

□ Procedure No.: PS/00013/2021

## RESOLUTION OF PUNISHMENT PROCEDURE

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

### FACTS

FIRST: A.A.A. (\*hereinafter, the claimant) dated January 2, 2020

filed a claim with the Spanish Data Protection Agency. The

claim is directed against B.B.B. with NIF \*\*\*NIF.1 (hereinafter, the claimed one). The

The grounds on which the claim is based are as follows:

“That you have a video surveillance camera in your home without having an informative sign.

tive and focusing directly on a path of public ownership”

Along with the claim, provide the following evidence:

-Photograph showing what looks like a camera on the facade of a house

focusing on a path. There is a light bulb next to it.

SECOND: On 02/04/20 the claim is TRANSFERRED to the respondent, the

which makes insufficient allegations to clarify the facts object of CLAIM-

MATION.

THIRD. As a result of the research activities carried out, it was established

tata that the data controller is the claimed party.

On behalf of this body, the REPORT OF PRE-INTERMINATION ACTIONS is drawn up.

INSPECTION ROADS with reference number E/06682/2020.

On March 3, 2020, the respondent sends this Agency the following information:

mation and manifestations:

-That your house is in the mountains located within a plot of land 50 meters from

-That the closest inhabited house is 200 meters away.

-That the camera to be connected is oriented to the parking door and escape-

a public road.

read.

-That it would be impossible to capture images from the outside, due to fruit trees and distances.

cia that is in front of the house.

Provides aerial photography of the area.

On March 25, 2020, the reported request for information is sent.

tion. The notification is made by postal mail. The notice is recorded delivered on 9

June 2020. No reply received.

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On August 11, 2020, these proceedings begin.

On 09/29/2020, the denounced request for information requesting-

do photograph of informative poster and accreditation of the scope of the camera. The notice-

tion is done by post. The notification states “Returned to Origin due to Surplus

te (Not withdrawn in office)” on 10/23/2020.

FOURTH: On January 19, 2021, the Director of the Spanish Agency for

Data Protection agreed to initiate a sanctioning procedure against the claimant, for the

alleged infringement of Article 13 of the RGPD, typified in Article 83.5 of the RGPD.

FIFTH: When the database of this Agency was consulted, there is no allegation in

date 04/16/21.

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 are concretized in the presence of some type of device that the

The claimant considers that he does not have an information poster, considering that he could be taken from a video-surveillance camera.

Second. The resident of the locality B.B.B.

Third. The defendant denies the facts, pointing out that the camera is oriented towards private area, although it does not provide any photograph of the camera or screen printing.

II of it.

Fourth. The defendant does not prove that he has an informative poster indicating the person responsible.

ble of the treatment.

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## 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 resolve this procedure.

II

In the present case, the claim dated 01/02/20 is examined by me-  
from which the presence of a camera without an informative sign in a vi-  
possible.

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It should be remembered that individuals are responsible for ensuring that the systems installed  
felled comply with current legislation, proving 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 sign.  
tive, indicating the purposes and responsible for the treatment, where appropriate, of the data of each  
personal character.

Another of the obligations involved in the use of video surveillance for security purposes  
ity, in relation to data protection, is to comply with the right to information,  
by means of an informative badge.

They will be installed at the different entrances to the video-monitored area and, in a visible place, one or  
several posters that inform that you are accessing a video-monitored area.

The art. 22 section 4 of the LOPDGDD (LO 3/2018) provides: "4. The duty of  
training provided for in article 12 of Regulation (EU) 2016/679 will be understood to be compliant  
plied by placing an informative device in a sufficiently  
visible identifying, at least, the existence of the treatment, the identity of the responsible  
and the possibility of exercising the rights provided for in articles 15 to 22 of the Re-  
regulation (EU) 2016/679. A code may also be included in the informative device.  
go connection or internet address to this information".

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 of the same without just cause.

With this type of device it is not possible to obtain image(s) of public space either.  
co, as this is the exclusive competence of the State Security Forces and Bodies  
ted.

The recording system will be located in a guarded place or with restricted access. At  
recorded images will be accessed only by authorized personnel, who must enter a code

say username and password. Once the system is installed, it is recommended regular password change, avoiding easily deductible ones.

It should be remembered that even in the case of a "simulated" camera, the same must be oriented towards private space, since it is considered that this type of devices can affect the privacy of third parties, who are intimidated by the herself 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, outside the cases allowed in the regulations.

### III

The principle of presumption of innocence prevents imputing an administrative offense when proof of charge accrediting the criminals has not been obtained and verified. facts that motivate the imputation or the intervention in them of the presumed infraction thor. Applying the principle "in dubio pro reo" in case of doubt regarding a fact

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concrete and determined, which obliges in any case to resolve said doubt in the most favorable to the interested party.

The presumption of innocence must govern without exceptions in the legal system sanctioning and must be respected in the imposition of any sanctions, since the exercise of the ius puniendi in its diverse manifestations is conditioned to the game of evidence and a contradictory procedure in which they can defend themselves own positions. In this sense, the Constitutional Court in its Judgment

76/1990, of 04/26, considers that the right to the presumption of innocence entails:

"that the sanction is based on acts or means of proof of charge or incriminating of the reproached conduct; that the burden of proof corresponds to the one who accuses, without that no one is obliged to prove his own innocence; and that any insufficiency in the result of the tests carried out, freely assessed by the sanctioning, must be translated into an acquittal pronouncement.

The presumption of innocence governs without exceptions in the sanctioning system and has to be respected in the imposition of any sanction, whether criminal or administrative (TCo 13/1981), since the exercise of the sanctioning right in any of its manifestations, is conditioned to the test game and to a procedure contradictory environment in which their own positions can be defended.

Pursuant to this principle, no penalty may be imposed on the basis of the guilt of the accused if there is no activity to prove the charge, which in the appreciation of the authorities or bodies called to resolve, destroy this presumption (TCo Auto 3-12-81).

#### IV

In accordance with the above, it has not been possible to determine that the camera in issue is misguided, not making any response to the Agreement to Start the this Agency the denounced party.

The mere display of the device does not imply the capture of the public road nearby, it can be disconnected or have a "privacy mask", not being possible to determine the bad orientation of the same (s).

It is recalled that not meeting the requirements of this Agency may result in gar to the opening of a new sanctioning procedure for the infringement of art. 72 section 1 letter o) LOPDGDD when "obstructing the inspection work".

The accused party has been widely informed by this body, assuming assessing the consequences of a future site inspection of the

camera(s).

Henceforth, it is recommended that the complaining party contact the Armed Forces.

and Security Corps of the town (Civil Guard), which may check in

I located the system in question, carrying out the necessary investigations.

Therefore, in accordance with the applicable legislation and after assessing the graduation criteria

tion of the sanctions whose existence has been proven,

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the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: ORDER the FILE of this procedure as there is no evidence

gives the commission of any administrative infraction.

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

of A.A.A. performances.

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

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.

Sea Spain Marti

Director of the Spanish Data Protection Agency

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