

□ Procedure No.: PS/00506/2020

RESOLUTION OF PUNISHMENT PROCEDURE

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

FACTS

FIRST: A.A.A. (*hereinafter, the claimant) dated September 11, 2020

filed a claim with the Spanish Data Protection Agency. The

claim is directed against B.B.B. with NIF ***NIF.1 (hereinafter, the claimed one). The

reasons on which the claim is based are succinctly "presence of a system

of cameras in the workplace without informing by means of an informative poster" (Doc. nº 1).

Together with the claim, it provides documentary evidence (Annex I) that proves the

stated by the claimant.

SECOND: On 09/24/20, the claim is transferred for the purposes of

that the respondent state in law what it deems pertinent without allegation

any has been done.

THIRD: The Director of the AEPD, in accordance with the provisions of article 65

of the LOPDGDD, dated 12/29/2020 agrees to admit this

claim.

FOURTH: On April 23, 2021, the Director of the Spanish Agency for Pro-

Data Protection agreed to initiate a sanctioning procedure against the defendant, in accordance with

the provisions of articles 63 and 64 of Law 39/2015, of October 1, on the Procedure

Common Administrative Procedure of Public Administrations (hereinafter, LPA-

CAP), for the alleged infringement of Article 13 of the RGPD, typified in Article 83.5

of the GDPR.

FIFTH: Notification of the aforementioned start-up agreement, it has not been carried out to date

any allegation in this regard, nor any documentary contribution.

SIXTH: On 06/21/21, the "Proposed Resolution" is issued through

which it was agreed to propose a penalty of €1,000, by not proving that the system

installed complies with current legislation, by not providing any evidence that proves such

extreme, considering the infringement of art. 13 GDPR.

Of the actions carried out in this procedure and the documentation

in the file, the following have been accredited:

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PROVEN FACTS

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First. The facts are specified in the claim dated 09/11/20 through

which translates the following:

“presence of a camera system in the workplace without informing

by means of an informative poster” (Doc. nº 1).

Second. It is the main responsible for the installation of the B.B.B.

Third. The presence of a video-surveillance device for purposes of

labor control, without the workers having been legally informed

(ace).

Fourth. No informative poster has been placed in a visible area indicating that it is

a video-monitored area, nor if it has reported on the person responsible and/or destination of the

images obtained with it.

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 the provisions of articles 47 and 48 of the LOPDGDD, the Director of the Spanish Agency for Data Protection is competent to initiate and to resolve this procedure.

II

In the present case, the claim dated 09/11/20 is examined by me- which is transferred as the main fact "absence of informative poster" indi- when it is a video-monitored area.

Reporting on video surveillance according to GDPR is an obligation contained in this framework. legislative co.

The installation of cameras must conform to the following rules:

- Proportionality Principle (art. 5 RGPD). The cameras must be oriented preferably towards our private space, avoiding the capture of public area and/or third-party private space.
- Duty information. An informative device must be available in the vi- possible (eg access door) indicating that it is a video-monitored area, in the

It must be indicated:

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the existence of the treatment.

the identity of the person responsible.

possibility of exercising the rights provided for in articles 15 to 22 of Regulation (EU) 2016/679.

☐ Where to obtain more information on the processing of personal data?

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Article 22 of Organic Law 3/2018 (December 5)-LOPDGDD- provides:

"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 to preserve the safety of people and property, as well as its installations. nes.

The AEPD, in a related report, stipulates that it is not necessary for cartels to be stand right below the cameras. It is enough to do it in a visible place and that it includes open and closed spaces where the video camera circuit is operational.

Regarding the installation of security cameras in companies to control the work, the labor regulations establish, in article 20 of the Statute of Workers-res, that "the employer may adopt the measures he deems most appropriate to monitor lance and control to verify compliance by the worker with his obligations and labor duties, keeping in its adoption and application the consideration due to their human dignity and taking into account the real capacity of the diminished workers. nudos, in your case".

To facilitate the adaptation of the treatments to the provisions of the RGPD, the AEPD has edited the Guide for compliance with the duty to inform, in which it is explained how comply with this right, through the so-called "two-layer" system, due to the type of information that must be provided by those responsible in relation to the different processing of personal data of the interested parties that they carry out.

Article 89 LOPDGDD (LO 3/2018, December 5) provides the following:

“Employers will be able to treat the images obtained through systems of cameras or video cameras for the exercise of the functions of control of the work of workers or public employees provided, respectively, in article 20.3 of the Workers' Statute and in public function legislation, provided that these functions are exercised within its legal framework and with its inherent limits. Employers must inform in advance, and expressly, clearly and concisely, to public workers or employees and, where appropriate, to their representatives, about this measure” (* underlining belongs to this Agency).

III

In accordance with the evidence available in this proceeding, it is considered that the defendant has a video-surveillance system in the workplace, without informing the workers through the corresponding card. informative phone

The known facts constitute an infraction, attributable to the defendant, for violation of article 13 RGPD “Information that must be provided when the data are obtained from the interested party”.

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IV

The art. 83.5 RGPD provides the following: “Infringements of the following provisions will be sanctioned, in accordance with section 2, with administrative fines of 20 EUR 000,000 maximum or, in the case of a company, an equivalent amount. to a maximum of 4% of the total global annual turnover of the financial year

above, opting for the highest amount:

b) the rights of the interested parties according to articles 12 to 22;

When motivating the sanction, the following is taken into account:

-the nature, seriousness and duration of the offence, taking into account the nature
nature, scope or purpose of the treatment operation in question as well as the
number of affected parties and the level of damages they have suffered
(art. 85.2 a) RGPD).

The camera is installed inside a work area in such a way that
allows exercising control over the workers who are monitored without having
received any explanation about the purpose(s) of the processing of your personal data.
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- the intention or negligence in the infringement (art. 85.2 b) RGPD), by not in-
form by informative device of the person in charge and/or the purpose of the treatment.

For all these reasons, it is considered correct to impose a sanction encrypted in the amount
of €1,000 (one thousand euros), a sanction located on the lowest scale for this type of infraction.
administrative tions.

In accordance with the provisions of article 58.2.d) of the RGPD, each authority
of control may “order the person in charge or in charge of the treatment that the operations
treatment measures comply with the provisions of this Regulation, when
proceed, in a certain way and within a specified period...”.

Given the absence of an informative badge, it is necessary to proceed to the placement
of one in a visible area informing of the data controller, as well
as in your case, the staff or their representatives must be informed of the reason(s)
of the recording, responsible for the treatment and possibility of exercising the rights re-
known in articles 15-22 RGPD.

Remember that the cameras cannot be oriented exclusively towards

the monitors of the employees (as) in such a way that the only thing that is allowed is the uptake of the cabin where they perform their tasks, and must inform clear of the purpose (s) in its case in the treatment of the data of the same.

Therefore, in accordance with the applicable legislation and after assessing the graduation criteria tion of the sanctions whose existence has been proven,

the Director of the Spanish Data Protection Agency RESOLVES:

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FIRST: IMPOSE B.B.B., with NIF ***NIF.1, for an infraction of Article 13 of the RGD, typified in Article 83.5 of the RGD, a fine of €1,000 (one thousand euros).

SECOND: ORDER the claimed party so that within 1 month of conformity with art. 58.2 d) RGD proceed to the regularization of the system providing proof document that proves that it reports that it is a video-monitored area or in its case that has proceeded to withdraw the camera from its current location.

THIRD: NOTIFY this resolution to B.B.B. and REPORT the result of the proceedings to the claimant A.A.A.

FOURTH: Warn the sanctioned party that he must make the imposed sanction effective once

Once this resolution is enforceable, in accordance with the provisions of the art. 98.1.b) of Law 39/2015, of October 1, of the Administrative Procedure Co- of the Public Administrations (hereinafter LPACAP), within the term of payment 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, through its entry, 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, opened in the name of the Spanish Agency Data Protection Law at the banking entity CAIXABANK, S.A. In case with- Otherwise, it will be collected during the executive period.

Received the notification and once executed, if the date of execution is between the 1st and 15th of each month, both inclusive, the term to make the payment will be until the 20th day of the following month or immediately after, and if between the 16th and last day of each month, both inclusive, the payment term It will be until the 5th of the second following month or immediately after.

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 resents may optionally file an appeal for reconsideration before the Director of the Spanish Agency for Data Protection within a month from the date of the day following the notification of this resolution or directly contentious appeal before the Contentious-Administrative Chamber of the National High Court, in accordance with the provisions of article 25 and section 5 of the additional provision Final fourth of Law 29/1998, of July 13, regulating the Contentious Jurisdiction-administrative, within a period of two months from the day following the notification of this act, as provided for 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 interested party do states its intention to file a contentious-administrative appeal. Of being In this case, the interested party must formally communicate this fact in writing addressed to the Spanish Agency for Data Protection, presenting it through the Re-

Electronic registry of the Agency [<https://sedeagpd.gob.es/sede-electronica-web/>], or to

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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

that proves the effective filing of the contentious-administrative appeal. If the

Agency was not aware of the filing of the contentious-administrative appeal

tive within two months from the day following the notification of this

resolution, would end the precautionary suspension.

Sea Spain Marti

Director of the Spanish Data Protection Agency

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