

□ File No.: EXP202102410

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. (*hereinafter, the claiming party) dated September 3,
2021 filed a claim with the Spanish Data Protection Agency. The re-
outcry is directed against B.B.B. with NIF ***NIF.1 (hereinafter, the claimed party).

The reasons on which the claim is based are the following:

“outside cameras have been installed that capture public space... It has been
notified via WhatsApp on August 29, 2021 to reorient the camera
front lens and remove or replace the rear lens with a fixed lens that does not focus on my property.
ity, without any result to date, for which we proceed to urge a complaint ”
(folio no. 1).

Together with the notification, documentary evidence is provided (Annex I) that proves the
presence of several devices facing public area.

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
hereafter LOPDGDD), said claim was transferred to the party claimed on fe-
date 09/24/21, to proceed with its analysis and inform this Agency on the plan
within one month, of the actions carried out to adapt to the foreseen requirements.
cough in the data protection regulations.

THIRD: On 11/03/21, a response was received from the defendant stating
succinctly the following:

-The cameras are not fictitious.

-The cameras have been installed to ensure the safety of people, goods and facilities. They minimally capture something from the public thoroughfare, a minimal portion essentially necessary for the intended security purpose. Still and all, given the distance that the cameras are from the public road, it is not possible to identify the ca-flush with the people who may coincide, in the viewing angle of the cameras. In it annex called Doc.5, in the second photograph called, "Camera vision plane nº2" we put a person to demonstrate the non-identification of the same.

-The period of conservation of the images is 7 days.

FOURTH: On November 29, 2021, in accordance with article 65 of the LOPDGDD, the claim presented by the complaining party was admitted for processing.

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FIFTH: On January 26, 2022, the Director of the Spanish Agency for Pro-Data Protection agreed to initiate a sanctioning procedure against the claimed party, with in accordance with the provisions of articles 63 and 64 of Law 39/2015, of October 1, of Common Administrative Procedure of Public Administrations (hereinafter, LPACAP), for the alleged infringement of Article 5.1.c) of the GDPR, typified in the Article 83.5 of the GDPR.

SIXTH: Once the aforementioned initiation agreement was notified, the claimed party submitted a written allegations in which, in summary, he stated that "the cameras are operational."

"The cameras are not recording. And the cameras, as we indicated, have not never been recording. Since the day of installation they have not recorded.

The cameras that do not record, are oriented to the private areas of the part

claimed, capture something from the public thoroughfare, a portion that is minimally necessary for the intended security purpose, which is to prevent continuous thefts and acts of vandalism.

dalics, which have ceased since they were installed. For the exposed,

We request that you submit this document with the attached documents and its copies, please admit it and take for granted the allegations that the same contains and by completed the requirement made for legal purposes opportune”

SEVENTH: On 03/28/22, the "Proposed Resolution" was issued, in which the confirmed the described violation of article 5.1 c) GDPR, being considered disproportionate angle of orientation of the camera installed on the front of your property, allowing excessive control of public space and vehicles that they pass through it.

EIGHTH: On 04/22/22, a written statement of allegations from the claimed party was received arguing the following:

"That the cameras installed inside the home of my client, do not collect personal data, nor identify any person, nor make them identifiable, nor can they, due to their location, distinguish, view or identify license plates of vehicles, as accredited.

In this file, it has not been proven to the contrary that it was recorded no person, not even having requested otherwise the possible recording tion that could have been made with the same

The cameras not only do not record, but are oriented to private areas. property of my client, and, in the event that they were put into operation

In this sense, they would capture the minimally necessary portion of the public thoroughfare to guarantee the fi-intended security purpose, which is to prevent continuous theft and acts of vandalism.

licos, which, reiterating what has been said, have ceased since they were installed”.

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

in the file, the following have been accredited:

First. The facts bring cause of the claim dated 09/03/21 through the

which translates the following:

PROVEN FACTS

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“outside cameras have been installed that capture public space... It has been

notified via WhatsApp on August 29, 2021 to reorient the camera

front lens and remove or replace the rear lens with a fixed lens that does not focus on my property.

ity, without any result to date, for which we proceed to urge a complaint "

(folio no. 1).

Second. It is identified as the main person responsible for B.B.B., whose data works

in the administrative file.

Third. It is proven that the defendant has a video surveillance system

that it is operational, disproportionately oriented towards public areas with-

controlling the circulation of nearby vehicles.

Attached image monitor nº1 Capture of the space located in the front of the vi-

sale beyond its limits.

Room. It is stated that the images are saved by the system during a period of

seven days.

FUNDAMENTALS OF LAW

Yo

In accordance with 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 sub-

sidario, by the general rules on administrative procedures."

II

In the present case, the claim dated 09/03/21 is examined by means of

gave from which the following is transferred as the main fact:

"outside cameras have been installed that capture public space... It has been

notified via WhatsApp on August 29, 2021 to reorient the camera

front lens and remove or replace the rear lens with a fixed lens that does not focus on my property.

ity, without any result to date, for which we proceed to urge a complaint "

The facts denounced could affect the content of art. 5.1 c)

GDPR (regulations currently in force) that provides: "personal data will be:

c) adequate, pertinent and limited to what is necessary in relation to the purposes

for those who are processed ("data minimization") (...)"

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Individuals are responsible for ensuring that the installed video surveillance systems are

conform to current legislation, and must be in a position to prove such extremes.

before the competent authority.

Cameras installed by individuals must be oriented towards their private space.

vativo avoiding the capture of private area of third parties without just cause.

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

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

dantes, adjoining buildings and vehicles other than those that access the monitored space.

Security cameras installed in private spaces will not be able to obtain images

of public spaces, the security function of public spaces corresponds to

exclusively to the State Security Forces and Corps.

Likewise, in the case of false cameras, they must be oriented

towards a private area, avoiding intimidation of neighboring neighbors who do not know

They do not know if they treat personal data or not.

Fake cameras can also affect personal privacy.

of the defendant, in such a way that it is a criterion maintained by this Agency that

they limit their radius of action (orientation) towards a private area, respecting the

tranquility of the private life of the affected person, who does not have to know nature

strength of the system, but neither can bear to be intimidated by it in its environment

personal and/or domestic.

II

Based on the evidence available in this proceeding

disciplinary action, it is considered that the claimed party has installed a camera system

of video-surveillance that affects a public transit area, without just cause.

The evidence provided by the defendant himself confirms the operation of the

themselves, as well as the control that has been carried out with them of a portion of the road

public and affectation to area near your property.

The modifications made have been after the notification of the Agreement of Initiation of this procedure, the allegations put forward being insufficient to consider the system adjusted to current legislation, since it would suffice to limit the catchment angle to your private property to meet the purpose of the system, which is none other a priori than to prevent theft with force in the things in it. The defendant enters into contradiction by arguing that the cameras "do not record" (writing dated 04/22/22), while in his initial writing dated 11/03/21 states "the period of conservation of the images is 7 days" (folio nº 3 letter F).

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It goes without saying that the cameras installed are for security reasons for the housing protection, however, it is argued that the "inoperativeness" of the themselves, which is in contradiction with the accreditation of the authorship of robberies or acts of vandalism according to the purpose of this type of system.

Security cameras installed in private spaces will not be able to obtain images of public spaces, the security function of public spaces corresponds to exclusively to the State Security Forces and Bodies.

In this sense, article 42 of Law 5/2014, of 4 April, Private Security.

“Cameras or video cameras may not be used for private security purposes. to take images and sounds of roads and public spaces or public access except in the cases and under the terms and conditions provided in its specific regulations, prior administrative authorization by the competent body in each case. Its use-

tion inside the homes will require the consent of the owner.

For its part, paragraph 2 of article 22 LOPDGD (LO 3/2018, December 5)

provides the following:

"Images of public roads may only be captured to the extent that it is

essential for the purpose mentioned in the previous section"

After analyzing the allegations put forward and the evidence provided, it is considered that

the installed system disproportionately affects the rights of third parties, which

are intimidated by them, carrying out a control of the frontal area of the vista.

housing (public space) excessive for the intended purpose, since the

modification of its angle: limited to the exclusive zone of private property

vativa.

It is enough that the system can determine a person as identifiable

(for example, for habitually wearing a hat, walking a dog, the model of car that

park, etc) for the "processing of personal data" to take place and therefore

next is affected by the system in question, which performs excessive control of

a free transit zone without just cause.

The known facts constitute an infringement, attributable to the party

claimed, for violation of the content of art. 5.1 c) GDPR, previously transcribed

to.

IV.

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

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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:

to)

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 infringement, taking into account the na-

nature, scope or purpose of the processing operation in question, as well as

the number of interested parties affected and the level of damages that have occurred

fried; (art. 83.2 a) GDPR), as the exterior camera(s) are oriented towards the ca-

public character of the house, when observing the cars parked on the sidewalk and the area

traffic close to it.

- the intent or negligence in the offence; (art. 83.2 b) GDPR), by controlling in

excessive area of public nature, and the conduct described may be considered a

gross negligence for the reasons stated, especially when it had already been extended

mind warned to this effect, being the system devoid of informative poster to such

effect, by not being limited to the <personal and domestic> sphere.

In accordance with the foregoing, it is considered correct to impose an encrypted sanction

in the amount of €500 (Five hundred euros), having a camera system whose

recording is excessive for the purpose pursued, as some neighbors were intimidated

(as) by the same whose orientation they consider excessive.

Therefore, in accordance with the applicable legislation and assessed the graduation criteria

tion of the 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, typified in Article 83.5 of the GDPR, a fine of €500 (Five hundred euros).

ros).

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

THIRD: Warn the penalized person that they must make the imposed sanction effective

Once this resolution is enforceable, in accordance with the provisions of Article

art. 98.1.b) of Law 39/2015, of October 1, on Co-Administrative Procedure

public administrations (hereinafter LPACAP), within the term of payment vo-

lunteer 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 number ES00 0000 0000 0000 0000 0000, open in the name of the Spanish Agency

ñola of Data Protection in the bank CAIXABANK, S.A.. In case of

Otherwise, it will proceed to its collection in the executive period.

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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

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 period is

It will run 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

Respondents may optionally file an appeal for reinstatement before the Director

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

the day following the notification of this resolution or directly contentious appeal

before the Contentious-Administrative Chamber of the National Court,

in accordance with the provisions of article 25 and section 5 of the additional provision

fourth clause of Law 29/1998, of July 13, regulating the Contentious Jurisdiction-

administration, within a period of two months from the day following the notification

tion of this act, as provided for in article 46.1 of the aforementioned 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 interested party

do states its intention to file a contentious-administrative appeal. If it is-

As the case may be, the interested party must formally communicate this fact in writing

addressed to the Spanish Data Protection Agency, presenting it through the Re-

Electronic registry of the Agency [<https://sedeagpd.gob.es/sede-electronica-web/>], or to

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 the documentation to the Agency

proving the effective filing of the contentious-administrative appeal. if the

Agency was not aware of the filing of the contentious-administrative appeal

treatment within two months from the day following notification of this

resolution, would terminate the precautionary suspension.

Mar Spain Marti

Director of the Spanish Data Protection Agency

938-100322

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