

□ Procedure No.: PS/00497/2020

RESOLUTION OF PUNISHMENT PROCEDURE

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

BACKGROUND

FIRST: Dated September 19, 2020, entered this Agency

Spanish Data Protection, a document presented by A.A.A. (hereinafter, the claimant), through which he makes a claim against B.B.B. with NIF ***NIF.1 (in hereinafter, the claimed), for the installation of a video surveillance system installed at ***ADDRESS.1, with indications of a possible breach of the provisions in the personal data protection regulations.

The reasons underlying the claim are the installation of two security cameras video surveillance aimed at the claimant's home, as well as the lack of information on the information poster.

Attach photographic report of the location of the cameras.

SECOND: Prior to the acceptance of this claim for processing, it is transferred the claimed, in accordance with the provisions of article 65.4 of the Law Organic 3/2018, of December 5, on the Protection of Personal Data and guarantee of digital rights (hereinafter, LOPDGDD), being notified on the 19th of October 2020.

There is no record in this Agency of any response by the claimed party.

THIRD: The claim was admitted for processing by means of a resolution of 21 December 2020.

FOURTH: On February 3, 2021, the Director of the Spanish Agency for Data Protection agreed to initiate a sanctioning procedure against the claimant, for the

alleged infringement of articles 5.1.c) and 13 of the RGPD, typified in article 83.5

of the GDPR.

FIFTH: The Start Agreement was notified to the respondent on April 14, 2021, without it being recorded, at the present time, that a writ of allegations to the same, for which what is stated in article 64 of the Law 39/2015, of October 1, of the Common Administrative Procedure of the Public Administrations (hereinafter, LPACAP), which in its section f) establishes that in case of not making allegations within the stipulated period on the content of the initiation agreement, this may be considered a resolution proposal when contains a precise statement about the imputed responsibility, therefore that a Resolution is issued.

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 September 19, 2020, this Agency entered a claim against B.B.B. for having installed a video surveillance system made up of two cameras oriented towards the claimant's home, and that it could be recording the interior of the same, and that in addition, the informative poster of the existence of that system is incomplete.

SECOND: Photographs of the location of the cameras are provided.

THIRD: The transfer of the claim that was made to the claimed party was duly

notified on October 19, 2020, without any record in this Agency

response.

FOURTH: The Agreement to Start this sanctioning procedure was notified

dated April 14, 2021, without, to date, having been received in

this Agency allegations by the respondent.

FOUNDATIONS OF LAW

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

control, and as established in arts. 47 and 48.1 of the LOPDGDD, the Director of

The Spanish Agency for Data Protection is competent to resolve this

process.

II

The physical image of a person under article 4.1 of the RGPD is personal data

and its protection, therefore, is the subject of said Regulation. Article 4.2 of the GDPR

defines the concept of “treatment” of personal data.

Article 22 of the LOPDGDD establishes the specificities of data processing

for video surveillance purposes, indicating the following:

"1. Natural or legal persons, public or private, may carry out the

processing of images through camera systems or video cameras with the

purpose of preserving the safety of people and property, as well as their

installations.

2. Images of public roads may only be captured to the extent that

is essential for the purpose mentioned in the previous section.

However, it will be possible to capture the public road in an extension

superior when necessary to guarantee the security of goods or

strategic installations or infrastructures linked to transport, without

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In no case may it involve capturing images of the interior of a home private.

3. The data will be deleted within a maximum period of one month from its collection, except when they had to be kept to prove the commission of acts that threaten the integrity of persons, property or facilities. In that case, the images must be made available to the competent authority in within a maximum period of seventy-two hours from the date of knowledge of the existence of the recording.

The blocking obligation provided for in article 32 of this organic law.

4. The duty of information provided for in article 12 of the Regulation (EU) 2016/679 will be understood to be fulfilled by placing an informative device in a sufficiently visible place identifying, at least, the existence of the treatment, the identity of the person in charge and the possibility of exercising the rights provided for 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 data controller must keep available to those affected the information referred to in the aforementioned regulation.

5. Under article 2.2.c) of Regulation (EU) 2016/679, it is considered excluded from its scope of application the treatment by a natural person of images

that they only capture the interior of their own home.

This exclusion does not cover processing carried out by a security entity private that had been contracted for the surveillance of a home and had access to the images.

6. The processing of personal data from the images and sounds obtained through the use of cameras and video cameras by the Armed Forces and Security Bodies and by the competent bodies for surveillance and control in penitentiary centers and for the control, regulation, vigilance and discipline of the traffic, will be governed by the legislation transposing Directive (EU) 2016/680, when the treatment is for the purposes of prevention, investigation, detection or prosecution of criminal offenses or execution of criminal sanctions, including protection and prevention against threats to public safety. Outside In these cases, said treatment will be governed by its specific legislation and additionally by Regulation (EU) 2016/679 and this organic law.

7. What is regulated in this article is understood without prejudice to the provisions of Law 5/2014, of April 4, on Private Security and its development provisions.

8. The treatment by the employer of data obtained through information systems cameras or video cameras is subject to the provisions of article 89 of this law organic.”

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III

In accordance with the foregoing, the processing of images through a

video surveillance system, to be in accordance with current regulations, must comply with the following requirements:

- Respect the principle of proportionality.
- When the system is connected to an alarm center, you can only be installed by a private security company that meets the requirements contemplated in article 5 of Law 5/2014 on Private Security, of April 4.
- The video cameras will not be able to capture images of the people who are outside the private space where the security system is installed.

video surveillance, since the processing of images in public places can only be carried out, unless there is government authorization, by the Forces and Corps of Security. Nor can spaces owned by third parties be captured or recorded without the consent of their owners, or, as the case may be, of the persons who are find.

This rule admits some exceptions since, on some occasions, for the protection of private spaces, where cameras have been installed on facades or inside, it may be necessary to guarantee the security purpose the recording of a portion of public road. That is, cameras and video cameras installed for the purpose of security will not be able to obtain images of public roads unless it is essential for said purpose, or it is impossible to avoid it due to the location of those and, extraordinarily, the minimum space for said purpose. Therefore, the cameras could exceptionally capture the portion minimally necessary for the intended security purpose.

- The duty to inform those affected provided for in the articles 12 and 13 of the RGPD, and 22 of the LOPDGDD, in the terms already indicated.
- The person in charge must keep a record of treatment activities carried out under its responsibility, including the information to which it makes

reference article 30.1 of the RGD.

- The installed cameras cannot obtain images from private space of third party and/or public space without duly accredited justified cause, nor can affect the privacy of passers-by who move freely through the area. No this allowed, therefore, the placement of cameras towards the private property of neighbors with the purpose of intimidating them or affecting their private sphere without just cause.
- In no case will the use of surveillance practices be admitted beyond the environment object of the installation and in particular, not being able to affect the spaces surrounding public, adjoining buildings and vehicles other than those accessing the guarded space.

In summary and to facilitate the consultation of interested parties, the Spanish Agency for Data Protection offers through its website [<https://www.aepd.es>] access to

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the legislation on the protection of personal data, including the RGD and the LOPDGDD (section “Reports and resolutions” / “regulations”), as well as the Guide on the use of video cameras for security and other purposes, as well as the Guide for compliance with the duty to inform (both available in the section “Guides and tools”).

It is also of interest, in the event of carrying out low-risk data processing, the facilitates free tool (in the “Guides and tools” section), which, through specific questions, allows to assess the situation of the person in charge with respect to the treatment of personal data that it carries out, and where appropriate, generate various

documents, informative and contractual clauses, as well as an annex with measures guidelines considered minimum.

IV

In the present case, the claim was filed because the respondent has installed video surveillance cameras that could be capturing images of the interior of the adjoining property of the claimant, and the informative poster of the existence of said video surveillance system is incomplete.

As proof of these manifestations, the evidence indicated in the “Facts” section of this agreement.

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 have the power to issue a warning -article 58.2.b)-, the power to impose an administrative fine in accordance with article 83 of the RGPD -article 58.2 i)-, or the power to order the controller or processor that the treatment operations comply with the provisions of the RGPD, when appropriate, in a certain way and within a specified period -article 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.

Without prejudice to the provisions of article 83 of the RGPD, the aforementioned Regulation has in its art. 58.2 b) the possibility of sanctioning with a warning, in relation with what is stated in Considering 148: "In the event of a minor infraction, or if the fine likely to be imposed would constitute a disproportionate burden on a natural person, instead of sanctioning by means of a fine, a warning. However, special attention must be paid to the nature,

gravity and duration of the infringement, its intentional nature, the measures taken to mitigate the damages and losses suffered, to the degree of responsibility or to any pertinent previous infraction, to the way in which the control authority has had knowledge of the infraction, compliance with measures ordered against the responsible or in charge, adherence to codes of conduct and any other aggravating or mitigating circumstance.

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In accordance with the evidence that is available and that has not been distorted in the sanctioning procedure, the defendant has installed two video surveillance cameras that capture images of the interior of the property adjoining the claimant, so it is considered that these facts violate the established in article 5.1.c) of the RGPD, which implies the commission of infractions typified in article 83.5 of the RGPD, which provides the following:

"Infringements of the following provisions shall be sanctioned, in accordance with paragraph 2, with administrative fines of a maximum of EUR 20,000,000 or, in the case of a company, an amount equivalent to a maximum of 4% of the global total annual turnover of the previous financial year, opting for the largest 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 infractions, the infraction indicated in the previous paragraph is considered very serious and prescribes after three years, in accordance with Article 72.1 of the LOPDGDD, which establishes that:

"According to the provisions of article 83.5 of Regulation (EU) 2016/679 are considered very serious and will prescribe after three years the infractions that suppose a substantial violation of the articles mentioned therein and, in particular, the following:

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

b) The processing of personal data without the concurrence of any of the conditions of legality of the treatment established in article 6 of the Regulation (EU) 2016/679.

(...)

h) The omission of the duty to inform the affected party about the treatment of their personal data in accordance with the provisions of articles 13 and 14 of the Regulation (EU) 2016/679 and 12 of this Organic Law.

(...)»

SAW

In the present case, it is considered that the corresponding sanction is to direct a warning, in accordance with the provisions of article 58.2 b) of the RGPD, in relation to what is stated in Considering 148, cited above.

In addition, the following elements have been taken into account, in particular.

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that it is an individual whose main activity is not linked to the processing of personal data.

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that there is no recidivism, because the commission is not recorded, in the term of one year, of more than one infraction of the same nature.

7th

However, as already indicated in the initial agreement and in accordance with the established in the aforementioned article 58.2 d) of the RGPD, according to which each authority of control may "order the person responsible or in charge of processing that the processing operations comply with the provisions of this Regulation, where appropriate, in a certain manner and within a specified period [...]."

The respondent is required to take the following measures:

- provide the images observed with the devices in question, indicating on a location map the parts that correspond to its private property.
- Prove that you have proceeded to remove the cameras from the current locations, or or to the reorientation of the same towards their particular area.
- certifies having proceeded to place the informative device in the video-monitored areas or to complete the information offered therein (you must identify, at least, the existence of a treatment, the identity of the responsible and the possibility of exercising the rights provided for in said precepts), locating this device in a sufficiently visible place, both in open and closed spaces.

- certifies that it keeps the information to which it refers available to those affected.

refers to the aforementioned RGPD.

It is warned that not meeting the requirements of this organization may be considered as an administrative offense in accordance with the provisions of the RGPD, typified as an infraction in its article 83.5 and 83.6, being able to motivate such conduct the opening of a subsequent sanctioning administrative proceeding.

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 a warning to B.B.B. with NIF ***NIF.1, for an infraction of articles 5.1.c) and 13 of the RGPD, typified in article 83.5 of the RGPD, a warning sanction.

SECOND: REQUIRE B.B.B. with NIF ***NIF.1, so that within a month

From the notification of this resolution, certify:

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provide the images that are observed with the devices in question, indicating on a location map the parts that correspond to its private property.

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certify having proceeded to withdraw the cameras from the places
current, or to the reorientation of the same towards their particular area.
certifies having proceeded to the placement of the informative device in the
video-monitored areas or to complete the information offered in the same
(must identify, at least, the existence of a treatment, the identity
of the person in charge and the possibility of exercising the rights foreseen in
said precepts), locating this device in a sufficiently
visible, both in open and closed spaces.
certifies that it keeps the information available to those affected
referred to in 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.
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.

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