

□ Procedure No.: PS/00128/2021

## 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 claimant) dated January 19, 2021  
filed a claim with the Spanish Data Protection Agency. The  
claim is directed against who identifies as B.B.B. with NIF \*\*\*NIF.1 (in  
later, the claimed one). The grounds on which the claim is based are  
succinctly “the presence of two video-surveillance cameras over a transit area  
without just cause” (folio nº 1).

Together with the claim, it provides documentary evidence that proves the presence of the  
reported devices (Proof Annex I).

SECOND: On 02/11/21, the claim is transferred to the respondent,  
for the appropriate legal purposes.

THIRD: On 03/17/21, a letter of allegations is received, expressing ma-  
succinctly the following:

“That the person responsible for the installation is the accused himself, that he has not con-  
treated the facility with no security service.

That there are FOUR cameras of which photographs are provided, as well as  
the screen where they can be viewed and the fields of vision obtained.

The deletion of the recording is practically in real time and is not processed.

sa no data since if any violation is detected it would be immediately transferred to  
security forces for treatment

Purpose of the treatment: Safety of people, goods and facilities”

FOURTH: On May 5, 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 5.1.c) of the RGPD, typified in Article 83.5 of the GDPR.

FIFTH: On 05/19/21, a written statement was received in relation to the facts object of transfer, arguing the following:

“That the existence of the cameras indicated in the complaint is admitted.

cia and two more but that it is not allowed that the cameras are located “over an area of traffic without just cause.

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That, as documented, there is an informative poster, in which it is expressed who is responsible for the treatment, that the purpose of the treatment is the security of the people, goods and installations, which are considered interested the people nas that access and their destiny is to facilitate it to the security forces and bodies.

That damage was being caused to the perimeter fence by application of pro-corrosive ducts, which led to the complaint I filed on September 18, 2020, at the Ávila police station, a copy of which is attached.

That the cameras are not oriented towards public roads, although it may be visible a tiny portion of the road since the installation aims to protect, among other things, sas, the perimeter fence with absolute proportionality, suitability and minimal intervention.

That the complainant is not affected by the field of view of the cameras

that his property adjoins the eastern limit of my plot, separated by a factory fence and your field is not displayed.

That in no case are images disproportionately displayed and everything

It is done for a fully justified cause.

SIXTH: On 05/24/21 a new document is received from the claimant stating that

“two new cameras have been installed”.

“The orientations of the cameras remain the same, towards the public highway and towards the people who walk.

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. On 01/19/21 a claim is received through which the

as main fact:

“The presence of two video-surveillance cameras over a transit zone without just cause” (folio nº 1).

Second. It is identified as the main responsible B.B.B., who does not deny being the responsible for protection reasons, considering that someone could be using some kind of corrosive acid on their metal posts.

A copy of the Complaint dated 09/17/20 before the Security Forces and Bodies is attached.

Security (Doc. No. 3).

Third. There is evidence of the presence of an informative poster indicating that it is a video-monitored area.

Fourth. There is no evidence that the system is aimed at adjoining homes, adhering to the intake to the area near the fence.

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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 01/19/21 is examined by me- from which the main fact is transferred as "the presence of two video cameras- surveillance over a transit zone without just cause" (folio nº 1).

Article 5 section 1 GDPR "Principles related to treatment" provides that: "The personal data will be:

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

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.

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.

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.

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On the part of individuals, it is not possible to install imaging devices

of public space, outside the cases allowed in the regulations.

The camera(s) cannot focus on public roads. If it is necessary to protect the entrance from

a house or that of the garage or establishment, the installation must pass the judgments of

proportionality, suitability and minimal intervention.

III

In accordance with the allegations put forward, the respondent considers proportional

gives the measure adopted when considering that property damage is being caused in

fencing, specifically by pouring some kind of "corrosive acid".

This body has expressed itself in various resolutions about the rejection to acts of vandalism, whatever their nature (e.g. graffiti, garbage, fluids, debris, etc.), allowing the installation of this type of device that allow to accredit in its case the presumed author of the same ones.

These types of acts are carried out surreptitiously in the belief that the themselves will not have any type of consequence, a reason that legitimizes the installation of cameras that have proven their worth as a deterrent or even as a gave indictment when proving facts of various kinds in court.

Article 263 CP provides: "Whoever causes damage to property belonging to others does not caught in other titles of this Code, shall be punished with a fine of six to twenty-four months, taking into account the economic condition of the victim and the amount of the damage."

The respondent attaches a copy of the Complaint filed with the National Police.

nal (Proof No. 3) considering that "the fence posts are rusty", in the belief that they could pour some kind of corrosive liquid.

The installed system has a movement "detector" that allows a cap-tation of the transit area adjacent to the property of the accused, whose images they are "treated" by the same if deemed appropriate.

The contribution of the images allows verifying the uptake of the fenced area da, as well as the adjoining traffic road(s), although in the necessary proportion given the nature of the land object of protection.

There are numerous cases in which the requirement of a contribution of proof of video is basic to reach the judge's conviction that the facts have occurred as which are manifested.

The video recordings are obviously also lawful evidence as long as they do not pay attention. have against fundamental rights worthy of protection and specifically the conflict

common is that which occurs with the right to intimacy (or privacy).

The nature of the land where the cameras are installed, as it is a

fenced space, with houses on both sides, makes it difficult to verify the alleged authorship

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of a Crime of damages, whose presumed origin is not clear either, as it is based on

ras "assumptions".

The impact of the cameras could be considered minimal, since in principle only

affects anyone who gets too close to the fenced area, considering it difficult to

facility other than the same, precisely because of the characteristics of the area of

facility.

Therefore, in the balance of the interests at stake it is temporarily considered

Measured as appropriate to avoid suspected damage to fence posts,

without prejudice to a review of the measure after a period of time, which has

I hope that the measure fulfills its dissuasive function.

The mere observation of the cameras does not affect the privacy of the

claimed, whose data will be "processed" in case of approach to the perimeter zone,

not being a "reserved" space even if you walk or walk through it, being se-

The area has been marked as video-surveillance.

Remember, however, the proximity of homes, making sure you

the protection of the rights of third parties at stake, being only allowed the contribution

images in judicial headquarters or to the security forces and bodies of the lo-

quality.

Likewise, it is recalled that the system may be the object of investigation in any time, being able to face an economic sanction from this Agency in case of modification of the capture angles, well-intentioned or even for-tweeted.

On the part claimed there is full collaboration ab initio with this Agency, expressing its willingness to cooperate at all times if necessary, that rules out any bad intention (subjective element) in the installation of the system. ma subject of complaint.

#### IV

Based on the foregoing, it can be concluded that the measure is considered proportionate to the intended purpose, to avoid property damage, without the impact of the cameras affects an area reserved for the privacy of third parties, which is why it is appropriate to order the File of this procedure.

Finally, the parties are reminded of the importance of the rights at stake. go, it being recommended that they adjust their relationships to the minimum requirements more of a good neighbor or transferring any other "conflict" between the same to the competent authorities (eg local police).

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

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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 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

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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