

□ Procedure No.: PS/00349/2021

## RESOLUTION OF PUNISHMENT PROCEDURE

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

### FACTS

FIRST: Don A.A.A. (\*hereinafter, the complaining party) dated March 31,  
2021 filed a claim with the Spanish Data Protection Agency. The  
claim is directed against B.B.B. with NIF \*\*\*NIF.1 (hereinafter, the part  
claimed). The grounds on which the claim is based are as follows:

claimant statement:

“transfers the presence of several video-surveillance cameras in the Community  
of owners (...) that could affect common areas and rights of third parties without  
just cause” (folio nº1).

As documentary evidence, it provides documentary evidence (Annex WhatsApp No. 1-3)  
that proves the presence of a camera with an installation cable facing the  
claimant's terrace area.

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 on 04/30/21 and  
05/28/21 to the respondent, to proceed with its analysis and inform this  
Agency within a month, of the actions carried out to adapt to the  
requirements set forth in the data protection regulations.

No response to this letter has been received after consulting the database of this  
Agency as of 08/10/21.

THIRD: On July 2, 2021, the Director of the Spanish Agency for Pro-

Data protection agreed to admit for processing the claim presented by the claimant party.

keep.

FOURTH: On August 26, 2021, the Director of the Spanish Agency for

Data Protection agreed to initiate a sanctioning procedure against the claimant, for the

alleged infringement of Article 5.1.c) of the RGPD, typified in Article 83.5 of the

GDPR.

FIFTH: The database of this AEPD consulted on 10/15/21 has not been

received any response in this regard.

In view of everything that has been done, by the Spanish Data Protection Agency

In this proceeding, the following are considered proven facts:

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## FACTS

First. The facts bring cause of the claim dated 31703/21 through the

cal transfers the following as the main fact:

“transfers the presence of several video-surveillance cameras in the Community

of owners (...) that could affect common areas and rights of third parties without

just cause” (folio nº1).

As documentary evidence, it provides documentary evidence (Annex WhatsApp No. 1-3)

that proves the presence of a camera with an installation cable facing the

claimant's terrace area.

Second. It is identified as the main person in charge B.B.B., with DNI \*\*\*NIF.1.

Third. The presence of several devices misoriented towards areas

common and terrace areas of adjoining neighbors without just cause.

Fourth. The presence of an informative poster at the access door has not been accredited to the house, informing the neighbors of the property that it is a zone video-surveillance.

Fifth. The respondent party has not made any allegation to the requirements of this Agency, nor has it clarified any aspect in relation to them.

## 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

Before going into the substance of the matter, clarify that in the Start Agreement of the PS/00349/21 express reference was made to the fact that the lack of response to it could give rise to its consideration "as a resolution proposal" when it contains make a precise statement about the imputed responsibility (art. 64.2 Law 39/2015, October 1).

In consideration of the foregoing and in accordance with the provisions of article 64.2.f) of the LPACAP, the initiation agreement of PS/00349/2021 is considered Pro-Resolution: Once the initiation agreement has been notified, the one claimed at the time of the This resolution has not submitted a brief of arguments, so it is application of what is stated in article 64 of Law 39/2015, of October 1, of the

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Common Administrative Procedure of Public Administrations, which in its section f) establishes that in the event of not making allegations within the stipulated period on the content of the initiation agreement, it may be considered a proposal for resolution when it contains a precise statement about the responsibility imputed, reason why a Resolution is issued.

### III

In the present case, the claim dated 03/31/21 is examined by me- gave from which the following facts are transferred:

“transfers the presence of several video-surveillance cameras in the Community of owners (...) that could affect common areas and rights of third parties without just cause” (folio nº1).

The facts denounced could imply an affectation to the content of art. 5.1 c) RGD (regulation currently in force) that provides: “personal data will be: c) adequate, pertinent and limited to what is necessary in relation to the purposes for which they are processed (“data minimization”) (...)”.

Individuals are responsible for the video-surveillance systems installed both comply with current legislation, and must be able to prove such extremes before the competent Authority.

Cameras installed by individuals must be oriented towards their private space. vative avoiding the capture of private area of third parties without just cause.

In no case will the use of surveillance practices be admitted beyond the objective environment. of the installation and in particular, not being able to affect the surrounding public spaces. contiguous buildings and vehicles other than those accessing the guarded space.

Likewise, in the case of false cameras, they must be oriented

to a private area, avoiding intimidation of neighboring neighbors who are unaware know whether or not they process personal data.

Without taking into account the allegations of the respondent, it is simply recalled that the installation of devices in a communal area must comply with the requirements established two in the LPH, not being the walls next to the access door that enjoys you-private ownership, but community.

#### IV

In accordance with the evidence available in this proceeding, sanctioning act, it is considered that the claimed party has proceeded to install a camera(s) on the balcony affecting areas reserved for the privacy of third parties “processing your personal data”.

The evidence provided together with the claim makes it possible to establish that the device is oriented towards the balcony of the claimant's property that is affected

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by the same, as well as that the second device is installed in zone community without just cause.

The documentary evidence (video evidence) allows verifying without gender of doubts the presence of the devices that affect the group of neighbors of the property, especially those close to the houses, who are intimidated by the themselves.

The known facts constitute an infraction, attributable to the party claimed, for violation of the content of art. 5.1 c) GDPR.

Article 83.5 RGPD provides the following:

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“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, treating- of a company, of 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:

a)  
the basic principles for the treatment, including the conditions for the consent under articles 5, 6, 7 and 9;

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

-the nature of the infraction by having a video-surveillance system that is oriented towards a third-party private area without just cause, trying to presumably mind data of identifiable natural persons (art. 83.5 a) RGPD).  
-the intentionality or negligence of the infringement, (art. 83.2 b) RGPD), since with the video-surveillance system, it performs an excessive control of the area outside the property.  
mercy without any justified cause, highlighting the bad orientation of the installation of the device(s).

For all this, a sanction is agreed in the amount of €1,500 (one thousand quihundred euros), by having a camera system that records excessively private areas  
third-party sanction, a sanction located on the lower scale of this type of infraction and according to the nature of the facts described.

In accordance with art. 58.2 d) RGPD, screen printing must be provided size (date and time) of what in your case is captured with the camera (s) installed in order to its analysis by this Agency, as well as characteristics of the device(s) installed, without prejudice to the allegations that it deems necessary to make or, where appropriate, the contribution of

proof of removal of the same from the areas described.

The rest of the issues (installation in common areas) have legal support in the LPH, being able to direct, where appropriate, the President of the Community of Owners letter indicating that this type of device cannot be installed in communal areas. owners, without the support of all the owners of the property, adopting in case of

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persistence of a “hindering” attitude the pertinent measures in court competent.

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:

FIRST: IMPOSE B.B.B., with NIF \*\*\*NIF.1, for an infraction of Article 5.1.c) of the RGPD, typified in Article 83.5 of the RGPD, a fine of €1,500 (one thousand five hundred cough euros).

SECOND: ORDER the respondent so that within a period of 1 month proceed to the re-regularization of the system either proceeding to the withdrawal of the camera (s) or to the co-correct reorientation of the same, providing documentary evidence of such extremes to this organism.

THIRD: NOTIFY this resolution to B.B.B. and REPORT the result of performances to 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  
Department of Data Protection at the banking entity CAIXABANK, S.A.. In case of  
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  
is between the 16th and last day of each month, both inclusive, the term of the payment  
It will be valid 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-

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administrative, within a period of two months from the day following the notification

tion 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. If it is-

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

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 AEPD, P.O. the Deputy Director General for Data Inspection, Olga

Pérez Sanjuán, Resolution 4/10/2021

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