

□ File No.: EXP202203716

RESOLUTION OF SANCTIONING PROCEDURE

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

BACKGROUND

FIRST: On 03/22/2022, a document submitted to this Agency was entered
by A.A.A. (hereinafter, the claiming party), through which the claim is made
against B.B.B. with NIF ***NIF.1 (hereinafter, the claimed party), for the installation of
a video surveillance system located at STREET ***ADDRESS.1, ***LOCATION.1,
***PROVINCE.1, there being indications of a possible non-compliance with the regulations of
Personal data protection.

The reasons for the claim are the following:

“The private house located in CALLE *** DIRECCIÓN.1, has on the balcony of the 1st
plants a web cam that focuses on the facade/access to the private garage, but
also on public roads. It is an area used by neighbors and many
MINORS/SCHOOL CHILDREN of the town, since it is an area of access to the
local conservatory.

On the video surveillance plate it does not put data on the person responsible for the recording.”

Along with the claim, provide photographs of the location of the web cam and the sign
informative video surveillance area, as well as a map taken from "Google maps" on
the one that indicates the location of the device.

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
forward LOPDGDD), on 03/24/2022 the claim was transferred to the party
claimed, so that it proceeds to its analysis and informs this Agency within the term

of one month, of the actions carried out to adapt to the foreseen requirements

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 03/31/2022 as stated in the

acknowledgment of receipt in the file.

Given the lack of response, on 05/19/2022 the transfer was reiterated and it was "Returned to

Origin by Unknown" on 05/30/2022. As of today, it does not appear in this Agency

any answer.

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THIRD: On 06/22/2022, in accordance with article 65 of the LOPDGDD,

The claim presented by the complaining party was admitted for processing.

FOURTH: On 07/18/2022, a letter was received from the Tax Agency answering the

NIF request of the defendant made by this Agency, for the purpose of being able to

validly practice the appropriate notifications, which will be precise in the development

of investigative actions, and in the event of initiating a disciplinary procedure.

FIFTH: On 09/26/2022, the Director of the Spanish Agency for the Protection of

Datos agreed to initiate disciplinary proceedings against the claimed party, for the alleged

violation of article 5.1.c) of the GDPR and article 13 of the GDPR, typified in article

83.5.a) and b) of the GDPR.

SIXTH: Notified the aforementioned start agreement in accordance with the rules established in

the LPACAP, on 10/24/2022 the claimed party submitted a brief of allegations in the

which, in summary, stated the following:

“[...]

This being the second time that I send all the documentation since it seems that the first time you did not receive it (about 4 months ago). I sent it by normal mail no certified after another conversation on the phone.

The poster has the phone ID and my address as responsible.

And the reason for the camera is that shortly after finishing the rehabilitation of the house some human being (to call it somehow) painted the facade and the garage door 3 times in a row, and since I installed it the camera has not returned happen.

With these documents I hope that the entire file will be resolved.”

Attached photographic report of the location of the camera and poster, as well as the device viewing.

SEVENTH: On 10/25/2022, the instructor of the procedure agreed to open of a trial period, taking as incorporated the claim filed by the complaining party and its documentation, the documents obtained and generated during the phase of admission to processing of the claim; as well as the allegations to the agreement to initiate the referenced sanctioning procedure, presented by the claimed party and accompanying documentation.

EIGHTH: On 10/26/2022, a resolution proposal was formulated in which the proposed to penalize the claimed party with a fine of €300, for the infringement of the Article 13 of the GDPR since at the time of filing the claim the separated from the video-monitored area sign were not filled in. However, it remained proven that the action of the claimed party did not constitute an infringement of article 5.1.c) of the GDPR, since the web cam does not carry out excessive capture of the public road.

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Also, it was ordered that, within ten business days from the date on which the resolution in which it so agrees is notified, the claimed party accredits that makes available to those affected the rest of the information to which refer to articles 13 and 14 of the GDPR.

NINTH: On 11/04/2022 the requested party was notified of the proposed resolution, without any response being received by this Agency.

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

PROVEN FACTS

FIRST: Installation of a white web cam on the balcony of the 1st floor of the home of the claimed party, located at CALLE ***ADDRESS.1,

***LOCATION.1, ***PROVINCE.1, facing outwards. In addition, the sections of the informative poster of the video-surveilled area placed on the façade of the property are empty, without including the data required by the GDPR.

These extremes are proven with the photographic report provided by the party claimant.

SECOND: He is identified as the main person responsible for the B.B.B. with NIF ***NIF.1.

THIRD: It is proven that the device in question focuses on the entrance of the home and garage of the claimed party. Likewise, the portion of public highway captured is minimal, being within the legal limits for not being

disproportionate.

FOURTH: In the photographic report provided by the claimed party, it is observed that the video surveillance zone poster has been filled in with the following data: "(...). Can exercise their rights under articles 15 to 22 of Regulation (EU) 2016-679 before the responsible:

B.B.B.. ***NIF.1. C/***ADDRESS.1.

FIFTH: This Agency has notified the claimed party of the proposed resolution of the present disciplinary procedure, but it has not presented allegations or evidence that contradicts the alleged facts.

FUNDAMENTALS OF LAW

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In accordance with the powers that article 58.2 of Regulation (EU) 2016/679 (General Data Protection Regulation, hereinafter GDPR), grants each control authority and as established in articles 47, 48.1, 64.2 and 68.1 of the

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Organic Law 3/2018, of December 5, on the Protection of Personal Data and guarantee of digital rights (hereinafter, LOPDGDD), is competent to initiate and resolve this procedure the Director of the Spanish Protection Agency of data.

Likewise, article 63.2 of the LOPDGDD determines that: "The 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

The image of a person, according to article 4.1 of the GDPR, is personal data and its protection, therefore, is the object of said Regulation. In article 4.2 of the GDPR it is defines the concept of "processing" of personal data.

Article 12.1 of the GDPR indicates that whoever carries out data processing personal, such as the capture of images through a system of video surveillance, must provide the interested parties with the information indicated in the Articles 13 and 14 of the GDPR.

In order that the duty of information provided for in article 12 of the GDPR is complies in a concise and understandable manner for the affected party, the aforementioned article 22 of the LOPDGDD foresees in relation to video surveillance a system of "information by layers". Specifically, the fourth section states:

"[...]

4. The duty of information provided for in article 12 of Regulation (EU) 2016/679 is shall be understood to have been fulfilled by means of the placement of an informative device in a sufficiently recently visible identifying, at least, the existence of the treatment, the identity of the person in charge 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 information device add a connection code or internet address to this information.

In any case, the person in charge of the treatment must keep available to the affected the information referred to in the aforementioned regulation.

[...]"

In this sense, the first layer must refer, at least, to the existence of the treatment (video surveillance), the identity of the person responsible, the possibility of exercising the

rights provided for in articles 15 to 22 of the GDPR and where to obtain more information on the processing of personal data.

Second layer information should be easily available in one place accessible to the affected person, whether it is an information sheet at a reception, cashier, etc..., placed in a visible public space or in a web address, and must refer to the other elements of article 13 of the GDPR.

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It is not necessary to specify the precise location of the video surveillance equipment.

This duty of information will be understood fulfilled by placing a Information device in a sufficiently visible place, and at least, at the entrances to monitored areas, whether interior or exterior. In case the space video surveillance has several accesses must have said hallmark of video surveillance area in each of them.

This information must be provided in advance -recital 39 of the GDPR-. He The aim is to make the context of surveillance clear.

II

In accordance with the evidence available in this disciplinary procedure, it is considered that the claimed party has breached its obligation to provide adequate information about the existence of a security device video surveillance of those affected. Well, compared to the photographs provided by both parties, it is noted that at the time of filing the claim the informative poster of video-surveilled area was not filled; maintaining the sanction

fine for previously captured images without providing the required information

by article 13 of the GDPR.

In view of the foregoing, the facts imply a violation of what is established in the article 13 of the RGPD, which supposes the commission of an infraction, typified in the Article 83.5.b) of the GDPR, which provides the following:

Violations of the following provisions will be sanctioned, in accordance with the section 2, with administrative fines of a maximum of 20,000,000 EUR or, in the case of a company, an amount equivalent to 4% of the turnover global annual total of the previous financial year, opting for the highest amount:

(...)

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

(...)"

For mere prescription purposes, article 72.1 of the LOPDGDD qualifies as very serious:

"(...)

h) The omission of the duty to inform the affected party about the processing of their data personal in accordance with the provisions of articles 13 and 14 of Regulation (EU) 2016/679 and 12 of this Organic Law;"

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IV.

The corrective powers available to the Spanish Agency for the Protection of Data, as a control authority, are established in article 58.2 of the GDPR. Between

they have the power to impose an administrative fine in accordance with the article 83 of the GDPR -article 58.2 i)-, or the power to order the person responsible or processor that the processing operations comply with the provisions of the GDPR, where applicable, in a certain way and within a certain specified term - article 58. 2 d).

In the present case, it is considered appropriate to sanction the party claimed by the infringement of article 13 of the GDPR for which he is responsible, with the imposition of a administrative fine that must be individual, effective, proportionate and dissuasive, of in accordance with article 83.1 of the GDPR. In order to determine the administrative fine to impose, the provisions of article 83.2 of the GDPR must be observed, which indicates:

"2. Administrative fines will be imposed, depending on the circumstances of each individual case, in addition to or in lieu of the measures contemplated in

Article 58, paragraph 2, letters a) to h) and j). When deciding to impose a fine administration and its amount in each individual case shall be duly taken into account:

a) the nature, seriousness and duration of the offence, taking into account the nature, scope or purpose of the processing operation in question, as well as such as the number of interested parties affected and the level of damages that have suffered;

b) intentionality or negligence in the infraction;

c) any measure taken by the controller or processor to alleviate the damages and losses suffered by the interested parties;

d) the degree of responsibility of the controller or processor, taking into account the technical or organizational measures that they have applied under of articles 25 and 32;

e) any previous infringement committed by the controller or processor;

f) the degree of cooperation with the supervisory authority in order to remedy the

infringement and mitigate the possible adverse effects of the infringement;

g) the categories of personal data affected by the infringement;

h) the way in which the supervisory authority became aware of the infringement, in

particular whether the person in charge or the person in charge notified the infringement and, if so, in what extent;

i) when the measures indicated in article 58, paragraph 2, have been ordered

previously against the person in charge or the person in charge in relation to the same matter, compliance with said measures;

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j) adherence to codes of conduct under article 40 or to mechanisms of

certification approved in accordance with article 42,

k) any other aggravating or mitigating factor applicable to the circumstances of the case,

such as financial benefits obtained or losses avoided, directly or

indirectly, through the infringement”.

For its part, in relation to letter k) of article 83.2 of the GDPR, the LOPDGDD, in

its article 76, "Sanctions and corrective measures", provides:

"1. The sanctions provided for in sections 4, 5 and 6 of article 83 of the Regulation (UE) 2016/679 will be applied taking into account the graduation criteria established in section 2 of said article.

2. In accordance with the provisions of article 83.2.k) of Regulation (EU) 2016/679 may also be taken into account:

a) The continuing nature of the offence.

b) The link between the activity of the offender and the performance of data processing.

personal information.

c) The benefits obtained as a consequence of the commission of the infraction.

d) The possibility that the conduct of the affected party could have included the commission of the offence.

e) The existence of a merger by absorption process subsequent to the commission of the infringement, which cannot be attributed to the absorbing entity

f) Affectation of the rights of minors

g) Have, when it is not mandatory, a data protection delegate.

h) Submission by the person responsible or in charge, on a voluntary basis, to alternative conflict resolution mechanisms, in those cases in which there are controversies between those and any interested party”.

The balance of the circumstances listed above allows setting a fine of

€300 (three hundred euros) for the commission of the infringement of article 13 of the GDPR.

Likewise, under the provisions of article 58.2 d) of the GDPR, you are ordered

that, within ten working days from the date on which the resolution in which

agrees to be notified, certify that it keeps available to those affected the

the rest of the information referred to in articles 13 and 14 of the GDPR (second layer).

Therefore, in accordance with the applicable legislation and assessed the criteria of graduation of sanctions whose existence has been accredited,

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the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: IMPOSE B.B.B., with NIF ***NIF.1, for a violation of article 13 of the GDPR, typified in article 83.5.b) of the GDPR, a fine of €300 (three hundred euro).

SECOND: ORDER B.B.B., with NIF ***NIF.1 that, within TEN DAYS

BUSINESS from the date on which the resolution in which it is so agreed is notified, certify that it keeps the rest of the data available to those affected. information referred to in articles 13 and 14 of the GDPR (second layer).

THIRD: NOTIFY this resolution to B.B.B., with NIF ***NIF.1.

FOURTH: 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 Administrative Procedure

Common of Public Administrations (hereinafter LPACAP), within the payment period

voluntary 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 IBAN number: ES00 0000 0000 0000 0000 0000 (BIC/SWIFT Code:

XXXXXXXXXX), opened on behalf of the Spanish Data Protection Agency in

the banking entity CAIXABANK, S.A. Otherwise, it will proceed to its

collection in 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 term

It will be 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 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

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 art. 90.3 a) of the LPACAP,

may provisionally suspend the firm resolution in administrative proceedings if the

The interested party expresses his intention to file a contentious-administrative appeal.

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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/](https://sedeagpd.gob.es/sede-electronica-web/)], or 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 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

938-181022

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