

□ File No.: EXP202200344

RESOLUTION OF PUNISHMENT PROCEDURE

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

BACKGROUND

FIRST: On 01/07/2022, the CIVIL GUARD - ***POSITION.1 (hereinafter, the
denouncing party) sent an Act-Complaint for a possible breach of the
provided in the personal data protection regulations by A.A.A. with
NIF ***NIF.1 (hereinafter, the denounced party).

The following is indicated in the letter of reference:

“At 12:40 p.m. on 12/21/2021, the GUARDIA patrol found
CIVIL-***PUESTO.1 (...) along the road ***VIA.1, at kilometer point XXX,
observe a video-surveillance dome on the left side of the road in a
corner of what could be a home, this dome is facing the road
public and part of the house that is in front of it. Negotiations are carried out
to locate the owner of the corresponding video-surveillance camera, being
A.A.A. (...) which states that it is for the protection of a dog that is next to him.
the house which carries the camera in its upper right corner of the eaves.
In the house across the street there are two posters with the inscription
Video-monitored area, they lack the identity of the person responsible (...).
You are requested to record the activities of the treatments you carry out, in which
must include certain information (...), stating that the interested party does not have
said record.

[...]”

SECOND: On 01/17/2022, the defendant was sent a letter indicating the

obligations it had in terms of data protection and video surveillance, resulting in notified on 01/31/2022. Subsequently, on 02/17/2022, a new Report is received of the denouncing party in which it is verified that the accused continues keeping the camera oriented to the public thoroughfare and without the signs indicating who He is in charge of the camera.

THIRD: On 05/03/2022, the Director of the Spanish Protection Agency of Data agreed to initiate a sanctioning procedure against the claimed party, for the alleged violations of articles 5.1.c) of the RGPD and article 13 of the RGPD, typified in article 83.5.a) and b) of the RGPD.

FOURTH: On 05/20/2022 the denounced party was notified of the start agreement in accordance with the regulations established in Law 39/2015, of October 1, of the Common Administrative Procedure of Public Administrations (hereinafter,

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LPACAP) and after the term granted for the formulation of allegations, it has been verified that no allegation has been received by the respondent.

Article 64.2.f) of the LPACAP - provision of which the respondent was informed in the agreement to open the procedure - establishes that if no allegations within the stipulated period on the content of the initiation agreement, when it contains a precise statement about the imputed responsibility, may be considered a resolution proposal.

In the present case, the agreement to initiate the disciplinary proceedings determined the facts in which the imputation was specified, the infraction of the RGPD attributed to the

claimed and the sanction that could be imposed. Therefore, taking into account that

the party complained against has made no objections to the agreement to initiate the file and

In accordance with the provisions of article 64.2.f) of the LPACAP, the aforementioned agreement of beginning is considered in the present case resolution proposal.

FIFTH: The agreement to open the procedure agreed in the fourth point of the

operative part "INCORPORATE to the disciplinary file, for the purposes of evidence, the

claims submitted by claimants and the information and documentation

obtained by the Subdirector General for Data Inspection in the phase of

information prior to the agreement for admission to processing of the claim".

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

In this proceeding, the following are considered proven facts:

PROVEN FACTS

FIRST: Installation of a video surveillance dome camera in the upper corner

right of the home of the accused party, located at ***ADDRESS.1 which could

be capturing images of the public road and part of the property that is located

in front. In addition, the two video-surveillance area signs placed in the building

reviewed do not contain all the information required by the RGPD.

SECOND: It is identified as responsible for the A.A.A. with NIF

***NIF.1.

THIRD: The Spanish Data Protection Agency has notified the party

denounced the agreement to open this sanctioning procedure, but not

has presented allegations or evidence that contradicts the facts denounced.

FOUNDATIONS OF LAW

Yo

In accordance with the powers that article 58.2 of Regulation (EU) 2016/679

(General Data Protection Regulation, hereinafter RGPD), grants each

control authority and as established in articles 47 and 48.1 of the Law

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

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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 Agency for Data Protection will be governed by the provisions

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

regulations issued in its development and, as long as they do not contradict them, with a

subsidiary, by the general rules on administrative procedures."

II

The image of a person, in accordance with article 4.1 of the RGPD, is personal data and its

protection, therefore, is the subject of said Regulation. In article 4.2 of the RGPD it is

defines the concept of "treatment" of personal data.

Article 22 of the LOPDGDD includes the specific rules for the treatment of

data for video surveillance purposes and states the following:

"1. Natural or legal persons, public or private, may carry out the treatment of images through camera systems or video cameras with the purpose to preserve the safety of people and property, as well as its facilities.

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

However, it will be possible to capture public roads to a greater extent

when necessary to guarantee the security of assets or strategic installations.

services or infrastructures linked to transport, without in any case being able to

put the capturing of images of the interior of a private home.

3. The data will be deleted within a maximum period of one month from its collection, except

when they had to be kept to prove the commission of acts that attend to

have against the integrity of people, goods or facilities. In this case, the images

must be made available to the competent authority within a maximum period of

seventy-two hours since the existence of the recording became known.

tion.

The blocking obligation provided for in art.

article 32 of this organic law.

4. The duty of information provided for in article 12 of Regulation (EU) 2016/679 is

understood to be fulfilled by placing an informative device in a sufficient place

ciently visible identifying, at least, the existence of the treatment, the identity

of the person in charge and the possibility of exercising the rights provided for in articles 15

to 22 of Regulation (EU) 2016/679. It may also be included in the device information

I attach a connection code or internet address to this information.

In any case, the person in charge of the treatment must keep available to the

affected the information referred to in the aforementioned regulation.

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5. Under article 2.2.c) of Regulation (EU) 2016/679, it is considered excluded

of its scope of application the treatment by a natural person of images that are

regretfully capture the interior of your own home.

This exclusion does not cover processing carried out by a private security entity.

given that she had been hired to guard a home and had access to the images.

6. The processing of personal data from the images and sounds obtained nests through the use of cameras and video cameras by the Forces and Corps Security and by the competent bodies for surveillance and control in the centers penitentiaries and for the control, regulation, surveillance and discipline of traffic, will be governed by the legislation transposing Directive (EU) 2016/680, when the treatment for purposes of prevention, investigation, detection or prosecution of violations criminal offenses or the execution of criminal sanctions, including protection and prevention against threats to public safety. Apart from these assumptions, said treatment will be governed by its specific legislation and additionally by the Regulations to (EU) 2016/679 and this organic law.

7. What is regulated in this article is understood without prejudice to the provisions of the Law 5/2014, of April 4, on Private Security and its development provisions.

8. The treatment by the employer of data obtained through camera systems cameras or video cameras is subject to the provisions of article 89 of this organic law.

III

In accordance with the foregoing, the processing of images through a system of video surveillance, to be in accordance with current regulations, must comply with the following requirements:

- Respect the principle of proportionality.
- When the system is connected to an alarm center, you can only be installed by a private security company that meets the requirements contemplated in article 5 of Law 5/2014 on Private Security, of 4

april.

-

Camcorders will not be able to capture images of people are outside the private space where the security system is installed. video surveillance, since the processing of images in public places only can be carried out, unless there is government authorization, by the Security Forces and Bodies. They cannot be captured or recorded spaces owned by third parties without the consent of their owners, or, in their case, of the people who are in them.

This rule admits some exceptions since, on some occasions, for the protection of private spaces, where cameras have been installed in facades or inside, it may be necessary to guarantee the purpose of security recording a portion of the public highway. That is, the cameras

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and video cameras installed for security purposes will not be able to obtain images of public roads unless it is essential for that purpose, or it is impossible to avoid due to their location and extraordinarily

The minimum space for said purpose will also be collected. Therefore, the cameras could exceptionally capture the minimally necessary portion for its intended security purpose.

- The duty to inform those affected provided for in articles

12 and 13 of the RGPD and 22.4 of the LOPDGDD.

- The person in charge must keep a record of treatment activities

carried out under their responsibility, including the information to which refers to article 30.1 of the RGPD.

-

The installed cameras cannot obtain images of private spaces.

third party and/or public space without duly accredited justified cause, or may affect the privacy of passers-by who move freely through the zone. It is not allowed, therefore, the placement of cameras towards the private property of neighbors with the purpose of intimidating them or affecting their private sphere without just cause.

- In no case will the use of surveillance practices be admitted beyond the environment object of the installations and in particular, not being able to affect the surrounding public spaces, adjoining buildings and vehicles other than those access the guarded space.

In relation to the foregoing, to facilitate the consultation of interested parties, the Agency Spanish Data Protection offers through its website

[<https://www.aepd.es>] access to data protection legislation

including the RGPD and the LOPDGDD (section “Reports and resolutions” / “regulations”), to the Guide on the use of video cameras for security and other purposes and the Guide for compliance with the duty to inform (both available in the “Guides and tools” section).

It is also of interest in the event that low-level data processing is carried out.

risk, the free tool Facilita (in the “Guides and tools” section) that,

through specific questions, it allows to assess the situation of the person in charge

regarding the processing of personal data that it carries out and, where appropriate, generate

various documents, informative and contractual clauses, as well as an annex with

indicative security measures considered minimal.

IV

In the present case, the accused party has not presented arguments or evidence that contradict the facts denounced within the period given for it.

In accordance with the evidence available and which has not been distorted during the sanctioning procedure, the accused party has installed a video surveillance camera outside his home, located in

*** ADDRESS.1 that would be capturing images of the public thoroughfare and part of the

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opposite property. In addition, the two video surveillance zone signs placed in the reviewed property do not contain all the information required by the GDPR.

Based on the foregoing, the facts entail a violation of the provisions of articles 5.1.c) and 13 of the RGPD, giving rise to the commission of both infractions typified in article 83.5.a) and b) of the RGPD, which provides the following:

“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, in the case of a company, an amount equivalent to 4% of the turnover global annual total of the previous financial year, choosing the highest amount:

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

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

(...)

For the mere purposes of prescription, article 72.1 of the LOPDGDD qualifies as very serious:

- a) The processing of personal data violating the principles and guarantees established in article 5 of Regulation (EU) 2016/679;
- 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;

(...)

- h) The omission of the duty to inform the affected party about the processing of their data personal in accordance with the provisions of articles 13 and 14 of the Regulation (EU) 2016/679 and 12 of this Organic Law;"

v

The corrective powers available to the Spanish Agency for the Protection of Data, as a control authority, is established in article 58.2 of the RGPD. Among them they have the power to impose an administrative fine in accordance with article 83 of the RGPD (art. 58.2 i)), or the power to order the person responsible or in charge of the treatment that the treatment operations comply with the provisions of the GDPR, where applicable, in a certain way and within a specified term (art. 58.2 d)).

According to the provisions of article 83.2 of the RGPD, the measure provided for in article 58.2

d) of the aforementioned Regulation is compatible with the sanction consisting of a fine administrative.

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In the present case, based on the facts set forth, it is considered that the sanctions that should be imposed are an administrative fine for each of the offenses committed. The fines imposed must be, in each case, individual, effective, proportionate and dissuasive, in accordance with article 83.1 of the GDPR. In order to determine the administrative fines to be imposed, it is necessary to observe the provisions of article 83.2 of the RGPD, which indicates:

"two. Administrative fines will be imposed, depending on the circumstances of each individual case, in addition to or as a substitute for the measures contemplated in the Article 58, paragraph 2, letters a) to h) and j). When deciding to impose a fine administration and its amount in each individual case will be duly taken into account:

- a) the nature, seriousness and duration of the offence, taking into account the nature, scope or purpose of the processing operation in question, as well such as the number of interested parties affected and the level of damages that have suffered;
- b) intentionality or negligence in the infringement;
- c) any measure taken by the controller or processor to alleviate the damages suffered by the interested parties;
- d) the degree of responsibility of the person in charge or of the person in charge of the treatment, taking into account the technical or organizational measures that they have applied under of articles 25 and 32;
- e) any previous infringement committed by the person in charge or the person in charge of the treatment;
- f) the degree of cooperation with the supervisory authority in order to remedy the infringement and mitigate the possible adverse effects of the infringement;
- g) the categories of personal data affected by the infringement;
- h) the way in which the supervisory authority became aware of the infringement, in

particular whether the person in charge or the person in charge notified the infringement and, if so, in what measure;

- i) when the measures indicated in article 58, section 2, have been ordered previously against the person in charge or the person in charge in question in relation to the same matter, compliance with said measures;
- j) adherence to codes of conduct under article 40 or mechanisms of certification approved in accordance with article 42,
- k) any other aggravating or mitigating factor applicable to the circumstances of the case, such as financial benefits obtained or losses avoided, directly or indirectly, through the infringement.

For its part, in relation to letter k) of article 83.2 of the RGPD, the LOPDGDD, in its article 76, "Sanctions and corrective measures", provides:

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"1. The penalties provided for in sections 4, 5 and 6 of article 83 of the Regulation (EU) 2016/679 will be applied taking into account the graduation criteria established in section 2 of the aforementioned article.

2. In accordance with the provisions of article 83.2.k) of Regulation (EU) 2016/679 may also be taken into account:

- a) The continuing nature of the offence.
- b) The link between the activity of the offender and the performance of treatment of personal information.
- c) The profits obtained as a result of committing the offence.

d) The possibility that the conduct of the affected party could have included the commission of the offence.

e) The existence of a merger by absorption process subsequent to the commission of the infringement, which cannot be attributed to the absorbing entity

f) Affectation of the rights of minors

g) Have, when not mandatory, a data protection delegate.

h) Submission by the person in charge or person in charge, on a voluntary basis, to alternative conflict resolution mechanisms, in those cases in which there are controversies between them and any interested party”.

With respect to infractions committed by violating the provisions of articles

5.1.c) and 13 of the RGD, a fine of €300 (three hundred euros) and another €300 is set. (three hundred euros), respectively.

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

the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: IMPOSE A.A.A., with NIF ***NIF.1, for an infraction of article 5.1.c) of the RGD, typified in article 83.5.a) of the RGD, a fine of €300 (three hundred euros).

SECOND: IMPOSE A.A.A., with NIF ***NIF.1, for an infraction of article 13 of the RGD, typified in article 83.5.b) of the RGD, a fine of €300 (three hundred euros).

THIRD: ORDER A.A.A., with NIF ***NIF.1, that under article 58.2 d) of the GDPR, within ten business days, take the following measures:

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- Prove that you proceeded to remove the camera in question by providing

Documentary evidence with date and time that accredits such end, or, failing that,

certifies the regularization of the camera in accordance with the regulations

valid.

- Prove that you have proceeded to complete the information on the zone posters

video surveillance (at least the existence of a treatment, the

identity of the person in charge and the possibility of exercising the rights provided in

said precepts), locating this device in a sufficiently visible place.

- Prove that you keep the information to which it refers available to those affected.

refers to the aforementioned RGPD.

FOURTH: NOTIFY this resolution to A.A.A., with NIF ***NIF.1.

FIFTH: 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, on Administrative Procedure

Common Public Administrations (hereinafter LPACAP), within the payment term

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 on behalf of the Agency

Spanish Department of Data Protection in the banking entity CAIXABANK, S.A.. In case

Otherwise, it will be collected in 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

voluntary 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

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.

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

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The interested party expresses his intention to file a contentious-administrative appeal.

If this is the case, the interested party must formally communicate this fact by

writing addressed to the Spanish Agency for Data Protection, presenting it through

Electronic Register of the Agency [<https://sedeagpd.gob.es/sede-electronica-web/>], or 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 proving the effective filing of the contentious appeal-administrative. If the Agency was not aware of the filing of the appeal contentious-administrative within a period of 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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