

□ Procedure No.: PS/00454/2019

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 August 6, 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 one). The
reasons on which the claim is based are "installation of a video-surveillance camera"
with presumed orientation towards the common pool area of the community of
owners.

Together with the claim, it provides documentary evidence (Annex I) various
photographs that prove the presence of a dome camera, close to the area of
swimming pool of the urbanization.

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-
vided 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
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 09/09/19, the claim was TRANSFERRED to

denounced so that he could allege what he deemed appropriate in law, without any response any has occurred.

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: The database of this Agency consulted on 02/18/19 has not been

received any response in relation to the transferred facts.

In view of everything that has been done, by the Spanish Data Protection Agency

In this proceeding, the following are considered proven facts:

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FACTS

First. On 08/06/19, this Agency received a letter from the complainant

by means of which he transfers as the main fact the following:

“installation of a video-surveillance camera” with an alleged orientation towards the common pool area of the community of owners.

Documentary evidence is attached that accredits the installation of the device(s) in question, being able to be incorrectly installed due to the orientation.

Second. It is identified as the main responsible B.B.B., a neighbor of the

community, which has not made any allegation regarding the facts in question.

Third. It is recorded in the computer system of this body as "Notified" the

Start Agreement, without it having been returned or refused.

Fourth. There is no evidence that the system in question has the mandatory cartel

informative indicating the data controller in a visible area.

Fifth. It has not been possible to verify what in his case is observed with the cameras

object of the complaint, by not providing the reported screen impression of the same.

FOUNDATIONS OF LAW

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

control, and according to the provisions of articles 47 and 48 of the LOPDGDD, the Di-

rector of the Spanish Agency for Data Protection is competent to initiate and

to solve this procedure.

II

In the present case, the claim dated 08/06/19 is examined by me-

gave from which the following is transferred as fact:

“installation of a video-surveillance camera” with an alleged orientation towards the

common pool area of the community of owners, creating some concern

in the group of neighbors of the community.

The art. 5.1 c) RGPD provides the following: The personal data will be:

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

for which they are processed ("data minimization").

It should be remembered that individuals are responsible for ensuring that the systems

more installed comply with current legislation, proving that it complies with

all the requirements demanded by the regulations in force.

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The installation of this type of device must have the mandatory sign informative, indicating the purposes and responsible for the treatment in your case of the data of a personal nature.

In any case, the cameras should preferably be oriented towards the private space, avoiding intimidating neighboring neighbors with this type of device, as well as control their transit areas without just cause.

With this type of device it is also not possible to obtain image(s) of space public service, as this is the exclusive competence of the Security Forces and Corps of the State.

This type of device must have a mask and privacy, and must

In any case, this Agency can examine through the corresponding frames (fe-date and time) what is captured with them.

III

In accordance with the evidence available in this proceeding, sanctioning procedure, it is considered that the defendant has a video system surveillance without clarifying any aspect in relation to it, being able to affect the pool area near your home and its users.
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The known facts could constitute an infraction, attributable to the claimed, for violation of art. 5.1 c) GDPR.

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;

IV

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. must, however, lend

special attention to the nature, seriousness and duration of the infringement, its character

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

liability or any relevant prior violation, to the manner in which the authority

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control authority has become aware of the infraction, compliance with measures

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

conduct and any other aggravating or mitigating circumstance.”

In the present case, it is taken into account that it is an individual, as well as

that it has not been proven to date what is recorded in his case with the camera in

question, for which a sanction of Warning is agreed.

The denounced party must accredit by reliable evidence what in its

case is observed with the camera (eg screen print), the cause/reason for the installation of the system, as well as having, where appropriate, the mandatory informative poster in viewable area.

You are informed that not meeting the requirements of this Agency can give rise to the opening of a sanctioning procedure of an economic nature. mico, for the commission of a serious infraction of article 73 letter o) LOPDGDD.

The denouncing party, in its case, must proceed as follows, contact the President of the Community so that he can contact the neighbor (a) in question, in order to make the appropriate clarifications about the system, you can Reliably delivering a copy of this resolution administrative (vgr. Via mail, certified mail, etc), if after a reasonable time the denounced persists in his attitude of non-cooperation can present a new denouncement to this Agency through the President, which will give rise to a sanctioning procedure for repeated non-compliance with the requirements of this organism.

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 Don B.B.B., with NIF ***NIF.1, for a violation of Article 5.1.c) of the RGPD, typified in Article 83.5 of the RGPD, a sanction of warning I lie.

SECOND: NOTIFY this resolution to Don B.B.B. and REPORT the result statement of the proceedings to the complainant Mr. A.A.A.

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 Autonomous 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

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Contentious-administrative jurisdiction, 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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