

File No.: EXP202100279

RESOLUTION OF PUNISHMENT PROCEDURE

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

BACKGROUND

FIRST: On 07/05/2021, it had entry in this Spanish Agency of
Data Protection a document presented by A.A.A. (hereinafter referred to as the claimant),
through which he makes a claim against B.B.B. with NIF ***NIF.1 (hereinafter, the
claimed), for the installation of a video surveillance system installed in
*** ADDRESS.1, there being indications of a possible breach of the provisions of
the personal data protection regulations.

The reasons underlying the claim are as follows:

“The problem is our neighbor Mr. B.B.B., ***ADDRESS.1, in March of this year he
placed a motion camera in front of his house that can record and capture
images of our properties.

[...]

Attach photographic report of the location of the cameras.

SECOND: In accordance with the provisions of article 65.4 of the Organic Law
3/2018, of December 5, on the Protection of Personal Data and guarantee of the
digital rights (hereinafter, LOPDGDD), was transferred on 07/08/2021 and
08/18/2021 of said claim to the respondent, so that it could proceed with its analysis and
inform this Agency within a month of the actions carried out to
comply with the requirements set forth in the data protection regulations. The first
attempt resulted in “Returned to origin due to surplus (not withdrawn at the office), while the
second request was notified on 08/25/2021, as stated in the notice issued

by Post. However, to date, this Agency has not received a response
some.

THIRD: On 10/20/2021, the Director of the Spanish Protection Agency

Data agreed to admit the claim filed by the claimant for processing.

FOURTH: On 12/16/2021, the Director of the Spanish Protection Agency

of Data agreed to initiate a sanctioning procedure against the claimed party, for the
alleged infringement of Article 5.1.c) of the RGPD, typified in Article 83.5 of the
GDPR.

FIFTH: Notification of the agreement to open this sanctioning procedure,

On 01/10/2022, a written statement was received from the respondent
stating the following:

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“The camera in question was a fake, dissuasive camera, with the only function
of a red LED that turned on to leave the impression of a real camera. Has been
purchased online on the AliExpres page. I have no reference to her.

The camera in question was removed 3 weeks ago when we renewed the
facade of our house and deciding not to place it, so as not to spoil the image of the
facade, has been thrown away, which is why I cannot provide a serial number.

We attach photos taken today, January 04, 2022, with the facade of our house,
where was the camera before.”

Provide a copy of the purchase receipt for the disclosure of photographs dated 01/04/2022
and the aforementioned photographic report.

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 07/05/2021 you entered this Spanish Agency for the Protection of

Data a document in which the claimant stated the existence of a camera in

the facade of the defendant's home, located at ***ADDRESS.1, which would record and

would capture images of other properties.

Together with the claim, it provides photographs that prove the presence of a camera

placed outside the property.

SECOND: It is identified as the main responsible B.B.B. with NIF ***NIF.1,

who does not deny being responsible for the installation of the device.

THIRD: It is accredited that the chamber object of the claim has not carried out

treatment of any personal data given the fictitious nature of the device in

question.

FOURTH: It is verified that the respondent has removed the simulated camera, as

can be seen in the photographs of 01/04/2022 attached to the pleadings brief.

FOUNDATIONS OF LAW

Yo

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

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

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

Organic 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 Data Protection Agency.

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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."

II

The defendant was charged with the commission of an infraction for violation of article 5.1 c) of the RGPD, considering that you have installed a video surveillance camera in the facade of your home, located at ***ADDRESS.1, which could capture images of the private properties of neighbors, disproportionately.

Article 5 section 1 of the RGPD "Principles related to treatment" provides that:

"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 establishes 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 treatment of excessive data must be restricted or proceed to delete them.

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

It should be remembered that individuals are responsible for ensuring that the systems installed comply with current legislation, proving 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 responsible for the treatment in your case of the data of a personal nature.

Article 22.4 of the LOPDGDD provides that:

"The duty of information provided for in article 12 of Regulation (EU) 2016/679 is understood fulfilled by placing an informative device instead sufficiently visible identifying, at least, the existence of the treatment, the identity of the person in charge and the possibility of exercising the rights foreseen 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 cameras must be oriented towards the particular space, avoiding intimidate neighboring neighbors with this type of device, as well as control areas transit of the same without just cause.

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Nor can images of public spaces be obtained with this type of device, as this is the exclusive competence of the State Security Forces and Bodies.

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

On the part of individuals, it is not possible to install sections for obtaining images

of public space, outside the cases allowed in the regulations.

This infringement is typified in article 83.5 a) of the RGPD, a provision that establishes:

“The infractions of the following dispositions will be sanctioned, in accordance with the

section 2, with administrative fines of a maximum of EUR 20,000,000 or,

in the case of a company, an amount equivalent to 4% of the turnover

global annual total of the previous financial year, choosing the highest amount:

a) The basic principles for the treatment, including the conditions for the

consent under articles 5, 6, 7 and 9;

(...)”

III

On 01/10/2022, a written statement was received from the respondent

stating that the installed device is of a dissuasive nature, that is, it does not

treatment of any personal data, since it does not capture images. Furthermore, it indicates

that "the camera in question was removed 3 weeks ago", an end that remains

accredited by observing the photographs it provides dated 01/04/2022.

It should be noted that article 28.7 of Law 39/2015, of October 1, of the

Common Administrative Procedure of Public Administrations (LPACAP, in

forward) provides: "The interested parties will be responsible for the veracity of the

documents they present.

IV

Based on all of the above, it can be concluded that it has not been proven that the facts

object of transfer constitute an administrative infraction in the matter that we

occupies. Well, on the one hand, it has been found that the camera was simulated, that is,

that it did not capture images of identified or identifiable natural persons not

thus existing treatment of personal data; and on the other, it has been shown

documented that the defendant has removed the camera from the façade.

Therefore, according to the above,

the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: ORDER the FILE of this procedure as there is no

accredited the commission of the administrative infraction object of claim.

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SECOND: NOTIFY this resolution to the claimant and the respondent.

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.

Finally, it is pointed out 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 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.

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