

□ File No.: PS/00450/2021

## RESOLUTION OF PUNISHMENT PROCEDURE

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

### BACKGROUND

FIRST: A.A.A. (\*hereinafter, the complaining party) dated June 22, 2021

filed a claim with the Spanish Data Protection Agency. The

claim is directed against B.B.B. with NIF \*\*\*NIF.1 (hereinafter, the part

claimed). The grounds on which the claim is based are as follows.

“It has been to install a surveillance camera in the common staircase, without consensus nor agreement, which captures images that I understand that only he can see and that focuses the access door from the street with which it records all the movements that I or authorized persons can do to my properties” (folio nº 1).

Along with the claim, provide documentary evidence that proves the presence of the chamber (s) -Annex I Doc a) and b)—in support of its claim before this body.

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), said claim was transferred to the claimed party in fe-dated 07/04/21, to proceed with its analysis and inform this Agency on the period of one month, of the actions carried out to adapt to the foreseen requirements cough in the data protection regulations.

On 08/23/21, this Agency received a written response indicating initial-mind "that ignores the facts" considering that the complainant has not acted in good faith.

On 08/30/21, a new response was received from the respondent stating in relation to

tion to the "facts" described that the camera is indeed installed on the landing of the ladder, noting that it is owned by the company "Toldos Canary-Sun S.L.

"That the managing partners are owners of the building, and that on the date of Today, none of the co-owners have requested the creation of the "Community of property" nor the creation of a "Community of Owners", since both both have not considered the creation of the same opportune, being as it has been mentioned do, both co-owners of the building. That is why it is not possible to provide a record of a document ment of a Board that has neither been created nor requested by both parties".

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THIRD: On September 02/09/21, 2021, the Director of the Spanish Agency Department of Data Protection agreed to admit for processing the claim presented by the claiming party.

FOURTH: On November 22, 2021, the Director of the Spanish Agency of Data Protection agreed to initiate a sanctioning procedure against the claimed party, in accordance with the provisions of articles 63 and 64 of Law 39/2015, of October 1, of the Common Administrative Procedure of Public Administrations (hereinafter te, LPACAP), for the alleged infringement of Article 5.1.c) of the RGPD, typified in the Article 83.5 of the RGPD.

FIFTH: On 12/21/21, this Agency received a written response to the claimed arguing the following:

"For greater depth, I enclose the deeds of the Society to which I per-

owns said chamber, and where it can be seen there are two founding partners and administrators supporters, A.A.A. and B.B.B.. The year the security system was installed (the camera mara) was in the year 2017, according to exposing second section C, which appears in the document 01 of the second statement of this document. (Document 02)

That according to the sanctioning file, in exposing II, it mentions the alleged affectation of third parties in the control in an unjustified way of access / exit from the main door of the building, said access is to be able to access the headquarters and offices of the Mercantil, and that the Complainant, owner of the two plants, the first The first are the offices of the company, and the second floor is used as a warehouse, with what is proven is that the Complainant made them available to the company. The floor that is above these two floors, is exclusive to the person claimed and his family. lia, with which the unjustified control alleged by the Complainant is distorted, since that no one has access to said plant without the consent of the Respondent, the Claimant not having any right of way if he does not previously request the Claimant authorization, being a private property, and access to offices and storage cén, first and second floors are freely accessible to customers, suppliers and the public usually. For what the Complainant authorized, according to document 01 of answer-tion, exposing 02 section C, it is accredited

I PRAY: that you have as presented answer to the sanctioning procedure, dictating a resolution of better law”.

SIXTH: On 03/23/22, a resolution “Proposal” is issued, agreeing on the imposition of a penalty of 2000e, upon finding the violation of art. 5.1 c) GDPR, when the presence of a video-surveillance camera is proven affecting the area of transit without just cause, recorded in the computer system as "Delivered".

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Of the actions carried out in this procedure and the documentation

in the file, the following have been accredited:

#### PROVEN FACTS

First. The facts bring cause of the claim dated 06/22/21 through the

which is transferred as the main fact:

“It has been to install a surveillance camera in the common staircase, without consensus

nor agreement, which captures images that I understand that only he can see and that focuses the

access door from the street with which it records all the movements that I or

authorized persons can do to my properties” (folio nº 1).

Second. It is identified as the main person responsible for the B.B.B. treatment, with

NIF \*\*\*NIF.1.

Third. The presence of a video-surveillance camera installed is accredited

on the first floor of the property shared by both parties, the main residence being

responsible for the treatment—B.B.B..

Fourth. There is evidence of the presence of an informative poster indicating the responsible

responsible for the treatment, which is a judicially dissolved Company, of which it was a participant

the claimed.

Fifth. No explanation has been made as to the cause (reason) for the presence

of the camera in question, nor on the orientation of the same towards a zone of tran-

site as is the staircase and landing of the building.

Sixth. No explanation has been made on how to exercise the rights

recognized in articles 12-22 RGPD, by any affected party, who does not want to

would be subject to processing of your data.

## FOUNDATIONS OF LAW

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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 of the LOPDGDD, the Director of the Spanish Agency for Data Protection is competent to initiate and to re-solve this procedure.

II

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In the present case, the claim dated 06/22/21 is examined by me-  
from which the presence of "a system of video-surveillance cameras" is transferred that may affect the rights of third parties by unjustifiably controlling access/exit from the main door of the property where the defendant is the owner of two floors.

The facts denounced could imply an affectation to the content of art. 5.1 c)

RGPD (regulation currently in force) that provides: "personal data will be:

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

Individuals are responsible for the installed video-surveillance systems to be comply with current legislation, and must be able to prove such extremes.

We report to the competent authority.

Cameras installed by individuals must be oriented towards their private space.

vative avoiding the capture of private area of third parties without just cause.

In no case will the use of surveillance practices be admitted beyond the objective environment.

of the installation and in particular, not being able to affect the surrounding public spaces.

contiguous buildings and vehicles other than those accessing the guarded space.

Likewise, in the case of false cameras, they must be oriented

to a private area, avoiding intimidation of neighboring neighbors who are unaware

know whether or not they process personal data.

III

According to the claimant, in the aforementioned property "there is no

constituted Community of owners "affecting the installation to areas of free

transit of the same, which supposes a "treatment of data" that has not been justified in

the current regulatory framework.

Since both parties are the main owners of the property, the

express consent of the same to be able to exercise access control

of the property, sensu contrario, the device cannot affect the rights of the

claimant and/or family members treating their data in a non-consensual manner, beyond the

current poor relationship between them.

On 12/21/21, this Agency received a written response from the

claimed arguing that "it is a Legal Entity, Sociedad Toldos Canarysol

S.L., which incurs in the alleged infraction", being both partners holders of the same

ma.

There are various disagreements between the parties confirmed in their writings,

that makes it difficult to analyze the facts based on mutual reproaches for what the

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facts will focus on the framework of data protection, leaving aside other issues.

There is evidence of the undoubted presence of a video-surveillance camera installed in the first floor, without clarification by the claimed (or) about the data controller of the images or cause (reason) of the presence of the same in a transit area and disproportionately.

Neither is screen printing provided of what is captured with the mentioned chamber, as well as any writing that allows verifying the consent of the complaining party.

It should be remembered that beyond the disagreements between the parties, the withdrawal of the consent of one of the parties limits at least the presence of the device in question, justifying per se the imposition of a sanction, as this is a measure gives in a certain coercive way to the rights of the claimant and other users of the stair area of the building.

The presence of this type of device is an "exceptional" measure that may The camera should be placed inside the building and not on the outside in such a way. that an intimidating control is exercised over the property, but no explanation plausible has not been made in this regard either.

The known facts constitute an infraction, attributable to the party claimed, for violation of the content of art. 5.1 c) GDPR.

Article 83.5 RGPD provides the following:

IV

“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, treating- of a company, of an amount equivalent to a maximum of 4% of the volume of

Total annual global business of the previous financial year, opting for the one with the highest

amount:

a)

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

consent under articles 5, 6, 7 and 9;

When motivating the sanction, the following is taken into account:

-the nature of the infraction by having a video-surveillance system that is oriented towards a transit area without just cause, presumably processing data of identifiable natural persons (art. 83.5 a) RGPD).

-the intentionality or negligence of the infringement, (art. 83.2 b) RGPD), since with the video-surveillance system performs an excessive control of the area of the property without

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any justified cause, highlighting the poor orientation of the installation of the device.

you).

For all these reasons, a penalty of €2,000 (Two Thousand

euros), by having a camera system that records excessively private areas of

third parties, sanction located in the lower scale of this type of infractions and according to the nature of the events described.

Therefore, in accordance with the applicable legislation and after assessing the graduation criteria of the sanctions whose existence has been proven,

the Director of the Spanish Data Protection Agency RESOLVES:

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

of the RGPD, typified in Article 83.5 of the RGPD, a fine of €2,000 (two thousand euros).



ros).

SECOND: ORDER the removal of the video-surveillance camera in accordance with article 58.2 RGD, accrediting such end before this Agency or where appropriate accredit the informed consent of both parties by means of a reliable document. you with date and time, at the time of the maintenance of the camera in the property.

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

FOURTH: Warn the sanctioned party that he must make the imposed sanction effective once

Once this resolution is enforceable, in accordance with the provisions of the art. 98.1.b) of Law 39/2015, of October 1, of the Administrative Procedure Co- of the Public Administrations (hereinafter LPACAP), within the term of payment 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, of December 17, through its entry, indicating the NIF of the sanctioned and the number of procedure that appears in the heading of this document, in the account restricted number ES00 0000 0000 0000 0000 0000, opened in the name of the Spanish Agency Department of Data Protection at the banking entity CAIXABANK, S.A.. In case of Otherwise, it will be collected during the executive period.

Received the notification and once executed, if the date of execution is between the 1st and 15th of each month, both inclusive, the term to make the payment will be until the 20th day of the following month or immediately after, and if is between the 16th and last day of each month, both inclusive, the term of the payment It will be valid until the 5th of the second following month or immediately after.

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

resents may optionally file an appeal for reconsideration before the Director  
of the Spanish Agency for Data Protection within a month from the date of  
the day following the notification of this resolution or directly contentious appeal

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before the Contentious-Administrative Chamber of the National High Court,  
in accordance with the provisions of article 25 and section 5 of the additional provision  
Final fourth of Law 29/1998, of July 13, regulating the Contentious Jurisdiction-  
administrative, 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 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 interested party  
do states its intention to file a contentious-administrative appeal. If it is-

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

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