

□ Procedure No.: PS/00023/2020

938-300320

RESOLUTION OF PUNISHMENT PROCEDURE

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

FACTS

FIRST: On October 8, 2019, it had entry in this Spanish Agency
of Data Protection a document presented by A.A.A. on behalf of B.B.B.
(hereinafter, the claimant), through which he makes a claim against C.C.C.
with NIF ***NIF.1 (hereinafter, the claimed one), for the installation of a
video surveillance at ***ADDRESS.1, ***APARTMENTS.1 - ***LOCATION.1
(SANTA CRUZ DE TENERIFE), with indications of a possible breach of the
provided in the personal data protection regulations.

The reasons that support the claim and, where appropriate, the documents
provided by the claimant are the following:

«[...] SECOND: For some time now (January 15, 2019) they have placed
cameras for private use on the community façade and focused on the house and
garden of D.B.B.B. and family, as well as an intercom for private use in the
exterior community wall, without authorization from the Community of Owners. [...]

Attach photographic report of the location of the cameras and two recordings
Of video.

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

10/23/2019.

On 11/18/2019, there was a written reply to the claimant with the following content:

«[...] SECOND: That the installation of the camera is based on the threats of injury and death received from the neighbor who lives in the apartment first of the building (apartment 101). These threats are denounced and It is currently in the investigation phase.

THIRD: That this party states that although the camera is installed in outside the house, CANNOT capture images of people at entrances, facades or dividing walls, but only the entrance of the house I own, therefore, the provisions of the RGPD are not applicable.

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FOURTH: That despite the foregoing, this part has been complying with the RGPD, so it answers the following points:

1. Identification of the person responsible for the installation by providing their NIF and telephone number of contact: D. C.C.C., provided with the N.I.E. number ***NIF.1

2. Information provided on the existence of a video-monitored area through Photographs of the poster or informative posters: Photograph is attached. said poster clearly indicates the existence of the treatment, the identity of the person in charge, the possibility of exercising the rights of article 15 to 22 of the RGPD and a reference to where to obtain more information about the treatment of the data personal.

3. If a third party has been commissioned to view and process the

images captured by the cameras, provide a contract: It has not been contracted with
no third party the visualization and treatment of the images.

4. Number and characteristics of the cameras: Three fixed cameras, they do not rotate.

5. Scope of the cameras and places where they are installed: Attached

photographs of the installation of the cameras as well as the images

captured, where it is verified that they do not capture

images of land and adjoining houses or any other foreign space.

6. Indicate the term of conservation of the registered images: The images

are not recorded in any medium, they are only used to

Visualize that there is no strange person outside the house when

get out of it.

7. Any other information of interest:

Images are accessed with an internet connection, with [Sic.]

restricted access with a user code and a password that guarantees

unique identification and authentication, which is known only to me.

The password is regularly changed, avoiding the easily

deductibles.[...]»

Attach photographic report.

THIRD: In view of the response made by the person claimed to the transfer

made, on 11/27/2019 he was required to complete the information

provided. Specifically, it was requested:

«-Contribution of the Minutes of the Meeting of the Community of Owners in which

approve the authorization for the installation of video surveillance cameras,

located outside your home, for which you are responsible.

-Regarding the video intercom with camera, of your property, installed on the wall

community outside, report if the camera is triggered and turned on when

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rings the doorbell, visualizing the caller during said

moments and without the system having an image recording system,

or if the system is articulated through procedures that reproduce and/or record

images constantly.

Likewise, contribution, with respect to this last system: copy of the minutes of the

Board of the Community of Owners in which the installation of the

mentioned video intercom; information provided on the existence of a zone

video surveillance through photographs of the information poster where possible

appreciate both its location and the data displayed; photograph of the

images captured by the same as they are displayed on the monitor and term

preservation of recorded images.»

On 12/9/2019, the respondent's response was received with the following

contents:

«[...] FIRST: THE MEETING MINUTES OF THE C.P. SINCE THE

CAMERAS DO NOT CAPTURE ANY IMAGE OF COMMON ELEMENTS,

BUT OF THE ENTRANCE OF THE HOUSE THAT HAS THE CONSIDERATION

PRIVATE ELEMENT, SO IT IS NOT NECESSARY

BOARD APPROVAL.

SECOND: REGARDING THE INSTALLED VIDEO DOORPHONE WITH CAMERA

IN THE EXTERIOR COMMUNITY WALL, IT IS REPORTED THAT THE SYSTEM

IT IS NOT OPERATIONAL, THE CALLER IS NOT DISPLAYED

NOR DOES IT HAVE AN IMAGE RECORDING SYSTEM.»

FOURTH: The claim was admitted for processing by means of a resolution of 16 December 2019.

FIFTH: On June 8, 2020, the Director of the Spanish Agency for Data Protection agreed to initiate a sanctioning procedure against the claimant, for the alleged infringement of article 5.1.c) of the RGPD, typified in article 83.5 of the GDPR.

: The initiation agreement has been formally notified, the respondent has not submitted

SIXTH

brief of allegations, for which what is stated in article 64 of the Law 39/2015, of October 1, of the Common Administrative Procedure of the Public Administrations, which in section f) establishes that in the event of make allegations within the stipulated period on the content of the initiation agreement, this may be considered a resolution proposal when it contains a precise pronouncement about the imputed responsibility, for which reason to issue resolution.

In view of everything that has been done, by the Spanish Protection Agency of Data in this procedure the following are considered proven facts,

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FACTS

FIRST: The defendant has installed a video surveillance system outside the

the house located at ***ADDRESS.1, ***APARTMENTS.1 - ***LOCATION.1

(SANTA CRUZ DE TENERIFE) composed of three fixed cameras. It has a poster informative.

SECOND: Of the photographs provided by the respondent in the answer to the transfer of the claim it is evidenced that:

Camera 1 (named that way on the viewing monitor)

□

captures the access staircase to the house and part of the lower garden that corresponds to another neighboring dwelling.

The camera displayed in the lower left quadrant of the monitor captures

□

part of the access stairs, part of the lower garden and reaches vehicles parked in the driveway outside the building.

THIRD: The respondent has also installed a video intercom on the exterior wall community with respect to which it states that it is not operational, without having proceeded to accredit this point.

FOURTH: The authorization of the Board of Owners of the Community for the installation of the aforementioned devices.

FIFTH: The sound recording provided by the claimant in his writing since the interveners of the recording.

SIXTH: The respondent has not presented allegations within the investigation of the process.

FOUNDATIONS OF LAW

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By virtue of the powers that article 58.2 of the RGPD recognizes to each

control authority, and as established in arts. 47 and 48.1 of the LOPDGDD, the

Director of the Spanish Data Protection Agency is competent to resolve

this procedure.

II

The defendant is imputed the commission of an infraction for violation of the

article 5.1.c) of the RGPD, regarding the principles of treatment, which provides that the

personal data will be “adequate, relevant and limited to what is necessary in relation to

for the purposes for which they are processed (“data minimization”).” This article

enshrines the principle of data minimization in data processing

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personal. It assumes that said treatment is adjusted and proportional to the purpose to be

which is addressed, and the processing of excessive data must be restricted or

proceed to their removal.

The violation of this article is typified as an infraction in article 83.5 of the

RGPD, which considers as such:

"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; [...].”

However, article 58.2.b) of the same legal text provides for the possibility of punish with a warning, in relation to what is stated in Considering 148:

“In the event of a minor offence, or if the fine likely to be imposed would constitute a disproportionate burden for a natural person, rather than sanction by means of a fine, a warning may be imposed. must however Special attention should be paid to the nature, seriousness and duration of the infringement, its intentional nature, to the measures taken to alleviate the damages suffered, the degree of liability or any relevant prior violation, the manner in which that the control authority has been aware of the infraction, compliance of measures ordered against the person responsible or in charge, adherence to codes of conduct and any other aggravating or mitigating circumstance.”

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.”

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In this procedure, it is necessary to analyze the presumed illegality of the installation, by the defendant, of a video surveillance system made up of 3 cameras located outside the house located at CALLE *** ADDRESS.1, ***APARTMENTS.1 - ***LOCATION.1 (SANTA CRUZ DE TENERIFE), system that could capture images of neighboring housing areas disproportionate, as well as an intercom for private use outside the building, all without the corresponding authorization of the Board of Owners of the Community.

The facts of this sanctioning procedure show that 2 of the 3 cameras installed by the respondent (the so-called camera 1 and the one visible in the lower left quadrant of the viewing monitor) clearly capture disproportionate community areas, neighboring homes and even public roads. This situation is not covered by the exclusion contained in article 22.5 of the LOPDGDD because the capture of images that exceed the verification about the identity of people trying to access a home exceeds the consideration of treatment "carried out by a natural person in the exercise of Exclusively private or domestic activities" of article 2.2.c) of the RGD.

The same reflection must be extended to the video door entry system installed on the exterior wall community, since due to its location it cannot be compared to the video door entry system installed at the entrance door of a house.

Likewise, even when the purpose of the data processing carried out with the video surveillance system was to guarantee the security of the home and the space exclusive of the claimed —and therefore said legitimizing basis could be asserted —, the capturing of images should be reduced to this private space, limiting itself that of common areas to the minimum tangential and essential, without in any case

can reach the gardens of neighboring houses or the public road. is remembered that, with respect to the latter, the power is generally attributed to the Forces and Security Forces and that, in any case, the possibility of capturing a portion essential of the same for security reasons would correspond, for the characteristics of the building in question, to the community of owners. Finally, it is noted that individuals who install this type of devices are responsible for its compliance with current legislation, must comply with the requirements established in Law 49/1960, of July 21, on horizontal property (LPH). Thus, the installation of a video surveillance system by an individual will require authorization from the Board of the community of owners both when its location is projected in a common area and when, even located in an area of private use, orient to surrounding common areas and capture — respecting in any case the principle of data minimization—tangentially these common areas.

IV

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In the present case, when deciding the appropriate sanction to impose,

In particular, the following elements have been taken into account.

That it is an individual whose main activity is not linked to the treatment of personal data.

☐ That there is no recidivism, because the commission is not recorded, in the term of a year, of more than one infraction of the same nature.

☐ That he has shown a cooperative attitude with this Agency when answering the request.

For all these reasons, it is considered that the sanction that should be imposed is warning, in accordance with the provisions of article 58.2 b) of the RGPD, in relation to what is stated in Considering 148, cited above.

Therefore, in accordance with the applicable legislation and having assessed the criteria for graduation of the sanctions whose existence has been proven, the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: IMPOSE C.C.C., with NIF ***NIF.1, for an infraction of article 5.1.c) of the RGPD, typified in article 83.5 of the RGPD, a sanction of WARNING.

To this end, within ONE MONTH from the notification of this act,

You must prove the following:

- ☐ Prove that you proceeded to the removal of cameras 1 and the one that appears in the monitor in the lower left quadrant of their current locations, or or to its reorientation by reducing the capture angle.
- ☐ Certify that the automatic video door entry system installed on the community wall is found inoperative.

SECOND: NOTIFY this resolution to C.C.C. and REPORT the result of performances to A.A.A. on behalf of B.B.B.

In accordance with the provisions of article 50 of the LOPDGDD, the

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 period of

month 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

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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 art. 90.3 a) of the LPACAP, the firm resolution may be provisionally suspended in administrative proceedings if the interested party expresses his intention to file a contentious appeal-administrative. If this is the case, the interested party must formally communicate this made by writing to the Spanish Agency for Data Protection,

introducing him to

the agency

[<https://sedeagpd.gob.es/sede-electronica-web/>], or through any of the other

records provided for in art. 16.4 of the aforementioned Law 39/2015, of October 1. Also

must transfer to the Agency the documentation that proves the effective filing

of the contentious-administrative appeal. If the Agency were not aware of the

filing of the contentious-administrative appeal within two months from the

day following the notification of this resolution, it would end the

precautionary suspension.

Electronic Registration of

through the

Sea Spain Marti

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