

□ Procedure No.: PS/00019/2020

RESOLUTION OF PUNISHMENT PROCEDURE

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

BACKGROUND

FIRST: Dated September 30, 2019, entered this Agency

Spanish Data Protection, a document presented by A.A.A. (hereinafter the

claimant), through which he makes a claim against B.B.B. with NIE ***NIE.1 (in

hereinafter, the claimed), for the installation of a video surveillance system located in

***ADDRESS.1) ***LOCATION.1, (MÁLAGA), with respect to which there are indications of

a possible breach of the provisions of the data protection regulations.

The reasons underlying the claim are as follows:

“[...] 2) That Mr. B.B.B. owner of home No. 6 has installed security cameras

video surveillance that is focused in the direction of my home.

3) That not only have I been denied access to verify if they are capturing

unduly images of my property or of my person, but that the cameras

They lack any signage warning of their existence. [...]”.

The claimant attaches a cadastral record of his property (Document No. 1), a copy of

deed of purchase of said property (Document No. 2), burofax sent to

claimed on 09/03/2019 (Document No. 3), email response from the latter of

dated 09/05/2019 (Document No. 4) and photographic report (Document No. 5).

SECOND: Prior to the acceptance of this claim for processing, it is

transferred the claimed, in accordance with the provisions of article 65.4 of the Law

Organic 3/2018, of December 5, on the Protection of Personal Data and guarantee of

digital rights (hereinafter, LOPDGDD), being notified on October 28

of 2019.

The response sent by the respondent does not appear in the electronic file. Of

In accordance with what was stated by him in the pleadings brief, the answer to the transfer was made through an email.

THIRD: The claim was admitted for processing by means of a resolution of 30 December 2019.

FOURTH: On March 11, 2020, the Director of the Spanish Agency for Data Protection agreed to initiate a sanctioning procedure against the claimant, for the alleged infringement of articles 5.1.c) and 13 of Regulation (EU) 2016/679 (General Data Protection Regulation, hereinafter RGPD), typified in the article 83.5 of the aforementioned regulation.

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FIFTH: Once the start agreement was notified, on July 1, 2020, it entered the record of the Spanish Agency for Data Protection written of allegations presented by the respondent in which he stated, fundamentally, that:

"[...] my system is connected to a company in ***COUNTRY.1 which makes it difficult for all those people who want to get in touch to find out if it has been violated his personal image. For the rest, this foreign company operates in the same way as a local. The treatment of the images is the same. Only images are saved when the alarm goes off so they can be offered to the police.

[...] the cameras are connected to a private security company in ***COUNTRY.1.

The system allows me to activate and deactivate the cameras, therefore in my absence the

exterior camera is disconnected and only the interior ones are activated. [...]

[...] I have only acted in my own protection [...] because some thieves had penetrated my house while I was sleeping I have set up this whole system.

[...] In trying to send you this letter by email we have ([...] secretary of our Community of Owners) realized that in that address they do not accept any correspondence, which I, from ***COUNTRY.1, not being familiar with the Spanish language, I did not realize that my first letter to the Agency [...] was not received.”

SIXTH: On August 5, 2020, the instructor of the procedure agreed to the opening of a period of practice of tests, taking for reproduced, for purposes evidence the claim filed by the claimant and its documentation, as well as as the allegations presented by the respondent.

SEVENTH: On October 13, 2020, a resolution proposal was formulated, proposing the imposition on the defendant of a sanction of warning, for a infringement of article 5.1.c) of the RGPD, typified in article 83.5 of the same rule.

The notification of this proposal was made on October 26, 2020, without which the claimed has submitted allegations.

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

In this proceeding, the following are considered proven facts:

FACTS

FIRST: The respondent has installed a video surveillance system in the home located at ***ADDRESS.1, ***LOCALITY.1, (MÁLAGA).

SECOND: From the photographs provided by the claimant, the existence of two cameras oriented towards the outside: in the access door of the house and in the lattice of the garage, without an information sign and whose range would be several meters according to

manifests the claimed in the answer of September 5, 2019 to the burofax

submitted by the claimant. There is no informative sign.

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THIRD: The respondent declared in his pleadings brief to the initial agreement that

It has a video surveillance system made up of both indoor and outdoor cameras.

as by others focusing outwards for security reasons, that the system

is connected to a security company in ***COUNTRY.1 and that the cameras

exteriors were disconnected in his absence.

FOURTH: In the allegations, the respondent refers to the existence of the charge

secretary of the community of owners.

FOUNDATIONS OF LAW

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By virtue of the powers that article 58.2 of the RGPD recognizes to each authority of

control, and as established in arts. 47 and 48.1 of the LOPDGDD, the Director of

The Spanish Agency for Data Protection is competent to resolve this

process.

II

In the proposed resolution, the defendant is accused of committing an infraction

for violation of article 5.1.c) of the RGPD, which states that personal data

shall be "adequate, relevant and limited to what is necessary in relation to the purposes for

those that are processed ("data minimization")."

This infringement is typified in article 83.5 of the RGPD:

“The infractions of the following dispositions will be sanctioned, in accordance with the 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 largest amount:

- a) the basic principles for the treatment, including the conditions for the consent under articles 5, 6, 7 and 9;
- b) the rights of the interested parties according to articles 12 to 22; [...]”

For the purposes of the limitation period of the infraction, it is considered very serious and prescribes after three years, in accordance with article 72.1 of the LOPDGDD, which establishes that:

“Based on the provisions of article 83.5 of Regulation (EU) 2016/679, considered very serious and will prescribe after three years the infractions that suppose a substantial violation of the articles mentioned therein and, in particular, the following:

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- a) The processing of personal data violating the principles and guarantees established in article 5 of Regulation (EU) 2016/679. [...]”

III

The facts proven in this proceeding show that the claimed has installed a video surveillance system in which the two cameras facing outwards, having a range of several meters, would capture

disproportionately the roads or spaces between dwellings of the urbanization. The

The complainant also states that the video surveillance system lacks a sign

informative and in the images provided its existence is not observed, as indicated by

in the agreement to initiate this procedure.

The installation of the aforementioned cameras oriented towards the outside is not

covered by the exclusion set forth in article 22.5 of the LOPDGDD insofar as

capturing images that go beyond —spatially and temporally— the

verification about the identity of people who try to access a

domicile at a given time, exceeds the consideration of treatment

“carried out by a natural person in the exercise of activities exclusively

personal or domestic” of article 2.2.c) of the RGPD.

On the other hand, even when the purpose of the data processing carried out with the

Surveillance system outside to guarantee the security of the dwelling and the space

exclusive of the claimed —and therefore this legitimating basis could be asserted—,

the taking of images should be reduced to the aforementioned private space, its access,

perimeter or both, limiting the capture of adjacent spaces to the minimum

and without in any case being able to reach neighboring homes or traffic lanes.

In addition, and even though the motion for a resolution has not included a

infringement in this sense, it is necessary to point out that article 13 of the RGPD -in

compliance with the duty of information contained in the preceding article 12 of the

same legal text - regulates the information that must be provided when the data

are obtained from the interested party, a situation that occurs in the cases in which

images are captured by a video surveillance system. In this sense, the article

22.4 of the LOPDGDD establishes that "The duty of information provided for in article 12

of Regulation (EU) 2016/679 will be understood to be fulfilled by placing a

informative device in a sufficiently visible place 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. Also

A connection code or email address may be included in the information device.

internet to this information. Therefore, so that the treatment carried out by the

installed video surveillance system is in accordance with the provisions of the regulations of

data protection, an informative poster must be placed that at least informs about the

treatment that is carried out, the identity of the person in charge and the possibility and manner of

exercise the rights recognized in articles 15 to 22 of the RGPD; without impairment

that the rest of the information must be kept available to those affected

stipulated by article 13 of the RGPD.

On the other hand, it is pointed out that individuals who use this type of device are

responsible that these comply with current legislation, and must comply, when

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The property is under the regime of community of owners, with the

requirements established in Law 49/1960, of July 21, on horizontal property

(LPH). Thus, the installation of a video surveillance system by an individual will require

of authorization of the board of the community of owners both when it is projected

its location in a common area such as when, even installed in an area of use

exclusive, is oriented to surrounding common areas and captures —respecting in any case

the principle of data minimization—tangentially common areas.

Finally, it is reported that access to images by third parties

other than the data controller must be regulated by the existence of a

contract and that those systems that are connected to a receiving center alarm system or a control center must comply with the provisions of Law 5/2014, of April 4, Private Security and other applicable regulations.

IV

The corrective powers available to the Spanish Agency for the Protection of Data, as a control authority, is established in article 58.2 of the RGD. Among them they have the power to sanction with a warning -article 58.2 b)-, the power to impose an administrative fine in accordance with article 83 of the RGD -article 58.2 i)-, or the power to order the controller or processor that the treatment operations comply with the provisions of the RGD, when appropriate, in a certain way and within a specified period -article 58. 2 d)-.

According to the provisions of article 83.2 of the RGD, the measure provided for in article 58.2 d) of the aforementioned Regulation is compatible with the sanction consisting of a fine administrative.

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.”

v

In the present case, when deciding the sanction to be imposed, they have taken into account

It includes, in particular, the following elements:

☐ That it is an individual whose main activity is not linked to the treatment of personal data.

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☐ That there is no recidivism, because the commission is not recorded, within a year, of more than one infringement of the same nature.

For all these reasons, it is considered that the sanction that should be imposed is warning, in accordance with the provisions of article 58.2 b) of the RGPD, in relation to what is stated in Considering 148, cited above.

On the other hand, in accordance with the provisions of the aforementioned article 58.2 d) of the RGPD, according to which each control authority may "order the person in charge or in charge of the treatment that the treatment operations comply with the provisions of the this Regulation, where appropriate, in a certain way and within a specified period [...]”, the person in charge must prove, within a period of two (2) months:

☐ Having proceeded to withdraw the cameras from the current locations, or to reorientation by reducing the capture angle. In the event that

In the case of adjustable cameras, with "zoom" or both, you must prove that they have privacy masks.

☐ Having proceeded to place the informative device in the areas

video-monitored (at least the existence of a treatment, the identity of the person in charge and the possibility of exercising the rights foreseen in the articles 15 to 22 of the RGPD), locating this device in a sufficiently visible.

☐ That it keeps the information referred to in the document available to those affected.

quoted GDPR.

Therefore, in accordance with the applicable legislation and having assessed the criteria for graduation of the sanctions whose existence has been proven, the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: IMPOSE B.B.B., with NIE ***NIE.1, for a violation of article 5.1.c) of the RGPD, typified in article 83.5 of the RGPD, a sanction of WARNING.

Likewise, within TWO MONTHS from the notification of this act, you must prove the following:

☐ Having proceeded to withdraw the cameras from the current locations, or to reorientation by reducing the acquisition angle. In the event that In the case of adjustable cameras, with "zoom" or both, you must prove that they have privacy masks.

☐ Having proceeded to place the informative device in the areas video-monitored (at least the existence of a treatment, the identity of the person in charge and the possibility of exercising the rights foreseen in the

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articles 15 to 22 of the RGPD), locating this device in a sufficiently

visible.

SECOND: NOTIFY this resolution to B.B.B. and inform A.A.A.

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.

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

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.

Finally, it is pointed out 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.

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

web/], or through any of the other registers 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 within a period of two months from the day following the

notification of this resolution would end the precautionary suspension.

Sea Spain Marti

Director of the Spanish Data Protection Agency

938-131120

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