

□ File No.: EXP202207150

RESOLUTION OF SANCTIONING PROCEDURE

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

BACKGROUND

FIRST: ***COMMUNITY OWNERS A.A.A. (*hereinafter, the claiming party-

te) on 05/19/22 filed a claim with the Spanish Protection Agency

of data. The claim is directed against who identifies as B.B.B. with NIF

***NIF.1 (hereinafter, the claimed party). The reasons on which the claim is based

are the following:

"since he has installed, next to the door of his home, without authorization

of the Community of Owners, a video surveillance camera that would capture images

common areas"

File EXP202201980 was processed, although the complaining party states

that the complained party has not taken corrective measures.

Along with his initial claim, an image of the location of the camera was provided (Annex
YO).

SECOND: Consulted the database of this Agency, it appears associated with the claim-

of the File with number AT/00761/2022 as a result of a previous claim of 02/22/22

for the same facts exposed, where various requirements are sent to

the correction of the situation described in the current legal framework.

"Taking the foregoing into account, if necessary, you will have to adapt the treatments

treatment carried out in accordance with the provisions of the aforementioned regulations. In the event of not

adopt the measures that, where appropriate, are necessary to comply with the

aforementioned legal provisions, would incur an infringement, which could lead to the initiation of the

corresponding investigative and sanctioning actions”

It is reported that you can obtain information related to the subjects

competence of this Agency by consulting its guides at [https://www.aepd.es/es/](https://www.aepd.es/es/guides-and-tools/guides)

[guides-and-tools/guides](https://www.aepd.es/es/guides-and-tools/guides).

THIRD: On July 29, 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 6 of the GDPR, typified in Article 83.5 of the

GDPR.

FOURTH: Consulted the database of this organization, it was subject to non-

notification in time and form, not having received a response to it or adoption

corrective measure in this regard.

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The notification is verified in the BOE dated August 22, 2022

"Notification announcement of August 24, 2022 in procedure PS/00348/2022"

the extract thereof being incorporated into the Administrative File.

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. The facts bring cause of the claim dated 05/19/22 where

transfer as claim

"since he has installed, next to the door of his home, without authorization

of the Community of Owners, a video surveillance camera that would capture images

common areas" (folio no. 1).

Documentary evidence is provided (Annex I) confirming the presence of a camera on the outside of the house, affecting common areas without just cause.

Second. It is identified as the main person in charge B.B.B., with NIF ***NIF.1.

Third. The presence of a video-monitored camera outside the housing affecting common areas without just cause.

Room. There is evidence of the absence of an informative poster indicating that it is a video-surveilled area, as well as the purpose of the treatment of the data has not been explained. third party data.

FUNDAMENTALS OF LAW

Yo

In accordance with the powers that article 58.2 of Regulation (EU) 2016/679 (Re-General Data Protection Regulation, hereinafter GDPR), grants each authority quality of control and as established in articles 47, 48.1, 64.2 and 68.1 of the Law Organic 3/2018, of December 5, 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.

Likewise, article 63.2 of the LOPDGDD determines that: "The procedures processed by the Spanish Data Protection Agency will be governed by the provisions of Regulation (EU) 2016/679, in this organic law, by the regulations comments dictated in its development and, insofar as they do not contradict them, with a subsidiary, by the general rules on administrative procedures."

II

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In the present case, the new claim dated

05/19/22 by means of which the camera installation is transferred by neighbor without contract with the proper authorization affecting common areas without just cause.

For the installation of surveillance services in a community of owners

the votes in favor of 3/5 of the total owners are needed, who must also represent pay at least 3/5 of the participation fees.

According to Article 17.1 of the Horizontal Property Law, to incorporate into the community services or improvements that are not essential for conservation, habitability and accessibility of the property, such as video surveillance cameras, it will be necessary the favorable vote of three fifths of the owners, who in turn suppose three fifths of the participation fees.

The installation of this type of devices individually must have the approval of the group of owners of the community when affecting areas of community transit.

To determine if an area is common or not, we must review article 396 of the Code of Civil. It contains the basic criteria by which to be governed, as well as a series of elements that are considered common areas.

Article 6 paragraph 1 GDPR letter e) provides "The treatment will only be lawful if at least one of the following conditions is met:

- the processing is necessary for the fulfillment of a mission carried out in public interest or in the exercise of public powers conferred on the data controller treatment;

Therefore, the question must be raised in the corresponding point of the

Order of the day, exposing to the group of community members the cause(reason) of the installation

where appropriate, the measure must be supported by the majorities required by law.

gallantly.

Apart from the above, the system must be duly informed, but

For obvious reasons, the absence of authorization does not legitimize the presence of an alarm gun in community wall.

Likewise, purposes such as the one pursued are achieved with the installation of

a security system inside the property, thus not affecting the

"intimate" sphere of third parties who are intimidated by the presence of this type of dis-

positive, considering that it affects their freedom to be observed as a guide

at the entrances/exits of their own properties.

II

Based on the evidence available in this proceeding

disciplinary action, it is considered that the claimed party has proceeded to install a system

of video-surveillance that affects a community area without just cause, lacking

the corresponding authorization of the board of owners.

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The initial behavior of this neighbor of the property that has caused

a situation of certain "discomfort" in the Community when proceeding with the installation of a

camera that affects transit areas without just cause, proceeding to the

"data processing" of the same without explanation in this regard to date.

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 allegations are made-

within the period provided for the content of the initiation agreement, when it contains
has a precise pronouncement about the imputed responsibility, it may be
considered motion for resolution. In the present case, the agreement to start the ex-
disciplinary action determined the facts in which the accusation was specified,
the infringement of the GDPR attributed to the defendant and the sanction that could be imposed.
Therefore, taking into consideration that the defendant has not made allegations
to the agreement to initiate the file and in accordance with the provisions of article
64.2.f) of the LPACAP, the aforementioned initiation agreement is considered in the present case
<motion for a resolution>.

It has been accredited its presence on the outside of the house
(Doc. Evidence Annex I), affecting the rights of third parties, whose data is processed
illegitimately, by not having authorization from the owners' meeting, which
has widely warned about the behavior described.

The known facts constitute an infringement, attributable to the party
claimed, for violation of the content of article 6 GDPR, previously cited.

IV.

It is considered that the system lacks the corresponding informative signage of
so that it is not reported that it is a video-surveilled area, so the con-
duct described is considered a second administrative offense within the framework of the
regulations that concern us.

Article 22 section 4 of the LOPDGDD (Lo 3/2018) provides: "The duty to
information provided for in article 12 of Regulation (EU) 2016/679 shall be understood
accomplished by placing an informational device in a location sufficiently
visible identifying, at least, the existence of the treatment, the identity of the person responsible,
and the possibility of exercising the rights provided for in articles 15 to 22 of the Re-
regulation (EU) 2016/679. A code may also be included in the information device.

go connection or internet address to this information”.

The facts described above imply an affectation to the content of the article

13 GDPR, as the informative poster lacks an effective address to which power can be reached in

address your case, having informed the group of neighbors of the purpose

of the installation (vgr. protection of the installations, etc).

Article 13 GDPR "Information that must be provided when the data per-

personal data are obtained from the interested party"

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1. When personal data relating to him or her is obtained from an interested party, the person responsible

of the treatment, at the moment in which these are obtained, it will provide you with all the information

information indicated below: a) the identity and contact details of the person in charge

and, where appropriate, his representative; b) the contact details of the protection delegate

tion of data, if applicable; c) the purposes of the processing for which the personal data is intended;

personal data and the legal basis of the treatment (...).

Article 72 section 1 of the LOPDGDD (LO 3/2018, December 5) in relation to

tion to the limitation period of very serious infractions "will prescribe three

years" and in particular the following:

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

(UE) 2016/679 and 12 of this organic law.

Therefore, the infringement of 13 GDPR is proven, by breaching the duty to

information to those affected by the processing of their data, which are collected by the

video surveillance system installed under its sole responsibility, lacking the same of the precise authorization to affect the community area.

V

The art. 83.5 GDPR provides the following: "Violations of the following provisions

These will be penalized, in accordance with section 2, with administrative fines of 20

000 000 EUR maximum or, in the case of a company, an equivalent amount

to a maximum of 4% of the overall annual total turnover of the financial year

previous year, 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 (...)".

the rights of the interested parties in accordance with articles 12 to 22;

b)

In accordance with the foregoing, it is considered correct to impose a penalty of €600, (€300

+€300), having a device whose nature has not been clarified, installed in

community zone affecting the set of neighbors (as) of the property and paying attention

ignoring the recommendations of the property managers, lacking the informative poster

prescriptive motive, considering the conduct described at least gross negligence,

sanction located on the lower scale for this type of behavior.

SAW

The text of the resolution establishes which have been the infractions committed and

the facts that have given rise to the violation of the data protection regulations

from which it is clearly inferred what are the measures to be adopted, without prejudice to

that the type of procedures, mechanisms or concrete instruments to implement

treat them corresponds to the sanctioned party, since it is the person responsible for the treatment who

fully knows your organization and has to decide, based on personal responsibility

active and risk-focused, how to comply with the GDPR and the LOPDGDD.

If the camera continues after a reasonable time, it can be moved

give the situation to the Local Police, so that they make the mandatory Report (Act-Complaint-cia), once again transferring the facts to this body, for the purposes of analysis.

initiate, if appropriate, the opening of a new procedure for continuous administrative infringement
nuada.

Therefore, in accordance with the applicable legislation and assessed the graduation criteria
tion of the 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 6.1 e)
of the GDPR, typified in Article 83.5 a) of the GDPR, a fine of €300.

SECOND: IMPOSE B.B.B., with NIF ***NIF.1, for a violation of Article 13
of the GDPR, typified in Article 83.5 b) of the GDPR, a fine of €300.

THIRD: ORDER the claimant so that, within 15 business days, he proceeds
gives as follows:

-Withdrawal of the device from its current location, proceeding to
provide documentary evidence (photograph date and time) that proves such extreme to this or-
agency to verify compliance with the adopted measure.

FOURTH: NOTIFY this resolution to B.B.B..

FIFTH: 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 Co-Administrative Procedure

public administrations (hereinafter LPACAP), within the term of payment 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 number ES00 0000 0000 0000 0000 0000, open in the name of the Spanish Agency for Data Protection in the bank CAIXABANK, S.A.. In case of Otherwise, it will proceed to its collection in the 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 period is It will run 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

Respondents may optionally file an appeal for reinstatement before the Director

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of the Spanish Agency for Data Protection within a period of one month from the the day following the notification of this resolution or directly contentious appeal before the Contentious-Administrative Chamber of the National Court,

in accordance with the provisions of article 25 and section 5 of the additional provision fourth clause of Law 29/1998, of July 13, regulating the Contentious Jurisdiction-administration, within a period of two months from the day following the notification of this act, as provided for in article 46.1 of the aforementioned 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 interested party do states its intention to file a contentious-administrative appeal. If it is-

As the case may be, the interested party must formally communicate this fact in writing addressed to the Spanish Data Protection Agency, presenting it through the Re-Electronic registry of the Agency [<https://sedeagpd.gob.es/sede-electronica-web/>], or to 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 the documentation to the Agency proving the effective filing of the contentious-administrative appeal. if the Agency was not aware of the filing of the contentious-administrative appeal treatment within two months from the day following notification of this resolution, would terminate the precautionary suspension.

Mar Spain Marti

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