

□ Procedure No.: PS/00094/2021

## RESOLUTION OF PUNISHMENT PROCEDURE

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

### BACKGROUND

FIRST: On November 26, 2020, he 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 NIF \*\*\*NIF.1 (in hereinafter, the claimed), for the installation of a video surveillance system installed on Avenida \*\*\*DIRIMIENTO.1, \*\*\*LOCALIDAD.1, there being indications of a possible Non-compliance with the provisions of the data protection regulations staff.

The claimant indicates that the cafeteria "BAR CAFETERÍA \*\*\*BAR.1", managed by the claimed, has a camera capable of capturing public roads, as well as the private area of the community of owners of the building \*\*\*ADDRESS.1 in which the claimant's establishment is found, and that, furthermore, there is no cartel of video surveillance area.

It provides a photographic report of the camera on the terrace and the possible angle of catchment.

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).

The respondent sent a letter to this Agency providing a copy of the contract with the installation company Grupo 8x8 and three photographs of the intakes made by the

two exterior cameras, from which it is deduced that one captures the terrace attached to the establishment and another the access door and a fairly wide space of road public.

Likewise, the existence of a video-surveillance zone sign is observed, located in the exterior facade of the entrance to the establishment, but given the remoteness of the catchment of the photograph, its content is not legible.

THIRD: The claim was admitted for processing by means of a resolution of 24 February 2021.

FOURTH: On April 23, 2021, 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 the RGPD, typified in article 83.5 of the GDPR.

C/ Jorge Juan, 6

28001 – Madrid

[www.aepd.es](http://www.aepd.es)

[sedeagpd.gob.es](http://sedeagpd.gob.es)

2/7

FIFTH: On June 24, 2021, allegations were received by this Agency regarding initiation agreement formulated by the respondent in which he indicates that, as stated In the photographs you have already provided, one of the cameras “(...) directly captures the entrance to my establishment, and only on its left margin can you see, inescapably, a partial and very small piece of the transit area to other establishments or houses, being impossible to capture less. The area that can be seen, outside the door of my establishment, is very limited, without affecting the entrance of any building, or any public establishment, (...)”

Provide notarial certificate of presence with several photographs.

In some of these photographs, the informative poster of the video-monitored area appears placed on the access door to the establishment.

In others, the images that are captured with the camera facing the area appear. privacy indicated by the claimant, in which he observes the facade of the establishment and a small part around it. However, the store of the claimant.

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: Installation of several cameras that collect images of people who located inside the private space of the property "BAR CAFETERÍA \*\*\*BAR.1", located on Avenida \*\*\*DIRIMIENTO.1, \*\*\*LOCALIDAD.1 and another outside, located in the upper part of the terrace enclosure, from which you can see a strip around the facade of the establishment.

SECOND: Installation of a sign indicating a video-monitored area placed in the facade, above the access door.

THIRD: The respondent has provided a notarial certificate of presence with several Photographs.

In them, the images that are captured with the camera oriented towards the area appear. privacy indicated by the claimant, in which he observes the facade of the establishment and a small part around it. However, the store of the claimant.

FOURTH: The person responsible for the devices is B.B.B. NIF \*\*\*NIF.1.

#### FOUNDATIONS OF LAW

C/ Jorge Juan, 6

28001 – Madrid

[www.aepd.es](http://www.aepd.es)

[sedeagpd.gob.es](http://sedeagpd.gob.es)

3/7

Yo

By virtue of the powers that article 58.2 of the RGPD recognizes to each authority of control, and according to the provisions of articles 47 and 48.1 of the LOPDGDD, the Director of the Spanish Agency for Data Protection is competent to resolve this process.

II

The physical image of a person under article 4.1 of the RGPD is personal data and its protection, therefore, is the subject of said Regulation. Article 4.2 of the GDPR defines the concept of "treatment" of personal data.

Article 22 of the LOPDGDD establishes the specificities of data processing for video surveillance purposes, indicating the following:

"1. Natural or legal persons, public or private, may carry out the processing of images through camera systems or video cameras with the purpose of preserving the safety of people and property, as well as their installations.

2. Images of public roads may only be captured to the extent that is essential for the purpose mentioned in the previous section.

However, it will be possible to capture the public road in an extension superior when necessary to guarantee the security of goods or strategic installations or infrastructures linked to transport, without In no case may it involve capturing images of the interior of a home private.

3. The data will be deleted within a maximum period of one month from its

collection, except when they had to be kept to prove the commission of acts that threaten the integrity of persons, property or facilities. In that case, the images must be made available to the competent authority in within a maximum period of seventy-two hours from the date of knowledge of the existence of the recording.

The blocking obligation provided for in article 32 of this organic law.

4. The duty of information provided for in article 12 of the Regulation (EU) 2016/679 will be understood to be fulfilled by placing an 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 the 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 information.

C/ Jorge Juan, 6

28001 – Madrid

[www.aepd.es](http://www.aepd.es)

[sedeagpd.gob.es](http://sedeagpd.gob.es)

4/7

In any case, the data controller must keep available to those affected the information referred to in the aforementioned regulation.

5. Under article 2.2.c) of Regulation (EU) 2016/679, it is considered excluded from its scope of application the treatment by a natural person of images that they only capture the interior of their own home.

This exclusion does not cover processing carried out by a security entity private that had been contracted for the surveillance of a home and had access

to the images.

6. The processing of personal data from the images and sounds obtained through the use of cameras and video cameras by the Armed Forces and Security Bodies and by the competent bodies for surveillance and control in penitentiary centers and for the control, regulation, vigilance and discipline of the traffic, will be governed by the legislation transposing Directive (EU) 2016/680, when the treatment is for the purposes of prevention, investigation, detection or prosecution of criminal offenses or execution of criminal sanctions, including protection and prevention against threats to public safety. Outside In these cases, said treatment will be governed by its specific legislation and additionally by Regulation (EU) 2016/679 and this organic law.

7. What is regulated in this article is understood without prejudice to the provisions of Law 5/2014, of April 4, on Private Security and its development provisions.

8. The treatment by the employer of data obtained through information systems cameras or video cameras is subject to the provisions of article 89 of this law organic.”

### III

In accordance with the foregoing, the processing of images through a video surveillance system, to be in accordance with current regulations, must comply with the following requirements:

- 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 where the security system is installed.

video surveillance, since the processing of images in public places can only be carried out, unless there is government authorization, by the Forces and Corps 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.

C/ Jorge Juan, 6

28001 – Madrid

[www.aepd.es](http://www.aepd.es)

[sedeagpd.gob.es](http://sedeagpd.gob.es)

5/7

This rule admits some exceptions since, on some occasions, for the protection of private spaces, where cameras have been installed on facades or inside, it may be necessary to guarantee the security purpose the recording of a portion of public road. That is, cameras and video cameras installed for the purpose of security will not be able to obtain images of public roads unless it is essential for said purpose, or it is impossible to avoid it due to the location of those and, extraordinarily, the minimum space for said purpose. Therefore, the cameras could exceptionally capture the portion minimally necessary for the intended security purpose.

- The duty to inform those affected provided for in the articles 12 and 13 of the RGPD, and 22 of the LOPDGDD, in the terms already indicated.

- The person in charge must keep a record of treatment activities carried out under its responsibility, including the information to which it makes reference article 30.1 of the RGPD.

- The installed cameras cannot obtain images from private space of third party and/or public space without duly accredited justified cause, nor can

affect the privacy of passers-by who move freely through the area. No this allowed, therefore, the placement of cameras towards the private property of neighbors with the purpose of intimidating them or affecting their private sphere without just cause.

- In no case will the use of surveillance practices be admitted beyond the environment object of the installation and in particular, not being able to affect the spaces surrounding public, adjoining buildings and vehicles other than those accessing the guarded space.

In summary and to facilitate the consultation of interested parties, the Spanish Agency for Data Protection offers through its website [<https://www.aepd.es>] access to the legislation on the protection of personal data, including the RGPD and the LOPDGDD (section "Reports and resolutions" / "regulations"), as well as the Guide on the use of video cameras for security and other purposes, as well as the Guide for compliance with the duty to inform (both available in the section "Guides and tools").

It is also of interest, in the event of carrying out low-risk data processing, the facilitates free tool (in the "Guides and tools" section), which, through specific questions, allows to assess the situation of the person in charge with respect to the treatment of personal data that it carries out, and where appropriate, generate various documents, informative and contractual clauses, as well as an annex with measures guidelines considered minimum.

#### IV

In the present case, the claim was filed because the respondent has installed video surveillance cameras capable of capturing public roads, as well as the area exclusive property of the community of owners of the building \*\*\* BUILDING.1 in which finds the claimant's establishment, and that, furthermore, there is no zone sign video surveillance.



C/ Jorge Juan, 6

28001 – Madrid

[www.aepd.es](http://www.aepd.es)

[sedeagpd.gob.es](http://sedeagpd.gob.es)

6/7

As proof of these manifestations, the evidence indicated in the  
“Facts” section of this agreement.

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 RGPD. Among  
they have the power to issue a warning -article 58.2.b)-, the  
power to impose an administrative fine in accordance with article 83 of the RGPD  
-article 58.2 i)-, or the power to order the controller or processor  
that the treatment operations comply with the provisions of the RGPD, when  
appropriate, in a certain way and within a specified period -article 58. 2  
d)-.

v

In accordance with the evidence that is available and that has been  
accredited in the sanctioning procedure, the defendant has installed several  
cameras that collect images of people who are inside the  
private space of the property "BAR CAFETERÍA \*\*\*BAR.1", located in  
\*\*\*ADDRESS.1, \*\*\*LOCALITY.1 and another outside, located in the upper part of the  
enclosure of the terrace, from which a strip around the façade can be seen  
of the establishment.

Likewise, it has a sign indicating the video-monitored area placed on the façade,  
on the access door.

The proven facts show the existence of a camera installed in the

exterior of the property that records minimally the essential space for the purposes surveillance for which these cameras have been installed.

SAW

Based on the foregoing, it cannot be concluded that the devices subject to the claim capture images beyond a minimum space outside your property particular, and also has an informative poster of the existence of said cameras, so that it is not possible to speak of infringing conduct within the framework of the regulations governing data protection, which is why we proceed to the File of this procedure.

Therefore, in accordance with the applicable legislation, the Director of the Agency Spanish Data Protection RESOLVES:

FIRST: ORDER the FILE of this procedure as there is no accredited administrative infraction.

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

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.

C/ Jorge Juan, 6

28001 – Madrid

[www.aepd.es](http://www.aepd.es)

[sedeagpd.gob.es](http://sedeagpd.gob.es)

7/7

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 Law 39/2015, of 1 of October, of the Common Administrative Procedure of the Public Administrations, 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.

Sea Spain Marti

Director of the Spanish Data Protection Agency

948-161220

C/ Jorge Juan, 6

28001 – Madrid

[www.aepd.es](http://www.aepd.es)

[sedeagpd.gob.es](http://sedeagpd.gob.es)