

□ File No.: EXP202200543

RESOLUTION OF SANCTIONING PROCEDURE

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

BACKGROUND

FIRST: On 01/10/2022, the ARONA CITY COUNCIL sent Act-
Complaint by the ARONA LOCAL POLICE (hereinafter, the complainant) in
which reveals the installation of a video surveillance system by A.A.A.,
with NIF ***NIF.1. (hereinafter, the denounced party) outside the property located
*** ADDRESS.1, there being indications of a possible non-compliance with the
personal data protection.

The reasons for the complaint are the following:

“Fixed camera placed on the facade of the house ***ADDRESS.1, without authorization.
Oriented and capturing images of the public thoroughfare (...).

It lacks the signaling of information about the taking of images and rights.”

Attached is a photograph of the section of track covered by the video surveillance camera.

SECOND: The denounced party was sent a letter indicating the obligations that
had in matters of data protection and video surveillance, resulting in notification of the
01/25/2022, after the submission of the ARONA LOCAL POLICE Report for having
a video surveillance camera facing the public thoroughfare, without prior authorization to
it.

THIRD: On 03/15/2022, the Director of the Spanish Protection Agency
of Data agreed to initiate disciplinary proceedings against the denounced party, in accordance with
to the provisions of articles 63 and 64 of Law 39/2015, of October 1, of
Common Administrative Procedure of Public Administrations (hereinafter,

LPACAP), for the alleged violation of article 5.1.c) of the GDPR and article 13 of the GDPR, typified in article 83.5.a) and b) of the GDPR.

FOURTH: Notification of the aforementioned initiation agreement in accordance with the established norms in the LPACAP, on 04/12/2022 the denounced party submitted a brief of allegations in which indicated the following:

“[...]

Although it is true that there is a camera arranged on the façade, in no way would not comply with the existing regulations, in this sense I would like to put into question knowledge of this Agency the following points.

C / Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

2/8

In relation to the first question included in the complaint, that is, that the camera captures images of public roads, having said this in a broad sense, I must state that such a statement does not correspond to reality, since exclusively captures images aimed at the point of access to the dwelling (...). My housing has been the object of different events that I have had to report to the authorities (...). All these facts would have been committed at the point at which it is facing the camera, not affecting surrounding public spaces, buildings contiguous and/or vehicles other than those that access the monitored space and, where appropriate, it would be a minimal and essential part that would inevitably be captured.

[...]

As can be seen, there are three informative posters, which were placed by the company that installed the camera in question, at the time of arranging the camera in the

property. (...)”

Attach the following documentation:

- Photographic report of the location of the video surveillance camera and the posters.

- Copy of the complaints filed by the party denounced by an alleged crime of robbery with force in things in your home and for a crime of mistreatment of domestic animals, as of 08/31/2019 and 03/22/2020.

- Copy of emergency medical and psychological report for neighborhood conflicts, of 01/30/2014 and 03/26/2014.

FIFTH: On 04/20/2022, 05/18/2022 and 09/14/2022, the party is requested reported contribution of screen printing (date and time) to a suitable size of what the camera in question views, making a brief explanation of what in your case is being captured; as well as its location. Also, what a contribution clearer photographs of the informative posters of the video-surveilled area so that can see the information they contain.

SIXTH: On 10/07/2022, a response was received from the denounced party in which states the following:

“[...]”

Based on such photographs, it can be seen how the images that are captured are strictly and rigorously those necessary for the purpose of the installation,

Specifically, these images as we stated at the time capture the

entry point, where I have suffered certain facts for which I have presented

complaint to the competent authorities (...). It can also be seen as

I have been particularly interested in placing different signs throughout the property, not just in order to comply with current regulations, but rather with the dissuasive purpose for those people who wish to commit any type of illegal act (...).”

Attach the following documentation:

C / Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

3/8

- Photographic report of the location of the video surveillance camera and the posters.

-

Images of what the device captures on days 26 and 28/09/2022.

SEVENTH: On 10/20/2022, a resolution proposal was formulated in which the proposed to penalize the denounced party for a violation of article 5.1.c) and 13 of the GDPR, with a fine of €300 for each of the infractions; when making a excessive capture of the public thoroughfare and the lack of signs for the video-monitored area of all the necessary information. Also, the denounced party was ordered that, in the within ten business days from the date on which the resolution so agreed be notified, proceed to complete the badges and withdraw or regularize

In accordance with the regulations, the video surveillance camera.

EIGHTH: On 11/04/2022 the denounced party was notified of the proposed resolution and, on 11/24/2022, a written statement of allegations was entered into this Agency in which indicates the following:

“[...]

We accompany comprehensive documents of the images captured from the camera installed, once the existing installation has been reviewed, providing the correct photographs in order to certify that the images that are captured are strictly and rigorously those necessary for the purpose of the installation, specifically said images as and

As we stated at the time, they capture the entry point. On the other hand it accompanying new signs placed on the property in order to determine the legality of the installation as well as of the posted signs.

[...]

I request that a warning be issued to me, which I will accept without resorting to a resolution that at effect is issued, although and in the event that such request is not accepted from this

I inform the AEPD that I will proceed voluntarily to pay the sanction initially proposed in order for me to be granted the consequent discount.

[...]"

Attach the following documents:

- A screenshot of what is seen through the camera

video surveillance on 11/16/2022, at 5:10:10 p.m.

-

Three photographs of the location of the area information signs

video surveillance

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

in the file, the following have been accredited:

C / Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

4/8

PROVEN FACTS

FIRST: On 01/10/2022, an Act-Complaint against

A.A.A. for the installation of a video surveillance camera on the facade of his

house, located at ***ADDRESS.1, which would be facing the public road.

In addition, it warns of the lack of an informative poster of a video-surveilled area.

The first extreme is accredited by means of a photograph provided by the complaining party in which shows that the device in question captures an entire area of passage or alley, and the corner of the farm opposite.

SECOND: It is identified as the main person in charge of the A.A.A. system, with NIF ***NIF.1, who denies that the device captures images of public roads. Well, it only records images “directed at the point of access to the house (where it has suffered several facts denounced before the authorities), not affecting public spaces surroundings, adjoining buildings and/or vehicles other than those accessing the space monitored and in his case it would be a minimal and essential part that would be captured unavoidable way”. Likewise, it states that there are 3 informative posters, which are can be seen in the photographs provided at first, but the distance from which they were taken prevents reading their content.

THIRD: In the photographic report provided by the denounced party in response to the request for proof, it is proven that as of 09/26 and 28/2022 the camera in question has a privacy mask on the right margin, but continues capturing the entire area of passage or alley. In addition, the information that is appreciated in two of the posters is not entirely accurate.

FOURTH: In the photographs provided by the denounced party in the allegations to the resolution proposal, it is noted that the privacy mask of the device has been extended to areas that gave rise to excessive uptake (passage area or alley in its entirety). In addition, zone signs video surveillance have been completed with the required information and, one of them, substituted.

FUNDAMENTALS OF LAW

Yo

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

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

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

Organic 3/2018, of December 5, 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: "Procedures

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

C / Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

5/8

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

regulations dictated in its development and, insofar as they do not contradict them, with character

subsidiary, by the general rules on administrative procedures."

II

In this case, it is appropriate to examine the Report-Complaint sent to this Agency on

01/10/2022 by means of which the existence of a camera of

video surveillance on the facade of the defendant's home, located in

***ADDRESS.1, which would capture images of the public thoroughfare; without counting on the due

informative poster.

Article 5.1.c) of the GDPR "Principles relating to processing" provides that: "The

personal data will be:

c) adequate, pertinent and limited to what is necessary in relation to the purposes for which

that are processed ("data minimization")."

This article enshrines the principle of data minimization in the treatment of personal information. It assumes that said treatment is adjusted and proportional to the purpose to which it is directed, and the processing of excessive data must be restricted or proceed to their deletion.

The relevance in the treatment of data must occur both in the field of collection of the data as well as in the subsequent treatment that is carried out of the same.

It should be remembered that individuals are responsible for ensuring that the systems installed comply with current legislation, certifying 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 data controller, where appropriate of a personal nature. Specifically, article 22.4 of the LOPDGDD provides that:

"The duty of information provided for in article 12 of Regulation (EU) 2016/679 is shall be deemed fulfilled by the placement of an informative device in place sufficiently visible identifying, at least, the existence of the treatment, the identity of the person responsible 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 information device a connection code or internet address to this information."

These infractions are typified in article 83.5 of the GDPR:

Violations of the following provisions will be sanctioned, in accordance with the section 2, with administrative fines of a maximum of 20,000,000 EUR or, in the case of a company, an amount equivalent to 4% of the turnover global annual total of the previous financial year, 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;

b) The rights of the interested parties in accordance with articles 12 to 22;

For the purposes of the limitation period for infringements, they are considered very serious and prescribed after three years, in accordance with article 72.1 of the LOPDGDD, which states that:

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

(...)

h) The omission of the duty to inform the affected party about the processing of their data personal in accordance with the provisions of articles 13 and 14 of Regulation (EU) 2016/679 and 12 of this Organic Law".

II

It should be noted that article 28.7 of the LPACAP provides: "The interested parties They will be responsible for the veracity of the documents they present.

On 11/24/2022, a written statement of allegations was received from the denounced party in which shows, in summary, the adequacy of what the video surveillance camera captures to the current regulations and the placement of new video surveillance area posters; contributing several photographs as proof.

Regarding the viewing of the video surveillance camera, it is observed that as of 11/16/2022 the masked area has been enlarged, mostly hiding all the passageway or alley, as well as the access door to what seemed to be another farm. Of

In this way, the device in question is limited to capturing images of the access door.

entrance to the home of the accused party.

Regarding the informative posters of the video-surveilled area, the denounced party has placed three new badges modifying the content of the "Responsible" section.

At first, it listed "Owner" and, currently, "A.A.A.".

Despite this, it should be noted that the two fines of €300 imposed on the party denounced for the commission of a violation of article 5.1.c) and 13 of the GDPR. Well, at the time of presentation of the Act-Complaint and, even, until 09/28/2022, the images captured by the video surveillance camera were not limited to private space of the denounced party. In addition, the information offered about the existence of the device was not entirely accurate.

However, it should be noted that none of the measures proposed so far. Specifically, the obligation to complete the distinctive and to withdraw or regularize in accordance with the regulations the chamber of video surveillance. Well, with the photographic documents that you have provided in the letter of allegations indicated, there is a record of its adoption.

C / Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

7/8

Therefore, in accordance with the applicable legislation and assessed the criteria of graduation of sanctions whose existence has been accredited, the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: IMPOSE A.A.A., with NIF ***NIF.1, for a violation of article

5.1.c), typified in article 83.5.a) of the GDPR, a fine of €300 (three hundred

euro).

SECOND: IMPOSE A.A.A., with NIF ***NIF.1, for a violation of article 13

of the GDPR, typified in article 83.5.b) of the GDPR, a fine of €300 (three hundred euro).

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

FOURTH: Warn the sanctioned party that he must enforce the sanction imposed

Once this resolution is enforceable, in accordance with the provisions of Article art. 98.1.b) of Law 39/2015, of October 1, on Administrative Procedure

Common of Public Administrations (hereinafter LPACAP), within the payment period

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, by means of its income, indicating the NIF of the sanctioned and the number

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

restricted IBAN number: ES00-0000-0000-0000-0000-0000, open in the name of the

Spanish Agency for Data Protection at the bank CAIXABANK, S.A..

Otherwise, it will proceed to its collection in the executive period.

Once the notification has been received and once executed, if the execution date is

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

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

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

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

In accordance with the provisions of article 50 of the LOPDGDD, this

Resolution will be made public once the interested parties have been notified.

Against this resolution, which puts an end to the administrative process 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 reversal before the

Director of the Spanish Agency for Data Protection within a period of one month from count 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 for in article 46.1 of the referred Law.

C / Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

8/8

Finally, it is noted 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 through writing addressed to the Spanish Data Protection Agency, presenting it through of the Electronic Registry of the Agency [<https://sedeagpd.gob.es/sede-electronica-web/>], or through any of the other registries 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-administrative. If the Agency was not aware of the filing of the appeal contentious-administrative proceedings within a period of two months from the day following the Notification of this resolution would terminate the precautionary suspension.

Mar Spain Marti

Director of the Spanish Data Protection Agency

938-181022

C / Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es