

□ File No.: EXP202101490

RESOLUTION OF PUNISHMENT PROCEDURE

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

BACKGROUND

FIRST: A.A.A. (*hereinafter, the complaining party) dated August 3, 2021

filed a claim with the Spanish Data Protection Agency. The

claim is directed against ***EMPRESA.1 with NIF ***NIF.1 (hereinafter, the part
claimed). The grounds on which the claim is based are as follows:

“The claimant, a neighbor of the adjoining house, observes that there are cameras
focusing on the public road and not strictly on the main entrance and garage of the property
existing in CALLE *** ADDRESS.1 of MADRID...” (folio nº 1).

Documentary evidence is provided (Annex I) that proves the presence of cameras
video-surveillance with orientation towards the nearby pedestrian traffic 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 to the claimed party in fe-
cha 08/26/21 and 10/05/21, to proceed to its analysis and inform this Agency
within a month, of the actions carried out to adapt to the requirements
provided for in the data protection regulations.

No response has been received to this letter, nor has any explanation been given in this regard.
unto

THIRD: On November 10, 2021, the Director of the Spanish Agency

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

FOURTH: On January 17, 2022, the Director of the Spanish Agency for Data Protection agreed to initiate a sanctioning procedure against the claimed party, for the alleged infringement of Article 5.1.c) of the RGD, typified in Article 83.5 of the RGD, appearing as notified in the computer system of this body.

FIFTH: The data of the computer system of this Agency was consulted on the date 03/03/22 no response has been received in relation to the facts subject to transfer.

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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PROVEN FACTS

First. The facts bring cause of the claim dated 08/03/21 through the which translates as done as follows:

“The claimant, a neighbor of the adjoining house, observes that there are cameras focusing on the public road and not strictly on the main entrance and garage of the property existing in CALLE *** ADDRESS.1 of MADRID...” (folio nº 1).

Second. It is identified as the main responsible *** COMPANY.1.

Third. There is proof of the presence of a bad image capture device oriented focusing pedestrian transit area without just cause.

Fourth. It is not possible to determine the presence of an informative sign in the access area. so approved in terms of data protection, no clarification has been made to the respect for the claimed.

Yo

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 re-solve this procedure.

II

Before going into the substance of the matter, remember that in the Initiation Agreement of the pre-present procedure it was mentioned that, in the case of not making any allegation to the itself, this could be considered a “resolution proposal”.

Article 64.2.f) of Law 39/2015, of October 1, on Administrative Procedure Common Public Administrations (hereinafter LPACAP) -provision of which the party claimed was informed in the agreement to open the proceeding- established that if allegations are not made within the stipulated period on the content of the agreement, initiation document, when it contains a precise statement about the response imputed responsibility, may be considered a resolution proposal. In the present In this case, the agreement to initiate the sanctioning file determined the facts in which that the imputation was specified, the infraction of the RGPD attributed to the claimed one and the sanction that could be imposed. Therefore, taking into consideration that the claimant mada has not formulated allegations to the agreement of beginning of the file and in attention to established in article 64.2.f) of the LPACAP, the aforementioned initial agreement is considered in the present case proposed resolution.

III

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In the present case, the claim dated 08/03/21 is examined by me-

gave from which the following fact is transferred:

“The claimant, a neighbor of the adjoining house, observes that there are cameras focusing on the public road and not strictly on the main entrance and garage of the property existing in CALLE *** ADDRESS.1 of MADRID...” (folio nº 1).

The facts denounced could imply an affectation to the content of art. 5.1 c)

RGPD (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 installed video-surveillance systems to be comply with current legislation, and must be able to prove such extremes.

We report to 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.

If adjustable and/or zoom cameras are used, it will be necessary to install privacy masks to avoid capturing images of public roads and adjoining areas. dante or any other alien 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.

In accordance with the "evidence" available in this proceeding,
sanctioning procedure, it is considered that the claimed party is the owner of a
property that has a video-surveillance camera system, which is
capturing pedestrian traffic zone without just cause.

The main evidence provided by the claimant makes it possible to verify the facts
that are the subject of a claim, observing at first glance the poor orientation
affecting the nearby pedestrian area (evidence document No. 1).

The known facts are therefore constitutive of an infraction, attributable to
the claimed party, for violation of the content of art. 5.1 c) GDPR, previously
aforementioned.

v

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 public area without just cause, treating data of natural persons identifiable or identifiable in an undetermined number (art. 83.2 a) RGPD).

-the intentionality or negligence of the infringement, (art. 83.2 b) RGPD), since with the video-surveillance system is intimidating nearby neighbors, without just cause

tified any, highlighting the bad orientation a priori of the installation of the device (s).

The evidence provided is considered sufficient to initially prove the infraction object of imputation, when verifying the bad orientation of the same (s), as well as the absence of response despite the requirements of this body on concrete and precise questions; Also taking into account the absence of prior sanctions in this regard.

For all these reasons, it is agreed to impose a sanction amounting to €1,500 (one thousand five hundred euros), by having a camera system that excessively records the area of third parties, being able to affect the public area, without attending to any requirement, sanction located in the lower scale of this type of infractions and according to the nature of the facts described in relation to a natural person.

SAW

Among the corrective powers contemplated in article 58 of the RGPD, in its section 2 d) it is established that each control authority may "order the person in charge or of the treatment that the treatment operations comply with the provisions of this Regulation, where appropriate, in a certain way and within a specified period...". The imposition of this measure is compatible with the sanction consisting of an administrative fine, as provided in art. 83.2 of the GDPR.

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

the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: IMPOSE ***EMPRESA.1, with NIF ***NIF.1, for an infraction of the

Article 5.1.c) of the RGD, typified in Article 83.5 of the RGD, a fine of €1,500

(One thousand five hundred euros).

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SECOND: ORDER the respondent so that within ONE MONTH in accordance with

tion with article 58.2 d) RGD, proceed to the reorientation of the camera, providing

in your case, screen impression of what is observed with it, with express indi-

capture date and time.

THIRD: NOTIFY this resolution to ***COMPANY.1.

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-

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

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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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