

□ File No.: EXP202206939

RESOLUTION OF SANCTIONING PROCEDURE

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

BACKGROUND

FIRST: D.A.A.A. (hereinafter, the complaining party) dated June 20,
2022 filed a claim with the Spanish Data Protection Agency against
Mrs. B.B.B. with NIF ***NIF.1 (hereinafter, the claimed party), for the installation of
a video surveillance system located on ***ADDRESS.1 street, with indications of
a possible breach of the provisions of articles 5.1.c) and 13 of the Regulations
(EU) 2016/679 (General Data Protection Regulation, (hereinafter, GDPR).

The claiming party states that the claimed party has a
video surveillance system that includes a camera at the entrance to your home
that is oriented to the outside of it and is not properly
signposted, as an informative poster of a video-monitored area is installed, without stating
in it the person responsible for the treatment and to which address to go for the exercise
of rights regarding data protection.

Provide images of the location of the camera and the video surveillance area sign.

SECOND: In accordance with article 65.4 of Organic Law 3/2018, of 5
December, Protection of Personal Data and guarantee of digital rights (in
hereinafter, LOPDGDD), said claim was transferred to the claimed party,
to proceed with its analysis and inform this Agency within a month,
of the actions carried out to adapt to the requirements established in the
data protection regulations.

The transfer, which was carried out in accordance with the regulations established in Law 39/2015, of

October 1, of the Common Administrative Procedure of the Administrations

Public (hereinafter, LPACAP), was collected on June 30, 2022 as

It appears in the acknowledgment of receipt that is in the file.

Notwithstanding the foregoing, since this Agency has not received any response from the

claimed party, proceeded to reiterate the transfer of the claim, being notified

dated August 25, 2022, without in this case either having received

no response.

THIRD: On September 20, 2022, in accordance with article 65 of

the LOPDGDD, the claim presented by the complaining party was admitted for processing.

FOURTH: On November 14, 2022, the Director of the Spanish Agency

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

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for the alleged infringement of articles 5.1.c) and 13 of the GDPR, typified in the

Article 83.5 of the GDPR.

FIFTH: Once the aforementioned initiation agreement was notified, the claimed party submitted a written

in which, in summary, he stated that the camera is contracted with Securitas

Direct, "(...) and it is recording on my property (my terrace)..."

providing several photos.

SIXTH: On January 12, 2023, the procedure instructor agreed to the

opening of a test practice period, being considered reproduced, for the purposes of

evidence the claim filed by the claimant and its documentation, the

documents obtained and generated by the Sub-directorate General of Inspection of

Data and allegations presented by the claimed party.

SEVENTH: On January 25, 2023, a resolution proposal was formulated, in the

that, in accordance with the evidence available in this

sanctioning procedure, it was considered that the camera does not capture external areas to

their property, and, as regards the informative poster of the video-surveilled area, in the same no

There is no data on the person responsible for the treatment or before whom the rights can be exercised.

rights.

Therefore, it was proposed that the claim filed against the party be filed

claimed for a violation of article 5.1.c) of the GDPR, typified in article 83.5

of the GDPR, and that you are penalized for a violation of article 13 of the GDPR,

typified in article 83.5 of the GDPR, with a fine of €300.00 (* three hundred *

euro).

In this proposal, a period of 10 days was granted for the claimed party to

could allege whatever it considers in its defense as well as present the documents

and information that it considers pertinent, in accordance with article 89.2 of the

LPACAP.

The claimed party has indicated that the informative posters have been placed by

the company Securitas Direct, with whom the video surveillance service has been contracted,

they being responsible for any anomaly.

In view of all the proceedings, by the Spanish Agency for Data Protection

In this proceeding, the following are considered proven facts:

PROVEN FACTS

FIRST: On June 20, 2022, he entered this Spanish Agency for

Data Protection a claim that shows that the claimed party

You have a video surveillance system in your home that includes a

camera at the entrance to your home that is oriented to the outside of it and not

It is duly signposted, as an informative zone sign is installed

video surveillance, without stating the person responsible for the treatment and at what address

address for the exercise of rights in terms of data protection.

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SECOND: Existence of a video surveillance system and informative posters of the area

video surveillance on the street *** ADDRESS.1.

THIRD: The claimed party has provided various photographs of the posters

informative and what the installed camera captures.

FUNDAMENTALS OF LAW

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In accordance with the powers that article 58.2 of the GDPR grants to each authority of

control and as established in articles 47 and 48.1 of the LOPDGDD, it is

competent to initiate and resolve this procedure the Director of the Agency

Spanish Data Protection.

Likewise, article 63.2 of the LOPDGDD determines that "Procedures

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

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

regulations dictated in its development and, insofar as they do not contradict them, with character

subsidiary, by the general rules on administrative procedures."

II

On June 20, 2022, he entered this Spanish Protection Agency

of Data a claim that shows that the claimed party has in

your home with a video surveillance system that includes a camera in the entrance to your home that is oriented to the outside of it and is not located duly signposted, as an informative poster of a video-monitored area is installed, without stating the person responsible for the treatment and which address to contact for the exercise of rights regarding data protection.

Article 5.1 c) GDPR provides that personal data shall be "adequate, pertinent 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.

The cameras should be oriented towards the particular space, avoiding intimidating neighboring neighbors with this type of device, as well as control transit areas of the same without just cause.

On the part of individuals, it is not possible to install imaging devices of public space, outside the cases allowed by the regulations, as this is exclusive competence of the State Security Forces and Corps.

The treatment of images through a video surveillance system, to be

In accordance with current regulations, it must meet the following requirements:

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- Respect the principle of proportionality.
- When the system is connected to an alarm center, it can only be installed by a qualified private security company

contemplated in article 5 of Law 5/2014 on Private Security, of April 4.

- The camcorders will not be able to capture images of the people who are outside the private space where the video surveillance system is installed, since image processing in public places can only be performed, unless there is government authorization, by the Security Forces and Bodies. Neither spaces owned by third parties may be captured or recorded without the consent of their owners, or, where appropriate, 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 on facades or inside, it may be necessary to guarantee the security purpose the recording of a portion of the public road. That is, cameras and camcorders installed for the purpose of security will not be able to obtain images of the public thoroughfare unless it is essential for said purpose, or it is impossible to avoid it due to the location of the those and extraordinarily the minimum space for said purpose. Therefore, the cameras could exceptionally capture the portion minimally necessary for the intended security purpose.

- The duty to inform those affected provided for in articles 12 and 13 of the GDPR and 22.4 of the LOPDGDD.

Specifically, in the video-surveilled areas, at least one badge must be placed informative located in a sufficiently visible place, both in open spaces and closed, which will identify, at least, the existence of a treatment, the identity of the person responsible and the possibility of exercising the rights provided for in said precepts. Likewise, the information must be kept available to those affected to which the aforementioned GDPR refers.

- The controller must keep a record of processing activities carried out under his responsibility in which the information to which he makes

reference article 30.1 of the GDPR.

- Installed cameras cannot get images from third-party proprietary space

and/or public space without duly accredited justified cause, nor can they affect

the privacy of passers-by who move freely through the area. It is not allowed, for

therefore, the placement of cameras towards the private property of neighbors with the purpose of

to intimidate them or affect their private sphere without just cause.

- In no case will the use of surveillance practices be accepted beyond the environment

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

surroundings, adjoining buildings and vehicles other than those that access the space

guarded.

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II

The claimed party, in its pleadings to the initial agreement, stated

that the camera is contracted with Securitas Direct, "(...) and is recording

within my property (my terrace) correctly signposted" providing images of

what said camera captures as well as the posters both in the video-surveilled area and

from the installation company.

Likewise, in the allegations to the proposed resolution, the defendant provided

new photographs, reiterating that the camera only captures areas of his property.

The GDPR in its article 2.2 c) establishes that "This Regulation does not apply to the

processing of personal data c) carried out by a natural person in the exercise of

exclusively personal or domestic activities".

The cameras installed, according to the documentation provided by the claimed party, are they are limited to their <private scope> not affecting public space, nor private space of third parties.

The presence of the exterior poster is a deterrent, not being mandatory, in this case, its presence.

Notwithstanding the foregoing, the absence of information in the spaces reserved for the itself, may give rise to new claims in the belief of irregularities in the obligation to report it, so it is recommended to avoid future administrative actions, with the logical inconvenience for the claimed party that fill in the same (indicating the person in charge and effective address of the latter, ...) if you want Continue with the placement of the poster on the outside of the house.

Therefore, according to the above, the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: TO ORDER the ARCHIVE of the present proceedings as there are no accredited the commission of any administrative infraction.

SECOND: NOTIFY this resolution to Ms. B.B.B..

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 article 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

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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 article 90.3 a) of the LPACAP,

The firm resolution may be temporarily suspended 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-](https://sedeagpd.gob.es/sede-electronica-web/)

web/], or through any of the other records provided for in article 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

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