

□ Procedure No.: PS/00477/2020

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 18, 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
in ***DIRECCION.1, MÁLAGA, with indications of a possible breach of the
provided in the personal data protection regulations.

The reasons that support the claim and, where appropriate, the documents provided
by the claimant are the following:

"The camera installed on the terrace of the defendant's house points
unnecessarily to the public thoroughfare and to the portal of our building. (...)»

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 14, 2020, a reply is received from the respondent
indicating that the video surveillance installation was carried out by the company Securitas Direct
Spain S.A.U. with a camera located on the terrace of the 1st floor of the house, and
that said camera records the images and keeps them for 48 hours.

Provide a copy of the installation contract and a photograph of the informative poster of the

camera existence.

In addition, it attaches a photograph of the capture carried out by the same, in which it is observed the entire terrace, and on the right side, the street, sidewalk and building from which denounces the facts by the claimant.

FOURTH: The claim was admitted for processing by means of a resolution of 16 December 2020.

FIFTH: On February 2, 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 Regulation (EU) 2016/679 of the European Parliament and of the Council, of April 27, C/ Jorge Juan, 6

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2016, regarding the protection of natural persons with regard to the treatment of personal data and the free circulation of these data and by which the Directive 95/46/EC (hereinafter, RGPD).

SIXTH: On February 26, 2021, this Agency received the allegations presented by the respondent, who, in short, indicates that he installed the system of video surveillance for a series of attacks suffered in his home.

However, he has contacted the camera installation company and "(...) I have ordered to modify the position of the security camera so that it only captures images of the terrace and its railing, as can be seen from the photograph I attached, taken from the camera. In no case is the building in front

where the claimant lives, nor anything that could affect the freedom of people. (...)”

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

In this proceeding, the following are considered proven facts:

FACTS

FIRST: On October 18, 2020, a claim was filed with this Agency

because "The camera installed on the terrace of the defendant's home points unnecessarily to the public thoroughfare and to the portal of our building. (...)»

SECOND: It is identified as the main person in charge D. B.B.B. with NIF

***NIF.1, who wields reasons of their home security for the installation of the camera.

THIRD: The respondent has ordered to modify the position of the security camera so that it only captures images of the terrace and its railing, as can be seen by the attached photograph, taken from the camera. In no case is the building visible opposite where the claimant lives, nor anything that could affect the freedom of the people.

FOUNDATIONS OF LAW

Yo

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

On October 18, 2020, this Agency received a claim from the complainant by means of which it is transferred that «The camera installed on the terrace of the defendant's home points unnecessarily to the public thoroughfare and the portal of our building. (...)»

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The art. 5.1 c) RGPD provides that personal data will be:

“adequate, relevant 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

installed comply with current legislation.

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 them without just cause.

On the part of individuals, it is not possible to install imaging devices

of public space, outside the cases allowed in the regulations, as this is

exclusive jurisdiction of the State Security Forces and Bodies.

III

On February 26, 2021, a written statement was received from the party

denounced by means of which he states that he has contacted the company

installer of the cameras and "(...) I have ordered to modify the position of the camera of

security so that it only captures images of the terrace and its railing, as can be

check by the attached photograph, taken from the camera. In no case is

see the building across the street where the claimant lives, or anything that might affect the

people's freedom. (...)”

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.

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, it has been verified, with the contribution of a photograph, that it has proceeded to the reorientation of the camera towards his private space.

IV

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,

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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

Note that the reorientation of the camera has occurred during the processing of the present procedure, the sanction of warning is maintained, since during a time the camera overrecorded the public thoroughfare, although no measures are required

complementary to having been adopted.

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 RGPD, typified in article 83.5 of the RGPD, a sanction of WARNING.

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

Director of the Spanish Data Protection Agency

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