

□ File No.: EXP202205092

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 April 29,
2022 filed a claim with the Spanish Data Protection Agency. The
claim is directed against D. B.B.B. with NIF ***NIF.1 (hereinafter, the part
claimed), for the installation of a video surveillance system located in
*** ADDRESS.1, there being indications of a possible breach of the provisions of
Article 5.1.c) of the General Data Protection Regulation (hereinafter,
GDPR).

The reasons for the claim are the following:

The claimant states that he is the owner of a home that is integrated
within an Urbanization with gardens, swimming pool and common areas and that the part
claimed are neighbors of an adjoining house, having installed a security camera
video surveillance inside your home that is oriented to the outside, in such a way that
It is likely to capture common areas that run next to the house on the
claimed, without authorization to do so. Provide two videos and two photographs
of the camera location.

The documents provided are:

- Photo report
- Videos

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

forward LOPDGDD), said claim was transferred to the claimed party, for 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 regulations of Data Protection.

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 not collected by the person in charge; reiterating the transfer on dates 05/12/2022, 06/08/2022 and 07/12/2022 by certified postal mail, he was again returned on all three occasions for "absentee".

THIRD: On July 29, 2022, in accordance with article 65 of the LOPDGDD, the claim presented by the claimant party was admitted for processing.

FOURTH: On October 13, 2022, the Director of the Spanish Agency for Data Protection agreed to initiate disciplinary proceedings against the claimed party,

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for the alleged infringement of Article 5.1.c) of the GDPR, typified in Article 83.5 of the GDPR.

FIFTH: Notified of the aforementioned start-up agreement in accordance with the rules established in Law 39/2015, of October 1, on the Common Administrative Procedure of Public Administrations (hereinafter, LPACAP) and after the period granted for the formulation of allegations, it has been verified that no allegation has been received any by the claimed party.

Article 64.2.f) of the LPACAP -provision of which the claimed party was informed

in the agreement to open the procedure - establishes that if no arguments within the established term on the content of the initiation agreement, when it contains a precise pronouncement about the imputed responsibility, may be considered a resolution proposal. In the present case, the agreement of beginning of the disciplinary file determined the facts in which the imputation, the infringement of the GDPR attributed to the defendant and the sanction that could impose. Therefore, taking into consideration that the claimed party has not made allegations to the agreement to start the file and in attention to what established in article 64.2.f) of the LPACAP, the aforementioned initiation agreement 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: The claimant states that he is the owner of a home that is integrates within an Urbanization with gardens, swimming pool and common areas and that the claimed party are neighbors of an adjoining house, having installed a camera of video surveillance inside your home that is oriented to the outside, in such a way that is likely to capture common areas that pass next to the house of the claimed party, without authorization to do so. Provide two videos and two photos of the camera location.

SECOND: The Spanish Agency for Data Protection has notified the party the Agreement to Initiate this Sanctioning Procedure has been claimed, without said claimed party has presented allegations or evidence that contradicts the facts denounced, after three notification attempts on different dates, with the always result of Absent, and its publication in the B.O.E. as of November 15 of 2022.

FUNDAMENTALS OF LAW

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Competence

In accordance with the powers that article 58.2 of Regulation (EU) 2016/679

(General Data Protection Regulation, hereinafter GDPR), grants each

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

Organic Law 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 Protection Agency

of data.

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

II

The image is a personal data

The physical image of a person, according to article 4.1 of the GDPR, is data

personnel and their protection, therefore, is the subject of said Regulation. In article 4.2

of the GDPR defines the concept of "processing" of personal data.

The images generated by a system of cameras or camcorders are data of

personal nature, so its treatment is subject to the protection regulations

of data.

It is, therefore, pertinent to analyze whether the processing of personal data (image of the natural persons) carried out through the denounced video surveillance system is in accordance with the provisions of the GDPR.

II

Infringement

Article 6.1 of the GDPR establishes the assumptions that allow the use of processing of personal data.

Regarding treatment for video surveillance purposes, article 22 of the LOPDGDD establishes that natural or legal persons, public or private, may carry out carry out the treatment of images through systems of cameras or video cameras in order to preserve the safety of people and property, as well as their facilities.

The processing of personal data is subject to the rest of the principles of the treatment contained in article 5 of the GDPR. We will highlight the principle of minimization of data contained in article 5.1.c) of the GDPR which provides that personal data will be "adequate, relevant and limited to what is necessary in relation to for the purposes for which they are processed".

This means that in a specific treatment only the data can be processed timely personal, that come to the case and that are strictly necessary to fulfill the purpose for which they are processed. Treatment must be adjusted and proportional to the purpose to which it is directed. The relevance in the treatment of

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data must occur both at the time of data collection and at the time of subsequent treatment carried out on them.

In accordance with the above, the processing of excessive data must be restricted or proceed to their deletion.

The application of the principle of data minimization in the field of video surveillance means that images of the public thoroughfare cannot be captured, since the treatment of images in public places, unless authorized government, can only be carried out by the Security Forces and Corps.

On some occasions, for the protection of private spaces, where cameras installed on facades or inside, may be necessary to ensure the security purpose the recording of a portion of the public thoroughfare.

That is, cameras and camcorders installed for security purposes may not be obtain images of public roads unless it is essential for said purpose, or it is impossible to avoid it due to their location. And in such a case extraordinary, the cameras will only be able to capture the minimum portion necessary to preserve the safety of people and property, as well as its facilities.

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

Installed cameras cannot get images from third-party proprietary space and/or public space without duly accredited justified cause, nor can they affect the privacy of passers-by who move freely through the area.

It is not allowed, therefore, the placement of cameras towards the private property of

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

Nor can images be captured or recorded in spaces owned by third parties without the consent of their owners, or, where appropriate, of the people who find.

Likewise, it is disproportionate to capture images in private spaces, such as such as changing rooms, lockers or rest areas for workers.

IV.

Video surveillance obligations

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

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1.- Individuals or legal entities, public or private, can establish a system video surveillance in order to preserve the safety of people and property, as well as its facilities.

It must be assessed whether the intended purpose can be achieved in another less intrusive to the rights and freedoms of citizens. Personal data only should be processed if the purpose of the processing cannot reasonably be achieved by other means, recital 39 of the GDPR.

2.- The images obtained cannot be used for a subsequent purpose incompatible with the one that motivated the installation of the video surveillance system.

3.- The duty to inform those affected provided for in articles

12 and 13 of the GDPR, and 22 of the LOPDGDD.

In this sense, article 22 of the LOPDGDD provides in relation to video surveillance

a “layered information” system.

The first layer must refer, at least, to the existence of the treatment

(video surveillance), the identity of the person responsible, the possibility of exercising the rights

provided for in articles 15 to 22 of the GDPR and where to obtain more information about the

processing of personal data.

This information will be contained in a device placed in a sufficiently

visible and must be provided in advance.

Second layer information should be easily available in one place

accessible to the affected person, whether it is an information sheet at a reception, cashier, etc...,

placed in a visible public space or in a web address, and must refer to the

other elements of article 13 of the GDPR.

4.- The treatment of images through the installation of camera systems or

video cameras must be lawful and comply with the principle of proportionality and the principle of

minimization of data, in the terms already indicated.

5.- The images may be kept for a maximum period of one month, except in

those cases in which they must be kept to prove the commission of acts

that threaten the integrity of people, property or facilities.

In this second case, they must be made available to the authority

competent authority within a maximum period of 72 hours from the knowledge of the

recording existence.

6.- 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.

7.- The person in charge must carry out a risk analysis or, where appropriate, an evaluation of impact on data protection, to detect those derived from the implementation

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of the video surveillance system, assess them and, where appropriate, adopt security measures.

appropriate security.

8.- When a security breach occurs that affects the processing of cameras for security purposes, whenever there is a risk to the rights and freedoms of natural persons, you must notify the AEPD within a maximum period of 72 hours.

A security breach is understood to be the destruction, loss or accidental alteration or unlawful transfer of personal data, stored or otherwise processed, or the communication or unauthorized access to said data.

9.- When the system is connected to an alarm center, it 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 Spanish Data Protection Agency offers through its website

[<https://www.aepd.es>] access to:

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the legislation on the protection of personal data, including the

RGPD and the LOPDGDD (section "Reports and resolutions" / "regulations"),

the Guide on the use of video cameras for security and other purposes,
the Guide for compliance with the duty to inform (both available at 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.

V

administrative infraction

In accordance with the proven facts verified during the procedure
disciplinary action, it is considered that the facts exposed violate what is established in the article
article 5.1.c) of the RGPD, therefore they suppose the commission of an infraction typified in
Article 83.5.a) of the GDPR, which provides the following:

Violations of the following provisions will be sanctioned, 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 in accordance with articles 5, 6, 7 and 9;”.

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For the purposes of the limitation period for infringements, the infringement indicated in the previous paragraph is considered very serious in accordance with article 72.1 of the LOPDGDD, which states 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."

SAW

Sanction

Article 58.2 of the GDPR establishes:

"Each control authority will have all the following corrective powers indicated below:

(...)

d) order the person in charge or person in charge of treatment that the operations of treatment comply with the provisions of this Regulation, where appropriate, in a certain way and within a specified period;

(...)

i) impose an administrative fine in accordance with article 83, in addition to or instead of the measures mentioned in this paragraph, according to the circumstances of each particular case".

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.

Regarding the infringement of article 5.1.c) of the GDPR, based on the facts proven, it is considered that the sanction to be imposed is a fine administrative.

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.

In order to determine the administrative fine to be imposed, the provisions of article 83.2 of the GDPR, which indicates:

"2. Administrative fines will be imposed, depending on the circumstances of each individual case, in addition to or in lieu of the measures contemplated in

Article 58, paragraph 2, letters a) to h) and j). When deciding to impose a fine administration and its amount in each individual case shall be duly taken into account:

a) the nature, seriousness and duration of the offence, taking into account the nature, scope or purpose of the processing operation in question, as well as such as the number of interested parties affected and the level of damages that have suffered;

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b) intentionality or negligence in the infraction;

c) any measure taken by the controller or processor to alleviate the damages and losses suffered by the interested parties;

d) the degree of responsibility of the controller or processor, taking into account the technical or organizational measures that they have applied under of articles 25 and 32;

- e) any previous infringement committed by the controller or processor;
- f) the degree of cooperation with the supervisory authority in order to remedy the infringement and mitigate the possible adverse effects of the infringement;
- g) the categories of personal data affected by the infringement;
- h) the way in which the supervisory authority became aware of the infringement, in particular whether the person in charge or the person in charge notified the infringement and, if so, in what extent;
- i) when the measures indicated in article 58, paragraph 2, have been ordered previously against the person in charge or the person in charge in relation to the same matter, compliance with said measures;
- j) adherence to codes of conduct under article 40 or to mechanisms of certification approved in accordance with article 42,
- k) any other aggravating or mitigating factor applicable to the circumstances of the case, such as financial benefits obtained or losses avoided, directly or indirectly, through the infringement”.

For its part, in relation to letter k) of article 83.2 of the GDPR, the LOPDGDD, in its article 76, "Sanctions and corrective measures", provides:

"1. The sanctions provided for in sections 4, 5 and 6 of article 83 of the Regulation (UE) 2016/679 will be applied taking into account the graduation criteria established in section 2 of said article.

2. In accordance with the provisions of article 83.2.k) of Regulation (EU) 2016/679 may also be taken into account:

- a) The continuing nature of the offence.
- b) The link between the activity of the offender and the performance of data processing. personal information.
- c) The benefits obtained as a consequence of the commission of the infraction.

d) The possibility that the conduct of the affected party could have included the commission of the offence.

e) The existence of a merger by absorption process subsequent to the commission of the infringement, which cannot be attributed to the absorbing entity

f) Affectation of the rights of minors

g) Have, when it is not mandatory, a data protection delegate.

h) Submission by the person responsible or in charge, on a voluntary basis, to alternative conflict resolution mechanisms, in those cases in which there are controversies between those and any interested party”.

The balance of the circumstances contemplated, with respect to the infractions committed by violating the provisions of article 5.1 c) of the GDPR, allows setting a fine of €300 (three hundred euros).

It must be remembered that the voluntary payment of the proposed amounts does not exempt or accredit the regularization of the video surveillance system, in accordance with the regulations in force.

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VII

Measures

The text of the resolution establishes which have been the infractions committed and the facts that have given rise to the violation of the regulations for the protection of data, from which it is clearly inferred what are the measures to adopt, without prejudice that the type of procedures, mechanisms or concrete instruments for

implement them corresponds to the sanctioned party, since it is responsible for the treatment who fully knows its organization and has to decide, based on the proactive responsibility and risk approach, how to comply with the GDPR and the LOPDGDD.

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.

VIII

Conclusion

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 (THREE HUNDRED euros).

SECOND: ORDER D. B.B.B. that, by virtue of article 58.2 d) of the GDPR, in the within ten business days, take the following steps:

- Evidence of having removed the camera in question, providing documentary evidence with date and time that proves such end, or, failing that, certifies the regularization of the chamber, in accordance with current regulations so that it does not record the common areas of the urbanization or capture images. their genes.

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

art. 98.1.b) of Law 39/2015, of October 1, on Administrative Procedure

Common of Public Administrations (hereinafter LPACAP), within the payment term

voluntary established in art. 68 of the General Collection Regulations, approved

by Royal Decree 939/2005, of July 29, in relation to art. 62 of Law 58/2003,

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of December 17, by means of its income, indicating the NIF of the sanctioned and the number

of procedure that appears in the heading of this document, in the account

IBAN: ES00-0000-0000-0000-0000-0000 (BIC/SWIFT Code:

restricted no.

CAIXESBBXXX), opened on behalf of the Spanish Data Protection Agency in

the banking entity CAIXABANK, S.A. Otherwise, it will proceed to its

collection in 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 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 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 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 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-web/>], or through any of the other registries 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 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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