

□ File No.: EXP202100598

RESOLUTION OF SANCTIONING PROCEDURE

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

BACKGROUND

FIRST: On July 14, 2021, he entered this Spanish Agency for
Data Protection document presented by D. A.A.A. (hereinafter, the part
claimant), through which he makes a claim against D. B.B.B. with NIF ***NIF.1
(hereinafter, the claimed party), for the installation of a video surveillance system
at ***ADDRESS.1, there being indications of a possible breach of the
provided in the personal data protection regulations.

The reasons that support the claim and, where appropriate, the documents provided
by the claimant are as follows:

The neighbor of the adjoining farm has installed a video surveillance camera (360
degrees) in your home that, due to its location and orientation, is likely to capture the
residence of the claimant. Provides images of the camera location,
according to which, the camera is located at a height that could capture the
residence of the claimant.

The documents provided are:

- Photographic report of the location of the camera and the images it could capture
of the claimant's home.

SECOND: Prior to the admission for processing of this claim, it is
transferred to the claimed party, on July 20, 2021 and reiterated on September 21,
2021, in accordance with the provisions of article 65.4 of Organic Law 3/2018, of
December 5, Protection of Personal Data and guarantee of rights

digital (hereinafter, LOPDGDD).

There is no response from the claimed party.

THIRD: The claim was admitted for processing by resolution of the Director of the Spanish Agency for Data Protection, dated November 29, 2021.

FOURTH: On February 21, 2022, the Director of the Spanish Agency for Data Protection agreed to initiate disciplinary proceedings against the claimed party, in accordance with the provisions of articles 63 and 64 of Law 39/2015, of October 1, of the Common Administrative Procedure of Public Administrations (in hereinafter, LPACAP), for the alleged violation of Article 5.1.c) of Regulation (EU) 2016/679 (General Data Protection Regulation, hereinafter GDPR), typified in Article 83.5 of the GDPR.

C / Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

2/10

FIFTH: Notified of the aforementioned start-up agreement in accordance with the rules established in the LPACAP, the claimed party submitted a pleading in which, in summary, stated that:

“In October 2021, a claim came in the name of C.C.C. at home

***ADDRESS 1. In this address lives B.B.B. and it was he who installed the camcorder and who sent the claim and the pertinent evidence they requested. The test is attached below. On March 9, another letter arrived that proceeded to start sanctioning procedure and in which it was said that they had not sent the evidence.

- NUMBER OF CAMERAS: 1

- THE CAMERA IN QUESTION DOES NOT RECORD OR RECORD IMAGES, IT IS ONLY

VIEW THROUGH AN APP”

SIXTH: On June 10, 2022, a resolution proposal was formulated, proposing that the Director of the Spanish Data Protection Agency sanction to B.B.B., with NIF ***NIF.1, for a violation of Article 5.1.c) of the GDPR, classified as in Article 83.5 of the GDPR, with a fine of €300 (three hundred euros). The proposed resolution was notified on June 10 and reiterated on August 24 of 2022, both have been returned by the Postal service on July 7 and 12 of September, respectively, due to being absent from the cast and not withdrawn in the office. On ***DATE.1 it was published, in the Single Edictal Board of the Official State Gazette, the notice by which the proposed resolution is 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 claimant states in his claim that the neighbor of the farm neighbor has installed a video surveillance camera (360 degrees) in his home which, due to its location and orientation, is likely to capture the dwelling on the claimant. Provides images of the camera location, according to which, the camera is located at a height that could capture the house on the back claimant.

Photographic report of the location of the camera and the images it could capture of the claimant's home.

SECOND: The first transfer of the claim is made to D.B.B.B., and as is returned due to absence, it is reiterated in the name of D.C.C.C., as recorded in the entry of Cadastre as owner of the address in which the camera of video surveillance.

THIRD: The claimed party, in the allegations to the Commencement Agreement of this

Sanctioning Procedure, indicates that the number of cameras is 1 and that said camera does not record or record images, it is only viewable through an application.

C / Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

3/10

FUNDAMENTALS OF LAW

Yo

Competence

By virtue of the powers that article 58.2 of Regulation (EU) 2016/679 (General Data Protection Regulation, hereinafter GDPR), recognizes each Control Authority, and as established in articles 47 and 48.1 of the Law Organic 3/2018, of December 5, Protection of Personal Data and guarantee of digital rights (hereinafter, LOPDGDD), the Director of the Spanish Agency of Data Protection is competent to initiate and resolve this procedure.

Article 63.2 of the LOPDGDD determines that: «The procedures processed by the Spanish Data Protection Agency will be governed by the provisions of the Regulation (EU) 2016/679, in this organic law, by the provisions regulations dictated in its development and, insofar as they do not contradict them, with character subsidiary, by the general rules on administrative procedures.»

II

Response Allegations

In response to the allegations presented by the claimed party, it should be noted that following:

The defendant affirms that the camera installed does not record, but only

It is view through an application. If the images can be viewed from a application, with or without recording the images, there is a data processing of personal character.

Nor does it deny that this view includes images of the home of the claimant and

If you capture the house, you can also capture images of the people who live there.

In the photographic report provided, you can see the location of the camera and given the height at the one that is, could capture especially the garden and the pool of the house on the back claimant.

You can also see the brand of the camera, which among its characteristics indicates the following:

"Video recorded by the camera can only be viewed through the app."

In short, the mere visualization of private spaces belonging to third parties through a application, already supposes a violation of the data protection regulations, since that improper images are being recorded, which are not limited to the private space of Who has installed the camera.

II

The image is a personal data

C / Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

4/10

The physical image of a person, according to article 4.1 of the GDPR, is data personnel and their protection, therefore, is the subject of said Regulation. In article 4.2 of the GDPR defines the concept of "processing" of personal data.

The images generated by a system of cameras or camcorders are data of

personal nature, so its treatment is subject to the protection regulations

of data.

It is, therefore, pertinent to analyze whether the processing of personal data (image of the natural persons) carried out through the denounced video surveillance system is in accordance with the provisions of the GDPR.

IV.

Infringement

Article 6.1 of the GDPR establishes the assumptions that allow the use of processing of personal data.

For its part, article 5.1.c) of the GDPR, relating to the principles of treatment, provides that personal data shall be "adequate, relevant and limited to what is necessary in relation to the purposes for which they are processed ("minimization of data")." This article enshrines the principle of data minimization in the treatment of personal data. It assumes that said treatment is adjusted and proportional to the purpose to which it is directed, and the processing of the data must be restricted excessive or proceed to suppress them.

The relevance in the treatment of data must occur both in the field of collection of the data as well as in the subsequent treatment that is carried out of the same.

On the other hand, in accordance with the provisions of article 22 of the LOPDGDD, referred to specifically to the "Treatments for video surveillance purposes", the treatment of images in public places can only be carried out -if applicable and prior compliance with the legally enforceable requirements-, by the Forces and Corps of Security, unless the exception established in the aforementioned article 22 of the LOPDGDD for natural or legal persons, public or private, respecting the conditions required in said article.

On some occasions, the protection of private spaces is only possible if the

cameras are located in spaces such as facades. Sometimes it is also necessary capture the accesses, doors or entrances, so that, even if the camera is inside the building, it is impossible not to register a minimum and essential part of the public thoroughfare, which is inevitably captured.

For this exception on the protection of private spaces to be applicable, it does not there must be an alternative installation possibility. In these cases, the responsible of the treatment carried out through cameras will adapt the use of the installation, so that the impact on the rights of third parties (passers-by) is as little as possible. In no case will the use of surveillance practices beyond the environment be admitted.

C / Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

5/10

object of the installation, not being able to affect the surrounding public spaces, adjacent buildings and vehicles other than those that access the monitored space.

Video surveillance obligations

V

In accordance with the foregoing, the processing of images through a system video surveillance, to comply with current regulations, must comply with the following requirements:

- Respect the principle of proportionality.
- When the system is connected to an alarm center, it can only be installed by a qualified private security company contemplated in article 5 of Law 5/2014 on Private Security, of April 4.
- The camcorders will not be able to capture images of the people who are

outside the private space where the video surveillance system is installed, since Image processing in public places can only be performed, unless there is government authorization, by the Security Forces and Bodies. Neither spaces owned by third parties may be captured or recorded without the consent of their owners, or, where appropriate, the people who are in them.

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 the public road. That is, cameras and camcorders installed for the purpose of security will not be able to obtain images of the public thoroughfare unless it is essential for said purpose, or it is impossible to avoid it due to the location of the 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 articles 12 and 13 of the GDPR and 22.4 of the LOPDGDD.

Specifically, in the video-surveilled areas, at least one badge must be placed informative located in a sufficiently visible place, both in open spaces and closed, which will identify, at least, the existence of a treatment, the identity of the person responsible and the possibility of exercising the rights provided for in said precepts. Likewise, the information must be kept available to those affected. to which the aforementioned GDPR refers.

- The controller must keep a record of processing activities carried out under his responsibility in which the information to which he makes reference article 30.1 of the GDPR.

- Installed cameras cannot get images from third-party proprietary space

and/or public space without duly accredited justified cause, nor can they affect the privacy of passers-by who move freely through the area. It is not allowed, for

C / Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

6/10

therefore, the placement of cameras towards the private property of neighbors with the purpose of to intimidate them or affect their private sphere without just cause.

- In no case will the use of surveillance practices be accepted beyond the environment object of the installation and in particular, not being able to affect public spaces surroundings, adjoining buildings and vehicles other than those that access the space guarded.

In relation to the foregoing, to facilitate the consultation of the interested parties, the Agency Española de Protección de Datos offers through its website

[<https://www.aepd.es>] access to data protection legislation

personal information, including the RGPD 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 "Guides and tools" section).

It is also of interest, in case of carrying out low-risk data processing, the free tool Facilitates (in the "Guides and tools" section) that, through specific questions, allows to assess the situation of the person in charge with respect to the processing of personal data that it carries out, and where appropriate, generate various documents, informative and contractual clauses, as well as an annex with measures indicative security considered minimum.

SAW

administrative infraction

In accordance with the evidence that is available and that has not been distorted during the sanctioning procedure, it is considered that the facts proven violate the provisions of Article 5.1.c) of the GDPR, for which reason they could suppose the commission of an infraction typified in article 83.5.a) of the GDPR, which provides the following:

Violations of the following provisions will be sanctioned, in accordance with the section 2, with administrative fines of a maximum of 20,000,000 EUR or, in the case of a company, an amount equivalent to 4% of the turnover global annual total of the previous financial year, 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;

For mere prescription purposes, article 72.1 of the LOPDGDD qualifies as very serious:

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

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

C / Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

VII

Sanction

7/10

Article 58.2 of the GDPR establishes:

"Each control authority will have all the following corrective powers

indicated below:

(...)

d) order the person in charge or person in charge of treatment that the operations of treatment comply with the provisions of this Regulation, where appropriate, in a certain way and within a specified period;

(...)

i) impose an administrative fine in accordance with article 83, in addition to or instead of the measures mentioned in this paragraph, according to the circumstances of each particular case".

According to the provisions of article 83.2 of the GDPR, the measure provided for in article 58.2

d) of the aforementioned Regulation is compatible with the sanction consisting of a fine administrative.

Regarding the infringement of article 5.1.c) of the GDPR, based on the facts proven, it is considered that the sanction that would correspond to be imposed is a fine administrative.

The fine imposed must be, in each individual case, effective, proportionate and dissuasive, in accordance with article 83.1 of the GDPR.

In order to determine the administrative fine to be imposed, the provisions of article 83.2 of the GDPR, which indicates:

"2. Administrative fines will be imposed, depending on the circumstances of each individual case, in addition to or in lieu of the measures contemplated in

Article 58, paragraph 2, letters a) to h) and j). When deciding to impose a fine administration and its amount in each individual case shall be duly taken into account:

a) the nature, seriousness and duration of the offence, taking into account the

nature, scope or purpose of the processing operation in question, as well as

such as the number of interested parties affected and the level of damages that

have suffered;

b) intentionality or negligence in the infraction;

c) any measure taken by the controller or processor to

alleviate the damages and losses suffered by the interested parties;

d) the degree of responsibility of the controller or processor,

taking into account the technical or organizational measures that they have applied under

of articles 25 and 32;

e) any previous infringement committed by the controller or processor;

f) the degree of cooperation with the supervisory authority in order to remedy the

infringement and mitigate the possible adverse effects of the infringement;

g) the categories of personal data affected by the infringement;

h) the way in which the supervisory authority became aware of the infringement, in

particular whether the person in charge or the person in charge notified the infringement and, if so, in what

extent;

C / Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

8/10

i) when the measures indicated in article 58, paragraph 2, have been ordered

previously against the person in charge or the person in charge in relation to the

same matter, compliance with said measures;

j) adherence to codes of conduct under article 40 or to mechanisms of

certification approved in accordance with article 42,

k) any other aggravating or mitigating factor applicable to the circumstances of the case, such as financial benefits obtained or losses avoided, directly or indirectly, through the infringement”.

For its part, in relation to letter k) of article 83.2 of the GDPR, the LOPDGDD, in its article 76, "Sanctions and corrective measures", provides:

"1. The sanctions provided for in sections 4, 5 and 6 of article 83 of the Regulation (UE) 2016/679 will be applied taking into account the graduation criteria established in section 2 of said article.

2. In accordance with the provisions of article 83.2.k) of Regulation (EU) 2016/679 may also be taken into account:

- a) The continuing nature of the offence.
- b) The link between the activity of the offender and the performance of data processing personal information.
- c) The benefits obtained as a consequence of the commission of the infraction.
- d) The possibility that the conduct of the affected party could have included the commission of the offence.
- e) The existence of a merger by absorption process subsequent to the commission of the infringement, which cannot be attributed to the absorbing entity
- f) Affectation of the rights of minors
- g) Have, when it is not mandatory, a data protection delegate.
- h) Submission by the person responsible or in charge, on a voluntary basis, to alternative conflict resolution mechanisms, in those cases in which there are controversies between those and any interested party”.

The balance of the circumstances contemplated, with respect to the infractions committed by violating the provisions of article 5.1 c) of the GDPR, allows setting a fine of €300 (three hundred euros).

VIII

Measures

The text of the resolution establishes which have been the infractions committed and the facts that have given rise to the violation of the regulations for the protection of data, from which it is clearly inferred what are the measures to adopt, without prejudice that the type of procedures, mechanisms or concrete instruments for implement them corresponds to the sanctioned party, since it is responsible for the treatment who fully knows its organization and has to decide, based on the proactive responsibility and risk approach, how to comply with the GDPR and the LOPDGDD.

It is noted that not meeting the requirements of this body may be considered as an administrative offense in accordance with the provisions of the GDPR, classified as an infraction in its article 83.5 and 83.6, being able to motivate such conduct the opening of a subsequent administrative sanctioning procedure.

C / Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

9/10

IX

Conclusion

Therefore, in accordance with the applicable legislation and assessed the criteria of graduation of sanctions whose existence has been accredited, the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: IMPOSE D. 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 €300

(THREE HUNDRED euros).

SECOND: ORDER D. B.B.B. that, by virtue of article 58.2 d) of the GDPR, in the within ten business days, take the following steps:

- Provide documentary evidence (photograph showing date and time) proving the Absence of any device in ***ADDRESS.1.
- Provide the images that are observed with the device in question, indicating in a situation plan the parts that correspond to your particular property.
- Evidence of having proceeded to remove the camera from the current location, or to reorientation of it towards its particular area.

THIRD: NOTIFY this resolution to D. 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 Administrative Procedure

Common of Public Administrations (hereinafter LPACAP), within the payment period

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, 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 Agency

Spanish Data Protection Agency at the bank CAIXABANK, S.A.. In the event

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 term

It will be 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 may optionally file an appeal for reversal before the

C / Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

10/10

Director of the Spanish Agency for Data Protection within a period of one month from

count 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 for in article 46.1 of the

referred 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

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 through

writing addressed to the Spanish Data Protection Agency, presenting it through

of the Electronic Registry 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 registries 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 proceedings within a period of two months from the day following the

Notification of this resolution would terminate the precautionary suspension.

938-120722

Mar Spain Marti

Director of the Spanish Data Protection Agency

C / Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es