

□ File No.: EXP202202088

RESOLUTION OF SANCTIONING 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 claiming party) dated January 27, 2022

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 reasons on which the claim is based are the following:

The claimant states that she filed a claim against the defendant before this

SPANISH DATA PROTECTION AGENCY, which gave rise to the

procedure ***PROCEDURE.1 in which the defendant was warned for the lack

installation of the mandatory informative sign for the video-surveilled area.

It states that the defendant has installed new cameras in his home, other than

those already analyzed in said procedure, and that they are oriented in a

significant and not punctual, to the adjoining public road, which is a transit area for other

farms and without being adequately signposted by means of the prescriptive

informative posters of video-monitored area.

It provides a plurality of images of the location of the cameras and a video (Annex

YO).

SECOND: In accordance with article 65.4 of Organic Law 3/2018, of 5

December, Protection of Personal Data and guarantee of digital rights (in

hereinafter LOPDGDD), said claim was transferred to the party claimed in

time and form at the address indicated by the claimant on 02/18/22, so that

proceed to its analysis and inform this Agency within a month of the

actions carried out to adapt to the requirements established in the regulations of

Data Protection.

The transfer, which was carried out in accordance with the regulations established in Law 39/2015, of

October 1, of the Common Administrative Procedure of the Administrations

Public (hereinafter, LPACAP), was returned by the Official Postal Service with the

indication "unknown".

THIRD: After requesting the effective address associated with the DNI of the claimant, the AET

gives you a new transfer at the following address ***ADDRESS.1, receiving a concise

response to what is required by this Agency, being reiterated the

request for information dated 04/01/22, without any response in this regard.

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FOURTH: On April 27, 2022, in accordance with article 65 of the

LOPDGDD, the claim presented by the claimant party was admitted for processing.

FIFTH: On June 2, 2022, the Director of the Spanish Agency for

Data Protection agreed to initiate disciplinary proceedings against the claimed party,

in accordance with the provisions of articles 63 and 64 of Law 39/2015, of October 1,

of the Common Administrative Procedure of Public Administrations (in

hereinafter, LPACAP), for the alleged infringement of Article 5.1.c) of the GDPR, classified as

in Article 83.5 of the GDPR.

SIXTH: On 06/27/22 the first letter of allegations to the Agreement of

Beginning of the disciplinary procedure, arguing the following:

"That, from the warning issued in Procedure No.:

***PROCEDURE.1, this part acquired special sensitivity with the regulations in force regarding data protection. For this reason, it contracted the installation and maintenance of the two video surveillance cameras with a specialized company as Securitas Direct Spain, SAU. Attached as Document 1 is the invoice for the company for the contracted services.

The contract by the company has not yet been provided to this party as of the date of presentation of allegations, however, this party undertakes to attach it to the this Agency as soon as they have it in their possession if they deem it appropriate.

That the cameras installed in the home comply with article 5.1 c)

GDPR and with the provisions of the Video Surveillance Guide and the practical sheets published by this Agency. The cameras do not capture images of public roads exception of a minimum strip of access to my home. They also do not capture images of adjoining land and houses or of any other foreign space,

Only images of my private garage are captured. Attached as Document (...) the images of the minimum stripes captured by the cameras.

That the installed cameras comply with the duty of information contained in article 13 GDPR, since the existence of a system of video surveillance. Two informative signs have been placed sufficiently visible in access to monitored areas. Attached as Document (...) the images of the two informative posters”.

SEVENTH: On 07/04/22, the procedure instructor agreed to practice the following tests:

- Require the contribution of a screen print of what is captured with the camera(s) in question.

- Contribution of photography with the informative poster (s), as well as contribution of duly conformed form available to any affected party.

EIGHTH: On 07/21/22, a new pleadings statement was received from the party claimed arguing essentially the same as the previous time, although providing the

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screen print of what, if any, is captured with the camera(s) installed on your private property.

NINTH: On 07/26/22, the "Proposed Resolution" was issued, in which the conforms to the wrong orientation of one of the cameras object of claim, as well as the insufficiency in the allegations put forward, proposing a sanction encrypted in the amount of €1000 for infringement of art. 5.1 c) GDPR.

Of the actions carried out in this procedure and of the documentation in the file, the following have been accredited:

PROVEN FACTS

First. The facts bring cause of the claim dated 01/27/22 through the which translates the following:

"You have installed new cameras in your home, different from those already analyzed in said procedure, and that they are oriented in a significant and not punctual way, to the adjoining public road, which is a transit area to other farms and without being adequately marked by means of the mandatory informative signs of the area video surveillance"—folio no. 1--.

Second. It is identified as the main responsible B.B.B., with DNI ***NIF.1.

Third. There is evidence of the presence of an informative poster indicating that it is a video-surveilled area, providing documentary evidence that proves such extreme (Written

Annex I test 2º 07/21/22).

Room. The capture of public space is accredited, with the camera of the exterior façade that is insufficiently masked.

Fifth. No allegation has been made about the outer chamber object of claim located in a transit area that is included in the Document

Attachment No. 1 of the claim.

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, 48.1, 64.2 and 68.1 of the

Organic Law 3/2018, of December 5, on the Protection of Personal Data and

guarantee of digital rights (hereinafter, LOPDGDD), is competent to

initiate and resolve this procedure the Director of the Spanish Protection Agency of data.

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Likewise, article 63.2 of the LOPDGDD determines that: "The procedures

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

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."

In the present case, we proceed to analyze the claim dated 01/27/22 for through which "placement of cameras is transferred without proper signaling towards public space" (folio no. 1).

"has placed new devices (cameras) that focus on public roads and the inside the houses of other neighbors, controlling at all times the entrances/exits of house number 26 as shown in the documents attached to this claim" (folio no. 1).

The art. 5.1 c) GDPR provides the following: Personal data will be:

"adequate, relevant and limited to what is necessary in relation to the purposes for those who are processed ("data minimization").

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.

In any case, the cameras must be oriented towards the particular space, avoiding intimidating neighboring neighbors with this type of device, as well as control transit areas of the same without just cause.

Neither with this type of device can you obtain image(s) of space public, as this is the exclusive competence of the Security Forces and Bodies of the State.

It should be remembered that even if it is a "simulated" camera, the same should preferably be oriented towards private space, since it is considered that this type of device can affect the privacy of third parties, which are seen intimidated by it into the belief of being permanently recorded.

On the part of individuals, it is not possible to install devices for obtaining images of public space and/or traffic of third parties, outside the cases allowed in the normative.

The purpose of this type of device must be the security of the property and its inhabitants, avoiding the affectation of rights of third parties that are seen intimidated by them.

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II

On 07/21/22, a written statement of allegations of the defendant stated in essence that the system conforms to current legislation, being the same duly informed by informative poster about it.

In support of his argument, he provides documentary evidence that proves the orientation of the camera and the presence of an informative poster where the information of the presence of it.

Examining the photographs provided, an excessive uptake of public space close to the area of your private property in the two chambers installed, with which the collection that is made is considered disproportionate.

In the case of the camera facing the "garage" area, it is enough to limit the space towards the gate area and a small portion of public space, while in the case of the camera on the facade of the property it should be limited to the private space of the same, avoiding by masking affecting the area traffic close to it.

It should be remembered that the installation of this type of device by individuals must be carried out in strict compliance with the current legal framework, especially when he had already been warned by this body, for some facts similar that had involved an analysis of the requirements in terms of video-surveillance.

The intended purpose of the system is perfectly compatible with the limitation of the angle of the cameras towards its exclusive private area, so that the impact towards the transit zone next to the property is minimized (vgr. contributing new images to this organism).

Any action that may involve criminal activity on the property of the claimed is fulfilled with the exclusive capture of his private property, for example by obtaining images of the access zone, being unnecessary control of the transit area near the home.

The claimed party must answer about all the cameras installed in especially those located in a transit area on a façade of the house (Doc. No. 1 Written claim) on which he omits any comment, which was clearly Oriented towards public transit area.

The known facts constitute an infringement, attributable to the party claimed, for violation of the content of art. 5.1 c) GDPR, as they are the same pointed towards public and/or private space of third parties in a disproportionate way.

IV.

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The art. 83.5 GDPR provides the following: "Violations of the provisions following will be sanctioned, in accordance with section 2, with administrative fines EUR 20,000,000 maximum or, in the case of a company, an amount equivalent to a maximum of 4% of the total global annual turnover of the previous financial year, opting for the highest amount:

a) The basic principles for the treatment including the conditions for the consent in accordance with articles 5,6,7 and 9 (...)".

In the present case it is taken into account that it is an individual although the same was already warned by this body (**PROCEDURE.1) of the need to report the presence of video surveillance cameras, so it must be aware of the requirements made, being a system that is affecting areas that exceed their private space, a reason that justifies imposing a sanction €1000 for violation of art. 5.1 c) GDPR, by having a camera system oriented towards public and/or private space without justified cause, sanction located in the lower scale for this type of behavior, but taking into account the negligent conduct of the defendant.

SAW

The text of the resolution establishes which have been the infractions committed and the facts that have given rise to the violation of the regulations for the protection of data, from which it is clearly inferred what are the measures to adopt, without prejudice that the type of procedures, mechanisms or concrete instruments for implement them corresponds to the sanctioned party, since it is responsible for the treatment who fully knows its organization and has to decide, based on the proactive responsibility and risk approach, how to comply with the GDPR and the LOPDGDD.

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 B.B.B., with NIF ***NIF.1, for a violation of Article 5.1.c)

of the GDPR, typified in Article 83.5 of the GDPR, a fine of €1,000 (one thousand euros).

SECOND: ORDER compliance within ONE MONTH of the following

corrective measures, in accordance with article 58.2 GDPR:

-Proceed to mask the cameras so that space is not captured

any public, limited to their private property.

-Withdrawal of all those cameras that affect the transit area, accrediting such

extreme before this Agency by means of documentary evidence (vgr. photography).

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

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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 number ES00 0000 0000 0000 0000 0000, open in the name of the Agency

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

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.

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-](https://sedeagpd.gob.es/sede-electronica-web/)

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.

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