

□ Procedure No.: PS/00452/2020

RESOLUTION OF PUNISHMENT PROCEDURE

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

BACKGROUND

FIRST: On August 7, 2020, it had entry in this Spanish Agency of
Data Protection a document presented by A.A.A. (hereinafter referred to as the claimant),
through which he makes a claim against B.B.B. with NIF ***NIF.1 (hereinafter, the
claimed), for the installation of a video surveillance system installed in
***TOWN.1, ADDRESS.1,
Alicante, with indications of a possible
Non-compliance with the provisions of the data protection regulations
staff.

The reasons that support the claim and, where appropriate, the documents provided
by the claimant are the following:

“Mr. B.B.B. has installed 3 surveillance cameras that are carrying out an intrusion
abusive that violates my privacy, that of my family and that of any person who may
come to visit me. One of the cameras is fixed and allows you to see who enters and leaves my
property. The other two cameras are mobile, dome type, and focus directly on the
inside my property. (...)»

Attach photographic report of the location of the cameras.

SECOND: Prior to the acceptance of this claim for processing, it is
transferred the claimed, in accordance with the provisions of article 65.4 of the Law
Organic 3/2018, of December 5, on the Protection of Personal Data and guarantee of
digital rights (hereinafter, LOPDGDD), being notified on the 28th of

September 2020.

There is no record in this Agency of any response from the respondent.

THIRD: The claim was admitted for processing by means of a resolution of 30

November 2020.

FOURTH: On January 25, 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: Having been notified of the aforementioned initiation agreement, the respondent submitted a written

allegations in which, in summary, he stated that the cameras are set

way that they only record their property. The denouncer goes to his plot for his already

that claims to have a right of way, which is in the hands of justice so that

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Decide if this is the case or not, since your deed does not contain said easement. accompanies

images of the recordings of the three installed cameras. the second chamber

takes images that seem to exceed the plot of the claimed, when seeing other

houses and a public road.

SIXTH: On March 24, 2021, the instructor of the procedure agreed to the

opening of a period of practice of tests, taking for reproduced, for purposes

evidence of the claim filed by the claimant and its documentation, the

documents obtained and generated by the Subdirector General for Inspection of

Data and allegations presented by the respondent.

SEVENTH: On March 30, 2021, a resolution proposal was formulated, proposing that a sanction of warning be imposed on the defendant, for a infringement of article 5.1.c) of the RGPD, typified in article 83.5 of the RGPD. In this proposal, a period of 10 days was granted for the respondent to claim whatever he considers in his defense as well as to present the documents and information that it considers pertinent, in accordance with article 89.2 of the Law 39/2015, of October 1, of the Common Administrative Procedure of the Public Administrations (hereinafter, LPACAP).

EIGHTH: On April 27, 2021, the respondent submitted a brief of allegations in which, in short, stated that a few days before, and with the supervision of a professional installer, had moved chamber no. 2.

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: On August 7, 2020, it entered this Spanish Agency for Data Protection a letter that shows that the claimed party has installed a video surveillance system made up of 3 cameras facing the outside, one of which records more than what is provided, since a vision of others is offered houses and a street.

Attach photographic report of the location of the cameras.

SECOND: The person in charge of the video surveillance system is B.B.B. with NIF ***NIF.1.

THIRD: The respondent has proceeded to relocate the camera.

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.

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II

The defendant is charged with the commission of an infraction for violation of article 5.1.c) of the RGPD, regarding the principles of treatment, which provides that the data Personal information will be “adequate, relevant and limited to what is necessary in relation to the purposes for which they are processed (“data minimization”).

III

Without prejudice to the provisions of article 83.5, sections a) and b), of the RGPD, in its art. 58.2 b) establishes the possibility of sanctioning with a warning, in relation to what stated in Recital 148:

“In the event of a minor offence, or if the fine likely to be imposed would constitute a disproportionate burden for a natural person, rather than sanction by means of a fine, a warning may be imposed. must however Special attention should be paid to the nature, seriousness and duration of the infringement, its intentional nature, to the measures taken to alleviate the damages suffered, the degree of liability or any relevant prior violation, the manner in which that the control authority has been aware of the infraction, compliance of measures ordered against the person responsible or in charge, adherence to codes of conduct and any other aggravating or mitigating circumstance.”

IV

When deciding to impose an administrative fine and its amount, in each case individual will take into account the aggravating and mitigating factors indicated in art. 83.2 of the RGD, as well as any other that may be applicable to the circumstances of the case.

The infractions are typified in article 83.5 of the RGD:

“The infractions of the following dispositions will be sanctioned, in accordance with the paragraph 2, with administrative fines of a maximum of EUR 20,000,000 or, in the case of a company, an amount equivalent to a maximum of 4% of the global total annual turnover of the previous financial year, opting for the largest amount:

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

For the purposes of the limitation period for infractions, those indicated in paragraph above are considered very serious and prescribe after three years, in accordance with article 72.1 of the LOPDGD, which establishes that:

“Based on the provisions of article 83.5 of Regulation (EU) 2016/679, considered very serious and will prescribe after three years the infractions that suppose a substantial violation of the articles mentioned therein and, in particular, the following:

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[...] b) The processing of personal data without the concurrence of any of the conditions of legality of the treatment established in article 6 of Regulation (EU) 2016/679.

c) Failure to comply with the requirements of Article 7 of the Regulation (EU)

2016/679 for the validity of consent [...]"

The art. 22 section 2 of the LOPDGDD provides:

"Images of public roads may only be captured to the extent that it is essential for the purpose mentioned in the previous section.

However, it will be possible to capture public roads to the extent that it is essential to guarantee the security of strategic goods or installations or of infrastructures linked to transport, without in any case implying the capturing images of the interior of a private home".

Examined the file as a whole, although it is true that at the time of the start of this sanctioning procedure one of the cameras installed in the property of the defendant captured images foreign to his property, during the period of allegations, the respondent has stated that he has proceeded to relocate the camera to your private space.

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In accordance with the foregoing, having examined the modifications of the installed system, the itself is considered adjusted to the right, capturing the camera the minimum essential for their home protection work.

Full collaboration with this body is taken into account when carrying out the precise corrections to avoid affecting the right of third parties, being the necessary ones to preserve the security of the property and its inhabitants.

The parties are reminded of the importance of the rights at stake and must avoid instrumentalize institutions in matters beyond their competence, having to adjust the relationships between them to the minimum requirements of the good neighbor rules

Therefore, in accordance with the applicable legislation, once the criteria for

graduation of the sanctions whose existence has been proven, and taking into account account that the relocation of the camera has occurred during the processing of the present procedure, the sanction of warning is maintained, since during a time the camera overrecorded the public thoroughfare, although no measures are required complementary to having been adopted.

The Director of the Spanish Data Protection Agency RESOLVES:

FIRST: IMPOSE B.B.B. with NIF ***NIF.1, for a violation of article 5.1.c) of the RGPD, typified in article 83.5 of the RGPD, a sanction of WARNING.

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SECOND: NOTIFY this resolution to B.B.B..

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

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