

□ File No.: PS/00449/2021

RESOLUTION OF PUNISHMENT PROCEDURE

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

BACKGROUND

FIRST: On 06/17/2021, it had entry in this Spanish Agency of
Data Protection a document presented by A.A.A. (hereinafter the part
claimant), through which he makes a claim against B.B.B. with NIF ***NIF.1 (in
hereinafter, the defendant), due to the existence of a video surveillance system
installed in ***ADDRESS.1, ***LOCATION.1, ***PROVINCE.1, with evidence
of a possible breach of the provisions of the data protection regulations
of a personal nature.

The reasons underlying the claim are as follows:

“I file a complaint against my neighbor for having 5 video surveillance cameras for having them
pointing and recording towards the street or public thoroughfare.

[...]

Attach photographic report of the location of the cameras.

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 on 07/04/2021 to the
claimed, so that it could proceed with its analysis and inform this Agency within the period
of a month, of the actions carried out to adapt to the foreseen requirements
in data protection regulations. The notification was made by mail
postal service on 07/16/2021, as stated in the Notice issued by Correos.

On 08/13/2021, the respondent submitted a brief of allegations in which

states that the video surveillance system is made up of 3 cameras and that the time conservation of the captured images is 15 days. In addition, it provides a series of photographs in which you can see the following:

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The existence of an informative poster on the facade of the house, in which identifies the person in charge and the address for the exercise of rights.

- The monitor that shows the captures of 3 cameras that focus on the sidewalk and the road in all its extension to both sides and in front.

That same day, this Agency requests the respondent as additional information that provide again images of the field of view of the cameras and clarify the

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exact number of cameras that make up the video surveillance system. The notification occurred on 08/31/2021 and 09/03/2021, the respondent replied by providing new photographs of the images captured by 3 cameras, where it is observed that changed the capture angle, but it still focuses on the entire sidewalk and quite road.

THIRD: On 09/07/2021, the Director of the Spanish Protection Agency

Data agreed to admit the claim filed by the claimant for processing.

FOURTH: On 12/02/2021, the Director of the Spanish Protection Agency

of Data 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,

LPACAP), for the alleged infringement of article 5.1.c) of the RGPD, typified in the article 83.5 of the RGPD.

FIFTH: Once the agreement to open this sanctioning procedure has been notified, the Respondent, by means of a document dated 12/29/2021, made allegations to the Initiation of file in which it indicated the following:

“All the video-surveillance cameras are fixed and do not have zoom or possibility of movement. They are oriented towards the entrance of the house and focusing exclusively on the undersigned's car. With this answer undoubtedly proves that the cameras are not focusing on public roads but only, the entrance of the claimant's residence.

[...]

There have been several criminal proceedings for minor offenses before the Court of Instruction of ***LOCATION.1, motivated by the damage caused to the vehicle repeatedly by the father of the aforementioned complainant, in which he was sentenced by Sentence. It must be taken into account that the Court not only respected admitted the evidence of the video recordings as proof of the charge, but at no time considered that it violated any legality.

[...]

SIXTH: On 01/25/2022 the instructor of the procedure agreed to open a evidence practice period, taking into account the previous actions investigation, E/07296/2021, as well as the documents provided by the respondent.

SEVENTH: On 01/25/2022, a resolution proposal was formulated in which proposed to send a warning to the defendant, for the infringement of article 5.1.c) of the RGPD, since the video surveillance system installed outside your home captures images of public roads, disproportionately.

Likewise, in accordance with article 58.2.d) of the RGPD, the claimed party was ordered to

proceed to the withdrawal or reorientation of the cameras avoiding excessive capture of public transit areas.

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EIGHTH: The proposed resolution of this sanctioning procedure was notified by mail on 02/08/2022, as stated in the Notice issued by Post. Once the period granted for the formulation of allegations has elapsed, verified that this Agency has not received any allegation by the party complained against. Of the actions carried out in this procedure and the documentation in the file, the following have been accredited:

PROVEN FACTS

FIRST: Installation of a video surveillance system on the facade of the building located at ***ADDRESS.1, ***LOCALITY.1, ***PROVINCE.1, facing the exterior that captures images of the public road, disproportionately.

This end is accredited by photographs provided by the person claimed in response to the "Request for information" in which it is observed that, despite modifying the angle of capture of the cameras, they are still focusing on the entire sidewalk and quite road.

SECOND: It is identified as the main person in charge of the B.B.B. with NIF ***NIF.1, who does not deny having installed 3 video surveillance cameras in the facade of your home. Its placement is due to reasons of protection and security motivated by "the damage caused to the vehicle repeatedly by the father of the aforementioned complainant, in which he was convicted by Judgment." However, do not

provides a copy of the Judgment issued by the Investigating Court of

***LOCATION.1 in which the claimant's father is convicted of a minor crime.

THIRD: There is proof of the presence of an informative poster indicating that it is from a video-monitored area.

FOURTH: The Spanish Data Protection Agency has notified the respondent of the proposed resolution of this sanctioning procedure, but has not presented allegations or evidence that contradicts the facts denounced.

FOUNDATIONS 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 RGPD), grants each control authority and as established in articles 47 and 48.1 of the Law

Organic 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 Data Protection Agency.

Likewise, article 63.2 of the LOPDGDD determines that: "The procedures processed by the Spanish Agency for Data Protection will be governed by the provisions

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in Regulation (EU) 2016/679, in this organic law, by the provisions

regulations issued in its development and, as long as they do not contradict them, with a subsidiary, by the general rules on administrative procedures."

The image of a person, in accordance with article 4.1 of the RGPD, is personal data and its protection, therefore, is the subject of said Regulation. In article 4.2 of the RGPD it is defines the concept of “treatment” of personal data.

Article 22 of the LOPDGDD includes the specific rules 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 treatment ment of images through camera systems or video cameras with the purpose to preserve the safety of people and property, as well as its facilities.

2. Images of public roads may only be captured to the extent that it is indispensable for the purpose mentioned in the previous section.

However, it will be possible to capture public roads to a greater extent when necessary to guarantee the security of assets or strategic installations. services or infrastructures linked to transport, without in any case being able to put the capturing 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 had to be kept to prove the commission of acts that attend to have against the integrity of people, goods or facilities. In this case, the images must be made available to the competent authority within a maximum period of seventy-two hours since the existence of the recording became known. tion.

The blocking obligation provided for in art. article 32 of this organic law.

4. The duty of information provided for in article 12 of Regulation (EU) 2016/679 is understood to be fulfilled by placing an informative device in a sufficient place ciently 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 device information

I attach 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.

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

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

given that she had been hired to guard 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 Corps Security and by the competent bodies for surveillance and control in the centers penitentiaries and for the control, regulation, surveillance and discipline of traffic, will be governed by the legislation transposing Directive (EU) 2016/680, when the treatment for purposes of prevention, investigation, detection or prosecution of violations criminal offenses or the 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 (EU) 2016/679 and this 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.”

III

In the present case, the claim dated 06/17/2021 is examined

presented in this Agency in which the existence of a

video surveillance system installed in ***ADDRESS.1, ***LOCATION.1,

***PROVINCIA.1, which due to its positioning and characteristics seems to be capturing

public transit areas, disproportionately.

Article 5.1 c) of the RGPD provides that personal data will be “adequate,

“adequate, relevant and limited to what is necessary in relation to the purposes for which

that are processed (“data minimization”).

It should be remembered that individuals are responsible for ensuring that the systems

installed comply with current legislation, proving that it complies with

all the requirements demanded by the regulations in force.

The infringement of the aforementioned precept is typified in article 83.5.a) of the RGPD, article

which establishes: “Infringements of the following provisions will be sanctioned,

in accordance with section 2, with administrative fines of EUR 20,000,000 as

maximum or, in the case of a company, an amount equivalent to 4% of the volume

of total global annual business of the previous financial year, opting for the

greater amount:

a) The basic principles for the treatment, including the conditions for the

consent under articles 5, 6, 7 and 9;

(...)”

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In turn, article 72.1 a) of the LOPDGDD, under the heading "Infringements considered very serious" provides:

"They are considered very serious and the infractions that

suppose a substantial violation of the articles mentioned in that and, in

particularly the following:

a) The processing of personal data violating the principles and guarantees

established in article 5 of Regulation (EU) 2016/679.

(...)"

IV

In accordance with the evidence available in this

sanctioning procedure, it is considered that the claimed party has a

video surveillance system on the facade of your home, located at *** ADDRESS.1,

***LOCALIDAD.1, ***PROVINCIA.1, which captures images of public roads without cause justified.

The respondent party has not provided any documentary evidence that allows considering

that a judgment has actually been issued in his favor where it has been determined

that you have suffered property damage to your vehicle by the claimant's father,

uptake being disproportionate.

Therefore, in accordance with the applicable legislation and having examined the images of the

monitor provided by the respondent in which it is observed that, despite having

modified the capture angle, it still covers both sides of the sidewalk and the entire

roadway width; it is estimated that due to the infringement of article 5.1 c) of the RGPD

proceed to issue a warning.

the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: ADDRESS B.B.B., with NIF ***NIF.1, for a violation of article 5.1.c)

of the RGPD, typified in article 83.5 of the RGPD, a warning.

SECOND: ORDER to B.B.B., with NIF ***NIF.1 that, by virtue of article 58.2.d)

of the RGPD, within ten business days, take the following measures:

- Prove that you proceeded to remove the cameras from the current location, or to reorientation of these towards their particular area.

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

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

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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-](https://sedeagpd.gob.es/sede-electronica-web/)

[web/](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.

Sea Spain Marti

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