

□ File No.: PS/00360/2021

RESOLUTION OF PUNISHMENT PROCEDURE

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

FACTS

FIRST: Don A.A.A. (*hereinafter, the complaining party) dated February 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 reasons on which the claim is based are succinctly:
following:

"For about 3 days he has observed how his brother (claimed) has
installed what appears to be a surveillance camera in his home, which is directed
towards the property of the appearing party, clearly observing during the night that
it is on (...) understanding that this violates its
privacy, requesting (...) -folio nº 1-.

A copy of the Inspection Act of the Local Police of the town (Ayto
***CITY COUNCIL.1) No. ***ACTA.1 although it is not conclusive as to
the impact on the claimant's home or its operability.

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-
cha 03/18/21 and 04/16/21, to proceed to its analysis and inform this Agency
within a month, of the actions carried out to adapt to the requirements
provided for in the data protection regulations.

No response has been received to this letter as verified in the database of

this Agency.

THIRD: On July 6, 2021, the Director of the Spanish Agency for Data Protection agreed to admit for processing the claim presented by the party claimant.

FOURTH: On August 24, 2021, the Director of the Spanish Agency for Data Protection agreed to initiate a sanctioning procedure against the claimed party, for the alleged infringement of Article 5.1.c) of the RGD, typified in Article 83.5 of the GDPR.

FIFTH: On 10/04/21, the Instructor of the procedure requested evidence from the appropriate legal effects in order to clarify the facts object of the claim, You must indicate on a map the land you own and the area affected by the camera.

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SIXTH: On 10/22/21, a reply is received from the party complained against arguing in his right of defense the following:

- ☐
- ☐
- ☐
- Screenshot of the reviewed video-camera where the date and time are recorded.
- Photograph taken from the street and placement of the video camera-surveillance.
- Photograph taken from public roads with the presence of an information poster

where does it put my name address so that you can exercise the right that appropriate (...).

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

In this proceeding, the following are considered proven facts:

FACTS

First. The facts bring cause of the claim dated 02/22/21 through the which this Agency is informed of the presence of a video device surveillance, presumably without reporting their presence, considering their intimacy affected. personal identity for this reason (folio nº 1).

Second. It is identified as the main person in charge of the installation Don B.B.B., who does not deny the facts that are transferred.

Third. The operability of the device in question is accredited, obeying its installation to the safety of the fine, limiting its focus to the entrance area of the vi- The property that the claimant states is his exclusive property.

Fourth. The presence of an informative poster is accredited, although it is referenced to the repealed LO 15/1999 (LOPD), indicating the person in charge and an address to which be governed (no zip code).

Fifth. None of the parties has documented the land or property of which they are the owners, being the same as stated in the Police Report her- hands and with the device, as stated, "aimed at the adjoining uninhabited area- you to the house" (folio nº 3 Report nº ***REPORT.1 Local Police City Council *** TOWN HALL.1).

FOUNDATIONS OF LAW

Yo

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 resolve this procedure.

II

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In the present case, the claim dated 02/22/21 is examined by me-

gave of which the inscription denounces the presence of a video-surveillance camera

installed by a family member “without the presence of an information poster” unaware of the operation

dissuasive character of the same (folio nº 1).

The Local Police-Town Hall *** TOWN HALL.1-- travels to the place of

the facts (01/22/21) although it cannot specify the “operationality” of the same or that

this affects the rights of third parties, although it reflects in the Minutes provided the presence of

the camera “oriented towards the uninhabited area adjoining the house”.

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.

It must have an informative poster indicating that it is a video-surveillance area.

gives, expressly mentioning the person responsible for the treatment, adjusting the same to the

provided in the current art. 22 LOPDGDD (LO 3/2018, December 5).

III

On 10/22/21 a new document is received from the claimant through which it proves

the presence of an informative badge, indicating the data controller and where

exercise rights, but it is a poster not adapted to the regulations

in force: current RGD and not the repealed LO 15/1999, December 13.

The art. 22 section 4 of the current Organic Law 3/2018, December 5 provides:

“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

responsibility of the person in charge and the possibility of exercising the rights provided for in articles

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

formative a connection code or internet address to this information”.

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In his brief he argues that he has installed the camera for security reasons,

being the same directed towards a land that manifests is of "its ownership".

It is recalled that in case of installation in an exclusively private area

the presence of sign(s) is not necessary, if in the case of capturing areas that affect third parties or minimally public space.

After analyzing the screen impression, it is observed that it allows

capture a small portion of the adjoining road, although the distance between the camera and the area to be recorded would not allow clear images to be obtained.

In relation to the "facts" subject to transfer, no affectation is observed in the area reserved for the privacy of the claimant, such as his home, not entering

assess this body any other family-type dispute between the parties.

Article 89 of Law 39/2015 (October 1) LPAC provides:

"The investigating body will resolve the completion of the procedure, with a file of the actions, without it being necessary to formulate the resolution proposal, when in the procedure instruction it becomes clear that there is any of the following circumstances

c) When the proven facts do not constitute, in a manifest way, an infringement administrative (...)".

Individuals can install video surveillance cameras for security purposes.

security of the dwelling, although they are directly responsible for ensuring that it conforms to the current legislation, avoiding the affectation of the rights of third parties without cause justified; being to some extent understandable that the presence of the same increases the security of the property against hypothetical thefts that could affect it, being a measure that can benefit its inhabitants.

Notwithstanding the foregoing, this body recommends the regularization of the cartel

to the regulations in force, as well as the minimum reorientation of the camera to the area fencing of the farm, limiting the impact on the public road area adjacent to

the farm.

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IV

According to the above, it can be concluded that a "data processing" is not accredited of the claimant in a private space of the same (eg adjoining dwelling), limiting the collection to an area of land at the entrance to the house where observe a gate, which may be justified by security in an access to the same.

The parties are reminded that this body is not going to mediate any kind of "family and/or personal" conflict between them, owing in their If necessary, contact the competent judicial authority.

Therefore, in accordance with the applicable legislation and having assessed the criteria for graduation of sanctions whose existence has been proven, the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: ORDER the FILE of this procedure as there is no accredited the commission of any administrative infraction.

SECOND: NOTIFY this resolution to B.B.B. and REPORT the result of performances to A.A.A.

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 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.

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