

□ File No.: EXP202103400

## RESOLUTION OF PUNISHMENT PROCEDURE

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

### BACKGROUND

FIRST: Don A.A.A. (\*hereinafter, the complaining party) dated September 15 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 advance te, the party claimed). The grounds on which the claim is based are as follows:

“That video-surveillance cameras have been installed despite the prohibition of the Community of owners, ignoring the warnings of the representatives representatives of the Community of owners, visualizing public space and homes and private plots without just cause (...)”—folio nº 1--

Together with the claim, documentary evidence is provided that proves the presence of the video-surveillance cameras (Annex I).

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 to the claimed party in fe-date 10/26/21, to proceed with its analysis and inform this Agency on the period of one month, of the actions carried out to adapt to the foreseen requirements cough in the data protection regulations.

THIRD: On 11/30/21 a reply is received from the respondent party confirming firm to be responsible for the installation of the camera system, considering that they are on private property and the LPH does not apply.

Likewise, the cameras have been installed since 2018, not having any func-

right to any agreement retroactively. September 13

of 2018 the Civil and Criminal Chamber of the Superior Court of Justice of Catalonia (TSJ-Cat) issued a relevant judgment, number 74/2018.

FOURTH: On December 3, 2021, in accordance with article 65 of the LOPDGDD, the claim filed by the claimant was admitted for processing.

FIFTH: On January 26, 2022, the Director of the Spanish Agency for Data Protection agreed to initiate sanctioning proceedings against the claimed party, with 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,

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

SIXTH: The database of this organization was consulted and received on 02/21/22 brief of allegations of the claimed party, denying the commission of infringement any administration on the matter.

SEVENTH: On 02/23/22 collaboration is requested from the Security Forces and Corps State Security so that those displaced to the scene of the events verify the pre-presence of the cameras and the legality of the system in question.

EIGHTH: On 05/06/22 a Report was received from the Civil Guard (Comandancia Toledo) who, after traveling to the scene of the events, confirmed the following:

-You can see the presence of 3 video surveillance cameras (...).

-Camera nº 3 that focuses on the interior of the farm located at the back of the

house on a wall approximately 2.5 meters high.

-When accessing the farm, two informative posters are observed, in which indicates that it is a video-monitored area.

“The owner of the property gives his consent to access his house and can view the monitors where the signal from the surveillance cameras is retransmitted.

You can only view 2 quadrants of 2 cameras, these being number 1 and number 3.

No 2 is not seen from the monitor since, according to the owner, an application must be downloaded.

cation to see it from the mobile. In the viewing it is observed that the focus of the cameras

Maras is directed to the interior of the farm only in case of opening the main door.

pal of the farm, when someone accesses the interior, they could record the exterior. Attached photographic report of all the cameras and monitor”.

NINTH: On 05/23/22 a "resolution proposal" is issued in which it is proposed

the Archive of the actions, after verifying the acting force displaced to the place of

the facts the legality of the system, being the same notified in a timely manner to the

claimed party as stated in the computer system of this body, without

response and/or statement has occurred in this regard.

Of the actions carried out in this procedure and of the document

information in the file, the following have been accredited:

#### PROVEN FACTS

First. The facts bring cause of the claim dated 09/15/21 through the

which translates as the main fact the following:

“That video-surveillance cameras have been installed despite the prohibition of

the Community of owners, ignoring the warnings of the representatives

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representatives of the Community of owners, visualizing public space and homes and private plots without just cause (...)”—folio nº 1--

Second. It is identified as the main responsible B.B.B., who denies being capturing public space.

Third. It is proven that the system has three cameras all oriented them towards the interior area of their private property, without any capture of any public space.

Fourth. It is accredited that the system has two informative signs indicating when it is a video-monitored area.

## FOUNDATIONS OF LAW

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In accordance with and as established in articles 47, 48.1, 64.2 and 68.1 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 formal procedures ted by the Spanish Agency for Data Protection will be governed by the provisions of Regulation (EU) 2016/679, in this organic law, by the regulatory provisions dictated in its development and, as long as they do not contradict them, with a subsidiario, by the general rules on administrative procedures.”

II

In the present case, the claim dated 09/15/21 is examined by medio from which the "presence of a system of video-surveillance cameras installed by an individual that affects public areas and third parties with the opposition of the

Owner board".

Examined the allegations of the defendant, they are installed in his private courtyard, so it is considered that they are oriented a priori from disproportionately towards public and/or private space of third parties without cause justified.

The facts denounced could imply an affectation to the content of art. 5.1 c)

RGPD (regulation currently in force) that provides: "personal data will be:

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

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Individuals are responsible for the installed video-surveillance systems to be comply with current legislation, and must be able to prove such extremes.

We report to the competent authority.

Cameras installed by individuals must be oriented towards their private space.

vative avoiding the capture of private area of third parties without just cause.

In no case will the use of surveillance practices be admitted beyond the objective environment.

of the installation and in particular, not being able to affect the surrounding public spaces.

contiguous buildings and vehicles other than those accessing the guarded space.

Security cameras installed in private spaces will not be able to obtain images

public spaces, the security function of public spaces corresponding to

It is exclusively for the State Security Forces and Bodies.

Likewise, in the case of false cameras, they must be oriented

to a private area, avoiding intimidation of neighboring neighbors who are unaware know whether or not they process personal data.

Fake cameras can also affect personal privacy.

of the claimed, in such a way that it is a criterion maintained by this Agency that they limit their radius of action (orientation) towards a private area, respecting the tranquility of the private life of the affected, who does not have to know the nature of the system, but neither bear being intimidated by it in its field personal and/or domestic.

III

In accordance with the evidence available in this proceeding sanctioning agent, after moving the Security Forces and Bodies to the place of the the presence of three video-surveillance cameras is verified, being visible car-Informative phone adjusted to the regulations on data protection.

The three cameras installed focus towards the interior of private property of the claimed, not verifying the capture of public space without just cause.

Article 77 section 5 of Law 39&/2015 (October 1) provides the following:

"5. The documents formalized by the officials who are recognized as authority and in which, observing the corresponding legal requirements the facts verified by those are collected will prove them unless they are prove the contrary".

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.

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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

Based on the foregoing, it can be concluded that the chambers object of the claim are not affect public space, not affecting the right(s) of an identified or identified third party. cable, which is why the File of this procedure is proposed.

The rest of the issues are of a civil nature, taking into account the current Horizontal Property Law (LPH Law 49/1960, July 21), having in its case was raised in the appropriate judicial instances, by focusing the problem on the presence of appliances installed in “common” areas of the Community of owners rivers (as).

Therefore, in accordance with the applicable legislation, 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 in the matter that concerns us.

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

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 of this act, as provided for in article 46.1 of the aforementioned Law.

Sea Spain Marti

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