

□ Procedure No.: PS/00294/2021

RESOLUTION OF PUNISHMENT PROCEDURE

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

FACTS

FIRST: A.A.A. (*hereinafter, the claimant) dated May 20, 2021

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

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

“This is the ninth time that I have addressed this Agency to denounce the installation.

tion of video surveillance cameras by my neighbor. The first writing-of-

complaint dates from May 17, 2017. Let them know that, today, not only the de-

clared maintains the cameras that appear in all the previous writings, if not

which has also added a new surveillance video camera and a mirror on the back

rear of the house, which focus on our terrace and the windows of which it is

our room” (folio nº 1).

Along with the claim, provide documentary evidence that proves the presence of the
cameras (Annex I).

SECOND: On 06/11/21, the claim of the affected party is admitted for processing.
ted.

THIRD: On July 12, 2021, 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.

FOURTH: On 09/01/21 collaboration is requested from the Security Forces and Bodies

security of the locality so that those displaced to the scene of the events verify the reality truth of the facts that are the subject of the complaint.

FIFTH: On 09/29/21 a Report was received from the Civil Guard (Tenerife) which

Dispatched to the scene of the events, he verified the following:

-That there are two fixed cameras installed on the two sides of the house-

da, not being able to check what they record, nor being able to provide screen printing of what they capture due to the refusal of their owner.

-A yellow sign is located on the left side of the entrance door-

rillo, with a drawing of a black video camera.

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No information about the person responsible for the treatment is observed, nor where to go to exercise the rights provided by current regulations (RGPD)—art. 13--.

SIXTH: On 11/08/21, a “Resolution proposal” is issued confirming

After verifying the acting force, the infringement of art. 13 RGPD, lacking the

installed poster of the indications required by the regulations in force and paying attention

disregarding the repeated indications of the competent authorities, which is why

a penalty of €1,200 was proposed.

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

In this proceeding, the following are considered proven facts:

FACTS

First. The facts bring cause of the claim dated 05/20/21 through the

which is transferred as the main fact "the presence of a system of video cameras

deo-surveillance” that could be affecting their private space, considering for

such reason intimidated by these.

Second. The defendant, Mr. B.B.B., is identified as the main person responsible.

with DNI ***NIF.1.

Third. It is accredited after the on-site inspection of the acting force that the distinction

informative document is not duly approved, referring to a regulation

is repealed and lacking the precise information required by law.

Fourth. It has not been possible to verify what is captured with the camera (s) when denying

Be the owner at the entrance to the domicile of the acting force.

“The presence of two fixed cameras installed on the two sides of the

of the house not being able to verify what they record, nor being able to provide an impression of

screen (...)” “due to the refusal of its owner who informs that the recordings

are available to the Court No. 3 of Santa Cruz de Tenerife, not providing do-

any documentation...”.

FOUNDATIONS OF LAW

Yo

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

control, 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 re-

solve this procedure.

II

In the present case, we proceed to examine the claim dated 05/20/21 by me-

gave from which the following is transferred as the main fact:

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“This is the ninth time that I have addressed this Agency to denounce the installation.

tion of video surveillance cameras by my neighbor. The first writing-of-

complaint dates from May 17, 2017. Let them know that, today, not only the de-

clared maintains the cameras that appear in all the previous writings, if not

which has also added a new surveillance video camera and a mirror on the back

rear of the house, which focus on our terrace and the windows of which it is

our room” (folio nº 1).

The art. 13 RGPD includes the duty to inform by the person in charge without being

should demand any requirement, especially in terms of video-surveillance where

must be able to prove the legality of the system installed at all times.

side.

To adapt to current regulations, the AEPD published the new mandatory poster

rio to be located in collective spaces that are subject to video surveillance

Inc.

Article 22 section 4 of Lo 3/2018 (December 5) provides the following:

“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

responsibility of the person in charge and the possibility of exercising the rights provided for in articles

15 to 22 of Regulation (EU) 2016/679. It may also be included in the device

formative a connection code or internet address to this information”.

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

felled 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 informative sign.

tive, indicating the purposes and 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 of the same without just cause.

With this type of device it is not possible to obtain image(s) of public space either. co, as this is the exclusive competence of the State Security Forces and Bodies ted.

It should be remembered that even in the case of 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, that they are intimated by it in the belief of being the subject 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.

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According to the evidence available at the present time of the sanctioning procedure, it is considered that the defendant has a system of video-surveillance cameras that lack proper signage, by having a poster not approved and not completed in its essential aspects (eg indication of the data controller, etc.).

The known facts constitute an infraction attributable to the person affected by the article.

Article 13 RGPD, as it does not have an informative label indicating that it is a video-monitored area, duly in accordance with the requirements of the regulations in force.

The AEPD, in a related report, stipulates that it is not necessary for cartels to be stand right below the cameras. It is enough to do it in a visible place and that it includes open and closed spaces where the video camera circuit is operational.

This badge will be displayed in a visible place, and at least, at the entrances to the areas guarded whether indoors or outdoors. In the event that the video-monitored space has has several accesses, said video-surveillance area badge must be available in each one of them

IV

The art. 83.5 RGPD provides the following: "Infringements of the following provisions will be sanctioned, in accordance with section 2, with administrative fines of 20 EUR 000,000 maximum or, in the case of a company, an equivalent amount. to a maximum of 4% of the total global annual turnover of the financial year above, opting for the highest amount:

b) the rights of the interested parties according to articles 12 to 22;

When motivating the sanction, the following is taken into account:

- the nature, seriousness and duration of the offence, taking into account the nature nature, scope or purpose of the treatment operation in question, as well as the number of interested parties affected and the level of damages suffered fried; (art. 83.2 a) RGPD).

- the intent or negligence in the infringement; (art. 83.2 b) RGPD), due to the lack certify the informative sign of the information required by the regulations in force,

Considering the serious conduct in terms of the above.

- any previous infringement committed by the person in charge or the person in charge of the treatment-

I lie; (art. 83.2 f) RGPD).

There is a prior sanction associated with the claim in procedure no. PS/00339/2018, which ended with the imposition of a fine of €1,500 for the same exposed facts, although in the current one the installation of a new camera is denounced video surveillance.

The claimed party must clarify the reason(s) for installing the system, as well as as in your case that is captured with it (providing screen printing with fe-

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date and time), without prejudice to proceeding to the regularization of the situation described placing an informative poster adjusted to the regulations in force, in accordance with with art. 58.2 d) GDPR.

For all this, a sanction is agreed in the amount of €1,200 (one thousand and two hundreds of euros), offense located on the lower scale for this type of behaviour. cough.

The rest of the issues are considered to exceed the jurisdictional framework of this Agency having to resolve, in your case, a hypothetical affectation of the right to intimacy in the appropriate judicial venue (vgr. civil), remembering the transcendence of the rights at stake, and should, as far as possible, adjust their relationship to the minimum more rules of good neighborliness, avoiding the instrumentalization of this Agency in issues unrelated to it.

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 B.B.B., with NIF ***NIF.1, for an infraction of Article 13

of the RGPD, typified in Article 83.5 of the RGPD, a fine of €1,200 (one thousand two hundred euros).

SECOND: ORDER the person claimed in accordance with the provisions of article 58.2 d)

RGPD, so that within ONE MONTH proceed to the placement of a new poster

informative, where it should be clear:

-Indication Responsible for the treatment.

-Effective address to which you can go to exercise your rights

regulated in articles 15-22 RGPD.

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

FOURTH: 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, on Administrative Procedure

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

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 000 0000 0000 0000, opened on behalf of the Agency

Spanish Department of Data Protection in the banking entity CAIXABANK, S.A.. In case

Otherwise, it will be collected in the executive period.

Received the notification and once executed, if the date of execution 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 month or immediately after, and if

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between the 16th and last day of each month, both inclusive, the payment term

It will be until the 5th of the second following month or immediately after.

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.

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 AEPD-Spanish Data Protection Agency--

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