

□ File No.: EXP202200967

## RESOLUTION OF PUNISHMENT PROCEDURE

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

### BACKGROUND

FIRST: On 01/11/2022, it had entry in this Spanish Agency of  
Data Protection a document presented by the COMMUNITY OF OWNERS  
R.R.R., (hereinafter, the complaining party), through which it makes a claim against  
A.A.A. with NIF \*\*\*NIF.1 (hereinafter, the claimed party), for the installation of a  
video surveillance system located at \*\*\*ADDRESS.1, with indications of a  
possible breach of the provisions of the data protection regulations of  
personal character.

The reasons underlying the claim are as follows:

"Through this, we communicate that by D. A.A.A., whose home is located  
in \*\*\*ADDRESS.1, recording cameras have been placed in the windows  
of your home and facing the facade of the building, also at the access door  
to the community patio. After informing him that he has to remove the cameras, he tells us that  
they only record his sales and that he will not withdraw it, since he carries out a private activity  
and personal (...)"

Attach two photographs of the location of the cameras.

SECOND: On 01/27/2022, the respondent was sent a Request for  
information so that it could proceed with its analysis and inform this Agency within the  
of a month, of the actions carried out to adapt to the foreseen requirements  
in data protection regulations; being notified on 02/08/2022, according to the  
Notice issued by Post. To date, no reply has been received.

THIRD: On 03/25/2022, in accordance with article 65 of the LOPDGDD,

the claim filed by the claimant was admitted for processing.

FOURTH: On 05/12/2022, the Director of the Spanish Protection Agency

of Data agreed to initiate a sanctioning procedure against the claimed party, for the

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

GDPR.

FIFTH: On 05/23/2022, the defendant is notified of the agreement to open the

present sanctioning procedure and that same day a letter of allegations is received

in which it states the following:

"[...]

The alleged recording cameras have never been such, in fact, they were a

time as a video intercom, exclusively, and the sole purpose of have and have

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had is the dissuasive, for having received on no less than three occasions threats

of several of my neighbors (...). And being on notice in that aspect, I put, by way of

deterrent something like a video surveillance system, not trusting them.

When they contacted me from the agency of the "COMMONWEALTH"

I mistrusted the real reason why they wanted to know what I had posted,

therefore I did not tell them that they were fake cameras that did not record (...)."

Attach a signed Declaration of Responsibility, dated 02/08/2022, in which it states,

in short, that "those cameras don't even work anymore".

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

In this proceeding, the following are considered proven facts:

#### PROVEN FACTS

FIRST: Existence of two video surveillance cameras outside the windows of the respondent's home, located at \*\*\*ADDRESS.1, which would capture images of the public road and the access door to the community patio.

The complaining party attaches photographs that prove the presence of both devices.

SECOND: It is identified as the main responsible A.A.A. with NIF \*\*\*NIF.1.

THIRD: The defendant wields security reasons for the installation of the cameras, which are real, not fictitious, although it states that at present they do not they work, but he did not remove them because he has received threats against his properties. Provides responsible Declaration with signature of 02/08/2022.

#### 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 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."

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II

In the present case, it is appropriate to examine the claim dated 01/11/2022 through from which the placement of two cameras of video surveillance on the exterior windows of the defendant's home, located in \*\*\*ADDRESS.1, which would focus on the public road and the access door to the patio community.

The physical image of a person under article 4.1 of the RGPD is personal data and its protection, therefore, is the subject of said Regulation. Article 4.2 of the GDPR defines the concept of “treatment” of personal data.

Article 5.1 c) of the RGPD provides that personal data will be “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 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 sign informative, indicating the purposes and responsible for the treatment in your case of the data of a personal nature.

Article 22.4 of the LOPDGDD provides that:

“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 of the person in charge and the possibility of exercising the rights foreseen in the Articles 15 to 22 of Regulation (EU) 2016/679. It may also be included in the informative device a connection code 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.

Nor can images of public spaces be obtained with this type of device, as this is the exclusive competence of the State Security Forces and Bodies.

It should be remembered that even in the case of a "simulated" camera, the same should preferably be oriented towards a private space, since it is considered that this type of device can affect the privacy of third parties, which are seen intimidated by it in the belief of being the subject of permanent recording.

On the part of individuals, it is not possible to install sections for obtaining images of public space, outside the cases allowed in the regulations.

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This infringement is typified in article 83.5 a) of the RGPD, a provision that establishes:

"The infractions of the following dispositions will be sanctioned, in accordance with the section 2, with administrative fines of a maximum of EUR 20,000,000 or, in the case of a company, an amount equivalent to 4% of the turnover global annual total of the previous financial year, choosing the highest amount:

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

consent under articles 5, 6, 7 and 9;

(...)"

### III

On 05/23/2022, a written statement was received from the respondent stating that the installed system, although it is real, was used as a video intercom a while ago and that now it is not working, remaining as a mere deterrent function for security reasons.

Article 28.7 of Law 39/2015, of October 1, on Administrative Procedure

Common of Public Administrations (LPACAP, hereinafter) provides: "The

Interested parties will be responsible for the veracity of the documents they submit.

It should be noted that individuals can install cameras on their private property

false, although they must be oriented exclusively towards your property,

avoiding intimidating third parties with said devices.

In the installation of this type of "simulated" devices, caution must be taken.

necessary to avoid intimidating third parties who are unaware of the character

"fictitious" of these, who can believe they see themselves recorded by them, in such a way that they

should avoid its orientation towards public space.

### IV

Based on the foregoing, it is considered that the cameras are simulated,

that is, they do not obtain any image of an identified or identifiable natural person,

Therefore, since there is no processing of personal data, it cannot be discussed

of administrative infraction in the matter that occupies us.

Therefore, according to the above,

the Director of the Spanish Data Protection Agency RESOLVES:

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

accredited the commission of the administrative infraction object of claim.

SECOND: NOTIFY this resolution to the claimant and claimed party.

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.

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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-](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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