established in the Regulation Protection of Personal Data and in the Spanish Law on Data Protection and Guarantee of digital rights.

This appearing party addressed the defendant on 01/31/2020 by burofax to ask to remove both cameras and to comply with the regulations regarding Data Protection. The data controller reported has not responded to my burofax.

In support of the above facts, the following DOCUMENTS are provided:

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[...]

2. Certificate of the burofax of 01/31/2020

3. Photographs of the cameras installed by the defendant in the common areas.

[...]

A photographic report of the two chambers from different perspectives is attached.

SECOND: Prior to admitting this claim for processing, the

Subdirector General for Data Inspection directed, on June 5, 2020, a

request for information to the respondent in which he was informed that the Agency of

Data Protection had been aware of the existence of security cameras

video surveillance located at the address indicated in the first event that could be

violating the data protection regulations and in which it was requested that, in the

period of 1 month, the conformity of the aforementioned installation with the aforementioned normative

The respondent submitted a brief on August 3, 2020 in which he stated the

Next:

“[...]

The images captured by the video cameras are stored in a cloud for their viewing by the owners of the cameras and Securitas Direct [...] only in the case that it be so requested by the owners.

[...]

The images captured by the video cameras are stored for about a year.

[...] in the houses there is no registered community of owners. On the farm there are several individual dwellings, but between them there is no community of neighbours.

[...] I enclose the photos of the visible poster where it is indicated that security cameras are placed video surveillance, photograph of where the camera is placed and its scope,

Also, attached image of the characteristics of the camcorder. Likewise,

I am also sending you a printed copy of the contract.

[...]”

Attach a photographic report that includes images from a camera located in a roofed space that seems to be a portal, from the recording field of the camera, of a poster of the company Securitas Direct and of the technical specifications of the camera. Also, attach a copy of the contract signed between the respondent and Securitas Direct for the provision of a service of installation, maintenance and operation of alarm center.

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THIRD: On August 4, 2020, the Subdirector General for Data Inspection directs the respondent a request for additional information in which he is asked to report about the cameras object of the photographic report provided by the claimants, as well as to clarify whether the space captured by the camera to which refers to the transfer response brief is the exclusive property of the respondent or shared with other owners.

The respondent filed a brief on September 16, 2020 in which he makes the following manifestations:

“[...]

[...] the two cameras that appear in the images are my property and the Captured photographs can only be viewed by me and my wife.

The cameras were installed under the advice of the national police after a complaint (which I attach below) that I filed because we suffered continuous harassment through insults and rude acts such as [...]

I would also like to attach several photos of complaints that I have filed with the judged by the continuous harassment, previously mentioned, that we suffer.

The person responsible for the installation of these cameras is me, [...]

Below, I attach a photograph in which a poster is clearly visible information on video surveillance.

[...] the photographs and images can only be viewed by my wife and myself.

The house has two cameras of the ZOSI brand [...]

Then, I am sending you various images showing the scope of the

cameras and the place where they are installed, likewise, I send you other images in the which shows what you see on the monitor. I would like to emphasize that, although the space captured by the cameras is shared with other owners, I only I installed the cameras to view my home (my door and my window).

The images are stored for approximately one year.

The photograph that I presented in my answer brief is a space shared by the other owners (since there is no community of neighbors)'

Lastly, I would like to emphasize that the installation of the cameras is only for feel more calm and protected and have proof since the harassment we suffer it was constant.

[...]"

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He ends his writing by denouncing two alleged facts that in his opinion would violate the data protection regulations by the claimants and one of their lawyers.

☐ Attach a series of photographs of extracts from:

- Extract from the Verbal Complaint Act of January 30, 2020 presented in Court No. X of ***LOCATION.1.

- Excerpt from the Judgment of the Investigating Court of ***LOCALITY.1 (Proven Facts) dictated on August 11, 2010 in the Misdemeanor Trial Immediate 115/10.

- Extract from the Record of Verbal Complaint of July 3, 2013 presented in the

Court of Instruction No. X of ***LOCATION.1

- ☐ Photographs of what appear to be acts of vandalism on a metal door.
- ☐ Photographs of the cameras installed and the images that are displayed on the display.

FOURTH: The claim was admitted for processing by means of a resolution of 24 September 2020.

FIFTH: On May 25, 2021, the Director of the Spanish Agency for Data Protection agreed to initiate a sanctioning procedure against the claimed party, for the alleged infringement of articles 5.1.c), 5.1.e) and 13 of the RGPD typified in the article 83.5 of the RGPD.

SIXTH: On May 25, 2021, the requested party was notified of the Agreement to Start the Sanctioning Procedure. In the absence of information upon receipt of said notification, it was reiterated on the 11th of August 2021, being returned to this Agency by the Post Office said notification of the Agreement to Start the Sanctioning Procedure with the annotation "Returned to Origin for Surplus (Not picked up at the office)". For this reason, it was sent to the Board Single Edict (TEU), being published on September 14, 2021.

There is no record that, at the present time, the respondent has submitted a written allegations to the same, for which what is stated in article 64 of the 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:

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FACTS

FIRST: On June 1, 2020, paths entered this Agency

A.A.A. claims and C.C.C. against the person claimed for having installed a system

video surveillance in the common areas of the building that give access to the garages, and

which also does not have any informative poster of a video-monitored area.

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

THIRD: The respondent has provided photographs of the images captured

stating himself that they capture common ground of all the owners.

It provides a photograph of a sign that only states "a video-surveillance area and a camera."

It also states that the images are kept for one year.

The defendant points out, and provides sentences, in which the bad relationship is proven

between him and the claimants.

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 according to the provisions of articles 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 persons and goods, 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.

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

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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.

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.”

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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 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 respondent has installed a video surveillance system in the common areas of the building that give access to the garages, and which also does not have any informative poster of a video-monitored area.

As proof of these statements, the claimants 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 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

provides in its article 58.2 b) the possibility of directing a warning, in relation to

with what is stated in Considering 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

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.

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In accordance with the evidence available and which has not been

distorted in the sanctioning procedure, the defendant has installed a system

of video surveillance that could be capturing images of third parties, and being preserved those images for longer than necessary, and furthermore, it lacks informative poster of the existence of these cameras, for which it is considered that These facts violate the provisions of articles 5.1.c), 5.1.e) and 13 of the RGPD, which that supposes the commission of infractions typified in article 83.5 of the RGPD, which provides the following:

"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; [...]."

For the purposes of the limitation period for infractions, the infraction indicated in the previous paragraph is considered very serious and prescribes 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.

(...)»

SAW

In the present case, it is considered that it corresponds to issue a warning,
in accordance with the provisions of article 58.2 b) of the RGPD, in relation to the
indicated 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.

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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 steps:

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provide the images 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.

do not keep the data longer than necessary for the purposes of the
treatment of personal data.

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:

FIRST: ADDRESS A WARNING to B.B.B. with NIF ***NIF.1, for one
infringement of articles 5.1.c), 5.1.e) and 13 of the RGPD, typified in articles

83.5.a) and 83.5.b) of the GDPR.

SECOND: ORDER B.B.B. with NIF ***NIF.1, which, by virtue of article 58.2.d)

of the GDPR, within ten days, take the following measures:

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provide the images observed with the devices in question,

indicating on a location map the parts that correspond to its

private property.

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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.

do not keep the data longer than necessary for the purposes of the treatment of personal data.

THIRD: NOTIFY this resolution to B.B.B.

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 article 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 article 90.3 a) of the LPACAP,

The firm resolution may be provisionally suspended 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/](https://sedeagpd.gob.es/sede-electronica-web/)], or through any of the other records provided for in article 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-

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.

Sea Spain Marti

Director of the Spanish Data Protection Agency

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