

□ File No.: EXP202204246

## RESOLUTION OF SANCTIONING PROCEDURE

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

### BACKGROUND

FIRST: CIVIL GUARD - POST OF AOIZ and A.A.A. dated April 1, 2022 filed a claim with the Spanish Data Protection Agency. The re-outcry is directed against B.B.B. with NIF \*\*\*NIF.1 (hereinafter, the denounced party).

The reasons on which the claim is based are the following:

"video surveillance system that focuses on public roads, without authorization administrative authorization for it, having published recordings from said system on the social network FACEBOOK, in which the claimant appears"

It provides images of the aforementioned recordings and a complaint filed by the complaining party before the CIVIL GUARD.

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 hereafter LOPDGDD), said claim was transferred to the party claimed on fe-date 04/08/22, to proceed with its analysis and inform this Agency on the plan within one month, of the actions carried out to adapt to the foreseen requirements. cough in the data protection regulations.

THIRD: On 05/25/22, this body received a response from the party denounced (claimed) considering that the installation of the cameras obeys cause of necessity, justifying their use in a "situation of mistreatment animal" as well as various problems that he has continued with the counterpart.

FOURTH: On July 1, 2022, in accordance with article 65 of the LO-

PDGDD, the claim presented by the claimant party was admitted for processing.

FIFTH: On September 2, 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 5.1.c) of the GDPR, typified in Article 83.5 of the

GDPR.

SIXTH: The notification of the Agreement is recorded in the information system of this Agency

Start of this procedure, in accordance with the provisions of the LPAC

(Law 39/2015, October 1), being delivered as accredited by the Official Service of

Mail dated 09/20/22, receiving the same according to "I received" by the company itself

claimed.

In view of all the proceedings, by the Spanish Agency for Data Protection

In this proceeding, the following are considered proven facts:

C / Jorge Juan, 6

28001 – Madrid

[www.aepd.es](http://www.aepd.es)

[sedeagpd.gob.es](http://sedeagpd.gob.es)

2/6

## PROVEN FACTS

First. The facts bring cause of the claim dated 04/01/22 through the

which is transferred as main fact the following

“video surveillance system that focuses on public roads, without authorization

administrative authorization for it, having published recordings from said

system on the social network FACEBOOK, in which the claimant appears"

It provides images of the aforementioned recordings and complaint filed by the complainant.

complainant before the CIVIL GUARD.

Second. Ms. B.B.B., NIF \*\*\*NIF.1, is identified as the main responsible

who does not deny the installation of a recording device on his property.

Third. It is proven that the installed camera obtains images of a portion of public space, having processed data from third parties and having disseminated the same. We are on social networks.

“...the person reviewed disseminated said content on the social network Facebook (Annex II) that were the motivators of the initial attestation (...) and for which the the current efforts” (Civil Guard Act 04/08/22—folio no. 1--).

Room. No modifications have been made to the system, nor have the measures taken by the defendant.

## 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

In the present case, we proceed to examine the letter transferred by the Forces and State Security Corps (Civil Guard Company of Sanguesa) through which highlights the presence of a camera that is obtaining images of

[www.aepd.es](http://www.aepd.es)

C / Jorge Juan, 6

28001 – Madrid

[sedeagpd.gob.es](http://sedeagpd.gob.es)

3/6

public space without just cause, which has been denounced by a neighbor  
of the locality

The art. 5.1 c) GDPR provides the following: Personal data will be:

“adequate, relevant and limited to what is necessary in relation to the purposes

for those who are processed ("data minimization").

It should be remembered that individuals are responsible for ensuring that the systems installed  
felled comply with current legislation, certifying that it complies with all  
the requirements demanded by the regulations in force.

The installation of this type of device must have the mandatory informative poster  
tive, indicating the purposes and person responsible for the treatment, where appropriate, of the data of each  
personal character.

In any case, the cameras must be oriented towards the particular space, avoiding  
intimidate neighboring neighbors with this type of device, as well as control areas  
transit thereof without just cause.

Neither with this type of device can you obtain an image(s) of public space.  
since this is the exclusive competence of the Security Forces and Bodies of the State  
tado.

It should be remembered that even if it is a "simulated" camera, the same  
should preferably be oriented towards private space, since it is considered  
that this type of device can affect the privacy of third parties, who are intimate  
measured by it in the belief of being the object of permanent recording.

On the part of individuals, it is not possible to install devices for obtaining images of public space and/or traffic of third parties, outside the cases allowed in the normative.

The purpose of this type of device must be the security of the property and its inhabitants, avoiding the affectation of the rights of third parties who are intimidated two with the same

It is recalled that the installed devices must be duly informed by through an informative sign in a visible area indicating that it is a video-surveillance area given, proceeding to restore it in case of theft or theft, as well as that the images damages obtained with them (vgr, acts of vandalism, property crimes, threats, etc) must be made available to the competent Authorities, in order to analysis should not be the object of dissemination a priori in public networks because it can be produce reputational damage to the affected third party without just cause (vgr. Crime against moral integrity), affecting legally recognized rights.

The dissemination of certain types of images (data) on social networks must be done respecting certain guarantees and recognized rights, adopting in any case the necessary fabrics (vgr. blurring of the face, etc.) that can sometimes be incardi- in a certain type of social denunciation in situations of lack of protection of the Authorities.

C / Jorge Juan, 6

28001 – Madrid

[www.aepd.es](http://www.aepd.es)

[sedeagpd.gob.es](http://sedeagpd.gob.es)

4/6

ties, but that should not be done freely, preferable that they be analyzed, especially if we are faced with criminal situations as manifested by the denounced by the judicial authorities of the locality or, where appropriate, the Forces and

State Security Corps.

The cameras should preferably be oriented towards your private space.

vo, arranging where appropriate free advice in this body or where appropriate counting on the collaboration of the Security Forces and Bodies themselves or of private companies that are experts in data protection, so that there is no a situation of lack of protection of the same, but neither an excessive "freedom" in their use by individuals.

II

Based on the evidence available in this proceeding sanctioning party, it is considered that the claimed party has a device for image capture that is poorly oriented, making an excessive capture of public space.

The operation of the system is not denied by the defendant, nor by force actor confirming the dissemination of images through a well-known social network (Doc. Evidence Annex I Act of Complaint dated 04/08/22), as a protest before situation of lack of protection that the defendant claims to suffer.

"That people in the place verify these cameras are pointed-  
towards the public highway" "That there is also no poster that verifies the existence  
power of said camera"

Article 77 section 5 of Law 39/2015 (October 1) provides the following:

"5. The documents formalized by the officials to whom the  
condition of authority and in which, observing the corresponding legal requirements  
teeth, the facts verified by the former shall be collected, they shall prove the latter except  
that the contrary is proven" (\* the bold type belongs to this Agency).

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  
resolution proposal.

The known facts constitute an infringement, attributable to the party  
claimed, for violation of the content of article 5.1 c) GDPR, previously cited  
do.

C / Jorge Juan, 6

28001 – Madrid

[www.aepd.es](http://www.aepd.es)

[sedeagpd.gob.es](http://sedeagpd.gob.es)

5/6

IV.

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 (...)"

In this case, the initial allegations of the defendant in the case are taken into account.

context as a whole, as well as the absence of previous infringements, although it is valued the wrong orientation of the installed camera(s) and its subsequent dissemination on social networks; as well as the various conflicts between the parties involved, which leads one to think that the conduct is at least seriously negligent, all of which are reasons lead to the imposition of a penalty in the amount of €500, according to the facts crits.

V

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.

It is recalled that the payment of the fine does not exempt from the fulfillment of accrediting the full legality of the installed system, and all the cameras must be oriented towards your private property or proceed to seek advice from expert personnel in the matter, certifying such extremes before this body documentarily, since a new complaint may suppose, where appropriate, new behaviors subject to sanction, where They will value the broad guidelines contained in this document.

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 5.1.c) of the GDPR, typified in Article 83.5 of the GDPR, a fine of €500.

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



THIRD: Warn the penalized person that they must make the imposed sanction effective

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

C / Jorge Juan, 6

28001 – Madrid

[www.aepd.es](http://www.aepd.es)

[sedeagpd.gob.es](http://sedeagpd.gob.es)

6/6

public administrations (hereinafter LPACAP), within the term of payment vo-

lunteer 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

ñola of 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

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  
tion 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

Director of the Spanish Data Protection Agency

C / Jorge Juan, 6

28001 – Madrid

938-120722

[www.aepd.es](http://www.aepd.es)

[sedeagpd.gob.es](https://sedeagpd.gob.es)