

□ File No.: PS/00224/2021

RESOLUTION OF PUNISHMENT PROCEDURE

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

BACKGROUND

FIRST: Dated November 11, 2020 it is received in this Agency
claim filed by CITY COUNCIL OF ***CITY COUNCIL.1 (as regards
hereafter, the complaining party) against A.A.A. with NIF ***NIF.1 (hereinafter, the part
claimed) for having installed two video surveillance cameras on the facade of his
housing, C/ ***DIRECTORY.1, ***CITY COUNCIL.1, facing the public highway,
with an informative poster without information regarding the owner of the recording file or who
go to exercise the rights established in the regulations for the protection of
data.

For this reason, file E/09874/2020 was opened, sending a letter to the party
claimed informing you of the requirements to carry out treatment of
personal data through such devices. This letter was returned by the
postal service with the annotation "Returned to Origin due to surplus (not withdrawn in
office)".

Likewise, the claimant organization was informed that if the non-compliance
adoption of measures would be initiated, where appropriate, the actions provided for in the
data protection regulations.

On February 9, 2021, it had entry in this Spanish Protection Agency
of Data a document presented by the complaining party, by means of which it formulates
new claim against the claimed party for the installation of a
video surveillance oriented towards public roads and with the incomplete information poster,

There are indications of a possible breach of the provisions of the regulations of Personal data protection.

It provides a photographic report, and a police report where it is indicated:

“(…) That during the intervention, this officer realizes that the house of the applicant has two recording video cameras on the facade of the property, facing public roads, one on ***CALLE.1 street, the other on ***CALLE.2 street, with the corresponding informative poster established in the regulations on protection of data (photos are attached), although they are blank, without data related to the owner of the recording file or who to contact to exercise the rights established in the regulations on data protection. That in addition to being a sign not adjusted to current regulations. (…)”

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

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Organic Law 3/2018, of December 5, on the Protection of Personal Data and guarantee of digital rights (hereinafter, LOPDGDD), being notified with dated March 12, 2021, as stated in the proof of delivery issued by the mail service.

There is no record in this Agency of any response from the party complained against.

THIRD: The claim was admitted for processing by resolution of May 11 of 2021.

FOURTH: On July 9, 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 articles 5.1.c) and 13 of the RGPD, typified in the article 83.5 of the RGPD.

FIFTH: After the period granted for the formulation of allegations to the agreement to start the procedure, received by the claimed party on 05 August 2021, it has been verified that this Agency has not received an allegation some to the same

Article 64.2.f) of Law 39/2015, of October 1, on Administrative Procedure Common Public Administrations (hereinafter LPACAP) -provision of which the party claimed was informed in the agreement to open the proceeding- establishes that if allegations are not made within the stipulated period on the content of the initiation agreement, when it contains a precise statement about the imputed responsibility, may be considered a resolution proposal. In the present case, the agreement to initiate the disciplinary proceedings determined the facts in which the imputation was specified, the infraction of the RGPD attributed to the claimed and the sanction that could be imposed. Therefore, taking into account that the party complained against has made no objections to the agreement to initiate 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 everything that has been done, by the Spanish Data Protection Agency

In this proceeding, the following are considered proven facts:

FACTS

FIRST: On February 9, 2021, this Agency received a claim against A.A.A. with NIF ***NIF.1 for having two video surveillance cameras installed in the facade of your home, C/ ***DIRECTORY.1, ***CITY COUNCIL.1, facing towards the public thoroughfare, with an informative poster without data related to the owner of the file of

recording or who to contact to exercise the rights established in the regulations of data protection.

SECOND: Several photographs and a police report of the

Town Hall of *** TOWN HALL.1.

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THIRD: The Agreement to Start this sanctioning procedure was notified

dated August 5, 2021, without, to date, having received

in this Agency allegations by the respondent.

FOUNDATIONS OF LAW

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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.

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,

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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.

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.”

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

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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 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 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

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.

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IV

In the present case, the claim was filed because the respondent has installed two video surveillance cameras on the facade of his home, oriented towards the public thoroughfare, with an informative poster without data related to the owner of the file of recording or who to contact to exercise the rights established in the regulations of data protection.

As proof of these manifestations, 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.

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In accordance with the evidence available and which has not been

distorted in the sanctioning procedure, the claimed party has installed two

video surveillance cameras that could be capturing images of third parties, and

In addition, the informative poster of the existence of said chamber is incomplete, so

It is considered that these facts violate the provisions of articles 5.1.c) and 13

of the RGPD, which supposes the commission of infractions typified in article 83.5 of the

GDPR, 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;

b) the rights of the interested parties according to articles 12 to 22;

[...]."

For the purposes of the limitation period for infractions, the infractions indicated in

the previous paragraph are considered very serious and prescribe after three years, in accordance with

Article 72.1 of the LOPDGDD, which establishes that:

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"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.

(...)»

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 RGPD. So,

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

article 83.2 of the RGPD, and with the provisions of article 76 of the LOPDGDD, regarding

to section k) of the aforementioned article 83.2 RGPD:

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 intentionality or negligence of the infraction, the cameras are oriented to the outside of your establishment (83.2.b) RGPD).

- The informative poster that appears on the façade does not indicate who the responsible for the treatment and where the interested parties can go to exercise your rights recognized in the RGPD.

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 devices in question, indicating on a location map the parts that correspond to its private property.

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certify having proceeded to withdraw the cameras from the places

current, or to the reorientation of the same towards their particular area.

certifies having proceeded to the placement of the informative device in the

video-monitored areas or to complete the information offered in the same

(must identify, at least, the existence of a treatment, the identity

of the person in charge and the possibility of exercising the rights foreseen in

said precepts), locating this device in a sufficiently

visible, both in open and closed spaces.

certifies that it keeps the information available to those affected

referred to in the aforementioned RGPD.

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: IMPOSE A.A.A. with NIF ***NIF.1, for a violation of article 5.1.c)

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

SECOND: IMPOSE A.A.A. with NIF ***NIF.1, for a violation of article 13

of the RGPD, typified in article 83.5 of the RGPD, a fine of €500 (Five hundred

euros).

THIRD: ORDER A.A.A. with NIF ***NIF.1 which, by virtue of article 58.2.d)

of the GDPR, within ten days, take the following measures:

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provide the images that are observed with the devices in question,
indicating on a location map the parts that correspond to its
private property.

certify having proceeded to withdraw the cameras from the places
current, or to the reorientation of the same towards their particular area.

certifies having proceeded to the placement of the informative device in the
video-monitored areas or to complete the information offered in the same

(must identify, at least, the existence of a treatment, the identity
of the person in charge and the possibility of exercising the rights foreseen in
said precepts), locating this device in a sufficiently
visible, both in open and closed spaces.

certifies that it keeps the information available to those affected
referred to in the aforementioned RGPD.

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FOURTH: NOTIFY this resolution to A.A.A.

FIFTH: Warn the sanctioned party that he must make the imposed sanction effective once

Once this resolution is enforceable, in accordance with the provisions of the
article 98.1.b) of the LPACAP, within the voluntary payment term 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,
by entering, indicating the NIF of the sanctioned person and the procedure number

that appears at the top of this document, in the restricted account number ES00 0000 0000 0000 0000, opened in the name of the Spanish Protection Agency of Data in the banking entity CAIXABANK, S.A.. Otherwise, it will proceed to its collection in executive period.

Received the notification and once executed, if the date of execution 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 month or immediately after, and if between the 16th and last day of each month, both inclusive, the payment term It will be until the 5th of the second following month or immediately after.

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 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-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

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