

□ File No.: EXP202204214

RESOLUTION OF SANCTIONING PROCEDURE

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

BACKGROUND

FIRST: A.A.A. and CIVIL GUARD - *** POSITION 1 (hereinafter, the party claiming-
te/complainant) on April 6, 2022 filed a claim with the Agency

Spanish Data Protection. The claim is directed against B.B.B. with NIF

***NIF.1 (hereinafter, the claimed/reported party). The reasons on which the re-
clamor are as follows:

“Installation of several poorly oriented cameras affecting public areas without
justified cause (...)”-folio nº 1--.

It indicates that the CITY COUNCIL OF ALFOZ DE QUINTADUEÑAS, in December
2021 required the respondent to remove the cameras that were facing the road
public, ignoring the defendant part of said petition.

It provides, among other documentation, images of the location of the cameras and
writings of the CITY COUNCIL OF ALFOZ DE QUINTADUEÑAS requesting the adoption
of corrective measures on the orientation of the controversial cameras.

SECOND: On 05/23/22 the Record (Complaint) of the Civil Guard Company Bur-
judges who consider that the defendant “could be capturing public space”, indicating
providing the identification data of the informative poster, being the same as the one claimed
previously mentioned.

"Report received from the Government Sub-delegation in Burgos, and after
request for support to the State Security Forces and Corps by the
City Council of the town of Alfoz de Quintanadueñas (Burgos), for the placement

tion by the person described as accused of some video cameras

gillance on the facade of his home. That according to their placement in the re-

Inferred facade could apparently be capturing images of the public thoroughfare, in-

consequently violating the aforementioned R.G.P.D”

THIRD: In accordance with article 65.4 of Organic Law 3/2018, of December 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 04/07/22, 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.

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FOURTH: On 05/17/22, a response was received from the claimed party confirming

the presence of the cameras, although it does not provide an impression of the images, alleging

security reasons.

“The photographs on the images that the cameras record are not attached

for security, due to the visit we have received from the agents of the

civil guard where they have been provided with the vision of the cameras and seeing these the cap-

cations of said images”

FIFTH: On May 18, 2022, in accordance with article 65 of the LO-

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

SIXTH: On July 7, 2022, the Director of the Spanish Protection Agency

The Data Protection Agency agreed to initiate disciplinary proceedings against the claimed party, with

according to the provisions of articles 63 and 64 of Law 39/2015, of October 1, of the Pro-Common Administrative Procedure of Public Administrations (hereinafter, LPA-CAP), for the alleged violation of Article 5.1.c) of the GDPR, typified in Article 83.5 of the GDPR.

SEVENTH: Notification of the aforementioned initiation agreement in accordance with the established regulations in Law 39/2015, of October 1, of the Common Administrative Procedure of the Public Administrations (hereinafter, LPACAP), the claimed party submitted a written of allegations in which, in summary, he stated the following:

"I express my opposition to the start of the disciplinary file, and to the sanction proposed decision, considering it unfair and detrimental, in terms of defense, and considering I believe that, in the installation of video cameras carried out in my home, all two the requirements for its legality and obtaining the corresponding authorization.

In the case of video cameras that are placed on the gas meter and garage door, were in fact unusable, as the neighbor had placed and denouncing an illegal smoke outlet that limits any vision on the part of the camera. mara, also existing under the other chamber directed to the access door to his garage. heh, a smoke outlet that practically renders said chamber useless.

In any case, the installed cameras strictly comply with the legal conditions, and they cover public space in a very limited way, limiting themselves to the capture of images of the entrances to the house, and the rear part that gives access to a private patio.

Attached as DOCUMENT FIVE images of the vision of the two existing cameras.

I must also point out that in the locality there are other instruments of public and private recording, which are oriented to the public thoroughfare and which in some cases do not meet the legally established requirements, and we are not aware of

evidence that disciplinary proceedings have been filed against them."

EIGHTH: On 08/12/22 the "Proposal for a Resolution" is issued confirming the misorientation of the installed camera affecting public area, infringement of the

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article 5.1 c) GDPR, proposing a penalty of €600, taking into account the circumstances specific case, appearing in the system of this Agency as "Notified".

Of the actions carried out in this procedure and of the documentation in the file, the following have been accredited:

PROVEN FACTS

First. The facts bring cause of the claim (Complaint) dated 04/06/22 for means of which the following is transferred:

"Installation of several poorly oriented cameras affecting public areas without justified cause (...)"-folio nº 1--.

Second. It is identified as the main person in charge B.B.B., with NIF ***NIF.1.

Third. The defendant does not deny the facts, although he justifies the capture of public space. according to the regulations in force, however, it is considered excessive the capture of public space according to the documentaries provided.

Photographic document no. 1 (written on 07/29/22) certifies the capture and treatment

Data collection of the entire public highway adjacent to your private property.

Room. There is evidence of the placement of an information poster in a visible area indicating the data controller for the appropriate legal purposes.

FUNDAMENTALS OF LAW

Yo

In accordance with the powers that article 58.2 of Regulation (EU) 2016/679 (Regulation (EU) 2016/679, hereinafter GDPR), grants each authority 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."

In the present case, the claim dated 04/06/22 is examined by means of gave from which the following is transferred as the main fact:

II

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"Installation of video surveillance camera(s) that are poorly oriented, affect respecting the tranquility of the adjoining property (...)"

The same "facts" are transferred by the Security Forces and Bodies.

security of the State (Civil Guard Company Burgos) who consider that "it could be Capturing public space", indicating the identification data of the informative poster.

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, outside the cases allowed in the regulations.

II

In accordance with the evidence available in the sanctioning procedure, dor, it is considered that the claimed party has a video-surveillance system that is misdirected affecting the rights of third parties.

The installed cameras should preferably be oriented towards your

private property, avoiding affecting with them areas reserved for third parties and/or public space.

In the documentary evidence provided by the defendant himself in writing dated 07/29/22 the capture of the entire public highway adjacent to the your home, being considered disproportionate orientation to the purpose intended.

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Security cameras installed in private spaces will not be able to obtain images of public spaces, the security function of public spaces corresponds to exclusively to the State Security Forces and Corps, so that an affectation is made to a <public> space without justified cause, having to re-Orient the orientation angle if necessary.

The Private Security Law, in its Article 42 on Video Surveillance Services establishes:

"Cameras or video cameras may not be used for private security purposes to take images and sounds of roads and public spaces or public access except in the assumptions and in the terms and conditions provided in its specific regulations, previous administrative authorization by the competent body in each case".

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

According to article 72 section 1 LOPDGDD (LO 3/2018, December 5) "Infractions considered very serious" "infractions involving

a substantial violation of the articles mentioned therein and, in particular, the following (...)

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

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 (...)"

When motivating the sanction, it is taken into account that it is an individual, who has

been widely warned of the misguidance by the competent authorities,

creating a situation of some discomfort in the neighborhood with the presence of the same

more, originating the intervention of the State Security Forces and Bodies,

for which reason a sanction amounting to €600 is agreed, a sanction located in

the lower scale for this type of behavior, consistent with an attitude

grossly negligent in their orientation.

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

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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.

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 €600.

SECOND: TO ORDER the claimed party so that within 15 days from the following notification of this act, proceed to the re-orientation or reinstallation of the system, providing reliable evidence to this body of the corrective measures taken.

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

FOURTH: Warn the sanctioned party that he must enforce the sanction imposed

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

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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.

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