

□ Procedure No.: PS/00307/2020

## RESOLUTION OF PUNISHMENT PROCEDURE

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

### BACKGROUND

FIRST: On February 20, 2020, it had entry in this Spanish Agency  
of Data Protection a document presented by A.A.A. (hereinafter, the  
claimant), through which he makes a claim against B.B.B. with NIF \*\*\*NIF.1 (in  
hereinafter, the claimed), for the installation of a video surveillance system installed  
in \*\*\*ADDRESS.1 \*\*\*LOCATION.1, there being 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:

«[...] SINGLE: The defendants have installed a series of cameras on their property  
of recording that are oriented towards the property of this complainant,  
finding himself permanently recording the interior of my home, as well as  
myself and my family, including my minor son, C.C.C., who, in addition to  
being a minor suffers from a recognized disability of 47%. Well, the  
said party denounced permanently records said minor, records all the  
activities that both I and my family carry out inside our home.

[...].”

Attach photographic report of the location of the camera.

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

the digital rights (hereinafter, LOPDGDD), to be sent to this Agency

certain information:

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Identification of the person responsible for the installation, providing their NIF and telephone number contact.

Information provided on the existence of a video-monitored area through photographs of the poster or informative posters in which it is possible to appreciate both its location and the data displayed.

If a third party has been commissioned to view and process the images captured by the cameras, provide a copy of the signed contract.

Number and characteristics of the cameras. In the event that it is fictitious cameras must provide the invoice, purchase receipt or any another document that serves to prove that they are fictitious.

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Scope of the cameras and places where they are installed, accrediting

through photography of the images captured by the cameras, as are displayed on the monitor or equivalent system, which has limited the catchment space so as not to affect adjoining land and homes, the public thoroughfare or any other foreign or reserved space.

Indicate the period of conservation of the registered images.

Any other information that you consider of interest to assess the adequacy of the installation of video surveillance cameras to the data protection regulations.

Said transfer was notified on 06/09/2020, without any response being recorded in this Agency.

THIRD: The claim was admitted for processing by means of a resolution of 17 August 2020.

FOURTH: On December 3, 2020, 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: Notification of the start agreement on 12/22/2020, there is no record that, at the time current, the respondent has submitted a brief of allegations to the same, so it is of application what is stated in article 64 of Law 39/2015, of October 1, of the Common Administrative Procedure of Public Administrations (hereinafter, LPACAP), which in its section f) establishes that in case of not making allegations in the term established on the content of the initiation agreement, it may be considered motion for a resolution when it contains a precise pronouncement about the imputed responsibility, for which a Resolution is issued.

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 02/20/2020, this Agency has a claim from A.A.A. against the one claimed for having installed a video surveillance system oriented towards his property and that could be recording the interior of it.

SECOND: Photographs of the location of the camera are provided.

## 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 physical image of a person under article 4.1 of the RGPD is a data personnel and their protection, therefore, is the subject of said Regulation. Article 4.2 of the GDPR defines the concept of "treatment" of personal data.

Article 22 of the LOPDGDD establishes the specificities of the treatment of data for video surveillance purposes, indicating the following:

"1. Natural or legal persons, public or private, may carry out the processing of images through camera systems or video cameras with the purpose of preserving the safety of people and property, as well as their installations.

2. Images of public roads may only be captured to the extent that

is essential for the purpose mentioned in the previous section.

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

when necessary to ensure the safety of goods or facilities

strategic or infrastructure linked to transport, without in any case

may involve capturing 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 threaten the integrity of persons, property or facilities. In that

case, the images must be made available to the competent authority in

within a maximum period of seventy-two hours from the date of knowledge of the

existence of the recording.

The blocking obligation provided for in

article 32 of this organic law.

4. 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 data controller must keep available to

those affected the information referred to in the aforementioned regulation.

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

excluded from its scope of application the treatment by a natural person of images

that they only capture the interior of their own home.

This exclusion does not cover processing carried out by a security entity private that had been contracted for the surveillance of a home and had access to the images.

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

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

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

III

In accordance with the foregoing, the processing of images through a video surveillance system, 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 April 4.

- The video cameras will not be able to capture images of the people who

are outside the private space where the security system is installed.

video surveillance, since the processing of images in public places can only be

carried out, unless there is government authorization, by the Forces and Corps of

Security. Nor can spaces owned by third parties be captured or recorded without

the consent of their owners, or, as the case may be, of the persons who are

find.

This rule admits some exceptions since, on some occasions, for the

protection of private spaces, where cameras have been installed on facades or in

inside, it may be necessary to ensure the purpose of security recording

of a portion of the public highway. That is, cameras and camcorders installed with

security purposes may not obtain images of public roads unless it is

essential for said purpose, or it is impossible to avoid it due to the location of

those and, extraordinarily, the minimum space for said

purpose. Therefore, the cameras could exceptionally capture the portion

minimally necessary for the intended security purpose.

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- The duty to inform those affected provided for in the

articles 12 and 13 of the RGPD, and 22 of the LOPDGDD, in the terms already indicated.

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

carried out under its responsibility, including the information to which it makes

reference article 30.1 of the RGPD.

- The installed cameras cannot obtain images from private space of

third party and/or public space without duly accredited justified cause, nor can

affect the privacy of passers-by who move freely through the area. No this

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 installation and in particular, not being able to affect the spaces

surrounding public, adjoining buildings and vehicles other than those accessing the

guarded space.

In summary and to facilitate the consultation of interested parties, the Spanish Agency

Data Protection offers through its website [<https://www.aepd.es>] access

to the legislation on the protection of personal data, including the RGPD and the

LOPDGDD (section "Reports and resolutions" / "regulations"), as well as the Guide

on the use of video cameras for security and other purposes, as well as the Guide

for compliance with the duty to inform (both available in the section "Guides

and tools").

It is also of interest, in case of carrying out data processing of low

risk, the free tool Facilita (in the "Guides and tools" section), which,

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 claim relates to the fact that the respondent has installed a video surveillance camera that could be capturing images from inside the adjoining property of the claimant.

As proof of these statements, she provided the evidence indicated in the "Facts" section, first point, of this agreement.

The corrective powers of the Spanish Protection Agency of Data, as a control authority, are established in article 58.2 of the RGPD.

Among them are the power to sanction with a warning - article 58.2.b)-, the power to impose an administrative fine in accordance with article 83 of the RGPD -article 58.2 i)-, or the power to order the person in charge or in charge of the treatment that the treatment operations comply with the provisions of the GDPR, when applicable, in a certain way and within a certain period specified -article 58. 2 d)-.

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According to the provisions of article 83.2 of the RGPD, the measure provided for in the Article 58.2 d) of the aforementioned Regulation is compatible with the sanction consisting of administrative fine.

Without prejudice to the provisions of article 83 of the RGPD, the aforementioned Regulation has in its art. 58.2 b) the possibility of sanctioning with a warning, in relation with what is stated in Considering 148: "In the event of a minor infraction, or if the fine

likely to be imposed would constitute a disproportionate burden on a natural person, instead of sanctioning by means of a fine, a warning. However, special attention must be paid to the nature, gravity and duration of the infringement, its intentional nature, the measures taken to mitigate the damages and losses suffered, to the degree of responsibility or to any pertinent previous infraction, to the way in which the control authority has had knowledge of the infraction, compliance with measures ordered against the responsible or in charge, adherence to codes of conduct and any other aggravating or mitigating circumstance.

v

In accordance with the evidence that is available and that has been accredited in the sanctioning procedure, the defendant has a camera installed of video surveillance that captures images of the interior of the adjoining property of the claimant, so it is considered that these facts violate the provisions of the article 5.1.c) of the RGPD, which implies the commission of infractions typified in the article 83.5 of the RGPD, which provides the following:

"Infringements of the following provisions shall be sanctioned, in accordance with 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;
  - b) the rights of the interested parties according to articles 12 to 22;
- [...]."

For the purposes of the limitation period for infractions, the infraction indicated

in the previous paragraph is considered very serious and prescribes after three years, in accordance with

Article 72.1 of the LOPDGDD, which establishes that:

"According to the provisions of article 83.5 of Regulation (EU) 2016/679

are 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:

a) The processing of personal data violating the principles and guarantees

established in article 5 of Regulation (EU) 2016/679.

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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 the

Regulation (EU) 2016/679.

(...)

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 (EU) 2016/679 and 12 of this Organic Law.

(...)»

SAW

In the present case, it is considered that the appropriate sanction to be imposed is

the warning, in accordance with the provisions of article 58.2 b) of the RGPD, in

in relation to what is stated in Considering 148, cited above.

In addition, the following elements have been taken into account, in particular.

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that it is an individual whose main activity is not linked to

the processing of personal data.

that there is no recidivism, because the commission is not recorded, in the term of

one year, of more than one infraction of the same nature.

7th

However, as already indicated in the initial agreement and in accordance with the

established in the aforementioned article 58.2 d) of the RGPD, according to which each authority of

control may "order the person responsible or in charge of processing that the

processing operations comply with the provisions of this Regulation,

where appropriate, in a certain manner and within a specified period [...]."

The respondent is required to take the following steps:

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provide the images that are observed with the device in question,

indicating on a location map the parts that correspond to its

private property.

certifies having proceeded to withdraw the camera from the current place, or

to the reorientation of it towards its particular area.

It is warned that not meeting the requirements of this organization may be

considered as an administrative offense in accordance with the provisions of the RGPD,

typified as an infraction in its article 83.5 and 83.6, being able to motivate such conduct the

opening of a subsequent sanctioning administrative proceeding.

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 a violation of article 5.1.c)

of the RGPD, typified in article 83.5.h) of the RGPD, a sanction of warning.

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SECOND: REQUIRE B.B.B. with NIF \*\*\*NIF.1, so that within a month

From the notification of this resolution, certify:

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provide the images that are observed with the device in question,

indicating on a location map the parts that correspond to its

private property.

certifies having proceeded to withdraw the camera from the current place, or

to the reorientation of it towards its particular area.

THIRD

: NOTIFY this resolution to B.B.B. with NIF \*\*\*NIF.1.

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

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 period of

month 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, the firm resolution may be provisionally suspended in administrative proceedings if the interested party expresses his intention to file a contentious appeal-administrative. If this is the case, the interested party must formally communicate this made by writing to the Spanish Agency for Data Protection, introducing him to the agency [<https://sedeagpd.gob.es/sede-electronica-web/>], or through any of the other records provided for in art. 16.4 of the aforementioned Law 39/2015, of October 1. Also must transfer to the Agency the documentation that proves the effective filing of the contentious-administrative appeal. If the Agency were not aware of the filing of the contentious-administrative appeal within two months from the day following the notification of this resolution, it would end the precautionary suspension.

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