

Procedure No.: PS/00376/2018

RESOLUTION OF PUNISHMENT PROCEDURE

Of the procedure instructed by the Spanish Agency for Data Protection before A.A.A., pursuant to a claim filed by B.B.B. (hereinafter, the claimant) on its own initiative and based on the following:

BACKGROUND

FIRST: The claim filed by the claimant has an entry dated 6 August 2018 at the Spanish Data Protection Agency. The claim is directed against A.A.A. with NIF ***DNI.1 (hereinafter, the claimed one). The reasons on which the claim are that on August 1, 2018, three cameras were installed in two of the facades of the house of his neighbor A.A.A., adjoining the complainant's house. Together with the claim, documentary evidence consisting of several photographs about the installation of several video-surveillance cameras without just cause.

SECOND: In view of the facts denounced, in accordance with the evidence of available, the Data Inspection of this Spanish Data Protection Agency considers that the treatment of personal data that is carried out by the person reported to through the chambers to which the complaint refers, does not meet the conditions imposes the regulations on data protection, so the opening of the present sanctioning procedure.

THIRD: On December 11, 2018, the Director of the Spanish Agency for Data Protection agreed to initiate a sanctioning procedure against A.A.A. with NIF ***DNI.1 (hereinafter, the claimed party), in accordance with the provisions of articles 63 and 64 of the Law 39/2015, of October 1, of the Common Administrative Procedure of the Administrations Public (hereinafter, LPACAP), for the alleged violation of article 5.1 c) in connection with article 6 of the RGPD of Regulation (EU) 2016/679 of the European Parliament and of the

Council of April 27, 2016 regarding the protection of natural persons in what
regarding the processing of personal data and the free circulation of these data and for the
repealing Directive 95/46/EC (General Data Protection Regulation) (in
hereinafter, RGPD), typified in art. 83.5 a) of the GDPR.

FOURTH: Once the aforementioned initiation agreement was notified, on 12/18/2018, the defendant
He presented a brief of allegations in which, in summary, he stated that he is not the owner of
the house in which he resides and therefore has not made any decision about the works or
the placement of cameras on said property.

However, he has contacted the person who owns the property, and
has reported that these cameras have been installed in accordance with current regulations and
by the company authorized for this purpose so that in no case do they focus on places
public.

FIFTH: On 01/24/2019, the instructor of the procedure agreed to open a
evidence practice period, taking into account the previous actions of
investigation, E/06797/2018, as well as the documents provided by the respondent.

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2/5

SIXTH: Of the actions carried out, the following facts have been proven:

On August 1, 2018, three cameras were installed on two of the facades of the
home of his neighbor A.A.A., adjoining the home of the complainant.

Together with the claim, documentary evidence consisting of several
photographs about the installation of several video-surveillance cameras without just cause.

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 according to what is established in art. 47 of the Organic Law 3/2018, of 5 December, of Protection of Personal Data and guarantee of digital rights (in what hereinafter LOPDGDD), the Director of the Spanish Data Protection Agency is competent to resolve this procedure.

II

The treatment of images of a video surveillance system, in accordance with the current regulations, you must follow the following requirements:

- Respect the principle of proportionality.
- When the system is connected to an alarm center, it can only be installed by a private security company that meets the requirements set forth in Article 5 of Law 5/2014 on Private Security, of April 4.
- The video cameras will not be able to capture images of people who are outside the private space since the treatment of images in public places only it can be carried out, where appropriate, by the Security Forces and Bodies. Either spaces owned by third parties may be captured or recorded without the consent of their holders, or, where appropriate, of the people who are in them.
- The duty to inform those affected provided for in article 12 must be complied with of the RGPD 2016/679, of April 27, 2016, in the terms referred to both in the aforementioned article, as in articles 13 and 14 of said norm, resulting from application -by not contradict the provisions of the aforementioned Regulation-, the manner provided for in article 3 of Instruction 1/2006, of November 8, of the Spanish Data Protection Agency, on the Processing of Personal Data for Surveillance Purposes through Information Systems Cameras or Video Cameras (Instruction 1/2006, of November 8, of the Spanish Agency Data Protection).

Specifically, it must:

1 Place in the video-monitored areas, at least one informative badge located

in a sufficiently visible place, both in open and closed spaces.

In accordance with the provisions of articles 13 and 14 of Regulation (EU) 2016/679, of 27

of April 2016, in the previously mentioned informative badge, it must be identified,

at least, the existence of a treatment, the identity of the person in charge and the possibility of

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3/5

exercise the rights provided for in said precepts.

1 Keep available to those affected the information referred to in the

cited Regulation (EU) 2016/679, of April 27, 2016.

III

Article 5 section 1 letter c) RGPD “Principles related to treatment” provides

that personal data will be processed:

c) adequate, pertinent and limited to what is necessary in relation to the purposes for

those who are treated. (data minimization).

For its part, article 6.1 of the RGPD (Legality of the treatment) establishes the

Specific assumptions under which the processing of data is considered lawful

interested parties.

In this case, from the documentation contained in the procedure, the

existence of a video surveillance system made up of several security cameras,

that are installed without just cause, and may be capturing images

disproportionate from the public road.

The treatment of images in public places can only be carried out -in your case and prior compliance with the legally enforceable requirements-, by the Forces and Security Forces, unless the exception established in article 4.3 of the Instruction 1/2006, of November 8, of this Agency, which establishes: "the cameras and camcorders installed in private spaces will not be able to obtain images of spaces public unless it is essential for the intended surveillance purpose, or it is impossible to avoid it due to their location. In any case, you must Avoid any unnecessary data processing for the purpose pursued. However, on some occasions the protection of private spaces is only possible if the cameras are located in spaces such as facades. Sometimes it also turns out necessary to capture the accesses, doors or entrances, so that although the camera is inside the building, it is impossible not to record the minimum and essential of the public thoroughfare, which is inevitably captured.

For this exception to apply, there must not be a possibility of alternative installation. Bearing in mind that:

- The person responsible for processing the data carried out through cameras and/or video cameras will adapt the use of the installation, so that the impact on human rights of pedestrians is the minimum possible.
- In no case will the use of surveillance practices beyond the environment be admitted. object of the installation and in particular, not being able to affect public spaces surrounding buildings, adjoining buildings and vehicles other than those accessing the space guarded.

Article 83.5 a) of the RGPD, considers that the infringement of "the basic principles for processing, including the conditions for consent under the articles 5, 6, 7 and 9" is punishable, in accordance with section 5 of the aforementioned article 83 of the aforementioned Regulation, with administrative fines of €20,000,000 maximum or,

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4/5

in the case of a company, an amount equivalent to a maximum of 4% of the volume of total annual global business of the previous financial year, opting for the one with the highest amount.

IV

In the present case, the investigated party is accused of committing an infraction for violation of article 5.1 c) in connection with article 6 of the RGPD, which states that "the personal data will be adequate, pertinent and limited to what is necessary in relation to the purposes for which they are processed (minimization of data)," punishable in accordance with provided in art. 58.2 of the aforementioned RGPD. The infraction is typified in article 83.5 a) of the RGPD, considers that the infringement of "the basic principles for the treatment, including the conditions for consent under articles 5, 6, 7 and 9".

This infraction can be sanctioned with a maximum fine of €20,000,000 or, in the case of a company, an amount equivalent to a maximum of 4% of the volume of total annual global business of the previous financial year, opting for the one with the highest amount, in accordance with article 83.5 of the RGPD.

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Notwithstanding the provisions of article 83.5, sections a) and b), of the RGPD, its art. 58.2 b) establishes the possibility of sanctioning with a warning, in relation to what is indicated in Recital 148:

"In the event of a minor offence, or if the fine likely to be imposed would constitute a disproportionate burden for a natural person, rather than a sanction

A warning may be imposed by means of a fine. However, special attention must be paid attention to the nature, seriousness and duration of the infraction, to its intentional nature, to the measures taken to alleviate the damages suffered, to the degree of liability or any relevant prior violation, to the manner in which the authority of control has been aware of the infraction, to the fulfillment of measures ordered against the person in charge or person in charge, adherence to codes of conduct and any other aggravating or mitigating circumstance.”

According to what was stated,

SAW

By the Director of the Spanish Data Protection Agency,

HE REMEMBERS:

1.- WARN A.A.A., with NIF *** DNI.1 for an infraction of article 5.1 c) in connection with article 6 of the RGPD, typified in art. 83.5 a) of the RGPD, a sanction of warning.

2.- REQUEST A.A.A., with NIF *** DNI.1 so that within a month from this act of notification proves to this body compliance with the following measures:

☐ Documentation that proves that the chambers that are the object of this case have been installed in accordance with current regulations and by the company authorized for the purpose of so that in no case do they focus on public places.

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5/5

☐ Provision of supporting documentation on the characteristics of the cameras in

case of simulated or fake devices.

☐ Withdrawal of any video-surveillance device oriented or focused towards the public space, providing documentary evidence (photograph date and time) that proves such extreme.

3.- NOTIFY this Agreement to A.A.A., with NIF ***DNI.1

Against this resolution, which puts an end to the administrative procedure (article 48.2 of the LOPD), and in accordance with the provisions of articles 112 and 123 of Law 39/2015, of October 1, of the Common Administrative Procedure of the Administrations Public, 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 from the day following the notification of this resolution, or, directly appeal contentious-administrative before the Contentious-administrative Chamber of the High Court National, in accordance with the provisions of article 25 and section 5 of the provision additional fourth of Law 29/1998, of July 13, regulating the Jurisdiction Contentious-Administrative, within a period of two months from the day following the notification of this act, as provided in article 46.1 of the aforementioned legal text.

Sea Spain Marti

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