

□ File No.: EXP202100116

## RESOLUTION OF PUNISHMENT PROCEDURE

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

### BACKGROUND

FIRST: On 06/29/2021, it had entry in this Spanish Agency of  
Data Protection a document presented by A.A.A. (hereinafter the part  
claimant), assuming its representation B.B.B., through which it formulates  
claim against C.C.C. with NIF \*\*\*NIF.1 (hereinafter, the claimed party), by the  
installation of a video surveillance system located at \*\*\*ADDRESS.1, existing  
indications of a possible breach of the provisions of the data protection regulations.

Personal data.

The grounds on which the claim is based are as follows:

“The defendant has proceeded to place some cameras on the facade of the house that  
It is located on a property that is the private property of the claimant by inheritance of  
their parents without their consent. The claimant has attributed by judgment the use  
of the 1st floor of said building and the claimed one has attributed the use of the ground floor, but  
not so the use of the property on which the house is located, which is privately owned  
of the now claimant.

The claimant at no time has authorized or given his consent to the  
placement of said cameras that do not have any type of poster or notice

In addition, without any sign being recorded either for the exercise of the rights of  
access; rectification; opposition and/or cancellation.

[...]

Provide a photograph of the location of the cameras.

SECOND: In accordance with article 65.4 of Organic Law 3/2018, of 5

December, of Protection of Personal Data and guarantee of digital rights (in hereinafter LOPDGDD), said claim was transferred to the claimed party on the day 07/06/2021, to proceed with its analysis and inform this Agency within the term of a month, of the actions carried out to adapt to the foreseen requirements in data protection regulations. The notification was made by mail postal service on 07/20/2021, as stated in the Notice issued by Correos.

On 07/26/2021, the respondent submits a brief of allegations in which states that the video surveillance system consists of 3 cameras that do not capture images of public roads, keeping the recorded images for a period of 15 days. In addition, it indicates that they were installed with the consent of the two owners.

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of the farm, that is, the claimed and the claimant (her ex-husband). Contribute report photo in which you can see the following:

-

The location of the 3 cameras that make up the video surveillance system.

- The monitor that shows the captures of 3 cameras that focus on different parts of the farm.

On 08/27/2021, this Agency requests the respondent to clarify whether the spaces that the cameras capture are your property and, if not, that you provide the consent of the owner for its installation. It is 09/17/2021 when the claimed answers and states, in summary, that the claimant granted his

consent for the installation of the cameras, in fact, they were installed by an "intimate friend of yours", and that the joint ownership company has not yet been liquidated, so It has not been determined who owns the farm.

THIRD: On 09/21/2021, the Director of the Spanish Protection Agency

Data agreed to admit the claim filed by the claimant for processing.

FOURTH: On 01/03/2022, the Director of the Spanish Protection Agency

of Data agreed to initiate a sanctioning procedure against the claimed party, for the alleged infringement of article 5.1.c) of the RGPD and article 13 of the RGPD, typified in the article 83.5 of the RGPD.

FIFTH: Once the opening agreement was notified, the respondent presented a written pleadings in which, in summary, it states the following:

"Nothing to oppose the requested warning.

I REQUEST, that having presented this writing, please admit it, have me

for conforming to the indicated warning and for providing the attached photographs."

He provides two photographs in which it is observed that he has proceeded to remove the 3 cameras of video surveillance.

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: At the time the claim that gives rise to the

present sanctioning procedure, the installation of a system of

video surveillance at \*\*\*ADDRESS.1, which could capture areas that are not your

exclusive ownership; as well as the absence of an informative poster of the video-monitored area.

SECOND: C.C.C. is identified as the main person responsible for the installation. with

NIF \*\*\*NIF.1, who does not deny having placed 3 video surveillance cameras. Nope

However, it has not been able to prove that the claimant had granted his

express consent for the presence of the cameras.

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THIRD: It is proven that the respondent has proceeded to remove the cameras from video surveillance, as can be seen in the two photographs attached to the brief of allegations.

## FOUNDATIONS OF LAW

Yo

In accordance with the powers that article 58.2 of Regulation (EU) 2016/679

(General Data Protection Regulation, hereinafter RGPD), grants each

control authority and as established in articles 47 and 48.1 of the Law

Organic 3/2018, of December 5, on the 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 Agency for Data Protection will be governed by the provisions

in Regulation (EU) 2016/679, in this organic law, by the provisions

regulations issued in its development and, as long as they do not contradict them, with a

subsidiary, by the general rules on administrative procedures.”

II

In the present case, it is appropriate to examine the claim dated 06/29/2021 filed

in this Agency in which the existence of a system of

video surveillance located at \*\*\*ADDRESS.1, without reporting its presence, which could

capture images of land that is not their exclusive property.

The physical image of a person under article 4.1 of the RGD 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 5.1 c) of the RGD provides that personal data will be "adequate,

relevant and limited to what is necessary in relation to the purposes for which they are

processed ("data minimization").

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

installed 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 sign

informative, indicating the purposes and responsible for the treatment in your case of the data

of a personal nature.

Article 22.4 of the LOPDGDD provides that:

"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

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identity of the person in charge and the possibility of exercising the rights foreseen 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 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.

Nor can images of public spaces be obtained with this type of device, as this is the exclusive competence of the State Security Forces and Bodies.

It should be remembered that even in the case of a "simulated" camera, the same should preferably be oriented towards a private space, since it is considered that this type of device can affect the privacy of third parties, which are seen intimidated by it in the belief of being the subject of permanent recording.

On the part of individuals, it is not possible to install sections for obtaining images of public space, outside the cases allowed in the regulations.

Article 13 of the RGD, sections 1 and 2, establishes the information that must be provided to the interested party at the time of collecting their data. In the case of treatments of personal data for surveillance purposes through camera systems or video cameras, the duty of information can be fulfilled by placing, in the video-monitored areas, an informative badge located in a sufficiently visible, both in open and closed spaces, and using forms in the that the planned information is detailed, which the person in charge must make available of those interested.

These infractions are typified in article 83.5 of the RGD:

“The infractions of the following dispositions will be sanctioned, in accordance with the section 2, with administrative fines of a maximum of EUR 20,000,000 or, in the case of a company, an amount equivalent to 4% of the turnover global annual total of the previous financial year, choosing the highest 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 infringements, they are considered very serious and prescribe after three years, in accordance with article 72.1 of the LOPDGDD, which establishes that:

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

(...)

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

III

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 find the power to direct a warning (art. 58.2 b)), the power to impose an administrative fine in accordance with article 83 of the RGPD (art. 58.2 i)), or the power to order the person in charge or in charge of the treatment that the treatment operations comply with the provisions of the RGPD, where appropriate, in a certain way and within a specified period (art. 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.

In the present case, considering the special circumstances that concur in the claimed responsible for the infringement and making a broad interpretation of the criterion inspired by Recital 148 of the RGPD, according to which when the fine that likely to be imposed would constitute a disproportionate burden may be imposed instead of the sanction of a fine a warning, it is estimated that due to the Infractions of article 5.1 c) and 13 of the RGPD it is appropriate to direct a warning.

#### IV

In this case, it has been found that the defendant had installed a video surveillance likely to focus on areas that were not their exclusive property and, furthermore, it lacked the obligatory badge of a video-monitored area. However, it has verified that it has recently proceeded to withdraw the 3 cameras that they made up

Despite this, it should be noted that the warning continues to be maintained due to the images that were captured prior to the uninstallation and, furthermore, without reporting the their existence, which constitutes an infringement of article 5.1 c) and 13 of the GDPR. However, it will be a warning without the need to adopt measures by the claimed party, since it has already proceeded to remove the cameras.

Therefore, in accordance with the applicable legislation,  
the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: ADDRESS C.C.C., with NIF \*\*\*NIF.1, for a violation of article 5.1.c) of the RGPD and article 13 of the RGPD, typified in Article 83.5 of the RGPD, a warning.

SECOND: NOTIFY this resolution to C.C.C., with NIF \*\*\*NIF.1.

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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.

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