

□ File No.: EXP202211517

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. sent a letter to the Spanish Agency for Data Protection
as of 10/25/22. In said writing, the alleged author is identified as
B.B.B. with NIF ***NIF.1 (*hereinafter, the COMPLAINTEE party). The reasons on which
The claim is based on the following:

“that the defendant is responsible for two cameras facing the public thoroughfare,
without prior administrative authorization to do so and without signaling said cameras.
through the mandatory informative posters of the video-monitored area”.

It was already the subject of a previous claim for the same facts, giving rise to the
proceedings PS/XXXXX/2021 and PS/XXXXX/2022.

Along with the notification, the Inspection Record is provided, certifying the presence of
the devices in question (Annex I).

SECOND: On December 15, 2022, the Director of the Spanish Agency
of 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 violation of Article 5.1.c) of the GDPR and Article 13 of the
GDPR, typified in Article 83.5 of the GDPR.

THIRD: Notified the aforementioned start-up agreement in accordance with the established regulations
in Law 39/2015, of October 1, of the Common Administrative Procedure of the
Public Administrations (hereinafter, LPACAP), the claimed party has not made

any manifestation, nor has it accredited the regularization of the system.

FOURTH: On 01/13/23, the procedure instructor agreed to practice the following tests:

- Require complementary information about the situation from the acting force status of the camera(s) object of claim.

FIFTH: On 02/03/23, a letter was received from the complaining party (Report Enlargement) where it is reflected:

- The cameras are operational as they have a pilot light on red (...).

C / Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

2/8

The orientation angle of the cameras is focused to record public roads throughout the perimeter of the House affecting pedestrians and means of transport that are find in their vicinity.

- The defendant habitually lives in the aforementioned property.

- The defendant has a police and judicial record (...) having carried out such practices in the aforementioned property and being the same object of entry/registration for the seizure of substances.

- To this day, he continues to maintain the circuit of recording cameras that installed in his home oriented to record the public highway that said circumstances to judgment of the undersigned serve as a means of surveillance for the practices of criminal activities for which you have been arrested.

SIXTH: On 02/20/23 <Proposed Resolution> is issued considering the

evidence provided that the defendant has a system of video-surveillance cameras

lance to obtain images of the surroundings of his life, without counting on the

due signaling and disproportionately, proposing an admissible sanction

€3,000 (€2,000+€1,000) for the proven violation of articles 5.1 c) and

13 GDPR.

SEVENTH: Consulted the information system of this Agency on 03/17/23

No response has been received, nor has any action been taken.

to collaborate with this body, despite being notified of the proposal on the date

02/27/23 as certified by the Official Post and Telegraph Service.

Of the actions carried out in this procedure and of the documentation

in the file, the following have been accredited:

PROVEN FACTS

First. On 10/25/22, the Act (Complaint) of the A.A.A. (**LOCATION.1)

transferring to the competence framework of this body the following facts:

“that the defendant is responsible for two cameras facing the public thoroughfare,

without prior administrative authorization to do so and without signaling said cameras.

through the mandatory informative posters of the video-monitored area”.

It was already the subject of a previous claim for the same events, giving rise to the actions

tions PS/XXXXX/2021 and PS/XXXXX/2022.

Together with the notification, the Inspection Record is provided, certifying the presence of the dis-

positives in question (Annex I).

Second. It is accredited as the main person in charge B.B.B., with NIF ***NIF.1.

C / Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

Third. It is accredited in the opinion of the acting force displaced to the place of the facts, that the camera is operational by observing its wiring and the pilot "red" is in active mode.

Room. It is accredited that the presence of an informative poster in visible area indicating that it is a video-surveilled area, nor informing the person in charge system.

Fifth. It is accredited according to the Report of the acting force that the inhabitant of the dwelling has a record for reasons related to criminal conduct, being aware of the irregularity of the system, although it persists in the presence of devices to control the environment near the home.

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 subsidiary, by the general rules on administrative procedures."

II

Before going into the merits of the matter, it is convenient to put it in context, having

processed previously for the same "facts" two procedures of a sanctity

sponsor: PS/XXXXX/2021 and PS/XXXXX/2022.

The acting force confirms the presence of video surveillance devices in the home of the defendant, confirming the performance of criminal activities in the itself, having made entries in it by court order.

Despite having imposed the corresponding administrative fines and having have ordered extensive corrective measures for the withdrawal (reorientation of the cameras) ras), they have become futile by continuing their presence, although without new actions inside the house by the Forces and Corps of State Security.

C / Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

4/8

The limited nature of human and material resources must be taken into account. of this body, in such a way that in situations such as those described, it is necessary to proceed, where appropriate, to adopt other types of actions, such as by way of indicative the Crime of Disobedience, within the framework of the current Civic Security Law dadana (vgr. LO 4/2015, March 30) or in last instance the judicial route, contributing sanctions imposed by this body as evidence.

In the event of obtaining objective evidence (eg, in the case of new research), sas inside the house) that accredit either the capture of public space or well the conservation of images associated with natural persons, it can be transferred of these "new" facts in order to be analyzed by this body as possible in-administrative fractions within the framework of data protection.

This Agency will adopt the necessary measures to proceed to comply with the regulations of its area of competence, these actions being actions that are followed ex officio in the face of non-compliance with the resolutions of the same, without need for new claims with the nuances expressed, such as infringement Very serious of the current article 72.1 letter m) LOPDGDD.

II

In the present case, we proceed to examine the Complaint sent by the Forces and State Security Corps on 10/25/22 through which it is transferred the next:

“presence of cameras on the façade of the house without just cause oriented towards public space without the mandatory informative poster” (folio nº 1).

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 fulfilled 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 intimidate neighboring neighbors with this type of device, as well as control areas transit thereof without just 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.

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

The cameras must adhere to the protection of the property of their ownership in such so that they do not affect the area of third parties who are intimidated by them. affect your free transit zone.

IV.

Based on the evidence available in this proceeding disciplinary action, it is considered proven that the claimed party has a system of cameras without having the proper information oriented according to the acting force towards public space without just cause.

According to the <complementary> report received on 02/03/23, the presence of the cameras at the present time, without recording any modification of the same, being oriented towards public roads and that in the opinion of the acting force

"It serves to avoid police action for criminal practices that occur in the living place".

The set of evidence provided allows us to deduce that the video-surveillance is operational, as it has wiring inside the home, as well as for the activities of a criminal nature that are carried out at the discretion of the force acting in the aforementioned dwelling, which explains the presence of the cameras.

Article 72 section 1 of the LOPDGDD (LO 3/2018, December 5) in relation to tion to the limitation period of very serious infractions "will prescribe three years" and in particular the following:

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

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

V

C / Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

6/8

From the evidence provided, it is verified that the cameras are placed in the external zone. interior (facade of the property) with at least one of them facing the wrong way public road area, not appreciating the presence of informative sign(s) indicating What a video-surveilled area.

Article 22 section 4 of the LOPDGDD (Lo 3/2018) provides: "The duty to inform tion provided for in article 12 of Regulation (EU) 2016/679 shall be understood to have been complied with

by placing an information 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 articles 15 to 22 of the Regulation (EU) 2016/679. A code of code may also be included in the information device.

connection or internet address to this information".

The facts described above imply an affectation to the content of the article

13 GDPR, as the informative poster lacks an effective address to which power can be reached in address your case, indicating where appropriate the "responsible for the treatment".

Article 13 GDPR "Information that must be provided when the data per-
personal data are obtained from the interested party"

1. When personal data relating to him or her is obtained from an interested party, the person responsible of the treatment, at the moment in which these are obtained, it will provide you with all the information information indicated below: a) the identity and contact details of the person in charge and, where appropriate, his representative; b) the contact details of the protection delegate tion of data, if applicable; c) the purposes of the processing for which the personal data is intended; personal data and the legal basis of the treatment (...).

Article 72 section 1 of the LOPDGDD (LO 3/2018, December 5) in relation to tion to the limitation period of very serious infractions "will prescribe three years" and in particular the following:

h) The omission of the duty to inform the affected party about the treatment of their personal data in accordance with the provisions of articles 13 and 14 of the Regulation (UE) 2016/679 and 12 of this organic law.

SAW

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 (...)."

the rights of the interested parties in accordance with articles 12 to 22 (..).

b)

Two procedures have been previously processed against the accused by this Agency.

records with no. PS/XXXXX/2021 and PS/XXXXX/2022, where they were established

corrective measures in relation to them, without the adoption of any measure

guna has been reliably accredited before this body.

C / Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

7/8

In the present case, it is taken into account that the defendant has been widely ad-

invested by this organism, showing a reluctant attitude to the "correction" of the irre-

regularities of the video-surveillance system, for which the conduct is considered as

very serious negligence, reasons that justify the imposition of a sanction encrypted in

the amount of €3,000 (€2,000+€1,000) for violation of art. 5.1 c) and 13 GDPR, san-

initial position located on the lower scale for this type of infraction.

VII

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

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 active and risk-focused, how to comply with the GDPR and the LOPDGDD.

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

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 GDPR and Article 13 of the GDPR, typified in Article 83.5 of the GDPR, a fine €3,000 (three thousand euros).

SECOND: ORDER the claimed party, in accordance with article 58.2

GDPR, so that, within 15 business days from the notification of this act

administrative, proceed to the immediate removal of the camera(s) that is oriented

towards public space, providing a photograph with date and time, as well as accrediting the

Immediate regularization of the system.

THIRD: NOTIFY this resolution to Mr. 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 Administrative Procedure

Common of Public Administrations (hereinafter LPACAP), within the payment period

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, 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 IBAN number: ES00 0000 0000 0000 0000 0000 (BIC/SWIFT Code:

XXXXXXXXXXXX), opened on behalf of the Spanish Agency for Data Protection in

the banking entity CAIXABANK, S.A. Otherwise, it will proceed to its

collection in 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

C / Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

8/8

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 term

It will be 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.

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 may optionally file an appeal for reversal before the

Director of the Spanish Agency for Data Protection within a period of one month from

count 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 for in article 46.1 of the

referred 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

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 through writing addressed to the Spanish Data Protection Agency, presenting it through of the Electronic Registry of the Agency [<https://sedeagpd.gob.es/sede-electronica-web/>], or 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 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 proceedings within a period of two months from the day following the Notification of this resolution would terminate the precautionary suspension.

Mar Spain Marti

Director of the Spanish Data Protection Agency

938-181022

C / Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es