

□ File No.: EXP202208323

## RESOLUTION OF SANCTIONING PROCEDURE

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

### BACKGROUND

FIRST: CIVIL GUARD - POSITION OF \*\*\*LOCATION.1 (\*hereinafter, the complaint)  
client) dated 07/20/22 transfers a letter to the Spanish Agency for the Protection of  
Data. The claim is directed against who identifies B.B.B. with NIF \*\*\*NIF.1 (in  
forward, the denounced party). The reasons on which the claim is based are the following:  
following:

“On 07/17/22 the patrol was carrying out a city security service.

dadana ...the presence of a camera located in the window of the façade is observed.

That after inspecting closely it is observed how the objective is focused

towards the vehicle that is parked outside... in breach of various in-

fractions of the data protection regulations. The patrol contacts

the tenant of the property, who after asking who owned the camera, stated that

she put it there (...) because previously the car of her father and a

neighbor of the area and is afraid of burning his

The claimant provides the Complaint Act dated July 9, 2022 in the

which reveals that the claimed party is responsible for a camera located

each in the window of his home, which is oriented to the public thoroughfare, without self-reporting

prior administrative authorization for it.

SECOND: On September 9, 2022, the Director of the Spanish Agency

of Data Protection agreed to initiate disciplinary proceedings against the claimed party,

for the alleged violation of Article 5.1.c) of the GDPR and Article 13 of the GDPR,

typified in Article 83.5 of the GDPR.

THIRD: After consulting the information system of this organization, the notification at the address provided by the acting force, as accredited reliably the Official Postal Service, recording as "Delivered" on date 09/27/22.

FOURTH: Notification of the aforementioned initiation agreement in accordance with the established norms in Law 39/2015, of October 1, of the Common Administrative Procedure of the 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 allegations are made-

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within the period provided for the content of the initiation agreement, when it contains has a precise pronouncement about the imputed responsibility, it may be considered motion for resolution. In the present case, the agreement to start the ex-disciplinary action determined the facts in which the accusation was specified, the infringement of the GDPR attributed to the defendant and the sanction that could be imposed.

Therefore, taking into consideration that the defendant has not made allegations to the agreement to initiate the file and in accordance with the provisions of 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. On 07/20/22, a letter was received from the Security Forces and Corps

(GCivil Position of \*\*\*LOCATION.1) through which the following is transferred:

“On 07/17/22 the patrol was carrying out a city security service.

dadana ...the presence of a camera located in the window of the façade is observed.

That after inspecting closely it is observed how the objective is focused

towards the vehicle that is parked outside... in breach of various in-

fractions of the data protection regulations. The patrol contacts

the tenant of the property, who after asking who owned the camera, stated that

she put it there (...) because previously the car of her father and a

neighbor of the area and is afraid of burning his

Second. It is identified as the main person in charge B.B.B., with NIF \*\*\*NIF.1,

who does not make any claim in this regard.

Third. The presence of a camera oriented towards the public thoroughfare is accredited.

Gún certifies the acting force.

Room. There is no record of the cause (reason) for the installation, nor has it been reported

that it is a video-surveilled area through the appropriate informative poster.

## FUNDAMENTALS OF LAW

Yo

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

General Data Protection Regulation, hereinafter GDPR), grants each authori-

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

Organic 3/2018, of December 5, 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 Data Protection Agency will be governed by the provisions of

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Regulation (EU) 2016/679, in this organic law, by the regulations comments dictated in its development and, insofar as they do not contradict them, with a subsidiary, by the general rules on administrative procedures."

II

In the present case, we proceed to examine the document sent to this body by the acting force (Civil Guard-Post \*\*\*LOCATION.1) through which it transfers the "presence of camera on balcony facing outwards" affecting rights of third parties without just cause.

The art. 5.1 c) GDPR provides the following: Personal data will be:

"adequate, relevant and limited to what is necessary in relation to the purposes for those who are processed ("data minimization").

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

The installation of this type of device must have the mandatory informative poster tive, indicating the purposes and person responsible for the treatment, where appropriate, of the data of each personal character.

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 thereof without just cause.

Neither with this type of device can you obtain an image(s) of public space.

since this is the exclusive competence of the Security Forces and Bodies of the State

tado.

It should be remembered that even if it is a "simulated" camera, the same

should preferably be oriented towards private space, since it is considered

that this type of device can affect the privacy of third parties, who are intimate

measured by it in the belief of being the object of permanent recording.

On the part of individuals, it is not possible to install devices for obtaining

images of public space and/or traffic of third parties, outside the cases allowed in

the normative.

The purpose of this type of device must be the security of the property and

its inhabitants, avoiding the affectation of the rights of third parties who are intimidated

two with the same

II

In the letter sent, the acting force indicates the "absence of an information poster" in the

moment of carrying out the patrol work, indicating that it is a video-surveillance area

gives.

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In the Minutes provided, the documentary evidence proves that the device was found

contraba inside the house, a "personal and domestic" area, although at that time

moment it was oriented towards the exterior zone in particular, focusing towards the defendant's vehicle, this body not knowing if the area is private or public nature or the scope of the images or the time in which the camera has been oriented towards the outside area.

The foregoing implies an affectation to the content of article 13 GDPR, since the system does not exist. subject of an informative poster in this regard, although as indicated it cannot be oriented take the camera into a public area without just cause, which must be documented mentally.

Article 13 GDPR "Information that must be provided when personal data are obtained from the interested party"

1. When personal data relating to him or her is obtained from an interested party, the person responsible of the treatment, at the moment in which these are obtained, it will provide you with all the information information indicated below: a) the identity and contact details of the person in charge and, where appropriate, his representative; b) the contact details of the protection delegate tion of data, if applicable; c) the purposes of the processing for which the personal data is intended; personal data and the legal basis of the treatment (...).

Article 72 section 1 of the LOPDGDD (LO 3/2018, December 5) in relation to the limitation period for very serious offenses "will prescribe after three years" and in particularly the following:

h) The omission of the duty to inform the affected party about the treatment of their personal data in accordance with the provisions of articles 13 and 14 of the Regulation (UE) 2016/679 and 12 of this organic law.

IV.

In accordance with the evidence available in this proceeding, disciplinary action, it is considered that the claimed party has a device as a web cam oriented towards the outside of your home, affecting the rights of third parties.

rivers without just cause.

Article 77 section 5 of Law 39/2015 (October 1) provides:

5. The documents formalized by the officials to whom the condition of authority and in which, observing the corresponding legal requirements teeth, the facts verified by the former shall be collected, they shall prove the latter except prove otherwise

The aforementioned device is enabled to obtain images of those who transit along the sidewalk and adjacent public space, exercising an excessive control function of public space, which exceeds the private scope of the interior of your home.

It should be remembered that this type of device affects the rights of third parties who are intimidated by them or who may restrict their freedom in space

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qualified as public, not being enough a hypothetical fear of an alleged action possible for the installation of this type of device, existing means that are less harmful you for the purpose pursued (eg installation of audible alarm, parking in private garage, etc.).

The known facts constitute an infringement, attributable to the party claimed, for violation of the content of article 5.1 c) GDPR, previously cited do.

According to article 72 section 1 of the LOPDGDD (LO 3/2018, December 5) "Infra-offenses considered very serious" "the infractions that su- put a substantial violation of the articles mentioned therein and, in particular

particular, the following (...) a) The processing of personal data in violation of the main terms and guarantees established in article 5 of Regulation (EU) 2016/679.

V

The art. 83.5 GDPR provides the following: "Violations of the following provisions

These will be penalized, in accordance with section 2, with administrative fines of 20

000 000 EUR maximum or, in the case of a company, an equivalent amount

to a maximum of 4% of the overall annual total turnover of the financial year

previous year, opting for the one with 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 (...)".

the rights of the interested parties in accordance with articles 12 to 22

b)

In the present case, it is taken into account that the person responsible is an individual, who has

acted in the belief of protection of a movable property (vehicle) in the face of a rational fear

final and well-founded, although the poor orientation of the installed camera(s) is valued, which in-

leads one to think that the conduct is at least negligent, lacking at least

temporarily as an informative poster, all of which lead to the imposition of a

penalty in the amount of €600 (300+300), according to the facts described, situation

on the lower scale for this type of behavior and considering that the measurement

da has not had a significant impact on the rights of third parties.

SAW

The text of the resolution establishes which have been the infractions committed and

the facts that have given rise to the violation of the data protection regulations

from which it is clearly inferred what are the measures to be adopted, without prejudice to

that the type of procedures, mechanisms or concrete instruments to implement

treat them corresponds to the sanctioned party, since it is the person responsible for the treatment who



fully knows your organization and has to decide, based on personal responsibility

active and risk-focused, how to comply with the GDPR and the LOPDGDD.

Since the defendant has not made any allegation, it is appropriate to adopt as a measure

gives the withdrawal of the camera, in case of maintaining it, from its current place of emplacement

I lie ; remembering that in case of reiteration and/or persistence in the behavior described

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before a new Complaint of the Security Forces and Bodies, it can be

into account when assessing new administrative sanctions.

Therefore, in accordance with the applicable legislation and assessed the graduation criteria

tion of the sanctions whose existence has been accredited,

the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: IMPOSE B.B.B., with NIF \*\*\*NIF.1, for a violation of Article 5.1.c)

of the GDPR, typified in Article 83.5 a) of the GDPR, a fine of €300.

SECOND: IMPOSE B.B.B., with NIF \*\*\*NIF.1, for a violation of Article 13

of the GDPR, typified in Article 83.5 b) of the GDPR, a fine of €300.

THIRD: TO ORDER the denounced party so that, within 15 business days

counting from the following of the notification of this act, proceed in case of not

having done so to the removal of any type of device from its current location

with the capture of public space, providing documentary evidence (eg, photograph, date and

time) that certifies such end.

FOURTH: NOTIFY this resolution to B.B.B. and report the results of the

proceedings to the complaining party.

FIFTH: 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 Co-Administrative Procedure

public administrations (hereinafter LPACAP), within the term of payment vo-

lunteer 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,

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

restricted IBAN number: ES00 0000 0000 0000 0000 0000 (BIC/SWIFT Code: XXXXXX-

XXXX), open on behalf of the Spanish Data Protection Agency in the entity

bank CAIXABANK, S.A. Otherwise, it will be collected in pe-

executive river.

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 period is

It will run 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

Respondents may optionally file an appeal for reinstatement before the Director

of the Spanish Agency for Data Protection within a period of one month from the

the day following the notification of this resolution or directly contentious appeal

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before the Contentious-Administrative Chamber of the National Court,  
in accordance with the provisions of article 25 and section 5 of the additional provision  
fourth clause of Law 29/1998, of July 13, regulating the Contentious Jurisdiction-  
administration, within a period of two months from the day following the notification  
tion of this act, as provided for in article 46.1 of the aforementioned 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 interested party  
do states its intention to file a contentious-administrative appeal. If it is-

As the case may be, the interested party must formally communicate this fact in writing  
addressed to the Spanish Data Protection Agency, presenting it through the Re-  
Electronic registry of the Agency [<https://sedeagpd.gob.es/sede-electronica-web/>], or to  
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 the documentation to the Agency  
proving the effective filing of the contentious-administrative appeal. if the  
Agency was not aware of the filing of the contentious-administrative appeal  
treatment within two months from the day following notification of this  
resolution, would terminate the precautionary suspension.

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