

□ File No.: PS/00212/2021

RESOLUTION OF PUNISHMENT PROCEDURE

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

BACKGROUND

FIRST: On February 3, 2021, it had entry in this Spanish Agency
of Data Protection a document presented by Ms. A.A.A. (hereinafter the part
claimant), through which he makes a claim against D.B.B.B. with NIF ***NIF.1
(hereinafter, the claimed party), for the installation of a video surveillance system
installed in ***ADDRESS.1, with indications of a possible breach of the
provided in the personal data protection regulations.

The reasons underlying the claim are that the respondent party has
installed a video surveillance camera oriented towards the public thoroughfare and towards the
home and business of the claimant, and that there is no information poster.
Provide photographic report.

SECOND: Prior to the acceptance of this claim for processing, it is
transferred to the claimed party, in accordance with the provisions of article 65.4 the
Organic Law 3/2018, of December 5, on the Protection of Personal Data and
guarantee of digital rights (hereinafter, LOPDGDD).

On April 19, 2021, this Agency received a document submitted by
the party claimed in which, in summary, it states that it has three chambers of
video surveillance: one located on the façade, which is the subject of this claim,
another in the pool area and another inside the garage.

Indicates that the person responsible for the installation of said video surveillance system is
Pecalux, S.L., and that the images are kept for a period of 14 days.

Provides various photographs of the location of the cameras and the fields of view of every one of them.

THIRD: Examined the allegations presented, given that no information is provided photograph of the informative poster, dated April 19, 2021, you are required to attach "Clear photograph of the informative poster of the existence of a video surveillance, clearly stating the identity of the person in charge (in this case the owner) and address of the same, for the exercise of the rights recognized in data protection regulations; as well as its location", receiving the information requested on May 4, 2021.

From the analysis of the photographs provided of the images that the cameras would capture that make up the system from its location, it follows that two of them capture interior spaces, property of the claimed party but the exterior, object of

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complaint, located on the facade, would capture an excessive space of public thoroughfare given that extends to the sidewalk and driveway where vehicles are parked.

FOURTH: The claim was admitted for processing by means of a resolution dated May 5, 2021.

FIFTH: On July 1, 2021, 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 the RGPD, typified in article 83.5 of the GDPR.

FIFTH: Having been notified of the aforementioned initiation agreement, the respondent submitted a written

allegations in which, in summary, he stated that

“In my case, it is a camera whose purpose is to monitor the entrance to the living place. The entrance and garage have a length of more than 4 meters, so the camera, if placed with more inclination to the wall, would lose angle of vision entrance to the house. That is why the current situation in which is located and the angle, given that this was arranged by those in charge of installing said camera.

“(…) In no case has this camera been arranged (…) for viewing the pedestrians or parked vehicles.”

SIXTH: On September 15, 2021, the instructor of the procedure agreed the opening of a period of practice of tests, considering reproduced, to evidentiary purposes 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.

SEVENTH: On September 15, 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, It granted him a period of 10 days so that he could allege whatever he considered in his opinion. defense as well as to present the documents and information that it considers pertinent, in accordance with article 89.2 of Law 39/2015, of October 1, of the Common Administrative Procedure of Public Administrations (hereinafter, LPACAP), as well as ordering the removal of the camera that records adjoining houses and public road, or to the reorientation of the same reducing the pickup angle.

EIGHTH: There is no evidence that, at the present time, the respondent has submitted any allegation to the proposed resolution, which was duly notified in

dated September 28, 2021, as stated in the proof of delivery issued by the mail service.

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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FACTS

FIRST: Existence of a video surveillance camera installed in

***ADDRESS.1, oriented towards the outside as reflected in the content of the

claim and the photographs that accompany the answer made by the party

claimed at the initiation agreement.

It is proven, through these photographs, that the camera captures the entire width of the sidewalk

and the cars parked next to it along the front of the property of the

claimed, as well as the roadway, that is, it burns excessively.

SECOND: The informative poster of the video-monitored area was installed by the

claimed upon becoming aware of the claim originating in this proceeding

sanctioning

THIRD: The person in charge of the video surveillance system is D. B.B.B. with NIF

***NIF.1.

FOURTH: There is no record in this Agency that the respondent has presented allegations

to the Resolution Proposal that was duly notified on the 28th of

September 2021, as stated in the proof of delivery issued by the service of

emails.

Yo

By virtue of the powers that article 58.2 of the RGPD recognizes to each authority of control, and according to the provisions of articles 47 and 48.1 of the LOPDGDD, the Director of the Spanish Agency for Data Protection is competent to resolve this process.

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.

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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.

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.

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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 video surveillance system, 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 found.

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 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

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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 camera facing the outside of your home.

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 -

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.

Without prejudice to the provisions of article 83 of the RGPD, the aforementioned Regulation

has in its art. 58.2 b) the possibility of directing a warning, in relation to what

indicated in Recital 148: "In the event of a minor infraction, or if the fine

likely to be imposed would constitute a disproportionate burden on a

natural person, instead of sanctioning by means of a fine, a

warning. However, special attention must be paid to the nature,

gravity and duration of the infringement, its intentional nature, the measures taken

to mitigate the damages and losses suffered, to the degree of responsibility or to any

pertinent previous infraction, to the way in which the control authority has had

knowledge of the infraction, compliance with measures ordered against the

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responsible or in charge, adherence to codes of conduct and any other aggravating or mitigating circumstance.

v

In accordance with the evidence available in this sanctioning procedure, it is considered that the claimed party has ordered a badly oriented video surveillance camera, which captures the entire width of the sidewalk and cars parked next to it along the front of the property of the claimed, as well as the road, that is, it records excessively, according to the images provided by the claimant himself.

According to this evidence, it is considered that these facts violate the established in article 5.1.c) of the RGPD, which implies the commission of an infringement typified in article 83.5 of the RGPD, which provides the following:

"Infringements of the following provisions shall be sanctioned, in accordance with 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:

"According to the provisions of article 83.5 of Regulation (EU) 2016/679

are 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.

(...)

h) The omission of the duty to inform the affected party about the treatment of their personal data in accordance with the provisions of articles 13 and 14 of the Regulation (EU) 2016/679 and 12 of this Organic Law.

(...)»

In the initial assessment, the following have been considered:

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The nature of the offense by having a video surveillance system that is oriented towards public transit areas without just cause, trying to data of identifiable natural persons (art. 83.5 a) RGPD.

The violation of the rights of the person who feels watched constantly, as a result of the camera being aimed at areas

where the public travels.

Based on the foregoing, it is considered that it is appropriate to issue a warning, in accordance with the provisions of article 58.2 b) of the RGPD, in relation to the indicated in Considering 148, cited above.

SAW

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:

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provide the images that are observed with the device in question, indicating in a location plan the parts that correspond to your property particular.

certifies having proceeded to the removal of the camera from the current place, or to the reorientation of it towards its particular area.

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: ADDRESS A WARNING to D. 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: ORDER to D. B.B.B., with NIF ***NIF.1 that, by virtue of article

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

-

provide the images that are observed with the device in question, indicating

in a location plan the parts that correspond to your property

particular.

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certifies having proceeded to the removal of the camera from the current place, or to the

reorientation of it towards its particular area.

THIRD: NOTIFY this resolution to D.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 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.

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

web/], or through any of the other records provided for in article 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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