

□ File No.: EXP202102386

RESOLUTION OF SANCTIONING 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 claiming party) dated September 15,
2021 filed a claim with the Spanish Data Protection Agency. The re-
outcry is directed against B.B.B. with NIF ***NIF.1Z (hereinafter, the claimed party).

The reasons on which the claim is based are the following:

“presence of poorly oriented camera that captures public roads without just cause
(...) lacking an informative poster in this regard”

Along with the notification, documentary evidence is provided (Annex I graphic documentation)
which accredits the presence of a small device that affects the façade area
of the establishment, but could affect public space.

SECOND: On December 15, 2021, in accordance with article 65 of
the LOPDGDD, the claim presented by the complaining party was admitted for processing.

THIRD: The General Subdirectorate of Data Inspection proceeded to carry out
of previous investigative actions to clarify the facts in
matter, by virtue of the functions assigned to the control authorities in article
57.1 and the powers granted in article 58.1 of Regulation (EU) 2016/679
(General Data Protection Regulation, hereinafter GDPR), and in accordance
with the provisions of Title VII, Chapter I, Second Section, of the LOPDGDD, subject
having knowledge of the following extremes:

As a consequence of previous investigations, specified in EXP202102386
the following is specified,

INVESTIGATED ENTITIES

During these proceedings, the following entities have been investigated:

BAR NEW TEMPO (...) with address at LAUREL, 4, BAJO - 28005 MADRID

(MADRID)

RESULT OF INVESTIGATION ACTIONS

The person in charge of the video surveillance installation installed in BAR NEW TEMPO is

B.B.B. with NIF ***NIF.1z

In relation to the video system, the person in charge of the installation states that the number

number of cameras available are 5 although currently they are only in operation

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2/7

4 since the one located in the upper room is uninstalled due to a soundproofing work.

tion that we are undertaking.

The system saves the images within 15 days

The images can only be viewed by the person responsible for the installation through a

mobile application

The person in charge of the system provides a photograph that contains an informative poster

installed inside the bar where it can be seen that it contains the identity of the respondent

Saber of the installation, your ID and postal address.

The poster also contains information regarding the procedure to exercise your rights.

chos

It also provides a series of photographs on which the following can be verified:

Photography of the mobile application: it is observed that up to 6 cameras can be displayed,

cameras 1, 2, 3 and 5 are active and cameras 4 and 6 are turned off or not installed.

you give

In the image relative to camera 1, it is verified that it captures images of the bar

the bar and some tables

Camera 2 captures images of tables where customers can be installed.

Camera 3 captures images of a billiard table in which you can see perfectly-

mind 4 people playing

Camera 5 captures images of the public road, focusing on the entire sidewalk and

to the parked vehicles, taking pictures even of the sidewalk in front and of the

cars parked across the street.

FOURTH: On May 27, 2022, the Director of the Spanish Agency for

Data Protection agreed to initiate disciplinary proceedings against the claimed party,

in accordance with the provisions of articles 63 and 64 of Law 39/2015, of October 1,

of the Common Administrative Procedure of Public Administrations (hereinafter

te, LPACAP), for the alleged infringement of Article 5.1.c) of the GDPR, typified in the

Article 83.5 of the GDPR.

FIFTH: On 06/22/22 the Agreement of

Start associated with PS/00212/2022 as attempts to

notification at the address associated with the claimant.

SIXTH: On 07/18/22 <Proposed Resolution> is issued confirming

the presence of a camera misoriented towards public space without just cause,

assuming a breach of article 5.1 c) GDPR, proposing for this reason a

penalty in the amount of €400.

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SEVENTH: Consulted the database of this Agency on 08/09/22, there is no record any allegation, nor has any corrective measure been accredited in relation to the facts that are the subject of the claim.

Of the actions carried out in this procedure and of the documentation in the file, the following have been accredited:

PROVEN FACTS

First. The facts bring cause of the claim (09/15/21) by means of which transfers as main fact the following:

“presence of poorly oriented camera that captures public roads without just cause (...) lacking an informative poster in this regard” -Doc. nº1-.

Second. It is identified as the main responsible for B.B.B. with NIF ***NIF.1Z.

Third. The presence of camera(s) oriented towards the outside area, affected by entering public space, without justified cause, which is installed on the façade of the establishment that he runs.

Room. There is evidence of the absence of an informative poster indicating that it is a video-monitored area outside the establishment.

Fifth. Consulted the database of this organization on 07/18/22, there is no record no allegation, no explanation has been produced in relation to the objective facts claim.

FUNDAMENTALS OF LAW

Yo

In accordance with the powers that article 58.2 of Regulation (EU) 2016/679 (Regulation General Data Protection Regulation, hereinafter GDPR), grants each authority quality of control and as established in articles 47, 48.1, 64.2 and 68.1 of the Law

Organic 3/2018, of December 5, Protection of Personal Data and guarantee of

digital rights (hereinafter, LOPDGDD), is competent to initiate and resolve

this procedure the Director of the Spanish Data Protection Agency.

Likewise, article 63.2 of the LOPDGDD determines that: "The procedures processed

by the Spanish Data Protection Agency will be governed by the provisions of

Regulation (EU) 2016/679, in this organic law, by the regulations

comments dictated in its development and, insofar as they do not contradict them, with a sub-

sidario, by the general rules on administrative procedures.

II

In the present case, the claim dated 09/15/21 is examined by means of

gave from which the following is transferred as the main fact.

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4/7

"presence of poorly oriented camera that captures public roads without just cause

(...) lacking an informative poster in this regard"

The facts are limited to the presence of a device (outer camera) whose orientation

tion is considered excessive by "capturing public space" by processing data from third parties and in-

cluding the license plates of the vehicles on the adjoining sidewalks, given that the claimant

do certifies the presence of an informative poster inside the establishment.

The art. 5.1 c) GDPR provides the following: Personal data will be:

"adequate, relevant and limited to what is necessary in relation to the purposes

for those who are processed ("data minimization").

It should be remembered that individuals are responsible for ensuring that the systems installed

felled comply with current legislation, certifying that it complies with all

the requirements demanded by the regulations in force.

The installation of this type of device must have the mandatory informative poster

tive, indicating the purposes and person responsible for the treatment, where appropriate, of the data of each personal character.

In any case, the cameras must be oriented towards the particular space, avoiding to intimidate neighboring neighbors with this type of device, as well as control areas nas of transit of the same without justified cause.

Neither with this type of device can you obtain an image(s) of public space.

since this is the exclusive competence of the Security Forces and Bodies of the State tado.

The recording of personal conversations both in companies and in communities of owners (as), supposes an invasion of the privacy of the user, for what with the except that there is prior judicial authorization and the recordings are made by the competent people to do so, this type of behavior is not allowed. cough.

It should be remembered that even if it is 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, who are intimate measured by it in the belief of being the object of permanent recording.

On the part of individuals, it is not possible to install devices for obtaining images of public space and/or traffic of third parties, outside the cases allowed in the normative.

The purpose of this type of device must be the security of the property and its inhabitants, avoiding the affectation of the rights of third parties who are intimidated two with the same

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5/7

II

Based on the evidence available in this proceeding disciplinary action, it is considered that the claimed party has a camera system poorly oriented that affects public space.

The presence of it is confirmed with extensive tests documents provided by the claimant (Annex I) that allow determining the presence of device in outdoor area facing public space.

The known facts constitute an infringement, attributable to the party claimed, for violation of the content of article 5.1 c) GDPR, previously cited do.

IV.

The art. 83.5 GDPR provides the following: "Violations of the following provisions These will be penalized, in accordance with section 2, with administrative fines of 20 000 000 EUR maximum or, in the case of a company, an equivalent amount to a maximum of 4% of the overall annual total turnover of the financial year previous year, opting for the one with the highest amount:

a) The basic principles for the treatment including the conditions for the consent in accordance with articles 5,6,7 and 9 (...)"

In this case it is taken into account that it is a small establishment hotelier, run by an individual with little knowledge in the field of data protection, to impose a penalty of €400, taking into account the palm-

collection of public space, processing data from third parties without just cause, as well as negligent conduct when affecting a public area, a sanction located in the lower scale for this type of infraction.

The sanction is limited to the bad installation of the exterior camera, although it is required that must be informed that it is a video-surveilled area by means of an information in a visible area (for example, a poster on the exterior façade of the establishment), as well as make form(s) available to any client who may require it in order for the purpose of exercising their rights within the framework of the indicated regulations.

V

The text of the resolution establishes which have been the infractions committed and the facts that have given rise to the violation of the data protection regulations from which it is clearly inferred what are the measures to be adopted, without prejudice to that the type of procedures, mechanisms or concrete instruments to implement to treat them corresponds to the sanctioned party, since it is the person responsible for the treatment who fully knows your organization and has to decide, based on personal responsibility and active and risk-focused, how to comply with the GDPR and the LOPDGDD.

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6/7

The claimed party must adopt the necessary measures that have been extended fully described to ensure that the system conforms to current legislation, accrediting Disputing such an extreme before this body in a reliable manner.

It is noted that not meeting the requirements of this body may be considered classified as an administrative offense in accordance with the provisions of the GDPR, typified

as an infraction in its article 83.5 and 83.6, being able to motivate such conduct the opening of a subsequent administrative sanctioning procedure.

Therefore, in accordance with the applicable legislation and assessed the graduation criteria of the sanctions whose existence has been accredited,

the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: IMPOSE B.B.B., with NIF ***NIF.1Z, for a violation of Article 5.1.c) of the GDPR, typified in Article 83.5 of the GDPR, a fine of €400 (Four-hundred euros).

SECOND: ORDER B.B.B. with NIF ***NIF.1Z, which, by virtue of article 58.2 d) of the GDPR, within ten business days, take the following measures:

- Evidence of having removed the cameras in question by providing documentary evidence with date and time that proves such end, or, failing that, certifies their regularization in accordance with the regulations vi-people.

THIRD: NOTIFY this resolution to B.B.B..

FOURTH: Warn the sanctioned party that he must enforce the sanction imposed

Once this resolution is enforceable, in accordance with the provisions of Article art. 98.1.b) of Law 39/2015, of October 1, on Co-Administrative Procedure public administrations (hereinafter LPACAP), within the term of payment volunteer 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, by means of its income, 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, open in the name of the Spanish Agency ñola of Data Protection in the bank CAIXABANK, S.A.. In case of Otherwise, it will proceed to its collection in the executive period.

Once the notification has been received and once executed, if the execution date is between the 1st and 15th of each month, both inclusive, the term to make the payment voluntary will be until the 20th day of the following or immediately following business month, and if between the 16th and the last day of each month, both inclusive, the payment period is It will run until the 5th of the second following or immediately following business month.

In accordance with the provisions of article 50 of the LOPDGDD, this

Resolution will be made public once the interested parties have been notified.

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7/7

Against this resolution, which puts an end to the administrative process in accordance with art. 48.6 of the LOPDGDD, and in accordance with the provisions of article 123 of the LPACAP, the interested parties Respondents may optionally file an appeal for reinstatement before the Director of the Spanish Agency for Data Protection within a period of one month from the the day following the notification of this resolution or directly contentious appeal before the Contentious-Administrative Chamber of the National Court, in accordance with the provisions of article 25 and section 5 of the additional provision fourth clause of Law 29/1998, of July 13, regulating the Contentious Jurisdiction-administration, 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 noted 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-

As the case may be, the interested party must formally communicate this fact in writing

addressed to the Spanish Data Protection Agency, presenting it through the Re-Electronic registry of the Agency [<https://sedeagpd.gob.es/sede-electronica-web/>], or to through any of the other registries provided for in art. 16.4 of the aforementioned Law 39/2015, of October 1. You must also transfer the documentation to the Agency proving the effective filing of the contentious-administrative appeal. if the Agency was not aware of the filing of the contentious-administrative appeal treatment within two months from the day following notification of this resolution, would terminate the precautionary suspension.

Mar Spain Marti

Director of the Spanish Data Protection Agency

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