

□ Procedure No.: PS/00332/2019

938-051119

## RESOLUTION OF PUNISHMENT PROCEDURE

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

### FACTS

FIRST: Don A.A.A. (hereinafter, the claimant) dated May 24, 2019

filed a claim with the Spanish Data Protection Agency. The

claim is directed against B.B.B. with NIF \*\*\*\*NIF.1 (hereinafter, the claimed).

The reasons on which the claim is based are "installation of cameras that record  
ban the public thoroughfare" without just cause, thereby affecting the right to privacy of  
third parties that are affected by them.

Along with the claim, provide documentary evidence (Doc. No. 1) that proves the  
presence of a device on the ship owned by the accused.

SECOND: In view of the facts denounced in the claim and the documents  
data provided by the claimant, the Subdirector General for Data Inspection pro-  
yielded to carry out preliminary investigation actions for the clarification  
of the facts in question, by virtue of the powers of investigation granted to the  
control authorities in article 57.1 of Regulation (EU) 2016/679 (Regulation  
General Data Protection, hereinafter RGPD), and in accordance with the provisions  
ed in Title VII, Chapter I, Second Section, of Organic Law 3/2018, of 5  
December, of Protection of Personal Data and guarantee of digital rights (in  
hereinafter LOPDGDD).

As a result of the research actions carried out, it is confirmed  
that the data controller is the claimed party.

THIRD: On 07/01/18, the claim is TRANSFERRED to the complaint-

do, receiving a reply from the same on date (s) 08/12/19 and 08/28/19. of the set

The following can be deduced from the allegations:

- Acknowledges being responsible for the installation of the video-surveillance system,

which is due to security reasons of the facilities.

- There is an information poster, but the photograph is taken from a distance.

cia that does not allow to analyze the same.

- It does not give an impression of what in your case is captured with the camera (s) installed-

give on your property.

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- It does not provide a location map of the place of installation of the camera (s) and the

main access points to your particular property.

- It does not provide a technical report that proves that the system is not operational, nor has

provided any documentation after the latest allegations to this body.

FOURTH: On January 13, 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.

FIFTH: On 02/03/20, a written statement was received from the accused by

means of which states the following:

“I provide copy No. 4: Complaint against A.A.A. dated January 28, 2019 by

attempted aggression and death threats, this happens in front of my warehouse (place

where the camera is installed).

“Only I had access to the recordings, I saw them and deleted them daily, and only two recordings have come out of said camera which were presented prior consultation (To the Subdelegate of the Government of Cuenca) in the Court and First Instance and instruction of \*\*\*LOCALIDAD.1 as proof of the complaints I have against A.A.A.”

I would like you to understand that it was never my intention to do anything wrong, nor bother anyone, quite the opposite (...).”

#### PROVEN FACTS

First. On 05/24/19, a claim is received at this Agency through the which translates as the main fact the following:

Along with the claim, provide documentary evidence (Doc. No. 1) that proves the “installation of cameras that record public thoroughfares” without just cause, affecting thereby violating the right to privacy of third parties who are affected by the same plus.

presence of a device on the ship owned by the accused.

Second. It is proven that the defendant has modified the information poster after requirement of this Agency, although it refers to a regulation repealed.

Third. It proves the removal of the camera from the façade where it was located installed, providing documentary evidence in this regard, stating that it was “inoperative” since August 2019.

Fourth. Provides a technical report, which certifies the disassembly of the camera from the window where it was installed (Proof No. 3).

Fifth. Between the complainant and accused parties, there is a bad relationship, accredited with the complaints provided by the accused.

Sixth. It is proven, according to the evidence examined, that the chamber allowed

Record a wide area, beyond the perimeter of the industrial building.

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FOUNDATIONS OF LAW

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By virtue of the powers that article 58.2 of the RGPD recognizes to each authority-control, and according to the provisions of articles 47 and 48 of the LOPDGDD, the Director of the Spanish Agency for Data Protection is competent to initiate and to solve this procedure.

II

In the present case, the claim dated 05/24/19 is examined by me-gave from which the following "installation of cameras that record the public thoroughfare" without just cause.

The "facts" described above imply an affectation of the content of art. 5.1

c) RGPD, by having video-surveillance cameras that obtain images of the sidewalk, affecting the right of passers-by who walk freely in the area.

"Personal data will be: adequate, pertinent and limited to what is necessary in relation to the purposes for which they are processed ("data minimization").

The treatment of images in public places can only be carried out -in your case and prior compliance with the legally enforceable requirements-, by the Forces and Security Forces, unless the exception established in article 4.3 operates of Instruction 1/2006, of November 8, of this Agency, which establishes: "the

cameras and video cameras installed in private spaces will not be able to obtain images of public spaces unless it is essential for the purpose of surveillance that is intended, or it is impossible to avoid it due to their location. In any case, any unnecessary data processing for the purpose should be avoided. persecuted”.

In no case will the use of surveillance practices beyond the en- object of the installation and in particular, not being able to affect the public spaces surrounding spaces, adjoining buildings and vehicles other than those accessing the space. guarded man

On 02/03/20, this Agency received a written statement from the respondent, stating the following “that the camera has been inoperative since August 2019”, justifying when the presence of the same as a result of a vandalism attack against his property. Likewise, it has proceeded to modify the informative poster indicating the responsible of the treatment, as well as a telephone number to which you can contact.

Regarding this last aspect, remember that there is a new regulation on of data protection, being the current regulation in force the Organic Law 3/2018, of 5 December, Protection of Personal Data and guarantee of digital rights.

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Article 22 section 4 of the LOPDGDD provides the following: “The duty to information provided for in article 12 of Regulation (EU) 2016/679 shall be understood accomplished by placing an informative device in a sufficiently visible identifying, at least, the existence of the treatment, the identity of the responsible

and the possibility of exercising the rights provided for in articles 15 to 22 of the Regulation (EU) 2016/679. A code may also be included in the informative device.  
go connection or internet address to this information”.

Therefore, the available poster does not conform to that required by the current regulations, refer to a repealed regulation.

III

In accordance with the evidence available in this proceeding, sanctioning procedure, it is considered that the defendant had a camera system video-surveillance cameras, without this body being able to analyze what was captured with the same, although a frame provided by the accused shows a great excessive drinking.

The evidence analyzed confirms that it had a camera system, which did not comply with current legislation, although the images have been transferred for prove alleged criminal acts of a neighbor.

For a long time the cameras have been operating, obtaining images disproportionately from public space, at least from 2012 to August of the year 2019.

The known facts constitute an infraction, attributable to the claimant. mado, for violation of art. 5.1 c) GDPR.

With this device, images are obtained of the public sidewalk adjoining its establishment disproportionately, existing less harmful means to the rights of pedestrians and having been able to reorient the outer chamber exclusively sively towards your private property.

The art. 83.5 RGPD provides the following: “Infringements of the provisions following will be sanctioned, in accordance with section 2, with administrative fines EUR 20,000,000 maximum or, in the case of a company, an equivalent amount.

equivalent to a maximum of 4% of the total global annual turnover of the fiscal year

previous financial statement, 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;

The installed camera disproportionately captured public space,

so that there are less harmful means to the rights of third parties to install the

same.

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Without prejudice to the provisions of article 83 of the RGPD, the aforementioned Regulation provides

ne in your art. 58.2 b) the possibility of sanctioning with a warning, in relation to what

stated in Recital 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 a sanction.

tion by means of a fine, a warning may be imposed. You must, however, pay

Special attention is paid to the nature, seriousness and duration of the infraction, its character

intentional ter, to the measures taken to alleviate the damages suffered, to the

degree of responsibility or any relevant prior violation, the manner in which

the control authority has become aware of the infraction, to the fulfillment of

measures ordered against the person in charge or in charge, adherence to codes of

conduct and any other aggravating or mitigating circumstance.”

On the occasion of the initiation of this proceeding, the defendant has agreed to remove the camera object of the complaint, as well as to modify the computerized poster vo, indicating the data controller.

Thus, this body proceeds to specify the situation that is the object of statement making the following recommendations, the cameras should be oriented in any case to the main accesses of your property, whether real or inoperable. tives, they must have a sign homologated to the regulations in force, or if they do not have ne of camera (s) some can have a simulated poster.

Therefore, this body does not prevent you from having the cameras, as long as you conform to current legislation, that is, oriented to the perimeter of your industrial warehouse, being able in case of doubt to consult the nearest Civil Guard Command. cana or this body, on the correct installation of the same.

In the event that they capture criminal acts, they must be transferred to the Investigating Court closest to the scene of the events or be made available of the Security Forces and Bodies, remembering that recordings are admissible made with mobile.

The rest of the issues must be analyzed in their case in the Courts corresponding, by exceeding the competence framework of this body, these being those competent to analyze images provided as evidence.

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 B.B.B., 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.  
SECOND: NOTIFY this resolution to Don B.B.B.

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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 LPA-

CAP, the interested parties may optionally file an appeal for reconsideration before

the Director of the Spanish Agency for Data Protection within a period of one month

counting from the day following the notification of this resolution or directly

contentious-administrative case before the Contentious-administrative Chamber of the Au-

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 Jurisdiction

Contentious-administrative diction, within a period of two months from the day following

Following the notification of this act, as provided in article 46.1 of the aforementioned

Law.

Sea Spain Marti

Director of the Spanish Data Protection Agency

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