

□ Procedure No.: PS/00124/2021

RESOLUTION OF PUNISHMENT PROCEDURE

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

BACKGROUND

FIRST: On October 6, 2020, it had entry in this Spanish Agency
of Data Protection a document presented by A.A.A. (hereinafter the part
claimant), through which he makes a claim against B.B.B. with NIF ***NIF.1 (in
hereinafter, the claimed party), for the installation of a video surveillance system
installed in ***ADDRESS.1, with indications of a possible breach of the
provided in the personal data protection regulations.

The claim is based on the fact that the defendant has installed three security cameras
video surveillance oriented to public roads, and, in addition, they lack the mandatory sign
informative.

Photo report is attached.

SECOND: The claim was admitted for processing by means of a resolution of 12
March 2021.

THIRD: On June 3, 2021, the Director of the Spanish Agency for
Data Protection agreed to initiate a sanctioning procedure against the claimed party,
for the alleged infringement of articles 5.1.c) and 13 of the RGPD, typified in article
83.5 of the GDPR.

FOURTH: On July 1, 2021, allegations to the
initiation agreement formulated by the respondent party in which it indicates that the
cameras are not real, they are only dissuasive.

Provide photographic report. In one of these photos the three cameras can be seen without

install, unplugged, on a surface.

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: Video surveillance system consisting of three cameras.

SECOND: The person in charge of the devices is B.B.B. with NIF ***NIF.1.

THIRD: The respondent declares in the pleadings brief to the settlement agreement start that the cameras are not real, but dissuasive.

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Provide photographic report. In one of these photos the three cameras can be seen without install, unplugged, on a surface.

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

In this case, we proceed to examine the claim dated October 6, 2020 through which the placement of three video surveillance cameras oriented to public roads, and, in addition, lack the mandatory informative poster.

Article 5.1 c) of the RGPD 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 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.

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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, 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 imaging devices of public space, outside the cases allowed in the regulations.

III

On July 1, 2021, a written statement is received from the respondent stating that the system is of a simulated nature, that is, it does not obtain an image some fulfilling a mere dissuasive function.

Article 28.7 of Law 39/2015, of October 1, on Administrative Procedure

Common of Public Administrations (LPACAP, hereinafter) provides: "The Interested parties will be responsible for the veracity of the documents they submit.

It should be noted that individuals can install cameras on their private property false, although they must be oriented exclusively towards your property, avoiding intimidating third parties with said devices.

The accused party provides photographs in which the cameras are observed without install, taking for granted the allegations made, being aware that in

At any time this body can proceed to check the system in question.

In the installation of this type of "simulated" devices, caution must be taken. necessary to avoid intimidating third parties who are unaware of the character fictitious of these, who may believe they are recorded by them, in such a way that they should avoid its orientation towards public space.

Although in the past the AEPD has sanctioned data controllers for

use of this type of device, it is currently understood that the use of cameras simulated does not imply an infringement of the fundamental right to data protection.

The Judgment of the First Chamber of the Supreme Court of November 7, 2019 declares that the installation of a fake video surveillance camera, apparently identical to other fully operative ones, is likely to restrict the freedom of third parties.

The TS reasons that when an individual does not know that he is being filmed, behaves with a naturalness and spontaneity that would not occur otherwise. And that "The plaintiff's right to the tranquility of his private life also includes the of not having to endure a permanent uncertainty" about whether the camera in question is operational or not, or whether "RCRE has replaced it with another fully identical in appearance and functional.

Therefore, it must be taken into account that the behavior described in the event of excessive can have consequences in other areas of law, being

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It is advisable to take the necessary precautions to avoid excessive orientation towards public space, limiting itself to the façade of the house to be protected.

Likewise, it is recommendable to follow the indications of the Forces and Bodies of the locality, which can guide you in the matter if you need it, avoiding with them new complaints about it.

IV

Based on the foregoing, it has not been possible to prove that the cameras

object of the claim obtain any image of an identified natural person or identifiable, as the respondent declared that the cameras are simulated;

Therefore, since there is no processing of personal data, it cannot be discussed of administrative infraction in the matter that occupies us.

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: ORDER the FILE of this procedure as there is no accredited the commission of any administrative infraction in the matter that we occupies.

SECOND: NOTIFY this resolution to B.B.B. with NIF ***NIF.1.

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.

Sea Spain Marti

Director of the Spanish Data Protection Agency

C/ Jorge Juan, 6

28001 – Madrid

938-131120

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