

□ Procedure No.: PS/00504/2020

## RESOLUTION OF PUNISHMENT PROCEDURE

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

### BACKGROUND

FIRST: On October 19, 2020, it had entry in this Spanish Agency  
of Data Protection a document presented by A.A.A. (hereinafter, the  
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  
on the street \*\*\*ADDRESS.1, there are indications of a possible breach of the  
provided in the personal data protection regulations.

The claim is based on the claimant having installed a video camera in the  
terrace of the upper floor of his house, which focuses directly on the house of the  
claimant, and to the gardens and swimming pools of both his house and several neighboring houses.  
Attach photographic report of the location of the cameras.

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

THIRD: On December 18, 2020, a reply is received from the claimant  
indicating that the video surveillance installation was carried out by the company Prosegur,  
providing a copy of the installation contract.

Attach photographs of the capture made by the interior cameras of your home.

It also attaches another photograph of the capture of the exterior camera, where it appears  
its swimming pool, the gardens of the two adjoining houses on both sides, the street, throughout

its width and length its facade and that of the adjoining house, as well as the opposite buildings.

FOURTH: The claim was admitted for processing by means of a resolution of 29 December 2020.

FIFTH: On February 16, 2021, the Director of the Spanish Agency for Data Protection agreed to initiate a sanctioning procedure against the claimant, for the alleged infringement of article 5.1.c) of the RGPD, typified in article 83.5 of the GDPR.

SIXTH: Having been notified of the aforementioned initiation agreement, the respondent submitted a written allegations in which, in summary, it stated that "(...) being true that they are seen

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2/5

part of two more gardens, in neither case does the camera focus directly on his house, but it focuses on the garden of mine and because of its quality, the images so distant, they are not sharp or clear, understanding that at no time are they violating any rights to privacy.”

However, given that the cameras had been installed by the company Prosegur, has contacted it to check the capture perimeter of the video surveillance system.

SEVENTH: On April 13, 2021, the instructor of the procedure agreed to the opening of a period of practice of tests, taking for reproduced, for purposes evidence of the claim filed by the claimant and its documentation, the documents obtained and generated by the Subdirector General for Inspection of

Data and allegations presented by the respondent.

EIGHTH: On April 13, 2021, a resolution proposal was formulated, proposing that a warning be addressed to the defendant, for an infraction of the article 5.1.c) of the RGPD, typified in article 83.5 of the RGPD. In this proposal, granted a period of 10 days for the respondent to be able to allege be considered in his defense as well as to present the documents and information that considered pertinent, in accordance with article 89.2 of Law 39/2015, of 1 October, of the Common Administrative Procedure of the Public Administrations (in hereafter, LPACAP).

NINTH: On April 12, 2021, the respondent submitted a brief of allegations, received by the instructor once the Resolution Proposal was sent, in which provides a copy of the email sent by Prosegur, in which it is indicated that "In this sense, the technical team of PROSEGUR, makes a visit in an immediately to the address of the claimed, in order to verify the collection perimeter of the camera, and if necessary, reorient it, so that, in no case record images that are not the property of the claimed party. Finally, how is it accredited in the image that is provided as evidence to this writing, the installation is correctly carried out, complying with the regulations in force in terms of Data Protection, since the perimeter of capturing data images does not allow the capture of public roads, as well as homes adjoining, preserving the right to intimacy and privacy of the claimant."

The defendant has provided a photograph in which the swimming pool of his home is observed and a minimal strip of the two adjoining houses on both sides and the street.

TENTH: On June 1, 2021, the respondent submitted allegations to the Motion for a Resolution indicating that the modifications had already been made

requests for camera reorientation.

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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3/5

## FACTS

FIRST: On October 19, 2020, it entered this Spanish Agency

of Data Protection a document that shows that the claimed party has

installed a video surveillance camera that focuses directly on the house of the

claimant, and to the gardens and swimming pools both of his house and of several neighboring houses

Attach photographic report of the location of the camera.

SECOND: The person in charge of the video surveillance system is B.B.B. with NIF \*\*\*NIF.1.

THIRD: The respondent has proceeded to relocate the camera.

## 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 as established in arts. 47 and 48.1 of the LOPDGDD, the Director of

The Spanish Agency for Data Protection is competent to resolve this

process.

II

The defendant is charged with the commission of an infraction for violation of article

5.1.c) of the RGPD, regarding the principles of treatment, which provides that the data

Personal information will be “adequate, relevant and limited to what is necessary in relation to

the purposes for which they are processed (“data minimization”).

### III

Without prejudice to the provisions of article 83.5, sections a) and b), of the RGPD, in its art. 58.2 b) provides for the possibility of directing a warning, in relation to what stated in Recital 148:

“In the event of a minor offence, or if the fine likely to be imposed would constitute a disproportionate burden for a natural person, rather than sanction by means of a fine, a warning may be imposed. must however Special attention should be paid to the nature, seriousness and duration of the infringement, its intentional nature, to the measures taken to alleviate the damages suffered, the degree of liability or any relevant prior violation, the manner in which that the control authority has been aware of the infraction, compliance of measures ordered against the person responsible or in charge, adherence to codes of conduct and any other aggravating or mitigating circumstance.”

### IV

When deciding to impose an administrative fine and its amount, in each case individual will take into account the aggravating and mitigating factors indicated

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4/5

in art. 83.2 of the RGPD, as well as any other that may be applicable to the circumstances of the case.

The infractions are typified in article 83.5 of the RGPD:

“The infractions of the following dispositions 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, those indicated in paragraph above are considered very serious and prescribe 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:

[...] b) The processing of personal data without the concurrence of any of the conditions of legality of the treatment established in article 6 of Regulation (EU) 2016/679.

c) Failure to comply with the requirements of Article 7 of the Regulation (EU) 2016/679 for the validity of consent [...]"

The art. 22 section 2 of the LOPDGDD provides:

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

However, it will be possible to capture public roads to the extent that it is essential to guarantee the security of strategic goods or installations or of infrastructures linked to transport, without in any case implying the capturing images of the interior of a private home".

Examined the file as a whole, although it is true that at the time of the start of this sanctioning procedure the camera installed on the property of the

claimed captured images outside his property, during the period of allegations, the respondent has stated that he has proceeded to relocate the camera towards his private space, providing a photograph in which his property and a minimum strip of the two adjoining houses on both sides and the street.

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5/5

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In accordance with the foregoing, having examined the modifications of the installed system, the itself is considered adjusted to the right, capturing the camera the minimum essential for their home protection work.

Full collaboration with this body is taken into account when carrying out the precise corrections to avoid affecting the right of third parties, being the necessary ones to preserve the security of the property and its inhabitants.

The parties are reminded of the importance of the rights at stake and must avoid instrumentalize institutions in matters beyond their competence, having to adjust the relationships between them to the minimum requirements of the good neighbor rules

Therefore, in accordance with the applicable legislation, once the criteria for graduation of the sanctions whose existence has been proven, and taking into account account that the relocation of the camera has occurred during the processing of the present procedure, it is maintained to direct a warning, since during a time the camera overrecorded areas outside his property, although it was not

require complementary measures to have been adopted.

The Director of the Spanish Data Protection Agency RESOLVES:

FIRST: ADDRESS A WARNING to B.B.B. with NIF \*\*\*NIF.1, for a  
infringement of article 5.1.c) of the RGPD, typified in article 83.5 of the RGPD.

SECOND: 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 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.

Sea Spain Marti

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