

□ File No.: EXP202207213

RESOLUTION OF SANCTIONING PROCEDURE

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

BACKGROUND

FIRST: D.A.A.A. (hereinafter, the complaining party) dated June 29,
2022 filed a claim with the Spanish Data Protection Agency against
D.B.B.B. with NIF ***NIF.1 (hereinafter, the claimed party), for the installation of
a video surveillance system located at ***ADDRESS.1, with indications of a
possible non-compliance with the provisions of article 5.1.c) of Regulation (EU)
2016/679 (General Data Protection Regulation, hereinafter, GDPR).

The claiming party declares that the claimed party has an account abroad of its
house with two cameras facing the public thoroughfare, without authorization
previous administrative procedure for her and that affect the privacy of passers-by and, more
specifically, that of the family of the complaining party, stating that he has used
images obtained by said cameras, in which the complaining party and his
family, to disseminate them to third parties.

Provide images of the location of the cameras.

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
hereinafter, LOPDGDD), said claim was transferred to the claimed party,
to proceed with its analysis and inform this Agency within a month,
of the actions carried out to adapt to the requirements established 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 August 10, 2022 as

It appears in the acknowledgment of receipt that is in the file.

On September 5, 2022, this Agency received a written response

indicating that it has three cameras. Two of them are installed in the

two facades of his house, capture approximately one meter of street space

public, and are duly indicated with the corresponding notice boards.

information, as can be seen in the attached photographs. "These cameras are

installed because on multiple occasions they have punctured the wheels of the

vehicles parked in that space."

"The other camera is installed on the access stairs and entrance to my

living place. This camera was installed due to the multiple problems I have with

my brother and his family as they throw bags with feces and fecal water at the entrance of

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my home, facts that have been denounced and have resulted in different trials

penalties.

The cameras do not record in any case land that is not owned by me or

inside other people's homes, they record my home and access to it".

After examining the photographs provided, it can be seen that the field of vision of the

cameras that make up the system may not be adequate to the regulations of

data protection, (the cameras identified on the monitor as camera 1 and 2

capture excessive land on public roads), for which reason a letter was addressed to him in which

asked him to provide images of his field of vision again, within the term established in five business days. "To this end, it is recalled that cameras cannot capture excessive public thoroughfare, but only a proportional minimum space that serves its purpose, the control of the security of the home and its occupants. Also It is recalled that the field of vision of the cameras cannot include spaces that are owned by third parties. It should be known that sometimes it is enough to reorient the device so that your field of vision is modified and exclusively captures your property; other times you can't relocate the camera and then you can introduce privacy masks that hide or veil the spaces that the cameras they cannot grasp."

Likewise, they were asked to "(...) report whether the space captured by the camera identified as number 3, is your exclusive property or is a shared space with other owners, also informing if the windows captured by the camera They are owned by you or by a third party. It should be remembered that the field of vision of the cameras cannot include spaces that are owned by third parties."

Said document was returned to this Spanish Data Protection Agency by the postal service with the annotation "Returned to origin due to excess (not withdrawn in office)" on September 29, 2022.

THIRD: On September 29, 2022, in accordance with article 65.5 of the LOPDGDD, the claim presented by the party claimant, as three months have elapsed since the entry of the claim in this Agency.

"5. The decision on the admission or non-admission to processing, as well as the one that determines, where appropriate, the referral of the claim to the main control authority that is deems competent, the claimant must be notified within a period of three months. Yeah After this period, said notification does not take place, it will be understood that the

the processing of the claim in accordance with the provisions of this Title from the date on which three months have elapsed since the claim was entered into the Spanish Data Protection Agency.”

FOURTH: On November 15, 2022, the Director of the Spanish Agency of Data Protection agreed to initiate disciplinary proceedings against the claimed party, for the alleged infringement of article 5.1.c) of the GDPR, typified in article 83.5 of the GDPR.

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FIFTH: On December 1, 2022, this Agency was returned the notification of the Agreement to Start the Sanctioning Procedure with the annotation "Returned to Origin due to excess (Not withdrawn in the office)".

For this reason, it was sent to the Single Edictal Board (TEU), being published on December 20. December 2022.

There is no record that the claimed party has submitted a written statement of allegations to the same.

Article 64.2.f) of Law 39/2015, of October 1, on Administrative Procedure

Common for Public Administrations (hereinafter LPACAP) -provision of which

the party claimed was informed in the agreement to open the procedure-

establishes that if allegations are not made within the stipulated period on the content of the

initiation agreement, when it contains a precise pronouncement about the

imputed responsibility, may be considered a resolution proposal. In it

present case, the agreement to initiate the sanctioning file determined the

facts in which the accusation was specified, the infringement of the GDPR attributed to the

claimed and the sanction that could be imposed. Therefore, taking into consideration that

the claimed party has not made allegations to the agreement to start the file and

In accordance with the provisions of article 64.2.f) of the LPACAP, the aforementioned agreement of beginning is considered in the present case resolution proposal.

In view of all the proceedings, by the Spanish Agency for Data Protection

In this proceeding, the following are considered proven facts:

PROVEN FACTS

FIRST: On June 29, 2022, a claim entered this Agency

against D.B.B.B. with NIF ***NIF.1 for having installed in ***ADDRESS.2 a system

video surveillance outside your home with two cameras facing the road

public, without prior administrative authorization for it and that affect the

privacy of passers-by and, more specifically, that of the family on the back

claimant.

SECOND: There are photographs provided of the location of the cameras.

FUNDAMENTALS OF LAW

Yo

In accordance with the powers that article 58.2 of the GDPR grants to each authority of

control and as established in articles 47, 48.1, 64.2 and 68.1 of the LOPDGDD,

The Director of the Agency is competent to initiate and resolve this procedure

Spanish Data Protection.

Likewise, article 63.2 of the LOPDGDD determines that "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."

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The physical image of a person under article 4.1 of the GDPR is personal data and their protection, therefore, is the object of said Regulation. Article 4.2 of the GDPR defines the concept of "processing" 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 treatment of images through systems of cameras or video cameras with the purpose of preserving the safety of people and property, as well as their facilities.

2. Images of the public thoroughfare may only be captured to the extent that it 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 safety of goods or strategic facilities or infrastructures linked to transport, without

In no case can it imply the capture of 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 violate the integrity of people, property or facilities. In that case, the images must be made available to the competent authority in a maximum period of seventy-two hours from the knowledge of the

recording existence.

The blocking obligation provided for in

article 32 of this organic law.

4. 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 the

Articles 15 to 22 of Regulation (EU) 2016/679. It may also be included in the

information device a connection code or internet address to this

information.

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 only capture the interior of their own home.

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This exclusion does not cover the treatment carried out by a security entity

private company that had been contracted to monitor 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 Forces and by the competent bodies for surveillance and control in

prisons and for the control, regulation, surveillance and discipline of the traffic, will be governed by the transposition legislation of Directive (EU) 2016/680, when the processing is for prevention, research, detection or prosecution of criminal offenses or enforcement of criminal sanctions, including protection and prevention against threats to public safety. Out 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 camcorders is subject to the provisions of article 89 of this law organic.”

II

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

- Respect the principle of proportionality.
- When the system is connected to an alarm center, you can only be installed by a qualified private security company contemplated in article 5 of Law 5/2014 on Private Security, of April 4.
- The camcorders 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 treatment 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, where appropriate, of the people who are in them

find.

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 the public road. That is, cameras and camcorders installed for the purpose of security will not be able to obtain images of the public thoroughfare unless it is essential for said purpose, or it is impossible to avoid it due to the location of the those and extraordinarily the minimum space for said

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purpose. Therefore, the cameras could exceptionally capture the portion minimally necessary for the intended security purpose.

- The duty to inform the affected parties provided for in the

Articles 12 and 13 of the GDPR, and 22 of the LOPDGDD, in the terms already indicated.

- The controller must keep a record of processing activities

carried out under his responsibility in which the information to which he makes reference article 30.1 of the GDPR.

- The installed cameras cannot obtain images of private space of

third party and/or public space without duly accredited justified cause, nor can they

affect the privacy of passers-by who move freely through the area. No this

Therefore, the placement of cameras towards the private property of neighbors is allowed.

with the purpose of intimidating them or affecting their private sphere without just cause.

- In no case will the use of surveillance practices be accepted beyond the

environment object of the installation and in particular, not being able to affect the spaces surrounding public spaces, adjoining buildings and vehicles other than those accessing the guarded space.

In summary and to facilitate the consultation to the interested parties, the Spanish Agency of Data Protection offers through its website [<https://www.aepd.es>] access to the legislation on the protection of personal data, including the GDPR 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 case of carrying out low-risk data processing, the free tool Facilitates (in the "Guides and tools" section) that, through specific questions, allows to assess the situation of the person in charge with respect to the processing of personal data that it carries out, and where appropriate, generate various documents, informative and contractual clauses, as well as an annex with measures indicative security considered minimum.

IV.

In the present case, the claim was filed because the claimed party has installed a video surveillance system outside your home made up of two cameras, which are likely to capture the public thoroughfare.

As proof of these statements, the claimant provided 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, are established in article 58.2 of the GDPR. Between they have the power to direct a warning -article 58.2.b)-, the power to impose an administrative fine in accordance with article 83 of the GDPR -

Article 58.2 i)-, or the power to order the person in charge or in charge of the treatment

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that the processing operations comply with the provisions of the GDPR, 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 GDPR, the measure provided for in article 58.2

d) of the aforementioned Regulation is compatible with the sanction consisting of a fine

administrative.

V

In accordance with the evidence that is available and that has not been

distorted in the disciplinary procedure, the denounced party has installed

two video surveillance cameras that could be capturing images from third parties, for

which is considered that these facts violate the provisions of article 5.1.c) of the

GDPR, which implies the commission of an infraction classified in article 83.5 of the

GDPR, which provides the following:

Violations of the following provisions will be penalized, in accordance with the

paragraph 2, with administrative fines of maximum EUR 20,000,000 or,

in the case of a company, an amount equivalent to a maximum of 4% of the

total annual global business volume of the previous financial year, opting for

the highest amount:

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

consent under articles 5, 6, 7 and 9; [...].”

For the purposes of the limitation period for infringements, the infringements indicated in the previous paragraph are considered very serious and prescribe after three years, in accordance with the Article 72.1 of the LOPDGDD, which establishes that:

"Based on what is established in article 83.5 of Regulation (EU) 2016/679, are considered very serious and will prescribe after three years the infractions that 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.

b) The processing of personal data without the concurrence of any of the conditions of legality of the treatment established in article 6 of the Regulation (EU) 2016/679.

(...)»

SAW

The fine imposed must be, in each individual case, effective, proportionate and dissuasive, in accordance with the provisions of article 83.1 of the GDPR. Therefore, it is appropriate to graduate the sanction to be imposed in accordance with the criteria established by the Article 83.2 of the GDPR, and with the provisions of Article 76 of the LOPDGDD, regarding to section k) of the aforementioned article 83.2 GDPR:

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For the graduation of the sanction, it has been considered that the sections 83.5.a) and 83.2.b) of the GDPR.

However, as was already indicated in the initiation agreement and in accordance with the established in the aforementioned article 58.2 d) of the GDPR, according to which each authority of control may “order the person in charge or person in charge of the treatment that the processing operations comply with the provisions of this Regulation, where appropriate, in a specified manner and within a specified period [...]”,

The complained party is required to take the following steps:

- provide the images that are observed with the devices in question, indicating on a situation plan the parts that correspond to your property particular.
- certify having proceeded to remove the cameras from the current locations, or to reorient them towards their particular area.

It is noted that not meeting the requirements of this body may be considered as an administrative offense in accordance with the provisions of the GDPR, classified 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 criteria of graduation of sanctions whose existence has been accredited,

the Director of the Spanish Data Protection Agency RESOLVES

FIRST: IMPOSE D. B.B.B., 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 300.00 euros (THREE HUNDRED euros).

SECOND: TO ORDER D. B.B.B., with NIF ***NIF.1 that, by virtue of article 58.2.d) of the GDPR, within ten days, adopt the following measures:

- provide the images that are observed with the devices in question, indicating on a situation plan the parts that correspond to your property

particular.

- certify having proceeded to remove the cameras from the current locations,
or to reorient them towards their particular area.

THIRD: NOTIFY this resolution to D. B.B.B..

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

Once this resolution is enforceable, in accordance with the provisions of Article
article 98.1.b) of the LPACAP, within the voluntary payment period established in art. 68
of the General Collection Regulations, approved by Royal Decree 939/2005, of 29
of July, in relation to article 62 of Law 58/2003, of December 17, through

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their income, indicating the NIF of the sanctioned and the number of the procedure that appears
in the heading of this document, in the restricted account IBAN number: ES00-
0000-0000-0000-0000 (BIC/SWIFT Code: CAIXESBBXXX), open to name
of the Spanish Data Protection Agency at the bank CAIXABANK,
S.A. Otherwise, it will be collected during 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 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 article 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 article 90.3 a) of the LPACAP,

The firm resolution may be temporarily suspended 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 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/], or through any of the other records provided for in article 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

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