

Procedure No.: PS/00243/2019

938-0419

## RESOLUTION OF PUNISHMENT PROCEDURE

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

### FACTS

FIRST: Don A.A.A. (hereinafter, the claimant) dated March 1, 2019

filed a claim with the Spanish Agency for Data Protection, motivated by

the processing of data carried out through cameras of a video surveillance system

whose holder identifies as B.B.B. with NIF \*\*\*NIF.1 (\*hereinafter the claimed)

installed in AV. SAN BARTOLOMÉ DE TIRAJANA 52, PARKING, LOS SAND

OF THE SUN, ELCHE, ALICANTE.

The reasons on which the claim is based are "installation of cameras in a garage without  
have the proper authorization" (folio nº 1).

Along with the claim, provide documentary evidence (Doc. No. 1) that proves the  
presence of the camera in question.

SECOND: In view of the reported facts, in accordance with the evidence

that is available, the Data Inspection of this Spanish Agency for the Protection of

Data considers that the treatment of personal data that is carried out by the

denounced through the chambers to which the complaint refers, does not meet the

conditions imposed by the regulations on data protection, for which reason the

opening of this sanctioning procedure.

THIRD: On 04/01/19, the claim was TRANSFERRED to the party

denounced so that he could allege in law what he deemed appropriate, without

no response has occurred to date.

FOURTH. On 09/19/19, the Director of this Agency issued Agreement to start sanctioning procedure, for the presumed infraction of the content of art. 5.1 c) RGPD, recorded as notified in the computer system of this organism.

## FOUNDATIONS OF LAW

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By virtue of the powers that article 58.2 of the RGPD recognizes to each control authority, and as established in art. 47 of the Organic Law 3/2018, of December 5, Protection of Personal Data and guarantee of rights (hereinafter LOPDGDD), the Director of the Spanish Agency for Data Protection is competent to initiate and resolve this procedure.

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II

In the present case, we proceed to examine the claim dated 03/01/19 by means of which the following is transferred as the main fact.

“Installation of cameras in a garage without proper authorization” (folio No. 1).

The facts described above may affect the content of art.5.1 c) RGPD. “Personal data will be:

c) adequate, pertinent and limited to what is necessary in relation to the purposes for those that are processed ("data minimization").

It should be remembered that individuals can install video surveillance cameras

although they assume the responsibilities that they comply with the provisions in force on the matter.

In relation to the cameras installed in the garage area, it must be taken into account if they capture common area of the Community of owners, being able to affect to the right of the rest of the neighbors who are intimidated by this type of device.

Only the community of owners, once the consequent agreement in the Homeowners Meeting, by a simple majority of those present, may agree on the installation of a video surveillance system with security cameras in the common areas of a building (garages, parking, storage rooms, portals...), at the same time that the installation of this security camera system will be subject to the obligations implied by the L.O.P.D. and R.G.P.D. (Duty to inform, principle of proactive responsibility, Record of Processing Activities, etc.)

### III

For information purposes only, it is worth remembering some of the requirements that must comply with the processing of images through a video surveillance system to comply with current regulations:

- Respect the principle of proportionality.
- When the system is connected to an alarm center, you can only be installed by a private security company that meets the requirements contemplated in article 5 of Law 5/2014 on Private Security, of April 4.
- The video cameras will not be able to capture images of the people who are outside the private space since the treatment of images in places public can only be carried out, where appropriate, by the Forces and Bodies of Security. Nor can spaces owned by third parties be captured or recorded without

the consent of their owners, or, as the case may be, of the persons who are find.

- The duty to inform those affected provided for in article

12 of the RGD 2016/679, of April 27, 2016, in the terms referred to both in the cited article, as in articles 13 and 14 of said rule, resulting from the application

-by not contradicting the provisions of the aforementioned Regulation-, the manner provided in the

Article 3 of Instruction 1/2006, of November 8, of the Spanish Agency for

Data Protection, on the Processing of Personal Data for the Purpose of

Surveillance through Camera Systems or Video Cameras (Instruction 1/2006, of 8

of November, of the Spanish Data Protection Agency).

Specifically, it must:

1. Place at least one informative badge in the video-monitored areas

located in a sufficiently visible place, both in open spaces and

closed.

In accordance with the provisions of articles 13 and 14 of the Regulation (EU)

2016/679, of April 27, 2016, in the informative sign above

mentioned must identify, at least, the existence of a treatment, the

identity of the person in charge and the possibility of exercising the rights provided in

these precepts.

2. Keep the information to which it refers available to those affected

the aforementioned Regulation (EU) 2016/679, of April 27, 2016.

In accordance with the evidence available in this I

sanctioning procedure, it is considered that the person claimed has installed a device of video-surveillance, which could affect the right of third parties without just cause.

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

Article 83.5 a) RGD provides the following:

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

a) the basic principles for the treatment, including the conditions for the consent under articles 5, 6, 7 and 9;

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

Special attention should be paid to the nature, seriousness and duration of the infringement, its

intentional nature, to the measures taken to alleviate the damages suffered, the degree of liability or any relevant prior violation, the manner in which that the control authority has been aware of the infraction, compliance of measures ordered against the person responsible or in charge, adherence to codes of conduct and any other aggravating or mitigating circumstance.”

SAW

In accordance with the above, it is considered that the accused has a device of video-surveillance, which is affecting common areas without just cause, not collaborating with this Agency in clarifying the facts.

Given the absence of a prior administrative infraction, in the case of a particular and that it has not been possible to ascertain what, in his case, is recorded with the aforementioned chamber(s) it is considered correct to impose a warning sanction.

Once the content of the same has been notified, the President (Administrator) of the Community of owners, you can send a new notice about it, including the content of this resolution, through a reliable means that proves the shipment (vgr. burofax or certified letter, etc).

After a period of one month and a few days to give you time to answer, can file a new Complaint against it, which will lead to the opening of sanctioning procedure with an economic fine, for "not attending to the requirements" of this body, under the terms of art. 72 letter o) LOPDGDD.

The respondent must provide a screen print (date/time) of what his case is captured with the camera in question, as well as explaining the reasons for the installation of the cameras (including its technical characteristics) and if has informed the President of the Community of owners.

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,  
by having two video-surveillance cameras in the garage area, without having the  
authorization of the Board of Owners.

SECOND: NOTIFY this resolution to the defendant B.B.B. and inform  
of the result of the proceedings to Mr. A.A.A.

THIRD. REQUIRE B.B.B. so that within a month from this act of  
notification, proceed:

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☐

Report on the installation of the device in question, providing a printout of  
screen (date/time) of what is captured with it, as well as  
all documentation that proves its legality.

☐ Proceed, where appropriate, to the removal/reorientation of the installed camera(s),  
accrediting it before this organism.

FOURTH: NOTIFY this resolution to the accused B.B.B. and REPORT the  
result of the performances to Don A.A.A.

In accordance with the provisions of article 50 of the LOPDPGDD, 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  
LOPDPGDD, and in accordance with the provisions of article 123 of the LPACAP, the

Interested parties may optionally file an appeal for reconsideration before the

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

counting 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 in article 46.1 of the  
aforementioned Law.

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Director of the Spanish Data Protection Agency

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