

□ File No.: EXP202100767

RESOLUTION OF PUNISHMENT PROCEDURE

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

BACKGROUND

FIRST: A.A.A. (*hereinafter, the complaining party) dated July 20, 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 grounds on which the claim is based are as follows:

“In my community an illegal user of the community garage has placed a camera

camera inside your vehicle that focuses on the rest of the garage space(s) as

communitarian Specifically, it focuses on our family car, and exactly on

the entrance of minors to the vehicle. It does not have any informative poster about

of the existence of the camera, nor has it requested permission from the community to install it

nor has it communicated anything regarding its existence” (folio nº 1).

“In addition, he has placed another camera on the facade of the interior patio of the house.

since it is focusing directly on the houses of the other neighbors. just coin-

He decides that these are the sleeping areas. In my case, it is the bedroom

of my minor daughter, so please understand my concern and total defenselessness.

sion” (folio nº 1).

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), said claim was transferred to the claimed party in fe-

cha 08/03/21 and 08/27/21, to proceed to its analysis and inform this Agency

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

provided for in the data protection regulations.

No response has been received to this letter, nor has there been any clarification to that effect.
effect.

THIRD: On October 18, 2021, the Director of the Spanish Agency for
Data Protection agreed to admit for processing the claim presented by the party
clamant.

FOURTH: On January 5, 2022, the Director of the Spanish Agency for
Data Protection agreed to initiate a sanctioning procedure against the claimed party,
for the alleged infringement of Article 5.1.c) of the RGD, typified in Article 83.5 of the
GDPR.

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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PROVEN FACTS

First. The facts bring cause of the claim presented transferring the presentation
ence of a video-surveillance camera inside a vehicle “processing data” from third parties.
zeros (Garage users) in a perimeter area close to it.

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

***NIF.1.

Third. There is no information on the way of "treatment of the
data”, nor explanation about the purpose of the installed system has been produced.

Fourth. The presence of an operational video-surveillance camera is accredited

installed on the rear window of the vehicle with obvious orientation towards the area of community traffic affecting and intimidating the rest of the users of the facilities

nes—Photograph No. 1--.

FOUNDATIONS OF LAW

Yo

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 of the LOPDGDD, the Director of the Spanish Agency for Data Protection is competent to initiate and to resolve this procedure.

II

Before going into the substance of the matter, remember that in the Initiation Agreement of the present procedure it was mentioned that, in the case of not making any allegation to the itself, this could be considered a “resolution proposal”.

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- established that if allegations are not made within the stipulated period on the content of the agreement, initiation document, when it contains a precise statement about the response imputed responsibility, may be considered a resolution proposal. In the present

In this case, the agreement to initiate the sanctioning file determined the facts in which that the imputation was specified, the infraction of the RGPD attributed to the claimed one and the sanction that could be imposed. Therefore, taking into consideration that the claimant mada has not formulated allegations to the agreement of beginning of the file and in attention to established in article 64.2.f) of the LPACAP, the aforementioned initial agreement is considered in the present case proposed resolution.

III

In the present case, the claim dated 07/20/21 is examined by me-

gave from which the following is transferred as the main fact:

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“In my community an illegal user of the community garage has placed a camera camera inside your vehicle that focuses on the rest of the garage space(s) as communitarian Specifically, it focuses on our family car, and exactly on the entrance of minors to the vehicle. It does not have any informative poster about of the existence of the camera, nor has it requested permission from the community to install it nor has it communicated anything regarding its existence” (folio nº 1).

The facts denounced could imply an affectation to the content of art.

5.1 c) RGPD (regulations currently in force) that provides: "personal data is ran:

c) adequate, pertinent and limited to what is necessary in relation to the purposes for which they are processed (“data minimization”) (...). ”.

It should be remembered that individuals are responsible for ensuring that the systems more installed comply with current legislation, proving that it complies with all the requirements demanded by the regulations in force.

The installation of this type of device must have the mandatory sign informative, indicating the purposes and responsible for the treatment in your case of the data of a personal nature.

In any case, the cameras must be oriented towards the particular space, avoiding intimidating neighboring neighbors with this type of device, as well as controls

lar transit areas of the same without just cause.

With this type of device it is also not possible to obtain image(s) of space public service, as this is the exclusive competence of the Security Forces and Corps of the State.

It should be remembered that even in the case of a "simulated" camera, the

It should preferably be oriented towards private space, since it is considers that this type of device may affect the privacy of third parties, which they are intimidated by it in the belief of being permanently recorded tea.

On the part of individuals, it is not possible to install devices for obtaining images of public space, outside the cases allowed in the regulations.

IV

In accordance with the evidence available in this proceeding sanctioning party, the respondent is considered to have installed a video camera Surveillance inside your vehicle that affects a community area, without explanation any about it.

The operability of the camera held by the complaining party is justified by the provision of documentary evidence (Annex I) that proves the presence of the device and the presence of a cable we understand the vehicle battery, thus performing

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a "data treatment" that has not been justified by the claimed in legal form in order to its study by this Agency.

The measure adopted is considered disproportionate in terms of the protection of the vehicle, since there are means that are less harmful to the rights of third parties (vgr. sound alarm) that are affected without justified cause by it, treating the data of these, without any information about it.

The known facts constitute an infraction, attributable to the party claimed, for violation of the content of art. 5.1 c) RGPD, previously transcribed unto

v

The art. 83.5 RGPD 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:

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, seriousness and duration of the offence, taking into account the nature nature, scope or purpose of the treatment operation in question, as well as the number of interested parties affected and the level of damages suffered

fried; (art. 83.2 a) RGPD).

- the intent or negligence in the infringement; (art. 83.2 b) RGPD), having installed a video-surveillance camera inside the vehicle with oriented palms transfer to a community area, the conduct described being at least negligent mild.

The presence of the device inside the vehicle affects a plurality

indeterminate number of owners and/or users of the property, as it is oriented towards a communal garage area without informing the Board of Owners of the Co-community, not having placed an informative poster indicating the purpose of the treatment and excluding the fact that it is not a "personal and domestic" space, reasons two of them that justify the imposition of a fine amounting to €1,500, before the seriousness of the facts described.

v

Among the corrective powers contemplated in article 58 of the RGPD, in its section 2 d) it is established that each control authority may "order the person in charge or of the treatment that the treatment operations comply with the provisions of this Regulation, where appropriate, in a certain way and within

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a specified period...". The imposition of this measure is compatible with the sanction consisting of an administrative fine, as provided in art. 83.2 of the GDPR.

In case of influencing the behavior described, you can proceed to the opening of a new sanctioning procedure for continued infringement, taking into account the recommendations of this resolution to increase the amount of the fine administrative that in his case could be imposed.

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:

FIRST: IMPOSE B.B.B., with NIF ***NIF.1, for an infraction of Article 5.1.c)

of the RGPD, typified in Article 83.5 of the RGPD, a fine of €1,500 (one thousand five hundred euros).

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

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, of the Administrative Procedure Co-

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

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 in the name of the Spanish Agency

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

Otherwise, it will be collected during the executive period.

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

between the 1st and 15th of each month, both inclusive, the term to make the 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

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

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

resents 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.

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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 Spanish Data Protection Agency

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