

□ Procedure No.: PS/00359/2019

938-051119

## RESOLUTION OF PUNISHMENT PROCEDURE

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

### FACTS

FIRST: A.A.A. (hereinafter, the claimant) dated August 23, 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

grounds on which the claim is based are "installation of a camera in the window of the  
building with a clear orientation towards public space" (folio nº 1).

Along with the claim, provide documentary evidence (Doc. No. 1) that proves the  
presence of a device, installed in the window with clear orientation towards  
public space and entrance to the building, pointing out that he carries out this conduct in a  
usual.

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 December 17, 2019, the Director of the Spanish Agency

of Data Protection agreed to initiate a sanctioning procedure against the claimed, for the alleged infringement of Article 5.1.c) of the RGPD, typified in Article 83.5 of the GDPR.

FOURTH: The database of this Agency consulted on 02/10/20 has not been received any allegation in relation to the facts described.

#### PROVEN FACTS

First. On 08/23/19, a claim was received from the complainant through the which transfers as the main fact the following "installation of a camera in the window-part of the building with a clear orientation towards public space" (folio nº 1).

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Provide documentary evidence (doc. No. 1) that proves the presence of a device, installed in the window with clear orientation towards public space and entrance of the building, pointing out that he performs this behavior on a regular basis.

Second. It is identified as the main responsible Mr. B.B.B., a resident of the in-piece of furniture.

Third. The evidence provided allows verifying the orientation of the camera towards the without just cause, affecting the residents of the property who are intimidated two for the same without just cause, allowing to induce that an image of public space.

Fourth. The defendant has not made any allegation to the requirement of this

ganism

## FOUNDATIONS OF LAW

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By virtue of the powers that article 58.2 of the RGPD recognizes to each authority, 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 08/23/19 is examined by means of which the "installation of a camera in the window of the building with clear orientation towards public space" (folio nº 1).

The content of article 5.1 letter c) RGPD is considered affected, which provides: "The personal data will be:

c) 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 cameras installed by individuals cannot be oriented towards public space, affecting the privacy of third parties, who are intimidated measured by these types of devices.

Individuals cannot install/uninstall cameras at will from their housing oriented towards public space, being a disproportionate measure, contrary to what would comply with the regulations in force, this being a competence of the Forces and Corps of State Security.

Surveillance cameras may make recordings limited to what is necessary. That is, the perimeter and some reasonable points, applying the principle of proportionality. That is, only the truly pertinent areas will be recorded for the desired end.

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Article 22 LOPDGDD (LO 3/2018, December 5) provides: "They may only capture images of the public highway to the extent that it is essential for the purpose mentioned in the previous section.

Likewise, it is recalled that this type of behavior may have sequences in other areas of law, by creating an alarm situation in neighbors close to their home who feel affected in their privacy, assume I am afraid of their logical consequences.

III

In accordance with the evidence available in this proceeding, sanctioning procedure, it is considered that the respondent has installed some type of Recording site with visible orientation towards the public road and the entrance of the building of the community of owners, without just cause.

The evidence provided allows us to verify the presence of the camera, the intentionality in the installation as well as the orientation without justified cause towards space public, assuming the "inconvenience" to third parties.

The known facts could constitute an infraction, attributable to the claimed, for violation of the content 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;

In the present case, when motivating the sanction, the following is taken into account:

following:

-the nature of the infraction, since it is affecting the rights of third parties

have been intimidated by them, obtaining images of public roads and exclusive of

third parties (art. 83.2 a) RGPD).

-The intentionality or negligence of the conduct, by widely capturing the

public and areas of adjacent property, without just cause, with the modern logics

injuries to nearby neighbors, behavior that repeats from time to time without just cause

da (art. 83.2 b) RGPD).

So, based on the foregoing, taking into account the lack of infractions

previous tions for the same facts, as well as that it is an individual who does not

has made an allegation in this regard, an economic sanction is imposed on the scale

lowest of this type of sanctions, encrypting the same in the amount of €2,000 (Two

A thousand euros).

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The art. 78.1 LOPDGDD (LO 3/2018, December 5) provides: The sanctions imposed

put into application of Regulation (EU) 2016/679 and this organic law prescribe

in the following terms:

a) Sanctions for an amount equal to or less than 40,000 euros, prescribe in the term of one year.

All this without prejudice to proving the immediate withdrawal of the camera from its action.

current place of location, whatever its nature, proving such

extreme by means of evidence admissible in law (eg photograph with date and hour).

If the behavior is repeated, it is recommended to inform

of the facts of the local Police, in order to take photographs (date and time) and

investigation of the alleged perpetrator of the events.

Likewise, you are informed that not meeting the requirements of this organization

mo, may be sanctioned for breaching art. 73 letter o) LOPDGDD, giving rise

to a new sanctioning procedure, which is brought to its attention for the purposes

appropriate legal cough.

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 an infraction of article

5.1.c) of the RGPD, typified in article 83.5 of the RGPD, a fine of €2,000 (Two Thousand euros).

SECOND: NOTIFY this resolution to B.B.B. and REPORT the result

of the actions to the complainant Mr. A.A.A.

THIRD: Warn the sanctioned party that he must make the imposed sanction effective once

Once this resolution is enforceable, in accordance with the provisions of the

art. 98.1.b) of Law 39/2015, of October 1, of the Administrative Procedure Co-

of the Public Administrations (hereinafter LPACAP), within the term of payment

voluntary 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, through its entry, 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, opened in the name of the Spanish Agency Data Protection Policy at Banco CAIXABANK, S.A. Otherwise, it will proceed to its collection in executive period.

Received the notification and once executed, if the date of execution is is between the 1st and 15th of each month, both inclusive, the term to carry out the voluntary payment will be until the 20th day of the following month or immediately after, and if

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is between the 16th and last day of each month, both inclusive, the term of the payment will be until the 5th of the second following month or immediately after.

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.

Finally, it is pointed out that in accordance with the provisions of art. 90.3 a) of the LPA-

CAP, the firm resolution may be provisionally suspended 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/], or through any of the other registers provided for in art. 16.4 of the city

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

certifying the effective filing of the contentious-administrative appeal. Yes

the Agency was not aware of the filing of the contentious-administrative appeal

nistrative within two months from the day following the notification of the pre-

This resolution would end the precautionary suspension.

Sea Spain Marti

Director of the Spanish Data Protection Agency

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