

□ File No.: PS/00492/2021

RESOLUTION OF PUNISHMENT PROCEDURE

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

BACKGROUND

FIRST: On 06/14/2021, it had entry in this Spanish Agency of
Data Protection a document presented by A.A.A. (hereinafter the part
claimant), through which he makes a claim against B.B.B. with NIF ***NIF.1 (in
hereinafter, the claimed party), for the installation of a video surveillance system in the
street ***ADDRESS.1 next to ***ADDRESS.2, there being indications of a possible
Non-compliance with the provisions of the data protection regulations
staff.

The reasons underlying the claim are as follows:

“My parents own a plot located in XXXXXXXXXXXXXXXXXXXX
(***LOCATION.1). For its access, it has been used for more than 20
years of the service of access to it, from the public street *** ADDRESS.1, to
the height of the dairy ***VAQUERÍA.1.

That the access service exists, at least, since 1957, which means more
65 years old, as shown in the orthophotos...

[...]

D. B.B.B., is the owner of the rural house ***CASA.1 (***DIRIMIENTO.1) and several
farms adjoining those of my parents. These farms are also adjacent to the
access service.

It has illegitimately placed identifying elements as belonging to the private domain of
said serventía, such as chains on the ground and posters, to intimidate the

service users.

It has placed last week a set of video surveillance cameras (at least 5 units) in various areas around the servant, focusing on it and for outdoor areas, intimidating and failing to comply with current regulations.

[...]

Attach a copy of the 06/13/2021 of the current location plans and the years 1951-1957 of plots and properties that appear in the Information System Territory of the Canary Islands of the Government of the Canary Islands (hereinafter, IDECanarias). Also, a photographic report of the location of the cameras.

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SECOND: In accordance with article 65.4 of Organic Law 3/2018, of 5 December, of Protection of Personal Data and guarantee of digital rights (in hereinafter LOPDGDD), it was transferred on 07/04/2021, 07/16/2021, 07/28/2021, 08/03/2021 and 08/26/2021 of said claim to the claimed party, so that proceed to its analysis and inform this Agency within a month of the actions carried out to adapt to the requirements set forth in the regulations of Data Protection. The first two notification attempts resulted in “Returned to origin due to incorrect address”, as stated in the Notice issued by Correos, despite that the first was sent to the address provided by the claimant and the second to the which corresponds to the RURAL HOUSE ***CASA.1; referring back to the latter, resulting in “Returned to origin due to excess (not picked up at the office)”. However, the notification occurred on 08/30/2021, once the transfer was sent to the address of the

reclaimed.

On 10/05/2021, the respondent submits a brief of allegations in which states, in summary, that the video surveillance system consists of six cameras that capture images of their private property, since the few images of space audience that are captured are essential for the purpose of surveillance; keeping the recorded images for less than 14 days. He adds that he does not have display monitor and that the recorder is in another dependency to which Only he has access, as he is the owner of the rural house.

Likewise, it indicates that the rural house is located on one of its farms where The 6 video surveillance cameras are located, with exclusive access for farms owned by them. Well, the adjoining plots, which are not yours property, they have their own access that is not captured by the cameras.

Attached photographic report in which you can see the following:

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The existence of an informative poster with the identification of the person in charge located in a gate.

The location of the 6 cameras that make up the video surveillance system.

THIRD: On 10/06/2021, the Director of the Spanish Protection Agency

Data agreed to admit the claim filed by the claimant for processing.

FOURTH: On 01/04/2022, the Director of the Spanish Protection Agency

of Data agreed to initiate a sanctioning procedure against the claimed party, for the alleged infringement of article 5.1.c) of the RGPD, typified in article 83.5 of the GDPR.

FIFTH: Notification of the agreement to open this sanctioning procedure,

On 01/28/2022, a written statement was received from the respondent

stating the following:

“ [...]

That the claimant has not been making use of the service of

access, and use, punctual and occasional, was allowed by me for good neighborliness. and it

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pretends to be a right. The times that I have opposed the passage through my access,

indicating that his plot has its own access, I have been threatened,

subsequently there has been damage, etc (...).

It is not true that the access service exists, at least since 1957 every time

that the only communication between the farms I owned was internal,

totally our property and, therefore, private (...).

[...]

Provide, among others, the following documentation:

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Screen print of what is observed with the cameras.

Three planes indicating the points where the 6 cameras are placed,

video surveillance zone signs and other elements that delimit its

property; and another on which he traces his land and that of the parents of the

claimant.

- Copies of the complaints filed for damages, coercion and

threats, as well as a Judgment of 05/11/2021 in which the

father of the claimant for the commission of a minor crime of threats.

- Copy of the deeds of ownership of the farms of the claimed.

- Certificate issued by the City Council of ***LOCALIDAD.1 in response to the

request of the claimed on the nature of ownership of part of the road located

at ***HOME.1. It indicates that "Consulted the General Inventory of Goods

of this corporation it turns out that there is no record that indicates the

inscription of the expressed path. Although (...) it cannot be understood that a

vial, by the mere fact of not being included in the corresponding inventory of

Municipal Assets, it is not owned by the municipality (...). This Administration does not

is competent to determine that the road is private access (...)".

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

In this proceeding, the following are considered proven facts:

PROVEN FACTS

FIRST: On 06/14/2021, it entered this Spanish Agency for the Protection of

Data a document in which the claimant states the installation of, at

least, five video surveillance cameras in what would be an access service,

located on STREET ***ADDRESS.1 next to ***ADDRESS.2 thus capturing images

of this and external areas.

Together with the claim, it provides a photographic report of the location of the cameras and

various orthophotos.

SECOND: It is identified as the main responsible B.B.B. with NIF ***NIF.1,

who does not deny having installed them.

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THIRD: It is proven that the cameras are installed in a space of private ownership of the claimed, providing "Property Deed" and references cadastral records that accredit such end.

FOURTH: The installed system has a total of 6 cameras, which have as purpose the protection of the farms and the CASA RURAL ***CASA.1.

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Cameras 2 and 5 have a privacy mask which prevents Capture an image of the farm owned by the claimant's parents.

- The rest of the cameras are focusing on the claimed property.

FIFTH: It has not been documented that on the land or properties of the parties there is an access service.

FOUNDATIONS 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 RGPD), grants each

control authority and as established in articles 47 and 48.1 of the Law

Organic 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 Data Protection Agency.

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

processed by the Spanish Agency for Data Protection will be governed by the provisions

in Regulation (EU) 2016/679, in this organic law, by the provisions

regulations issued in its development and, as long as they do not contradict them, with a

subsidiary, by the general rules on administrative procedures."

The defendant was charged with the commission of an infraction for violation of article 5.1.c) of the RGPD, considering that it has installed at least 5 cameras, in various areas around what would be an access service in STREET ***ADDRESS.1 next to ***DIRECTION.2 thus capturing images of this and exterior areas.

Article 5 section 1 of the RGPD “Principles related to treatment” provides that:

“Personal data will be:

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

This article establishes the principle of data minimization in the treatment of personal information. It assumes that said treatment is adjusted and proportional to the

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purpose to which it is directed, and the treatment of excessive data must be restricted or proceed to delete them.

The relevance in the processing of the data must occur both in the field of collection of the data as well as in the subsequent treatment that is carried out on them.

It should be remembered that individuals are responsible for ensuring that the systems installed comply with current legislation, proving that it complies with all the requirements demanded by the regulations in force.

The installation of this type of device must have the mandatory sign informative, indicating the purposes and responsible for the treatment in your case of the data of a personal nature.

Article 22.4 of the LOPDGDD provides that:

"The duty of information provided for in article 12 of Regulation (EU) 2016/679 is understood fulfilled by placing an informative device instead sufficiently visible identifying, at least, the existence of the treatment, the identity of the person in charge and the possibility of exercising the rights foreseen 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."

In any case, the cameras must be oriented towards the particular space, avoiding intimidate neighboring neighbors with this type of device, as well as control areas transit of the same without just cause.

Nor can images of public spaces be obtained with this type of device, as this is the exclusive competence of the State Security Forces and Bodies.

It should be remembered that even in the case of a "simulated" camera, the same should preferably be oriented towards a private space, since it is considered that this type of device can affect the privacy of third parties, which are seen intimidated by it in the belief of being the subject of permanent recording.

On the part of individuals, it is not possible to install sections for obtaining images of public space, outside the cases allowed in the regulations.

This infringement is typified in article 83.5 a) of the RGPD, a provision that establishes:

"The infractions of the following dispositions will be sanctioned, in accordance with the section 2, with administrative fines of a maximum of EUR 20,000,000 or, in the case of a company, an amount equivalent to 4% of the turnover global annual total of the previous financial year, choosing the highest 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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III

On 01/28/2022, a written statement of allegations is received from the respondent, which denies the facts, arguing that the video surveillance system "is installed in private space, in the accesses or entrances, facade and in private space / land of private property", an end that is documented.

Likewise, it indicates that "it is not capturing disproportionate images, they are proportionate insofar as it is confined to the private sphere". Proof of this is the screen print of what the cameras capture, where you can see that focus on the private space of the claimant. Well, two of them are masked, that prevents the capture of images of the adjoining farms.

It should be noted that article 28.7 of Law 39/2015, of October 1, of the Common Administrative Procedure of Public Administrations (LPACAP, in forward) provides: "The interested parties will be responsible for the veracity of the documents they present.

On the contrary, it has not been proven that there is currently a service of access that runs through the land indicated by the claimant.

IV

Based on all of the above, it can be concluded that it has not been proven that the facts object of transfer constitute an administrative infraction in the matter that we occupies. The defendant has documented that the security cameras video surveillance are not only installed on land owned by you, but,

In addition, they are addressed to their private space and have masks of privacy that make it impossible to capture images of the adjoining farms.

Therefore, according to the above,

the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: ORDER the FILE of this procedure as there is no

accredited the commission of the administrative infraction object of claim.

SECOND: NOTIFY this resolution to the claimant and the respondent.

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

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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->

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

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