

□ File No.: PS/00437/2021

## RESOLUTION OF PUNISHMENT PROCEDURE

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

### FACTS

FIRST: A.A.A. (\*hereinafter, the complaining party) dated June 9, 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 grounds on which the claim is based are as follows.

“It has a camera placed on the rear facade that looks towards me  
property. Nor is it signposted (...)”-folio nº 1--.

Along with the claim, a single documentary evidence is provided (Doc. No. 1) that  
proves the presence of a device in the terrace area.

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 fe-  
date 06/17/21, to proceed with its analysis and inform this Agency on the  
period of one month, of the actions carried out to adapt to the foreseen requirements  
cough in the data protection regulations.

No response has been received to this letter, nor has any clarification been produced.  
do in relation to the facts object of transfer.

THIRD: On August 26, 2021, the Director of the Spanish Agency for  
Data Protection agreed to admit for processing the claim presented by the party  
clamant.

FOURTH: On November 5, 2021, 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: The database of this Agency consulted on 12/11/21 has not been received any response in this regard, nor has the legality of the chamber been proven object of claim.

In view of everything that has been done, by the Spanish Data Protection Agency

In this proceeding, the following are considered proven facts:

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## FACTS

First. The facts are specified in the claim filed on 06/09/21 by means of which the presence of a camera is denounced, whose operation has not been accredited, which he considers "affecting his private space".

Along with the claim, a single documentary evidence is provided (Doc. No. 1) that proves the presence of a device in the terrace area.

Second. It is identified as the main person in charge Doña B.B.B., which has not made any allegation on the claimed facts.

Third. There is evidence of the presence of a single camera, on the rear facade, if It could well be a misguided fake camera.

Fourth. The database of this Agency consulted on 12/10/21 has not been carried out.

No allegation has been made in relation to the facts described, nor has the legality been clarified. installed system.

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By virtue of the powers that article 58.2 of the RGPD recognizes to each authority of control, and according to the provisions of articles 47 and 48 of the LOPDGDD, the Director of the Spanish Agency for Data Protection is competent to initiate and to resolve this procedure.

II

Before going into the substance of the matter, it should be noted that in the Agreement to Start the Fe-cha 11/05/21 was informed that in case of not making any allegation to the Agreement of Initiation, the same "may be considered as a Resolution proposal" in the terms Article 64 letter f) Law 39/2015 (October 1).

"f) Indication of the right to make allegations and to be heard in the proceeding. procedure and the deadlines for its exercise, as well as an indication that, in the event of make allegations within the stipulated period on the content of the initiation agreement, this may be considered a resolution proposal when it contains a pronouncement precise statement about the imputed responsibility.

In the present case, the claim dated 06/09/21 is examined by me- gave from which the following is transferred as the main fact:

"It has a camera placed on the rear facade that looks towards me property. Nor is it signposted (...) "-folio nº 1--.

The facts are therefore specified in the presence of a device located in a terrace, which could, in the claimant's opinion, affect his private space, although does not prove a "processing of your data" or of a third party based on the aforementioned device.

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The art. 5.1 c) RGD provides the following: The 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 informative sign.

indicative, indicating the purposes and 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 of the same without just cause.

With this type of device it is not possible to obtain image(s) of public space either. co, as this is the exclusive competence of the State Security Forces and Bodies ted.

It should be remembered that even in the case of 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, that they are intimidated by it in the belief of being the subject of permanent recording.

On the part of individuals, it is not possible to install devices for obtaining images of public space, outside the cases allowed in the regulations.

### III

In accordance with the evidence available in this proceeding, penalty, it is considered that the claimed party has a system of

video-surveillance cameras that could affect the rights of third parties.

The presence of an information poster is not observed, although it is not possible to determine the exact orientation of the camera, according to the only test contributed by what the initial facts are circumscribed to the bad orientation of the camera.

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

#### IV

The art. 83.5 RGPD provides the following: "Infringements of the following provisions will be sanctioned, in accordance with section 2, with administrative fines of 20 EUR 000,000 maximum or, in the case of a company, an equivalent amount.

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to a maximum of 4% of the total global annual turnover of the financial year above, 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;

In the present case, it is taken into account that it is a complaint against a particular, the absence of previous infractions, as well as the fact that the "operation" of the device, to impose a warning to the claimed.

The Regulation contemplates the possibility of replacing the RGPD sanctions with a warning. behavior (vgr. Considering 148). This consists of a notification so that the infringer

for adopt the corrective measures indicated therein.

In accordance with art. 58.2 d) RGPD, the claimed party must prove the legality quality of the installed system, providing all the necessary documentation for this purpose, including even in the case of a fake camera (eg, providing an invoice for it).

ma) or proceeding to reorient the camera towards the exclusive area of its terrace, avoiding any damage to the neighboring neighbor(s).

It should be remembered that in case of receiving a new claim on the same we have done, this Agency can proceed to open a new procedure being able to consider the imposition of a pecuniary sanction, assessing the lack of collaboration of the same with this Agency.

The claimant party can also transfer the facts to the Local Police closest in order to accredit through the mandatory Attestation the inquiries carried out, which will be taken into account in order to reopen, if applicable, a new sanctioning procedure.

Therefore, in accordance with the applicable legislation and after assessing the graduation criteria tion of the 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 sanction of WARNING TO.

SECOND: ORDER in accordance with art. 58.2 d) RGPD to the one claimed for that within ONE MONTH from the notification of this act, proceed to:

-Prove the legality of the installed camera or proceed to the reorientation from it to an exclusively private area, providing documentary evidence (s) (photograph date and time that proves such end).

THIRD: NOTIFY this resolution to B.B.B..

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.

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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

resorts may optionally file an appeal for reconsideration before the Director

of the Spanish Agency for Data Protection within a month from the date of

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

before the Contentious-Administrative Chamber of the National High Court,

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

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

administrative, 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.

Sea Spain Marti

Director of the Spanish Data Protection Agency

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