

□ File No.: EXP202205878

RESOLUTION OF SANCTIONING PROCEDURE

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

BACKGROUND

FIRST: CIVIL GUARD - GUARD POSITION (*hereinafter, the complaining party)

client) on May 21, 2022, filed a claim with the Space Agency

Data Protection tab. The claim is directed against whoever identifies as

A.A.A. with NIF ***NIF.1 (hereinafter, the denounced party). The reasons on which it is based
the claim are as follows:

“Camera presence on Avenida Asturias number s/n Guardo (Palencia) is

A white video camera is installed, with an antenna and two cables

(data and current). Indicate that said cables enter the interior of the building” –(folio no.

1 Minutes dated 05/20/22).

The complaining party filed a prior claim against the denounced party (claim-
da) from the Complaint Act dated April 22, 2022 in which it was stated

I certify that the claimed party is responsible for a video surveillance camera that is

oriented to the public thoroughfare, without prior administrative authorization to do so and without

that it is duly signposted by means of the mandatory informative signs

you from a video-monitored area. File EXP202205113 was processed and communication was sent

nication to the claimed (reported) party to take corrective measures,

said communication being notified to the claimant/complainant party on 12

May 2022, although the claimant provides an Ocular Inspection Diligence

dated May 20, 2022, in which they state that the claimed party has not adopted

corrective measures have been taken and the controversial camera continues to be oriented towards public roads

and it lacks signaling through informative posters of a video-monitored area.

Documentary evidence is attached (Annex I) proving the presence of positive white color on the exterior façade of the property with orientation towards space public without just cause.

SECOND: On July 7, 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.

THIRD: Consulted the database of this Agency, it appears "Notified" the Initiation Agreement as verified by the Official Post and Telegraph Service being delivered to him at his usual address.

FOURTH: On 07/21/22, a new Complaint was received from the acting force-Herrera Pisuerga Company (DG Civil Guard) that moved to the scene of the events

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confirm the presence of the <dome> type camera with an antenna and two cables that come out of the device.

"It is verified by the Citizen Security patrol service tomorrow the day 07/15/22 that despite the warnings of the AEPD the camera is still installed (it was Attached are photographs of the camera in question."

FIFTH: On the date the "Proposed Resolution" was issued, in which a

sanction encrypted in the amount of €600, when the presence of the device is accredited obtaining images misdirected towards public space without just cause, confirming the violation of article 5.1 c) GDPR, as well as that the same it lacks an informative sign indicating that it is a video-surveilled area, confirming the violation of art. 13 GDPR.

SIXTH: The notified Agency's information system contains the "Proposal resolution" dated 08/31/22, stating the same as delivered to the recipient of This is as certified by the Official Postal Service.

Of the actions carried out in this procedure and of the documentation in the file, the following have been accredited:

PROVEN FACTS

First. The facts bring cause of the complaint of the Civil Guard (Post of Guard-do) by means of which the following is transferred:

“Camera presence on Avenida Asturias number s/n Guardo (Palencia) is

A white video camera is installed, with an antenna and two cables

(data and current). Indicate that said cables enter the interior of the building” –(folio no.

1 Minutes dated 05/20/22).

Second. It is identified as the main responsible A.A.A., with NIF ***NIF.1.

Third. It is accredited that it does not have an informative poster indicating that it is from a video-surveilled area.

Room. The presence of a video-surveillance device oriented towards public space without just cause.

FUNDAMENTALS OF LAW

Yo

In accordance with the powers that article 58.2 of Regulation (EU) 2016/679 (Regulation General Data Protection Regulation, hereinafter GDPR), grants each authori-

quality of control 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.

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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 subsidiary, by the general rules on administrative procedures."

II

In the present case, the claim of date is examined by means of the which transfers the presence of "video-surveillance camera" that considers the force acting is misdirected affecting the rights of third parties without just cause.

Documentary evidence is provided (Annex I) in the case of a white device.

co devoid of informative poster and whose operation does not materialize.

The art. 5.1 c) GDPR provides the following: Personal data will be:

“adequate, relevant and limited to what is necessary in relation to the purposes for those who are processed ("data minimization").

It should be remembered that individuals are responsible for ensuring that the systems installed felled comply with current legislation, certifying 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 poster
tive, indicating the purposes and person 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
to intimidate neighboring neighbors with this type of device, as well as control areas
nas of transit of the same without justified cause.

Neither with this type of device can you obtain an image(s) of public space.
since this is the exclusive competence of the Security Forces and Bodies of the State
tado.

It should be remembered that even if it is 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, who are intimate
measured by it in the belief of being the object 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.

The purpose of this type of device must be the security of the property and
its inhabitants, avoiding the affectation of the rights of third parties who are intimidated
two with the same

II

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Based on the evidence available in this proceeding
sanctioning party, it is considered that the claimed party has a device installed

on the exterior façade with palms oriented towards the exterior area, affecting the area of public transit without just cause.

Article 77 section 5 of Law 39/2015 (October 1) provides the following:

5. The documents formalized by the officials to whom the condition of authority and in which, observing the corresponding legal requirements teeth, the facts verified by the former shall be collected, they shall prove the latter except that the opposite is proven (* the bold type belongs to this Agency).

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.

According to article 72 section 1 LOPDGDD (LO 3/2018, December 5) "Infractions considered very serious" "infractions involving a substantial violation of the articles mentioned therein and, in particular, the following (...)

a) The processing of personal data in violation of the principles and guarantees established in article 5 of Regulation (EU) 2016/679.

IV.

The claimant(s) also states in its claim that the system pre-supposedly it lacks informative signage in this regard, since the sign is not displayed (en) that report the video-surveilled area.

"The duty of information provided for in article 12 of Regulation (EU) 2016/679 will be understood to have been complied with by placing an informative device in a sufficiently visible place identifying, at least, the existence of the treatment, the identity of the person responsible and the possibility of exercising the rights provided for in 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 informa-

tion" (*bold type belongs to this body)—art. 22 section 4 of the LOPDGDD--.

The AEPD, in a related report, stipulates that it is not necessary for the cartels to be sit just below the cameras. It is enough to do it in a visible place and include open and closed spaces where the video camera circuit is operational.

The facts described above imply an affectation to the content of the article

13 GDPR, as the informative poster lacks an effective address to which power can be reached in

If necessary, contact or indicate, where appropriate, the main person responsible for the treatment of the data.

Article 13 GDPR "Information that must be provided when the data per-
personal data are obtained from the interested party"

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1. When personal data relating to him or her is obtained from an interested party, the person responsible of the treatment, at the moment in which these are obtained, it will provide you with all the information information indicated below: a) the identity and contact details of the responsible and, where appropriate, his representative; b) the contact details of the delegate of pro- data protection, if applicable; c) the purposes of the processing for which the data is intended personal information and the legal basis of the treatment (...).

Article 72 section 1 of the LOPDGDD (LO 3/2018, December 5) in relation to
tion to the limitation period of very serious infractions "will prescribe three
years" and in particular the following:

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

(UE) 2016/679 and 12 of this organic law.

V

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

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:

a) The basic principles for the treatment including the conditions for the

consent in accordance with articles 5,6,7 and 9 (...)".

the rights of the interested parties in accordance with articles 12 to 22;

b)

In the present case, it is taken into account that it is an individual who has not carried out

do any statement about the device object of claim, bearing in mind

the wrong orientation of the cameras accredited with the photographic evidence provided,

being a system that is affecting areas that exceed their private space and

even affecting public area; all this justifies imposing a penalty of 600 euros

(€300+€300), for violation of articles art. 5.1 c) GDPR and 13 GDPR, available

ner of a camera system without the proper informative signage oriented towards

public and/or private space of third parties without justified cause, sanction located in the

lower cove for this type of behavior, but taking into account the behavior

negligent of the defendant.

SAW

The text of the resolution establishes which have been the infractions committed and

the facts that have given rise to the violation of the data protection regulations

from which it is clearly inferred what are the measures to be adopted, without prejudice to

that the type of procedures, mechanisms or concrete instruments to implement

treat them corresponds to the sanctioned party, since it is the person responsible for the treatment who fully knows your organization and has to decide, based on personal responsibility active and risk-focused, how to comply with the GDPR and the LOPDGDD.

It is noted that not meeting the requirements of this body may be considered classified as an administrative offense in accordance with the provisions of the GDPR, typified

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as an infraction in its article 83.5 and 83.6, being able to motivate such conduct the opening of a subsequent administrative sanctioning procedure.

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 A.A.A., 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 €300.

SECOND: IMPOSE A.A.A., with NIF ***NIF.1, for a violation of Article 13

of the GDPR, typified in Article 83.5 letter b) of the GDPR, a fine of €300.

THIRD: TO ORDER the denounced party so that, within a period of 10 business days,

les, to be recorded from the following from the notification of this administrative act, proceed as follows:

- Placement of informative poster(s) indicating that it is a video-surveillance area.

lada, proceeding to have an information form.

- Proceed to regularize the external capture camera and must deactivate

the possibility of capturing public space, providing photography screen printing

size that proves such end (vgr. with date and time).

FOURTH: NOTIFY this resolution to A.A.A..

FIFTH: Warn the sanctioned party that he must enforce the sanction imposed

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.

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.

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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

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