

Procedure No.: PS/00020/2019

938-051119

RESOLUTION OF PUNISHMENT PROCEDURE

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

BACKGROUND

FIRST: A.A.A. (claimant) dated 06/04/2018 filed a claim with the
Spanish Agency for Data Protection, motivated by data processing
made by a neighbor, B.B.B. (claimed) that has a security camera installed
video surveillance on the facade of your home, ***ADDRESS.1 at the top of the
garage, and that focuses only on public roads.

The claimant provides photographs in which she sees herself in a dwelling, type
single-family, or ground floor, and above the door, parking type, at street level, and about three
approximately meters high, a fixed device, placed on its upper part
of the door embedded in the wall, that focusing from above, to the front can
focus towards the front, which is a transit area on public roads and there is a house
in front.

SECOND: In view of the facts denounced in the claim and the
documents provided by the claimant, transferred on 06/22/2018 to the claimed the
claim to detail what happened in relation to the object of the claim.

This first transfer to the claimed party is collected by the recipient on 06/28/2018, which at
not being answered is reproduced being delivered on 09/05/2018.

On 09/18/2018, a response was received indicating:

It does not have a video surveillance system, in the case of a video door entry system that "does not

1)

captures images that may be processed or transmitted to third parties". This located on the facade of your home, and covers a maximum of four meters, just In front of the door. It is only activated if the doorbell is called, as it has the same functions that a video door entry does not start automatically, and it only has the function of knowing who is knocking at the door, having access to them People who live in "my address".

two)

The installation was carried out by the claimed party, and they do not transfer the data to third parties, nor does it have internet access or image recording processes.

3)

Considers that it can be considered a treatment of data in the exercise of exclusively personal or domestic activities.

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The defendant does not provide any evidence to substantiate his allegations.

THIRD: On 10/31/2018, a letter is sent to the defendant of the tenor: "In relation to the document sent in response to the request for information made by this Agency, you are informed that there are certain aspects that need to be clarified.

For this reason, within five working days from the notification of the this application, you must complete the documentation initially sent providing the following information:

You must provide the field of view of the reported camera that according to reported in his latest writing, it is a video door entry system."

The brief was delivered on 11/09/2018 and no response was received.

FOURTH: On 05/06/2019, the Director of the Spanish Agency for the Protection of Data agreed to initiate a sanctioning procedure to warn the defendant, for the alleged infringement of article 6.1 of the RGPD, in accordance with articles 83.5 and 58.2.b) of the RGPD.

FIFTH: Once the aforementioned initial agreement was notified, it was not carried out as it was listed according to the Post certificate:

It has been Returned to Origin due to Surplus (Not withdrawn in office) on 05/24/2019 to 07:53,

Having the following associated information:

1st delivery attempt on 05/14/2019 at 09:47, has been Absent.

2nd delivery attempt on 05/16/2019 at 17:20, has been Absent. Notice was left in mailbox.

On 05/31/2019, the notification is published in the BOE, before the Impossibility of notification at home, in accordance with the provisions of the Articles 44, 45 and 46 of Law 39/2015, of 1/10, of the Common Procedure of the Public Administrations (LPACAP), and to serve as notification to the interested party. No allegations have been received.

SIXTH: On 11/22/2019, the instructor of the procedure agreed to open a period of practice tests, including the following:

1. Consider reproduced for evidentiary purposes the filed claim and its documentation, as well as the documents obtained and generated by the Inspection Services.
- two.

The respondent is requested to:

- A) You must prove the statements made about the system being

video intercom through the means it deems appropriate (certificate of installation, purchase receipt etc.).

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B) You are requested to inform what the video door entry system consists of.

have installed. If the images can be viewed without someone ringing the doorbell, if images are recorded or played back constantly. Submit photos in your case of these spaces that are captured.

C) You are requested to provide a photograph or image of the public space

that the video intercom picks up when someone presses the doorbell, and answers if only sees said space when someone presses the aforementioned doorbell, or it can be seen from some other way. Likewise, it is recommended that if you capture in excess of the purpose for which it is required, public road space, should limit it and explain the need for such space, always to the minimum necessary.

The result of these tests was, as stated in the shipping certificate of the

Postal Service that: "Has been Returned to Origin due to Surplus (Not withdrawn in office) on 12/07/2019 at 08:45, having the following associated information:

1st Delivery attempt on 11/28/2019 at 11:16, has been Absent. 2nd Delivery attempt delivery on 11/29/2019 at 18:08, has been Absent. Notice left in mailbox.

PROVEN FACTS

1) The claimant claims that the neighbor, B.B.B., has installed a security camera video surveillance on the facade of your home, ***ADDRESS.1 at the top of the garage, and that focuses only on public roads. In the photograph he provides, you can see, in

a house, single-family type, or ground floor, and above the door at street level, type parking lot, and approximately three meters high, a fixed device, placed in its upper part of the door embedded in the wall. The same, focusing from above, to the front, you can focus towards the front, which is a traffic zone on public roads and there is a house opposite.

1)

The respondent answered in the transfer of the claim, on 09/18/2018, that it is not a video surveillance system, but a video door entry system that “does not captures images that may be processed or transmitted to third parties”. "This located on the facade of your home, and covers a maximum of four meters, just In front of the door". “It is only activated if the doorbell is called, since it has the same functions that a video door entry does not start automatically, and it only has the function of knowing who is knocking at the door, having access to them People who live in "my address".

The respondent stated that the installation was carried out by him, and that he has no Internet access or image recording processes.

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FOUNDATIONS OF LAW

Yo

By virtue of the powers that article 58.2 of the RGPD recognizes to each control authority, and as established in arts. 47 and 48.1 of the LOPDGDD, the Director of the Spanish Data Protection Agency is competent to resolve

this procedure.

II

Article 22 of Organic Law 3/2018, of 5/12, on Data Protection

Personal and guarantee of digital rights (hereinafter LOPDGDD) indicates: "

Processing for video surveillance purposes

1. Natural or legal persons, public or private, may carry out the processing of images through camera systems or video cameras with the purpose of preserving the safety of persons and goods, as well as their installations.

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

In the present case, a video door entry unit is not assimilable to a video camera.

In cases where the use of video door entry systems is limited to their function of verify the identity of the person who rang the doorbell as well as facilitate access to the housing, the regulations on data protection will not apply.

However, if the service is articulated through procedures that reproduce and/or record images constantly, and in particular when the object of the themselves reach the whole of, for example, the patio and / or the adjoining public road, or record images of situations that occur in the goal of a building, at the exceed these actions of the personal and domestic sphere, will result in full GDPR application.

III

In sanctioning matters, the Constitutional Court, in its Judgment 76/1990, of April 26, has established as one of the basic pillars for the interpretation of sanctioning administrative law that, the basic principles and guarantees present in the field of criminal law are applicable, with certain nuances, in the

exercise of any sanctioning power of the Public Administration.

In this same sense, the Judgment of the Constitutional Court 18/1981 already had pointed out that the procedural guarantees constitutionalized in article 24.2 of the Constitution are applicable to the sanctioning administrative sphere "in the necessary measure to preserve the essential values that are at the base of such precept, and the legal certainty guaranteed by article 9 of the Constitution.

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It is therefore not a literal application, given the differences noted, but with the scope required by the purpose that justifies the constitutional provision.

Specifically, it established the aforementioned sentence, for what interests us here and regarding the principle of presumption of innocence that "article 24.2 of the Constitution includes the fundamental right to the presumption of innocence, which once enshrined constitutionally it has ceased to be a general principle of law «<in dubio pro inmate to become a basic right of the person that binds all public powers and is of immediate application; saying with, in relation to the test, that although its assessment always corresponds to the Court -or, as the case may be, to the Sanctioning administration-, so that its result can distort the presumption of innocence is necessary a probative activity, if you want minimal but produced with the precise guarantees of procedural order, which somehow may be considered to be charged and from which guilt may result".

In the present case, for the reasons already indicated, it is not possible to carry out a evidentiary activity that undermines the principle of presumption of innocence of the

claimed and presuppose that by having a device that could resemble a camera, be it such, and is also focusing excessively on public roads.

Applying such a presumption, the filing of the procedure would proceed.

the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: TO AGREE, in accordance with the provisions of article 90.1 of the Law 39/2015, of 1/10, of the Common Administrative Procedure of the Public Administrations (LPACAP), the non-existence of infraction verified by part of B.B.B., with NIF ***NIF.1, for an infringement of article 6.1 of the RGPD, of in accordance with article 83.5 of the RGPD.

SECOND: NOTIFY this resolution to B.B.B..

THIRD

This Resolution will be made public once it has been notified to the interested parties.

: In accordance with the provisions of article 50 of the LOPDGDD, the

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 period of

month 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 13/07, 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, the firm resolution may be provisionally suspended in administrative proceedings

if the interested party expresses his intention to file a contentious appeal-

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through the

Electronic Registration of

administrative. If this is the case, the interested party must formally communicate this

made by writing to the Spanish Agency for Data Protection,

introducing him to

the agency

[<https://sedeagpd.gob.es/sede-electronica-web/>], or through any of the other

records provided for in art. 16.4 of the aforementioned Law 39/2015, of 1/10. You must also

transfer to the Agency the documentation that proves the effective filing of the

Sponsored links. If the Agency were not aware of the

filing of the contentious-administrative appeal within two months from the

day following the notification of this resolution, it would end the

precautionary suspension.

Sea Spain Marti

Director of the Spanish Data Protection Agency

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