

□ File No.: EXP202205244

RESOLUTION OF SANCTIONING PROCEDURE

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

BACKGROUND

FIRST: On 05/05/2022, the COMMANDANCE OF LLEIDA (hereinafter, the
complaining party) sent three Records-Complaints of 05/03/2022 for a possible
breach of the provisions of the data protection regulations
staff by A.A.A. with NIF ***NIF.1 (hereinafter, the denounced party).

The letter of remittance indicates the following:

“At 10:12 a.m. on May 3, 2022, the Patrol of the COMPAÑÍA DE

*** LOCATION, carry out an inspection in the MiniSupermercat establishment, located in the

***ADDRESS.1 (...) by:

- Not having distinctive advertising signs, both outside and inside

of the establishment of video surveillance zone.

- Not having available to the interested parties the forms in which the

detail the information provided for in article 5.1.

[...]

SECOND: The denounced party was sent a letter indicating the obligations that
had in matters of data protection and video surveillance, resulting in notification of the
03/11/2021, after the submission of a Report from the ***LOCATION COMPANY by
the same facts.

THIRD: On 06/24/2022, the Director of the Spanish Protection Agency
of Data agreed to initiate disciplinary proceedings against the denounced party, for the
alleged violation of article 13 of the GDPR, typified in article 83.5.a) of the

GDPR.

FOURTH: An attempt was made to notify the agreement to open this disciplinary procedure by postal mail, which resulted in "Returned to origin by surplus (not withdrawn at the office)", according to the Notice issued by Correos on 07/25/2022.

In this way, the notification was produced by means of an announcement published in the Official State Gazette on 07/29/2022 and is granted a hearing period of TEN BUSINESS DAYS to formulate allegations and present the evidence that deems appropriate, in accordance with the provisions of articles 73 and 76 of the Law 39/2015, of October 1, on the Common Administrative Procedure of Public Administrations (hereinafter, LPACAP).

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FIFTH: After the period granted for the formulation of allegations, it has been verified that this Agency has not received any response.

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 to initiate the sanctioning file determined the facts in which the accusation was specified, the infringement of the GDPR attributed to the claimed and the sanction that could be imposed. Therefore, taking into consideration that the claimed party has not made allegations to the agreement to start the file and

In accordance with the provisions of article 64.2.f) of the LPACAP, the aforementioned agreement of beginning is considered in the present case resolution proposal.

SIXTH: The agreement to open the procedure agreed in the fourth point of the operative part "INCORPORATING into the disciplinary file, for the purposes of evidence, the claims submitted by claimants and the information and documentation obtained by the General Sub-directorate of Data Inspection in the phase of information prior to the agreement to admit the claim for processing".

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: Existence of a video surveillance system in the establishment "MiniSupermercat", located at ***ADDRESS.1, without having the mandatory signs informative video-surveilled area outside and inside the premises, nor to have available to those affected the rest of the information required by the GDPR.

SECOND: He is identified as responsible for the AAA system. with NIF ***NIF.1.

THIRD: The Spanish Data Protection Agency has notified the party denounced the agreement to open this disciplinary procedure, but not has presented allegations or evidence that contradicts the facts denounced.

FUNDAMENTALS 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 GDPR), grants each control authority and as established in articles 47 and 48.1 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: "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 of a person, according to article 4.1 of the GDPR, is personal data and its

protection, therefore, is the object of said Regulation. In article 4.2 of the GDPR it is

defines the concept of "processing" of personal data.

Article 22 of the LOPDGDD includes the specific regulations for the treatment of

data for video surveillance purposes and states the following:

"1. Natural or legal persons, public or private, may carry out the processing.

image storage through camera or video camera systems for the purpose of

to preserve the safety of people and property, as well as its facilities.

2. Images of the public thoroughfare may only be captured to the extent that it is im-

dispensable for the purpose mentioned in the previous section.

However, it will be possible to capture the public road in a greater extension

when necessary to guarantee the security of assets or strategic facilities.

logical or infrastructure related to transport, without in any case being able to

put the capture of images of the interior of a private home.

3. The data will be deleted within a maximum period of one month from its collection, except when they should be kept to prove the commission of acts that attend to have against the integrity of people, property or facilities. In such a case, the images must be made available to the competent authority within a maximum period of seventy-two hours after the existence of the recording became known.

tion.

The blocking obligation provided for in article 1 will not apply to these treatments.

article 32 of this organic law.

4. The duty of information provided for in article 12 of Regulation (EU) 2016/679 is shall be understood to have been fulfilled by means of the placement of an informative device in a sufficiently recently visible identifying, at least, the existence of the treatment, the identity 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 information device add a connection code or internet address to this information.

In any case, the person in charge of the treatment must keep available to the affected the information referred to in the aforementioned regulation.

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5. Under article 2.2.c) of Regulation (EU) 2016/679, it is considered excluded within its scope of application the treatment by a natural person of images that are regrettably capture the interior of your own home.

This exclusion does not cover processing carried out by a private security entity.

given that she had been hired to monitor a home and had access to the

images.

6. The processing of personal data from the images and sounds obtained nests through the use of cameras and video cameras by the Forces and Bodies of Security and by the competent bodies for surveillance and control in the centers prisons and for the control, regulation, surveillance and discipline of traffic, will be governed by the transposition legislation of Directive (EU) 2016/680, when the treatment to have the purpose of prevention, investigation, detection or prosecution of infringements criminal or execution of criminal sanctions, including protection and prevention against threats to public safety. Apart from these assumptions, said treatment will be governed by its specific legislation and additionally by the Regulations to (UE) 2016/679 and the present organic law.

7. What is regulated in this article is understood without prejudice to the provisions of the Law 5/2014, of April 4, on Private Security and its development provisions.

8. The treatment by the employer of data obtained through camera systems cameras or video cameras is subject to the provisions of article 89 of this organic law.

II

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:

- Respect the principle of proportionality.
- When the system is connected to an alarm center, you can only be installed by a qualified private security company contemplated in article 5 of Law 5/2014 on Private Security, of 4 April.

-

Camcorders will not be able to capture images of people

are outside the private space where the security system is installed
video surveillance, since the processing of images in public places is only
It can be carried out, unless there is governmental authorization, by the
Security Forces and Bodies. Neither can be captured or recorded
spaces owned by third parties without the consent of their owners, or, in their
case, of the people who are in them.

This rule admits some exceptions since, on some occasions, for the
protection of private spaces, where cameras have been installed in
facades or inside, it may be necessary to guarantee the purpose of
security recording a portion of the public highway. That is, the cameras

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and video cameras installed for security purposes will not be able to obtain images
of the public thoroughfare unless it is essential for said purpose, or it is
impossible to avoid it due to their location and extraordinarily

The minimum space for said purpose will also be collected. Therefore, the
cameras could exceptionally capture the minimally necessary portion
for the intended security purpose.

- The duty to inform those affected provided for in articles

12 and 13 of the GDPR and 22.4 of the LOPDGDD.

- The controller must keep a record of processing activities

carried out under its responsibility in which the information to which the
refers to article 30.1 of the GDPR.

-

The installed cameras cannot obtain images of private spaces of third party and/or public space without duly accredited justified cause, or may affect the privacy of passers-by who move freely through the zone. 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 just cause.

- In no case will the use of surveillance practices be accepted beyond the environment object of the facilities and in particular, not being able to affect the Surrounding public spaces, adjoining buildings, and vehicles other than those to access the monitored area.

In relation to the foregoing, to facilitate the consultation of the interested parties, the Agency

Española de Protección de Datos offers through its website

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

personal information, including the RGPD and the LOPDGDD (section "Reports and resolutions" / "regulations"), to the Guide on the use of video cameras for security and other purposes and the Guide for compliance with the duty to inform (both available in the "Guides and tools" section).

It is also of interest in the event that low-level data processing is carried out.

risk, the free tool Facilitates (in the "Guides and tools" section) that,

Through specific questions, it allows to assess the situation of the person in charge

regarding 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

indicative security measures considered minimal.

IV.

In the present case, the defendant has not submitted allegations or evidence

that contradict the facts denounced within the period given for it.

In accordance with the evidence that is available and that has not been

distorted during the disciplinary procedure, the denounced party has a

video surveillance system in its establishment "MiniSupermercat", located in

*** ADDRESS.1, without having informative posters of the video-surveilled area in the

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exterior and interior of the premises and without having the rest of the

information required by the GDPR.

In view of the foregoing, the facts imply a violation of what is established in the

article 13 of the RGD, which supposes an infringement 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

section 2, with administrative fines of a maximum of 20,000,000 EUR or,

in the case of a company, an amount equivalent to 4% of the turnover

global annual total of the previous financial year, opting for the highest amount:

b) The rights of the interested parties in accordance with articles 12 to 22;

(...)"

For mere prescription purposes, article 72.1 of the LOPDGDD qualifies as very

serious:

"(...)

h) The omission of the duty to inform the affected party about the processing of their data

personal in accordance with the provisions of articles 13 and 14 of Regulation (EU)

2016/679 and 12 of this Organic Law;”

V

The corrective powers available to the Spanish Agency for the Protection of Data, as a control authority, are established in article 58.2 of the GDPR. Between them they have the power to impose an administrative fine in accordance with the article 83 of the GDPR -article 58.2 i)-, or the power to order the person responsible or processor that the processing operations comply with the provisions of the GDPR, where applicable, in a certain way and within a certain specified term - article 58. 2 d).

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.

In the present case, based on the facts, it is considered that the sanction imposed

It would be appropriate to impose an administrative fine. The fine imposed shall be, in each individual case, effective, proportionate and dissuasive, in accordance with the Article 83.1 of the GDPR. In order to determine the administrative fine to be imposed, to observe 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:

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- 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;
- b) intentionality or negligence in the infringement;
- 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.

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- 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 listed circumstances allows setting a fine of €300

(three hundred euros) for the violation of article 13 of the GDPR.

Likewise, under the provisions of article 58.2 d) of the GDPR, you are ordered that, within ten working days from the date on which the resolution in which agreed to be notified, certify the following:

- To have proceeded to place the information device in the areas video surveillance (at least the existence of a treatment must be identified, the identity of the person responsible and the possibility of exercising the rights provided in said precepts), locating this device in a place sufficiently visible, both in open and closed spaces.
- Keep available to those affected the information referred to in the Articles 13 and 14 of the GDPR.

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 A.A.A., with NIF ***NIF.1, for a violation of article 13 of the GDPR, typified in article 83.5.a) of the GDPR, a fine of €300 (three hundred euro).

SECOND: TO ORDER A.A.A., with NIF ***NIF.1 that, by virtue of article 58.2.d) of the GDPR, within ten business days, take the following measures:

- Accredited having proceeded to the placement of the information device in the video-surveilled areas (at least the existence of a treatment, the identity of the person responsible and the possibility of exercising the rights provided for in said precepts), locating this device in a place sufficiently visible, both in open and closed spaces.

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- Evidence that the information referred to is available to those affected.

refer to articles 13 and 14 of the GDPR.

THIRD: NOTIFY this resolution to A.A.A., with ***NIF.1.

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,

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 number ES00 0000 0000 0000 0000 0000, open in the name of the Agency

Spanish Data Protection Agency at the bank CAIXABANK, S.A.. In the event

Otherwise, it will proceed to its collection in the 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

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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

938-120722

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