

□ File No.: EXP202208467

RESOLUTION OF SANCTIONING PROCEDURE

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

BACKGROUND

FIRST: The CIVIL GUARD - PUEBLA DEL RIO POST (hereinafter, the
complaining party) on March 7, 2022 filed a complaint with the Agency
Spanish Data Protection Act against Mrs. A.A.A. with NIF ***NIF.1 (hereinafter, the
denounced party), for the installation of a video surveillance system located in
STREET *** ADDRESS.1, there being indications of a possible breach of the
provided in article 5.1.c) of Regulation (EU) 2016/679 (General Regulation of
Data Protection, hereinafter, GDPR).

The complaining party provides the Complaint Act dated February 23, 2002, in which
it is indicated that the denounced party is responsible for a video surveillance camera
installed outside your home, which is oriented, without authorization to
this, to the public road and to adjoining houses.

SECOND: These facts were the object of a complaint before this Agency, processing
file AT/01169/2022. This Agency communicated to the party
denounced the requirements demanded to carry out processing of personal data
through this type of device, indicating that, in the event of not adopting the
necessary measures to comply with those requirements, would incur in a violation of the
provided in the data protection regulations, which could lead to the initiation of the
investigative and sanctioning actions. Said communication was notified with
dated March 21, 2022.

THIRD: On July 23, 2022, the complaining party has submitted to

this Agency a new complaint against the denounced party stating that the latter continues with the pertinent video surveillance cameras focused on the public thoroughfare, as well as access to other homes, without having adopted corrective measures indicated by the Spanish Data Protection Agency.

FOURTH: On October 24, 2022, the Director of the Spanish Agency for Data Protection agreed to initiate disciplinary proceedings against the claimed party, for the alleged infringement of article 5.1.c) of the GDPR, typified in article 83.5 of the GDPR.

FIFTH: On November 8, 2022, this Agency was returned the notification of the Agreement to Start the Sanctioning Procedure with the annotation "Returned to Origin due to excess (Not withdrawn in the office)".

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For this reason, it was sent to the Single Edictal Board (TEU), being published on December 2022.

There is no record that the claimed party has submitted a written statement of allegations to the same.

Article 64.2.f) of Law 39/2015, of October 1, on Administrative Procedure

Common for Public Administrations (hereinafter LPACAP) -provision of which

the party claimed was informed in the agreement to open the procedure-

establishes that if allegations are not made within the stipulated period on the content of the

initiation agreement, when it contains a precise pronouncement about the

imputed responsibility, may be considered a resolution proposal. In it

present case, the agreement to initiate the sanctioning file determined the

facts in which the accusation was specified, the infringement of the GDPR attributed to the claimed and the sanction that could be imposed. Therefore, taking into consideration that the claimed party has not made allegations to the agreement to start the file and

In accordance with the provisions of article 64.2.f) of the LPACAP, the aforementioned agreement of beginning is considered in the present case resolution proposal.

In view of all the proceedings, by the Spanish Agency for Data Protection

In this proceeding, the following are considered proven facts:

PROVEN FACTS

FIRST: On March 7, 2022, a complaint of

the CIVIL GUARD - PUEBLA DEL RIO POSITION against the party denounced by

have installed in STREET ***ADDRESS.1 a video surveillance camera in the

exterior of his house, which is oriented, without having authorization to do so, to the road

public and adjoining houses.

The Report of Complaint dated February 23, 2002 is recorded.

SECOND: File AT/01169/2022 was processed and the party was informed

denounced the requirements demanded to carry out processing of personal data

through these types of devices. Said communication was notified on 21

March 2022.

THIRD: On July 23, 2022, the complaining party has submitted to

this Agency a new complaint against the denounced party stating that the latter

continues with the pertinent video surveillance cameras focused on the public thoroughfare,

as well as access to other homes, without having adopted corrective measures

indicated by the Spanish Data Protection Agency.

There are photographs provided of the location of the camera.

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FUNDAMENTALS OF LAW

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In accordance with the powers that article 58.2 of the GDPR grants to each authority of control and as established in articles 47 and 48.1 of the LOPDGDD, it is competent to initiate and resolve this procedure the Director of the Agency Spanish Data Protection.

Likewise, article 63.2 of the LOPDGDD determines that "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."

II

The physical image of a person under article 4.1 of the GDPR is personal data and their protection, therefore, is the object of said Regulation. Article 4.2 of the GDPR defines the concept of "processing" 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 treatment of images through systems of cameras or video cameras with the purpose of preserving the safety of people and property, as well as their facilities.

2. Images of the public thoroughfare 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 the public road in an extension superior when necessary to guarantee the safety of goods or strategic facilities or infrastructures linked to transport, without In no case can it imply the capture of 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 violate the integrity of people, property or facilities. In that case, the images must be made available to the competent authority in a maximum period of seventy-two hours from the knowledge of the recording existence.

The blocking obligation provided for in article 32 of this organic law.

4. The duty of information provided for in article 12 of Regulation (EU) 2016/679 will be understood to have been complied with by placing an informative device

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in a sufficiently visible place identifying, at least, the existence of the treatment, the identity of the person responsible 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 information 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 only capture the interior of their own home.

This exclusion does not cover the treatment carried out by a security entity private company that had been contracted to monitor 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 Forces and by the competent bodies for surveillance and control in prisons and for the control, regulation, surveillance and discipline of the traffic, will be governed by the transposition legislation of Directive (EU) 2016/680, when the processing is for prevention, research, detection or prosecution of criminal offenses or enforcement of criminal sanctions, including protection and prevention against threats to public safety. Out 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.

8. The treatment by the employer of data obtained through information systems cameras or camcorders is subject to the provisions of article 89 of this law organic.”

II

In accordance with the foregoing, the processing of images through a video surveillance system, to be in compliance with current regulations, must comply the following requirements:

- Respect the principle of proportionality.

- When the system is connected to an alarm center, you can only

be installed by a qualified private security company

contemplated in article 5 of Law 5/2014 on Private Security, of April 4.

- The camcorders will not be able to capture images of the people who are

are outside the private space where the security system is installed

video surveillance, since the treatment of images in public places can only be

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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, where appropriate, of the people who are in them

find.

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 the public road. That is, cameras and camcorders installed for the purpose of

security will not be able to obtain images of the public thoroughfare unless it is

essential for said purpose, or it is impossible to avoid it due to the location of the

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 the affected parties provided for in the

Articles 12 and 13 of the GDPR, and 22 of the LOPDGDD, in the terms already indicated.

- The controller must keep a record of processing activities

carried out under his responsibility in which the information to which he makes reference article 30.1 of the GDPR.

- The installed cameras cannot obtain images of private space of

third party and/or public space without duly accredited justified cause, nor can they affect the privacy of passers-by who move freely through the area. No this

Therefore, the placement of cameras towards the private property of neighbors is allowed.

with the purpose of intimidating them or affecting their private sphere without just cause.

- In no case will the use of surveillance practices be accepted beyond the

environment object of the installation and in particular, not being able to affect the spaces

surrounding public spaces, adjoining buildings and vehicles other than those accessing the guarded space.

In summary and to facilitate the consultation to the interested parties, the Spanish Agency of

Data Protection offers through its website [<https://www.aepd.es>] access to

the legislation on the protection of personal data, including the GDPR 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 case of carrying out low-risk data processing, the

free tool Facilitates (in the "Guides and tools" section) that, through

specific questions, allows to assess the situation of the person in charge with respect to the

processing of personal data that it carries out, and where appropriate, generate various

documents, informative and contractual clauses, as well as an annex with measures

indicative security considered minimum.

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IV.

In the present case, the complaint was filed because the complained party has installed a video surveillance camera outside your home, on the STREET

*** ADDRESS.1, which is oriented, without authorization to do so, to the public thoroughfare and adjoining houses.

Despite having processed a file by this Agency, the denounced party continues with the installation of video surveillance without having adopted corrective measures indicated by the Spanish Data Protection Agency.

As proof of these statements, the complainant 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, are established in article 58.2 of the GDPR. Between them they have the power to direct a warning -article 58.2.b)-, the power to impose an administrative fine in accordance with article 83 of the GDPR - Article 58.2 i)-, or the power to order the person in charge or in charge of the treatment that the processing operations comply with the provisions of the GDPR, 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 GDPR, the measure provided for in article 58.2 d) of the aforementioned Regulation is compatible with the sanction consisting of a fine administrative.

IV.

In accordance with the evidence that is available and that has not been distorted in the sanctioning procedure, the denounced party has installed a video surveillance camera that could be capturing images from third parties, so It is considered that these facts violate the provisions of article 5.1.c) of the GDPR, which supposes the commission of an infraction typified in article 83.5 of the RGD, which provides the following:

Violations of the following provisions will be penalized, in accordance with the paragraph 2, with administrative fines of maximum EUR 20,000,000 or, in the case of a company, an amount equivalent to a maximum of 4% of the total annual global business volume of the previous financial year, opting for the highest 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 infringements, the infringements indicated in the previous paragraph are considered very serious and prescribe after three years, in accordance with the Article 72.1 of the LOPDGDD, which establishes that:

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"Based on what is established in article 83.5 of Regulation (EU) 2016/679, are considered very serious and will prescribe after three years the infractions that a substantial violation of the articles mentioned therein and, in particular, the following:

a) The processing of personal data in violation of 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.

(...)»

SAW

The fine imposed must be, in each individual case, effective, proportionate

and dissuasive, in accordance with the provisions of article 83.1 of the GDPR. Therefore,

it is appropriate to graduate the sanction to be imposed in accordance with the criteria established by the

Article 83.2 of the GDPR, and with the provisions of Article 76 of the LOPDGDD, regarding

to section k) of the aforementioned article 83.2 GDPR:

For the graduation of the sanction, it has been considered that the

sections 83.5.a) and 83.2.b) of the GDPR.

VII

However, as was already indicated in the initiation agreement and in accordance with the

established in the aforementioned article 58.2 d) of the GDPR, according to which each authority of

control may “order the person in charge or person in charge of the treatment that the

processing operations comply with the provisions of this Regulation,

where appropriate, in a specified manner and within a specified period [...]”,

The complained party is required to take the following steps:

- Provide the images that are observed with the device in question, indicating

on a location plan the parts that correspond to your particular property.

- certify having proceeded to remove the camera from the current location, or to

the reorientation of it towards its particular area.

It is noted that not meeting the requirements of this body may be

considered as an administrative offense in accordance with the provisions of the GDPR,
classified as an infraction in its article 83.5 and 83.6, being able to motivate such conduct the
opening of a subsequent administrative sanctioning procedure.

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

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FIRST: IMPOSE Ms. A.A.A. 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 €300
(three hundred euros).

SECOND: TO ORDER Ms. A.A.A. with NIF ***NIF.1 that, by virtue of article 58.2.d)
GDPR, within ten days, take the following steps:

- Provide the images that are observed with the device in question, indicating
on a location plan the parts that correspond to your particular property.
- certify having proceeded to remove the camera from the current location, or to
the reorientation of it towards its particular area.

THIRD: NOTIFY this resolution to Ms. A.A.A.

FOURTH: Warn the sanctioned party that he must enforce the sanction imposed

Once this resolution is enforceable, in accordance with the provisions of Article
article 98.1.b) of the LPACAP, within the voluntary payment period established in article
68 of the General Collection Regulations, approved by Royal Decree 939/2005, of
July 29, in relation to article 62 of Law 58/2003, of December 17,

through its entry, indicating the NIF of the sanctioned party and the number of the procedure that appears in the heading of this document, in the restricted account number IBAN: ES00 0000 0000 0000 0000 0000 (BIC/SWIFT Code: XXXXXXXXXXXXX), open to name of the Spanish Data Protection Agency in the bank CAIXABANK, S.A. Otherwise, it will be collected in the period executive.

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 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 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.

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Finally, it is noted that in accordance with the provisions of article 90.3 a) of the LPACAP,

The firm resolution may be temporarily 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 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 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 proceedings within a period of two months from the day following the

Notification of this resolution would terminate the precautionary suspension.

Mar Spain Marti

Director of the Spanish Data Protection Agency

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