

□ File No.: EXP202102409

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 26, 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 reasons on which the claim is based are succinctly:

following:

“It has installed an exterior surveillance camera type Dome 360° in the pergola

located in his home (number cannot be identified) on plot No. 150 of

*** LOCATION.1 that monitors, records and captures images of the private access road

to farm no. 146 of dwelling no. 69 (COMPLAINT) as well as its access door

exterior of the chalet entrance of vehicles and people, exterior walls of the land,

sheds, garage and rest of the private perimeter of the property, the interior of the property,

as well as the public thoroughfare of the highway of this locality (interior highway of the

locality) with traffic of vehicles and people on public roads” (folio nº 1).

Together with the claim, it provides several photographs that allow verifying the

presence of the devices (Annex I frames 1-4).

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

date 09/24/21, to proceed with its analysis and inform this Agency in the

period of one month, of the actions carried out to adapt to the requirements

provided for in the data protection regulations.

No reply has been received, nor has any explanation been given regarding the legality of the system.

THIRD: On 11/26/21, in accordance with article 65 of the LOPDGDD, the claim filed by the claimant was admitted for processing.

FOURTH: On February 3, 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 RGPD, typified in Article 83.5 of the GDPR.

FIFTH: After the period granted for the formulation of allegations to the agreement to initiate the procedure, it has been verified that no allegation has been received

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

2/6

any by the claimed party. It is included in the information system of this organization that the notification has been made in legal form (BOE 03/07/22).

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. The facts bring cause of the claim dated 08/26/21 through the which the presence of a poorly oriented camera is transferred, affecting the rights of the claiming party.

Together with the claim, it provides several photographs that allow verifying the presence of the devices (Annex I frames 1-4).

Second. Doña B.B.B. is accredited as the main person in charge.

Third. There is proof of the presence of a dome-type camera(s) that, due to the angle are oriented towards private areas of third parties affecting the area reserved for themselves.

Fourth. The database of this Agency consulted on 04/02/22 does not contain no allegation in this regard, nor a reasoned explanation has been produced in legal form.

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, 48.1, 64.2 and 68.1 of the Organic Law 3/2018, of December 5, on the Protection of Personal Data and guarantee of digital rights (hereinafter, LOPDGDD), is competent to initiate and resolve this procedure the Director of the Spanish Protection Agency of data.

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

Before going into the substance of the matter, remember that in the Agreement to Start the present procedure it was mentioned that, in the case of not making any allegation

At the same time, this could be considered a "resolution proposal".

C/ Jorge Juan, 6

28001 – Madrid

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-

establishes that if allegations are not made 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.

III

In the present case, we proceed to examine the claim dated 08/26/21 by

by means of which the following is transferred to this Agency as the main fact:

“Installation of a video-surveillance camera that affects private and public areas

without justified cause”

Article 5.1.c) of the RGPD provides that personal data will be “adequate,

relevant and limited to what is necessary in relation to the purposes for which they are

processed (“data minimization”).”

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

installed comply with current legislation, proving that it complies with

all the requirements demanded by the regulations in force.

The installation of this type of device must have the mandatory sign informative, indicating the purposes and responsible for the treatment in your case of the data of a personal nature.

Article 22.4 of the LOPDGDD provides that:

"The duty of information provided for in article 12 of the Regulation (EU) 2016/679 will be understood to be fulfilled by placing an informative device in a sufficiently visible place 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 the Articles 15 to 22 of Regulation (EU) 2016/679. It may also be included in the informative device a connection code or internet address to this information".

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

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

4/6

Nor can images of public spaces be obtained with this type of device, as this is the exclusive competence of the State Security Forces and Bodies.

It should be remembered that even in the case of a "simulated" camera, the

It should preferably be oriented towards private space, since it is

considers that this type of device may affect the privacy of third parties, which they are intimidated by it in the belief that they are being recorded

permanent.

IV

According to the evidence available at the present time of the sanctioning procedure, it is considered that the claimed party has a system of video-surveillance cameras that "affects private and/or public areas" without justified cause, affecting the personal and/or family privacy of the claimant.

The evidence presented allows verifying at least the presence of the devices object of claim, without any manifestation to day of the date on them has occurred, confirming the presence of a camera dome in an area without a fence, allowing a priori the capture of an outdoor area close.

The party complained against must adopt the necessary measures so that the system installed complies with current legislation avoiding "intimidation" with this type of devices to close third parties, whose rights are affected by "processing data" of spaces reserved for their privacy.

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

v

The art. 83.5 RGD provides the following: "Infringements of the provisions following will be sanctioned, in accordance with section 2, with administrative fines EUR 20,000,000 maximum or, in the case of a company, an amount equivalent to a maximum of 4% of the total global annual turnover of the previous financial year, opting for 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, 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; (art. 83.2 a) RGPD), as the exterior camera(s) are oriented towards

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

5/6

private area of the complaining party or, where appropriate, to be able to affect the area of public transit

- the intent or negligence in the infringement; (art. 83.2 b) RGPD), when controlling in excess area of a private nature, and the conduct described may be considered a gross negligence for the reasons stated, being responsible for the correct orientation of the device(s) in question.

In accordance with the above, it is considered correct to impose an encrypted sanction in the amount of €600 (six hundred euros), by having a camera system whose recording is excessive for the purpose pursued, as the neighbor is intimidated claimant for the same whose orientation they consider excessive affecting a area reserved for the privacy of your family and/or personal nucleus or even space public.

If the infringement continues (after a reasonable period of time) it is recalled that the complaining party may deem it appropriate to transfer the facts to the local security forces and bodies (vgr. local police), which are trained to carry out the relevant investigations.

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 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 €600.

SECOND: NOTIFY this resolution to the party claimed B.B.B..

THIRD: 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.

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

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

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-](https://sedeagpd.gob.es/sede-electronica-web/)

[web/](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

938-100322

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es