

□ File No.: PS/00446/2021

## RESOLUTION OF PUNISHMENT PROCEDURE

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

FIRST: On 05/20/2021 it had entry in this Spanish Agency of  
Data Protection a document presented by A.A.A. (hereinafter the part  
claimant), through which he makes a claim against B.B.B. with NIF \*\*\*NIF.1 (in  
hereinafter, the claimed party), for the installation of a video surveillance system  
installed in \*\*\*ADDRESS.1, there being indications of a possible breach of the  
provided in the personal data protection regulations.

The reasons underlying the claim are as follows:

“They have installed a camera in the front yard (1), another two cameras in the patio  
rear (2 and 3) and another on the roof (4).

[...]

Camera 1 is not pointing at your front yard as you told me, but at your gate.

entrance, and mostly to the public thoroughfare where two

private cars and sidewalks where pedestrians pass by. camera 2

mostly it does aim at your backyard, but it also takes part of the patio of the

community, camera 3 points directly at my balcony and backyard...

Camera 4 points towards your roof, but my roof is also visible.

[...]

At night time we observe that the cameras sometimes turn on some

red lights with which we think that they perform controlled viewings from their

TV.

[...]”

Attach photographic report of the location of the cameras.

SECOND: In accordance with article 65.4 of Organic Law 3/2018, of 5

December, of Protection of Personal Data and guarantee of digital rights (in

hereinafter LOPDGDD), was transferred on 06/03/2021, 07/03/2021 and 08/09/2021

of said claim to the claimed party, so that he proceeded to analyze it and inform

this Agency within a month, of the actions carried out to adapt to

the requirements set forth in the data protection regulations. In this agency

There is no response from the respondent.

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THIRD: On 09/07/2021, the Director of the Spanish Protection Agency

Data agreed to admit the claim filed by the claimant for processing.

FOURTH: On 11/24/2021, the Director of the Spanish Protection Agency

of Data agreed to initiate a sanctioning procedure against the claimed party, in accordance with

the provisions of articles 63 and 64 of Law 39/2015, of October 1, of the

Common Administrative Procedure of Public Administrations (hereinafter,

LPACAP), for the alleged infringement of article 5.1.c) of the RGPD and article 13 of the

RGPD, typified in Article 83.5 of the RGPD.

FIFTH: Having been notified of the aforementioned initiation agreement, the party complained against submitted a written pleadings in which, in summary, it stated that:

“This party acknowledges having four cameras set up in his home (...).

The four cameras point to the interior of the home, serving the exclusive purpose of

home protection. It is evidently inevitable that, punctually, in the

open spaces of the property, a minimum space that exceeds its own

housing, however, this must be considered within the term “minimum range of access”, which is widely accepted as respectful of the protection of data."

(...)

As for Camera 1 (for me “entrance” camera), it is in an elevated position focusing, indeed, on the entrance. The public thoroughfare is focused merely tangential and absolutely secondary, without relevance within the image and as part of the “minimum access band” (...).

Regarding Chamber 2 (“backyard”), in the attached image it can be verified that the camera focuses exclusively on the backyard (...).

With regard to Chamber 3 (“balcony”), it is evident that the well-deserved chamber it only focuses on the balcony owned by this part, without invading any moment the claimant's home (...).

In relation to Chamber 4 (“roof”), the complainant indicates that “it points towards its roof, but my roof is also visualized”. From the outset, the claimant is recognizing that the placement of the camera does not focus on your roof. Likewise, there to take into account that the balcony wall is extraordinarily high, which prevents projection in front of the camera. The building that extends to the horizon is distant enough so that it does not affect privacy rights, especially when it is not about an interior space, but, at most, it would be about the space exterior or terrace of another dwelling (...).

We understand that the placement of the well-deserved cameras does not infringe rights related to data protection, since its orientation focuses exclusively to the property of this party and serve exclusively the object of protection domestic, being that the spaces focused around the property are

merely accessories, without relevance, belonging to public roads or

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tremendously distant in space, occupying exclusively the "minimum strip of access" to housing and whose recording is essential to obtain the purpose of persecuted protection.

(...)

The cameras provided are for exclusive personal or domestic purposes, having been installed by a natural person. These two qualities entail that the facts are not applicable Regulation (EU) 2016/679 (...).

It is obvious that the cameras arranged, even in the event that it is considered applicable the aforementioned regulations on data protection, it must be considered that violates any provision since the weighting rules determine that there is a legitimate interest in their placement motivated by the preservation of the security of the home that must take precedence over obtaining the minimum and merely testimonial of images on the adjoining space, in the terms that have been previously exposed."

It provides a photograph of what the four cameras capture.

SIXTH: On 01/11/2021, the instructor of the procedure agreed to open a period of evidence practice, taking into account the actions preliminary investigations, E/06518/2021, as well as the documents provided by the claimed on 12/20/2021.

SEVENTH: On 01/13/2022, a resolution proposal was formulated in which

proposed to direct a warning to the defendant for the violation of article 13 of the RGD, since in the photographic report attached to the claim the presence of informative poster of video-surveillance area. However, examined the images from the monitor of the video surveillance cameras that the respondent provides in his brief of allegations, it was considered that the video surveillance system located in the exterior of the residence of the latter does not carry out a disproportionate or excessive capture; not being its action constitutive of an infringement of article 5.1.c) of the RGD.

Likewise, in accordance with article 58.2.d) of the RGD, the claimed party was ordered to Proceed to the placement of the corresponding informative posters of the area video surveillance.

The proposed resolution was notified by mail, resulting in it being returned by wrong address. It was resubmitted via courier service. I don't know have received objections to the proposal.

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

In this proceeding, the following are considered proven facts:

#### PROVEN FACTS

FIRST: Existence of four video surveillance cameras installed in

\*\*\*ADDRESS 1,

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The first of the cameras is installed at the top of a window of the facade of the claimed property. It is credited, through photography provided by him, that the camera captures the entire entrance patio of his home, but it is not observed that it points directly to the public highway. However, at capturing the access door to the patio, a minimal portion of the public road, being within the legal limits for not being disproportionate.

The second and third cameras, located on the balcony railing and wall back of the respondent's home, focus directly on the backyard of the property and the surface of the balcony, respectively. With respect to camera two, the area of the patio of the community that it captures is negligible, since the fabric that is placed on the exit door and on the adjoining fences prevents visualize much of the patio.

The fourth camera is installed on top of a rooftop wall of the claimed, without being appreciated in the photograph provided by him that captures direct images of the roof of the claimant.

SECOND: Absence of informative poster of the installation of the system of video surveillance.

THIRD: The person in charge of the video surveillance system is B.B.B. with NIF \*\*\*NIF.1.

## FOUNDATIONS OF LAW

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In accordance with the powers that article 58.2 of Regulation (EU) 2016/679 (General Data Protection Regulation, hereinafter RGPD), grants each control authority and as established in articles 47 and 48.1 of the Law Organic 3/2018, of December 5, on the 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 Agency for Data Protection will be governed by the provisions in Regulation (EU) 2016/679, in this organic law, by the provisions regulations issued in its development and, as long as they do not contradict them, with a subsidiary, by the general rules on administrative procedures.”

II

In the present case, it is appropriate to examine the claim dated 05/20/2021 filed in this Agency in which the existence of a video surveillance system is indicated, composed of 4 cameras, installed in \*\*\*ADDRESS.1, which due to its positioning and characteristics seems to be covering a part of the public thoroughfare and areas of exclusive transit of the claimant, beyond the strict access that by the surveillance of the property could be considered adequate.

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In addition, in the photographic report of the claimant it is not seen that the claimed party have an information poster informing about the presence of cameras and on the identity of the data controller.

Article 5.1 c) of the RGPD provides that personal data will be “adequate, “adequate, relevant and limited to what is necessary in relation to the purposes for which that are processed (“data minimization”).

It should be remembered that individuals are responsible for ensuring that the systems installed comply with current legislation, proving that it complies with

all the requirements demanded by the regulations in force.

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.

Article 22.4 of the LOPDGDD provides that:

"The duty of information provided for in article 12 of Regulation (EU) 2016/679 is understood fulfilled by placing an informative device instead sufficiently visible identifying, at least, the existence of the treatment, the identity of the person in charge and the possibility of exercising the rights foreseen in the Articles 15 to 22 of Regulation (EU) 2016/679. It may also be included in the informative device a connection code or internet address to this information."

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 of the same without just cause.

Nor can images of public spaces be obtained with this type of device, as this is the exclusive competence of the State Security Forces and Bodies.

It should be remembered that even in the case of a "simulated" camera, the same should preferably be oriented towards a private space, since it is considered that this type of device can affect the privacy of third parties, which are seen intimidated by it in the belief of being the subject of permanent recording.

On the part of individuals, it is not possible to install sections for obtaining images of public space, outside the cases allowed in the regulations.

Article 13 of the RGPD, sections 1 and 2, establishes the information that must be provided to the interested party at the time of collecting their data. In the case of treatments of personal data for surveillance purposes through camera systems or



video cameras, the duty of information can be fulfilled by placing, in the video-monitored areas, an informative badge located in a sufficiently visible, both in open and closed spaces, and using forms in the that the planned information is detailed, which the person in charge must make available of those interested.

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These infractions are typified in article 83.5 of the RGPD:

“The infractions of the following dispositions will be sanctioned, in accordance with the section 2, with administrative fines of a maximum of EUR 20,000,000 or, in the case of a company, an amount equivalent to 4% of the turnover global annual total of the previous financial year, choosing the highest amount:

- a) The basic principles for the treatment, including the conditions for the consent under articles 5, 6, 7 and 9;
- b) The rights of the interested parties according to articles 12 to 22;

For the purposes of the limitation period for infringements, they are considered very serious and prescribe after three years, in accordance with article 72.1 of the LOPDGDD, which establishes that:

- a) The processing of personal data violating the principles and guarantees established in article 5 of Regulation (EU) 2016/679;

(...)

- h) The omission of the duty to inform the affected party about the processing of their data personal in accordance with the provisions of articles 13 and 14 of the Regulation (EU)

2016/679 and 12 of this Organic Law.”

### III

The corrective powers available to the Spanish Agency for the Protection of Data, as a control authority, is established in article 58.2 of the RGPD. Among them they find the power to direct a warning (art. 58.2 b)), the power to impose an administrative fine in accordance with article 83 of the RGPD (art. 58.2 i)), or the power to order the person in charge or in charge of the treatment that the treatment operations comply with the provisions of the RGPD, where appropriate, in a certain way and within a specified period (art. 58.2 d)).

According to the provisions of article 83.2 of the RGPD, the measure provided for in article 58.2 d) of the aforementioned Regulation is compatible with the sanction consisting of a fine administrative.

In the present case, considering the special circumstances that concur in the claimed responsible for the infringement and making a broad interpretation of the criterion inspired by Recital 148 of the RGPD, according to which when the fine that likely to be imposed would constitute a disproportionate burden may be imposed instead of the sanction of a fine a warning, it is estimated that by the Infringement of article 13 of the RGPD, it is appropriate to direct a warning.

### IV

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In this case, it has been verified that the defendant has in his home four video surveillance cameras oriented in accordance with protection regulations

of personal data. By not exclusively limiting the capture of images inside the house because the cameras are located outside, it is capable of capturing images of people outside the property (access area or perimeter), resulting in application of the aforementioned regulations.

After analyzing the images provided by the respondent in the writ of allegations to the opening agreement, it is considered that the exterior cameras that are capable of capturing images of public transit areas are within the limits indicated in article 22 of the LOPDGDD, since they only focus on one minimum portion of the public road adjacent to the access to the requested dwelling, being provided. As for the claimant's private transit areas, consider that none of the exterior cameras are placed in such a way as to capture direct images of the claimant's property, so there is no excess in the catchment. For this reason, the defendant's conduct does not imply a violation of the article 5.1.c) of the RGPD.

However, the respondent has not provided any photograph or document that allows you to check if there is an informative poster of a video-surveillance area. Therefore, and given that the claimant provided several photographs of the exterior of the home, without observe in any of them any distinctive, it is understood that there is an infringement of the article 13 of the RGPD.

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: ADDRESS B.B.B., with NIF \*\*\*NIF.1, for an infraction of article 13 of the RGPD, typified in article 83.5.b) of the RGPD, a warning.

SECOND: ORDER to B.B.B., with NIF \*\*\*NIF.1 that under article 58.2 d) of the GDPR, within ten business days, take the following measures:

- Prove that you have proceeded to place the informative poster in the areas

video-monitored (at least the existence of a treatment must be identified,

the identity of the controller and the possibility of exercising the rights provided

in said precepts), locating this device in a sufficiently

visible.

- Prove that you keep the information to which it refers available to those affected.

refers to the aforementioned RGPD.

THIRD: NOTIFY this resolution to B.B.B..

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

Resolution will be made public once it has been notified to the interested parties.

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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 month from

counting 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

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,

may provisionally suspend the firm resolution in administrative proceedings if the

The interested party expresses his intention to file a contentious-administrative appeal.

If this is the case, the interested party must formally communicate this fact by

writing addressed to the Spanish Agency for Data Protection, presenting it through

Electronic Register of the Agency [[https://sedeagpd.gob.es/sede-electronica-](https://sedeagpd.gob.es/sede-electronica-web/)

[web/](https://sedeagpd.gob.es/sede-electronica-web/)], or through any of the other registers provided for in art. 16.4 of the

aforementioned Law 39/2015, of October 1. You must also transfer to the Agency the

documentation proving the effective filing of the contentious appeal-

administrative. If the Agency was not aware of the filing of the appeal

contentious-administrative within a period of two months from the day following the

notification of this resolution would end the precautionary suspension.

Sea Spain Marti

Director of the Spanish Data Protection Agency

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