

□ Procedure No.: PS/00120/2020

938-300320

## RESOLUTION OF PUNISHMENT PROCEDURE

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

### FACTS

FIRST: Mrs. A.A.A. (\*hereinafter, the claimant) dated January 23, 2020  
filed a claim with the Spanish Data Protection Agency. The  
claim is directed against B.B.B. (INFANTILE SCHOOL \*\*\*SCHOOL.1) with NIF  
\*\*\*NIF.1 (hereinafter, the claimed one).

The grounds on which the claim is based are as follows: In the place where  
who works, a nursery school for children from 0 to 3 years old, there are cameras located in the  
inside the classrooms where the children are. The school facilitates an application  
to parents so that they can observe the children, listen to them, record them, and take  
Photographs. Provide the same password to all parents, so they can  
see any child in any classroom.

They have not asked for your consent to carry out such recordings,  
considered the measure that violates their right to privacy; and there are no posters  
information about the installation of cameras.

He sent a burofax to the College indicating that he considered that, with the  
audio and video recordings in the classrooms and in the places where the tutorials take place  
with parents, without their consent, their privacy was violated. Adding that as  
all parents use the same keys can see any child and any  
professor.

Along with the claim, provide documentary evidence (photographs) that prove the

presence of camera(s) inside the classrooms.

SECOND: In view of the facts denounced in the claim and the documents data provided by the claimant, the Subdirector General for Data Inspection pro-yielded to carry out preliminary investigation actions for the clarification of the facts in question, by virtue of the powers of investigation granted to the control authorities in article 57.1 of Regulation (EU) 2016/679 (Regulation General Data Protection, hereinafter RGPD), and in accordance with the provisions ed in Title VII, Chapter I, Second Section, of Organic Law 3/2018, of 5 December, of Protection of Personal Data and guarantee of digital rights (in hereinafter LOPDGDD).

As a result of the research actions carried out, it is confirmed that the data controller is the claimed party.

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THIRD: On 02/20/20, the reported entity was TRANSFERRED from the claim filed, stating the following in relation to the facts:

In the center subject to the claim, the rules of social responsibility apply. corporate social and transparency, through which the company lets the society know society how it acts, carrying out the activity with honesty. This is critical for the sustainability of your company. These are also concepts that serve as guarantee for long-term success. The path to transparency is communication, for what needs to be strengthened in the company's communication system, both internally as external. A company like yours must maintain a positive image and generate

Build trust among your customers.

The purpose of installing cameras is mainly educational, since allows to observe the evolution and development of the classes and how the children respond to the learning.

The Legal Office of the Spanish Agency for Data Protection has already

He announced this in his report 0274/2009 and in the Video Surveillance Guide he dedicates a section to video surveillance in "school environments and minors". Your center meets all the requirements demanded to guarantee the privacy and intimacy of minors".

It accompanies the record of activities and the informative clause referring to the treatment camera data storage. It indicates that the purpose of the recordings it is educational and business transparency; In no case are images captured for direct or indiscriminate control of workers. There are no audio-visual systems. control channels in places of rest or recreation, such as locker rooms, toilets, dining rooms and the like.

Regarding the moment of information to the workers of the installation of the cameras, indicates that it is done at the beginning of the employment relationship, in the act of signing the contract with the company, you are informed of the operating rules of the center and they give their consent when signing their contract.

The consent for the processing of data of minors always requires the parental authorization as developed by GDPR. Parents can access images, prior express authorization for this purpose. Being all of them aware that the center is equipped with cameras and authorizing that the image of your child or daughter is captured by said cameras.

FOURTH. On June 16, 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), 5.1 f) and 13 of the RGPD, typified in Article

83.5 of the GDPR.

FIFTH. On 07/29/20, a Resolution Proposal was issued in which it was agreed

NOTICE the entity denounced for the accredited infringement of article 13 RGD.

SIXTH. The database of this Agency consulted on 10/13/20 does not contain

any allegation of the reported entity—Infant School \*\*\*ESCUELA.1--, nor

corrective action has been proven to have been adopted in this regard.

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

In this proceeding, the following are considered proven facts:

First. On 01/23/20, this AEPD received a letter from the complainant

through which transfers the following:

“...there are cameras located inside the classrooms where the

kids. They have not asked for your consent to carry out such recordings,

considered the measure that violates their right to privacy; and there are no posters

information about the installation of cameras” (folio nº 1).

Second. It is identified as the main responsible B.B.B. (SCHOOL

CHILD \*\*\*SCHOOL.1).

Third. A copy of the employment contract is provided, although blurred in some of

its clauses, not stating the date of signature, where the complainant is informed

in the following terms:

“Each classroom is equipped with a web camera to which parents of children have access.

the children of the group and the direction of the Center. The cameras are oriented

way that they only collect the image of the area where the children develop their educational activities, at no time is it observed through the same areas change and toilet"

Fourth. It is accredited that there is an informative poster where it indicates that it is a video-monitored area, indicating the data controller (Attached file cameras nº1-8), although it is not possible to determine if they were placed two initially at the time of the Complaint.

Fifth. The camera system has a timer, being disconnected outside school hours, at 3:30 p.m., taking place the development of tutorials outside these hours, so it is not possible to record them.

Proof Document No. 3 is provided that corroborates the installation of the timer in camera wiring.

Sixth. There is no evidence that informed consent has been obtained. of the parents (guardians) of the Center, since the denounced party had not provided the documents necessary for this purpose.

Seventh. Parents (guardians) are informed by the Center through a standard form with some access keys-Username and Password—indicating that can access the classroom of their children as well as that they do not transfer the keys to third parties. ceos outside the family nucleus, although it does not make a detailed explanation of the operation (use) of the same.

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FOUNDATIONS OF LAW

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By virtue of the powers that article 58.2 of the RGPD recognizes to each authority, 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 solve this procedure.

II

In the case of recordings in nurseries or early childhood education centers, you must It must be taken into account that the general principles of the regulations regarding the processing of personal data, being relevant:

- The consent for the processing of data of minors is found regulated in article 8 of the RGPD and requires the authorization of the father, mother or the legal representative in the case of minors.
- The purpose for capturing such images must be precisely defined, that in any case will respect the principle of proportionality and adequacy, and in particular for additional uses for promotional or marketing purposes, school reports of activity, or public websites of the center.
- In relation to the proportionality of capturing the images, it is necessary to consider that children who attend schools/nurseries, aged between 0 to 3 years, they carry out many activities in the classroom (eat, play, take naps...); There is a difference with the older children who attend schools that carry out each activity in different areas: classrooms, patios and dining rooms.
- The workers' rights must be properly informed and respected- affected by the use of video cameras such as monitors, teachers, staff of cleaning etc
- Security and secrecy must be guaranteed, particularly when access to the images is produced online.

And in those cases in which access is provided to a group, such as that of all two parents in a classroom:

-Access profiles should be defined, which, for example, should be limited to the environments your children are in, never to other classrooms.

-Parents should be informed of their responsibilities for access to data.

The RGPD establishes a series of guidelines, which try to achieve greater proactivity on the part of those responsible for data processing.

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Together with the record of treatment activities, it is necessary to carry out a brief reflection. The level of risk that data processing poses must be analysed.

(in this case, the capture or recording of images of natural persons), im-  
apply to those affected (parents, students and teachers).

It is recommended that the result of the risk analysis be recorded in writing.

III

In the present case, the claim dated 01/23/20 is examined by me-  
gave from which the following is succinctly translated as the main fact:

“...there are cameras located inside the classrooms where the  
kids. They have not asked for your consent to carry out such recordings,  
considering the measure that violates their right to privacy; and there is no  
informative posters of the installation of cameras” (folio nº 1).

The facts therefore materialize in the presence of a device (s) in the

interior of the classroom where the complainant teaches, without, according to her statement, being informed about the use of the images, nor has it been requested by the complainant's consent, affecting your personal intimacy and privacy (folio nº 1).

As a first question, it is appropriate to analyze "the absence of an information poster"

In this regard, it should be noted that the entity reported provides documentary evidence that accredits the presence of an informative poster(s) inside the classroom(s), indicating that it is a video-monitored area, so it complies with the provisions of the article 22.4 LOPDGDD (LO 3/2018, December 5).

The presence of video-surveillance cameras is not something unrelated today, there are cameras in shopping malls, in small establishments or in shopping malls. educational, obeying in principle the presence of the same to a purpose of facility security.

However, this type of device is complying in juvenile centers or nurseries, a different purpose such as facilitating the possibility for parents (guardians) to share the adaptation of the minor to their new school environment, allowing them to be participate in this first contact with the educational system.

This, however, may involve a certain collision with the rights of the employees, who feel subject to permanent observation, even in their teaching work, bringing into play other fundamental rights (art. 18 CE), with the logical concern of the fear of being recorded, as well as the fate that in your case will be given to them.

This connects with the second issue denounced, regarding the lack of information about the purpose of processing the images (data) that, if applicable, are obtained.

A copy of the contract signed by the complainant is provided by the denounced party. te, where you are informed in one of the clauses "Personnel attitude towards work"



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of the presence of the cameras (Proof Document No. 1), although it is not indicated (informed) of clearly what the purpose of the treatment is.

Article 28 Law 39/2015 (October 1) provides the following: "The interested parties

They will be responsible for the veracity of the documents they present", so this

The body considers a priori valid the contract provided by the denounced party.

Article 5 section 1 letter b) RGPD provides that personal data will be

"Collected for specific, explicit and legitimate purposes, and will not be processed further.

riorly in a manner incompatible with said purposes; according to article 89,

section 1 (Scientific Research, statistics), further processing of data

for archival purposes in the public interest, scientific research purposes and

historical or statistical purposes shall not be considered incompatible with the initial purposes ("li-purpose mitigating«).

The RGPD obliges data controllers to offer interested parties a ma-

More information about the treatments that are carried out and the way to exercise the rights

guys. All those responsible must comply with this obligation of transparency,

regardless of its size as an organization.

Article 13 RGPD establishes an exhaustive list of the information that must be

be provided to the interested parties (\*wider than that determined by the now extinct LOPD

15/99) based on the data obtained from the interested party.

In the case of data obtained from the interested party, the following information will be provided:

tion at the time the data is requested:

6.

7.

1.

Identity and contact details of the person in charge and, where appropriate, of their representative.

tea

treatment purposes

2. contact details of the delegate, if applicable,

3.

4. legal basis of the treatment

5. The legitimate interest pursued by the controller or a third party, when the treatment  
ment is based on said legitimate interest.

the recipients or categories of recipients of data (transfers)

the intention to make international transfers of data to third parties

countries and the existence of an adequacy decision or adequate guarantees and

the means to obtain a copy of these

9.

8. the term of conservation of the data or the criteria used to determine

the term

the need to provide the data and the consequences of not providing it if the co-

communication of data is a legal or contractual requirement or a necessary requirement

to sign a contract

10. the existence of automated decisions, including profiling

(in such cases, significant information about the applied logic, as well as the

significance and anticipated consequences of such processing for the interest

sado)

11. the possibility of exercising the rights that assist the interested party, the right

to withdraw consent as well as the right to file a claim

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12. in the event of further processing for a different purpose, you must first inform and educate you on that other purpose with additional relevant information.

If you proceed to read the clause of the contract provided in it, you will find that it embodies the following:

"Each classroom is equipped with a web camera to which parents of children have access. The cameras are oriented towards the children of the group and the direction of the Center. The cameras are oriented in a way that they only collect the image of the area where the children develop their educational activities, at no time is it observed through the same areas where there is a change and toilet"

Therefore, the clause of the contract provided does not determine what they will be treated for. The data, where the images that are obtained from the employee of the Center.

The obligation to inform must be fulfilled without the need for any requirement. and the person in charge must be able to prove later that he has complied with the obligation.

So that any employee of the Center, whose personal data is treated, must be able to know the purposes of the treatment of the same, in a way that is understandable, the set of rights that you can exercise in your case (art. 15-22 RGPD) or their conservation criteria as an example.

The employer (entrepreneur) can install limited video surveillance cameras.

being used for the purposes set forth in the Workers' Statute, since it attributes to the employer the power of management, which allows him to "adopt the measures he deems more timely surveillance and control to verify compliance by the work-guardian of his labor obligations and duties".

The employer must strictly respect the principle of proportionality, that is, In other words, video surveillance cameras will be installed when there are no other measures most suitable, will only record spaces that are essential to satisfy the purposes functions of labor control and will not be used for purposes other than those of the control itself labor.

In the case that concerns us the installation of a web camera in the classroom of the complainant, does not obey a purpose of labor control, but an objective of the po-"educational" policy of the Center, consisting of facilitating access to school activities minors in it, facilitating remote access for their parents (tutors) through a concerted password system.

The question of the affectation to privacy (art. 18 CE) denounced by the party complainant, it is not an issue that should be analyzed in depth by this Agency, whose competence framework is limited to the issue of due information in the treatment of its data.

The Constitutional Court, in its Judgment 292/2000, of November 30, 2000 (BOE of January 4, 2001), has come to define the right to protection of

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data such as the one that every citizen has to freely dispose of their personal data.

personal data, detaching it from the right to privacy and configuring it as a right fundamental independent (legal bases 6 and 7).

This fundamental right to data protection, unlike the right to privacy of art. 18.1 CE, with whom it shares the objective of offering an efficient constitutional protection of personal and family privacy, attributes to its holder a bundle of powers consisting for the most part of the legal power to impose on third parties the performance or omission of certain behaviors whose specific regulation must establish the Law, the one that according to art. 18.4 EC must limit the use of information technology, either by developing the fundamental right to data protection (art. 81.1 CE), or regulating its exercise (art. 53.1 CE).

Educational centers, in their task of making effective the fundamental right to education that constitutes their reason for being, they must also observe the fundamental right to the protection of personal data which, as it does not constitute its activity main life, sometimes generates doubts about the interpretation and application of its regulation.

The possibility of treating the image of the accused would be legitimized by complete information that could be provided in the signed contract, since its educational work is carried out in a classroom where external monitoring is allowed by the parents (guardians) of their students, as indicated in the freely signed contract. mind for the same.

The denounced "privacy" is not affected, given that the camera (s) does not obtain images of sensitive spaces, limiting the capture to the area of classroom, being the same connoisseur of the presence of these.

It should not be forgotten that in the workplace, art. 20.3 ET empowers the employer to adopt "the measures it deems most appropriate for surveillance and control to verify ensure compliance by the operator with his work obligations and duties, safeguarding

in its adoption and application due consideration to their dignity and taken into account

account in your case, the real capacity of workers with disabilities.

The foregoing, however, does not prevent greater precision in relation to the

training to be provided in relation to the purpose(s) of data processing

complainant's cough, as explained above.

With the entry into force of the new RGPD, the informative clause does not comply with

the greatest protection pursued in the right to information, and this must be

“precise, concise, transparent” with clear and simple language.

In such a way that the infringement of article 13 RGPD is considered accredited, by

the contract provided does not state the purpose(s) to which the obtaining of images will be dedicated.

in the classrooms where the complainant carries out her activity.

IV

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In relation to the imputation of non-compliance with article 5.1 c) RGPD, for alleged

"data processing" consisting of the recording of conversations, it should be noted

that the installed devices are disconnected at 15:30 (end time of the

school hours), being the tutorials with the parents developed outside said hours,

so the conversations are not recorded in any way.

It is provided by the denounced documentary evidence that allows verifying the pre-

presence of the timer that allows the disconnection of the video equipment, corroborating

the allegations made.

Therefore, it is accredited that the described infraction has not been committed, since

The conversations held with the parents (guardians) of the children must be recorded.

students, when the system is programmed to disconnect.

v

Lastly, the alleged commission of an infraction of art.

5.1 c) RGPD considering that parents could have access to third party data

(other students), lacking information about the responsibilities in the treatment

lien of personal data.

The keys provided only allow access to the specific classroom where your children

(as) develop the corresponding educational workshops, in such a way that it is not possible

It is possible to access other classrooms other than those authorized.

It is attached as documentary evidence (Doc. No. 4) where the following is noted:

following:

“Please use these passwords responsibly, using them responsibly.

personal way and not transferring them to anyone outside your family”

“Please do not spread these photos on social networks, nor publish them in any

some public access site

Therefore, it is considered that the "recommendations" put forward are sufficient

to avoid unauthorized dissemination of minors' data, having

automated passwords that allow exclusive access to the classrooms where

Their respective offspring call their training workshops.

SAW

In accordance with the evidence available in this proceeding,

sanctioning procedure, it is considered that the defendant has not fully accredited

that the owner of the data is informed about the purpose (s) in the treatment of their data.

cough of a personal nature.

The known facts constitute an administrative infraction, imputed

table to the claimed (a), for violation of the content of article 13 RGD, above-

transcribed mind.

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Article 83.5 RGD provides the following: “Infringements of the provisions

The following will be sanctioned, in accordance with section 2, with administrative fines.

amounts of EUR 20,000,000 maximum or, in the case of a company, an amount

equivalent to a maximum of 4% of the total global annual turnover for the year

previous financial agreement, opting for the highest amount:

b) the rights of the interested parties according to articles 12 to 22;

Without prejudice to the provisions of article 83 of the RGD, 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 offence, or if the fine likely to be imposed

would constitute a disproportionate burden for a natural person, rather than a sanction.

tion by means of a fine, a warning may be imposed. must, however, lend

special attention to the nature, seriousness and duration of the infringement, its character

intentional, to the measures taken to alleviate the damages suffered, to the degree

liability or any relevant prior violation, to the manner in which the authority

control authority has become aware of the infraction, compliance with measures

measures ordered against the person in charge or in charge, adherence to codes of con-

conduct and any other aggravating or mitigating circumstance.”

In the present case, we take into account the complexity of the matter that we



occupies, as well as the absence of previous infractions and the active collaboration with this Agency, to propose a warning sanction, imposing corrective measures as to those responsible for the Center in question.

7th

According to the above, the contract provided is not clear in terms of the information of the purpose of processing the complainant's data.

For all these reasons, it is proposed to comply with current legislation, the following requirement: ment, accrediting it as soon as possible before this body:

-A specific data protection clause must be included in the contract labor contracts that it subscribes in the future with the workers of the Center, information express command of the controller, purpose, rights within the framework of the GDPR, etc.

It is recommended that information concerning minors be published in private spaces of the center (vgr. Intranet of the Center), which is accessed through individual identification and password for each parent, avoiding to the extent as possible, shared passwords that allow access by unauthorized third parties. two to the data of minors.

Finally, it is recalled that not meeting the requirements of this body, may be considered a very serious offense in accordance with the provisions of art. 72 letter o) LOPDGDD "The resistance or obstruction of the exercise of the inspection function

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by the competent data protection authority", which is brought to your attention.

lien for the appropriate legal purposes.

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 Doña B.B.B. (NURSING SCHOOL \*\*\*SCHOOL), with NIF

\*\*\*NIF.1, for an infringement of Article 13 of the RGPD, typified in Article 83.5 of the RGPD, a sanction of Warning.

SECOND: NOTIFY this resolution to Doña B.B.B. (CHILDREN'S SCHOOL

\*\*\*SCHOOL.1) and REPORT the result of the proceedings to the complainant Mrs.

A.A.A.

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 LPA-

CAP, the interested parties may optionally file an appeal for reconsideration before

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

counting from the day following the notification of this resolution or directly

contentious-administrative case before the Contentious-administrative Chamber of the Au-

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 Jurisdiction

Contentious-administrative diction, within a period of two months from the day following

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 LPA-

CAP, the firm resolution may be provisionally 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 by writing addressed to the Spanish Agency for Data Protection, presenting it through Electronic Register of the Agency [<https://sedeagpd.gob.es/sede-electronica-web/>], or through any of the other registers provided for in art. 16.4 of the city tada Law 39/2015, of October 1. You must also transfer to the Agency the documentation certifying the effective filing of the contentious-administrative appeal. Yes the Agency was not aware of the filing of the contentious-administrative appeal nistrative within two months from the day following the notification of the pre- This resolution would end the precautionary suspension.

Sea Spain Marti

Director of the Spanish Data Protection Agency

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