

□ File No.: EXP202102487

## RESOLUTION OF PUNISHMENT PROCEDURE

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

### BACKGROUND

FIRST: On September 17, 2021, it entered this Agency

Spanish Data Protection, a document presented by Ms. A.A.A. (hereafter,  
the claimant), through which she makes a claim against Ms. B.B.B. with NIF

\*\*\*NIF.1 (hereinafter, the one claimed), for the installation of a

video surveillance installed in \*\*\* ADDRESS.1, there are indications of a possible  
breach of the provisions of the data protection regulations.

The claimant states that the respondent has installed two cameras in her home,  
one in the parking lot of said home and another on the roof, which are likely to capture  
both the claimant's home and the street.

Provides photographs of the location of the cameras and a complaint filed with the  
Civil Guard for the facts claimed.

SECOND: Prior to the acceptance of this claim for processing, it is

transferred to the claimed, in accordance with the provisions of article 65.4 of the Law  
Organic 3/2018, of December 5, on the Protection of Personal Data and guarantee of  
digital rights (hereinafter, LOPDGDD).

That transfer was returned by the postal service with the indication "absent distribution"  
on 10/22/2021. The transfer is repeated on 11/03/2021, and it is returned for the same reason.  
When verifying that there was an error in the street number, the code is changed and repeated.  
transfer to the correct number, on 11/26/2021. Despite this, the transfer is returned  
again for the same reason.

THIRD: The claim was admitted for processing by means of a resolution of 17

December 2021.

FOURTH: On February 22, 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 Regulation (EU) 2016/679

(General Data Protection Regulation, hereinafter RGPD), typified in the

article 83.5 of the RGPD.

FIFTH: On March 7, 2022, the notification was returned to this Agency

of the Agreement to Start the Sanctioning Procedure with the annotation "Returned to

Origin by surplus (Not withdrawn in the office)", for which it was sent to the Edictal Board

Single (TEU), being published on March 22, 2022.

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There is no evidence that, at the present time, the respondent has submitted a written

allegations to it.

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.

In view of everything that has been done, by the Spanish Data Protection Agency

In this proceeding, the following are considered proven facts:

#### PROVEN FACTS

FIRST: On September 17, 2021, it entered this Agency

claim of Ms. A.A.A. against the one claimed for having installed a

video surveillance in your home consisting of two cameras, one in the parking lot of said

house and another on the roof, which are likely to capture both the house of the

claimant as the public thoroughfare.

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

presented before the Civil Guard for the claimed facts.

#### FOUNDATIONS OF LAW

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In accordance with the powers that article 58.2 of the RGPD grants to each authority of

control and according to what is established in articles 47 and 48.1 of the LOPDGDD, it is

competent to initiate and resolve this procedure the Director of the Agency

Spanish Data Protection.

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."

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## 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 people and property, 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

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.

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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.”

### 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 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

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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 your home consisting of two cameras, one in the parking lot of said dwelling and another on the roof, which are likely to capture both the the claimant's residence as well as the public thoroughfare.

As proof of these statements, the claimant 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 -

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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.

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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 in your home consisting of two cameras, one in the parking lot of

said house and another on the roof, which could be capturing images of third parties,

Therefore, it is considered that these facts violate the provisions of article 5.1.c)

of the RGPD, which implies the commission of an infringement typified in article 83.5 of the

GDPR, which provides the following:

"Infractions of the following provisions will be sanctioned, in accordance with the

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:

"Based on the provisions of article 83.5 of Regulation (EU) 2016/679,

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.

(...)»

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The fine imposed must be, in each individual case, effective,

proportionate and dissuasive, in accordance with the provisions of article 83.1 of the RGPD.

Therefore, it is appropriate to graduate the sanction to be imposed according to the criteria that

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established in article 83.2 of the RGPD, and with the provisions of article 76 of the

LOPDGDD, regarding section k) of the aforementioned article 83.2 RGPD:

In the initial assessment, the following have been considered:

- The nature of the infraction when having a video surveillance system

that is oriented towards public transit areas without just cause, treating data of identifiable natural persons (art. 83.5 a) RGPD.

- The intentionality or negligence of the infraction, the cameras are oriented towards the outside of your property (83.2.b) RGPD).

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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:

- provide the images observed with the devices in question,

indicating on a location map the parts that correspond to your property particular.

- Prove that you proceeded to remove the cameras from the current locations, or to the reorientation of the same towards their particular zone.

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: IMPOSE Ms. 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 €300

(three hundred euros).

SECOND: ORDER Ms. B.B.B., with NIF \*\*\*NIF.1, who, by virtue of article

58.2.d) of the RGPD, within ten days, adopt the following measures:

- provide the images observed with the devices in question,

indicating on a location map the parts that correspond to your property

particular.

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- Prove that you proceeded to remove the cameras from the current locations,

or to the reorientation of the same towards their particular zone.

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

FOURTH: 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

article 98.1.b) of the LPACAP, within the voluntary payment term established in article

68 of the General Collection Regulations, approved by Royal Decree 939/2005, of

July 29, in relation to article 62 of Law 58/2003, of December 17,

by entering, indicating the NIF of the sanctioned person and the procedure number

that appears at the top of this document, in the restricted account number ES00

0000 0000 0000 0000 0000, opened in the name of the Spanish Protection Agency

of Data in the banking entity CAIXABANK, S.A.. Otherwise, it will proceed to

its collection in 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

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

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

It will be 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 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.

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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-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-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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