

□ File No.: EXP202208166

RESOLUTION OF SANCTIONING PROCEDURE

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

BACKGROUND

FIRST: A.A.A. (hereinafter, the claimant) on 07/19/2022, filed
claim before the Spanish Data Protection Agency. The claim is
directed against B.B.B. with NIF ***NIF.1 (hereinafter, the claimed party), for the
installation of a video surveillance system located at ***ADDRESS.1, with
indications of a possible breach of the provisions of Article 5.1.c) of the GDPR.

The reasons for the claim are the following:

The complaining party declares that he is a neighbor of a farm contiguous to a farm belonging to the party
claimed and that it has installed a camera on a mast which, due to its location
and orientation, is capable of capturing images of the property of the complaining party, without
have permission to do so.

Provide images of the location of the camera and the affected areas.

The documents provided are:

- Photo report

SECOND: In accordance with article 65.4 of Organic Law 3/2018, of 5
December, Protection of Personal Data and guarantee of digital rights (in
forward LOPDGDD), said claim was transferred to the claimed party, for
to proceed with its analysis and inform this Agency within a month of the
actions carried out to adapt to the requirements established in the regulations of
Data Protection.

The transfer of the claim, which was carried out in accordance with the rules established in

Law 39/2015, of October 1, on the Common Administrative Procedure of Public Administrations (hereinafter, LPACAP), was not collected by the person in charge.

The first transfer attempt was made on July 26, 2022, with the result of "returned to origin due to incorrect address" on 08/05/2022 according to certification from impossibility of delivery that appears in the file.

The second attempt was made to the address that appears in the register, on the 12th of August 2022, with the result of "returned to origin due to incorrect address" on the date 08/24/2022 according to certification of impossibility of delivery that appears in the proceedings.

A final notification attempt is made to the previous address, through courier on September 2, 2022, with result of returned by "address of delivery is incomplete or wrong" dated 09/15/2022, according to certification of impossibility of delivery that appears in the file.

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A new transfer attempt is made, to the address that appears in the Agency Spanish Tax Administration, dated September 13, 2022, with result of "absent". It was "Returned to Origin for Surplus (Not withdrawn in office)" dated 10/03/2022 according to certification of impossibility of delivery that appears in the proceedings.

Finally, a new attempt is made to the previous address, on the 13th of October 2022, with the result of "absent". It was "Returned to Origin by Surplus (Not withdrawn in office)" dated 11/03/2022 according to certification of impossibility of

delivery that appears in the file.

No response has been received to this letter of transfer.

THIRD: On October 19, 2022, in accordance with article 65 of the LOPDGDD, the claim presented by the claimant party was admitted for processing.

FOURTH: On February 22, 2023, 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: Notified the aforementioned start agreement on 03/07/2023, in accordance with the norms established in Law 39/2015, of October 1, on the Procedure Common Administrative System of Public Administrations (hereinafter, LPACAP) to through the Single Edictal Board, since the postal notification in the domicile of the interested party, and after the period granted for the formulation of allegations, it has been verified that no allegation has been received by the party claimed.

Article 64.2.f) of the LPACAP -provision of which the claimed party was informed in the agreement to open the procedure - establishes that if no arguments within the established term on the content of the initiation agreement, when it contains a precise pronouncement about the imputed responsibility, may be considered a resolution proposal. In the present case, the agreement of beginning of the disciplinary file determined the facts in which the imputation, the infringement of the GDPR attributed to the defendant and the sanction that could impose. Therefore, taking into consideration that the claimed party has not made allegations to the agreement to start the file and in attention to what established in article 64.2.f) of the LPACAP, the aforementioned initiation agreement 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: It appears in the file, according to documentation provided by the party

claimant, that the claimed party has installed a camera on a mast that,

Due to its location and orientation, it is likely to capture images of the property of the complaining party.

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FUNDAMENTALS OF LAW

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

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

control authority and as established in articles 47, 48.1, 64.2 and 68.1 of the

Organic Law 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 Protection Agency of data.

Likewise, article 63.2 of the LOPDGDD determines that: "The 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, according to article 4.1 of the GDPR, is data
personnel and their protection, therefore, is the subject of said Regulation. In article 4.2
of the GDPR defines the concept of "processing" of personal data.

The images generated by a system of cameras or camcorders are data of
personal nature, so its treatment is subject to the protection regulations
of data.

It is, therefore, pertinent to analyze whether the processing of personal data (image of the
natural persons) carried out through the denounced video surveillance system is
in accordance with the provisions of the GDPR.

II

Article 6.1 of the GDPR establishes the assumptions that allow the use of
processing of personal data.

Regarding treatment for video surveillance purposes, article 22 of the LOPDGDD
establishes that natural or legal persons, public or private, may carry out
carry out the treatment of images through systems of cameras or video cameras
in order to preserve the safety of people and property, as well as their
facilities.

The processing of personal data is subject to the rest of the principles of the
treatment contained in article 5 of the GDPR. We will highlight the principle of
minimization of data contained in article 5.1.c) of the GDPR which provides that
personal data will be "adequate, relevant and limited to what is necessary in relation to
for the purposes for which they are processed".

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This means that in a specific treatment only the data can be processed timely personal, that come to the case and that are strictly necessary to fulfill the purpose for which they are processed. Treatment must be adjusted and proportional to the purpose to which it is directed. The relevance in the treatment of data must occur both at the time of data collection and at the time of subsequent treatment carried out on them.

In accordance with the above, the processing of excessive data must be restricted or proceed to their deletion.

The application of the principle of data minimization in the field of video surveillance means that images of the private space of a 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.

In no case will the use of surveillance practices beyond the environment be admitted. object of the installation and, in particular, not being able to affect public spaces surroundings, adjoining buildings and vehicles other than those that access the space guarded.

It is not allowed, therefore, the placement of cameras towards the private property of neighbors with the purpose of intimidating them or affecting their private sphere without cause justified.

Nor can images be captured or recorded in spaces owned by third parties without the consent of their owners, or, where appropriate, of the people who find.

Likewise, it is disproportionate to capture images in private spaces, such as such as changing rooms, lockers or rest areas for workers.

IV.

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

1.- Individuals or legal entities, public or private, can establish a system video surveillance in order to preserve the safety of people and property, as well as its facilities.

It must be assessed whether the intended purpose can be achieved in another less intrusive to the rights and freedoms of citizens.

"Personal data should only be processed if the purpose of the processing does not could reasonably be achieved by other means. Recital 39 of GDPR.

2.- The images obtained cannot be used for a subsequent purpose incompatible with the one that motivated the installation of the video surveillance system.

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The Spanish Data Protection Agency offers through its website

[<https://www.aepd.es>] access to:

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the legislation on the protection of personal data, including the

RGPD and the LOPDGDD (section "Reports and resolutions" / "regulations"),

the Guide on the use of video cameras for security and other purposes, the Guide for compliance with the duty to inform (both available at 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.

V

It is considered that the facts exposed violate the provisions of Article 5.1.c) of the GDPR, as the installed camera is facing directly towards the farm belonging to the complaining party, implying such orientation that they are obtaining images of said farm, which implies the commission of an infraction typified in article 83.5 of the GDPR, which provides the following:

Violations of the following provisions will be penalized, according to with paragraph 2, with administrative fines of EUR 20,000,000 as maximum or, in the case of a company, an amount equivalent to 4% maximum of the overall annual total turnover of the financial year above, opting for the one with the highest amount:

a) the basic principles for the treatment, including the conditions for the consent in accordance with articles 5, 6, 7 and 9;"

For the purposes of the limitation period for infringements, the infringement indicated in the previous paragraph is considered very serious in accordance with article 72.1 of the LOPDGDD, which states that:

"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 suppose 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.”

SAW

In accordance with the provisions of article 58.2 d) of the GDPR, according to which each

The supervisory authority may “order the person in charge or in charge of the treatment to

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processing operations comply with the provisions of this

Regulation, where appropriate, in a certain way and within a time limit

specified...”, it is indicated that the claimed party must proceed to the withdrawal of the

system of cameras or video cameras of the current place or to its reorientation, in such a way

so that the viewing of the images that are observed shows that it is not captured:

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common areas of the house.

the adjoining house.

public roads.

The imposition of this measure is compatible with the sanction consisting of a fine

administration, according to the provisions of art. 83.2 of the GDPR.

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:

FIRST: IMPOSE B.B.B., 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 euros.

SECOND: Order B.B.B. with NIF ***NIF.1, in accordance with article 58.2.d) of the GDPR,

for a violation of article 5.1.c) of the GDPR, typified in article 83.5.b) of the

aforementioned Regulation, which, within a period of 30 days computed from the present

resolution is enforceable, proceed to remove the system of cameras or video cameras

of the current place or to its reorientation, in such a way that the viewing of the

images that are observed evidence that it is not captured:

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common areas of the house.

the adjoining house.

public roads.

THIRD TO NOTIFY this resolution to B.B.B..

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

Once this resolution is enforceable, in accordance with the provisions of Article

art. 98.1.b) of Law 39/2015, of October 1, on Administrative Procedure

Common of Public Administrations (hereinafter LPACAP), within the payment term

voluntary established in art. 68 of the General Collection Regulations, approved
by Royal Decree 939/2005, of July 29, in relation to art. 62 of Law 58/2003,
of December 17, by means of its income, indicating the NIF of the sanctioned and the number
of procedure that appears in the heading of this document, in the account
restricted IBAN number: ES00 0000 0000 0000 0000 0000 (BIC/SWIFT Code:
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XXXXXXXXXXXXX), opened on behalf of the Spanish Agency for Data Protection in
the banking entity CAIXABANK, S.A. Otherwise, it will proceed to its
collection in executive period.

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 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 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.

Finally, it is noted 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 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-web/>], or through any of the other registries 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 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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