

□ Procedure No.: PS/00114/2021

RESOLUTION OF PUNISHMENT PROCEDURE

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

BACKGROUND

FIRST: On February 23, 2021, it had entry in this Spanish Agency

TOWN HALL OF

of Data Protection a document presented by

CARCAIXENT (hereinafter, the complaining party), through which it formulates

claim against A.A.A. with NIF ***NIF.1 (hereinafter, the claimed party), by the

installation of a video surveillance system installed in *** ADDRESS.1, existing

indications of a possible breach of the provisions of the data protection regulations.

Personal data.

The party complained against provides a copy of the Complaint Act completed by Agents of the

Police of the town dated February 19, 2021 in which it is indicated:

“During the service we are required by a neighbor of ***ADDRESS.1 who

warns of the presence for some time of a video surveillance camera

existing on the facade of the property of ***ADDRESS.1 doubting its legality.

At home there is no person who can tell us about the camera.

The data of the inhabitant of the dwelling is collected according to the data of the census of
inhabitants of this town.”

Attach photographic report.

SECOND: These facts have already been the subject of a claim before this Agency through
of ***ORGANISM.1, processing file E/06050/2020.

From this Agency, the requested party was informed of the requirements for

carry out personal data processing, indicating that, in the event of not adopt the necessary measures to comply with those requirements, would incur a infringement of the provisions of the data protection regulations, which could lead to at the beginning of the corresponding investigative and sanctioning actions.

THIRD: The claim was admitted for processing by resolution of March 12 of 2021.

FOURTH: On May 14, 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.

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FIFTH: On June 9, 2021, allegations were received by this Agency regarding initial agreement formulated by the respondent in which he indicates, in summary, that the camera is offline.

Provide a photograph in which the device appears unplugged and another of the interior of the same in which it indicates that no data is stored.

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: Installation of a video surveillance camera on the facade of the building of the claimed.

SECOND: The person responsible for the device is A.A.A. with NIF ***NIF.1.

THIRD: The respondent declares in the pleadings brief to the initial agreement that the camera is disconnected, providing photographs in which it is observed that the device is unplugged.

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 as established in arts. 47 and 48.1 of the LOPDGDD, the Director of The Spanish Agency for Data Protection is competent to resolve this process.

II

In this case, we proceed to examine the claim dated February 23, 2021 by means of which the placement of a video surveillance camera on the facade of the property where the defendant resides.

The art. 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:

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"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 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 imaging devices of public space, outside the cases allowed in the regulations.

III

The art. 77 section 5 of Law 39/2015, of October 1, on the Procedure Common Administrative of Public Administrations (LPACAP, hereinafter), provides the following: "The documents formalized by the officials to whom the recognizes the condition of authority and in which, observing the legal requirements corresponding the facts verified by those are gathered will prove of

unless proven otherwise". The Security Forces and Bodies

displaced to the scene of the events confirm the presence of the system.

IV

On June 9, 2021, a written statement was received from the respondent stating that the installed system is offline, that is, it does not obtain an image some fulfilling a mere dissuasive function.

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.

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The accused party provides a document that proves the fictitious nature of the same taking for granted the allegations put forward, being aware that in any

This body can then proceed to check the system in question.

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

necessary to avoid intimidating third parties who are unaware of the character fictitious of these, who may believe they are recorded by them, in such a way that they should avoid its orientation towards public space.

Although in the past the AEPD has sanctioned data controllers for use of this type of device, it is currently understood that the use of cameras

simulated does not imply an infringement of the fundamental right to data protection.

The Judgment of the First Chamber of the Supreme Court of November 7, 2019

declares that the installation of a fake video surveillance camera, apparently identical to other fully operative ones, is likely to restrict the freedom of third parties.

The TS reasons that when an individual does not know that he is being filmed, behaves with a naturalness and spontaneity that would not occur otherwise. And that “The plaintiff's right to the tranquility of his private life also includes the of not having to endure a permanent uncertainty” about whether the camera in question is operational or not, or whether “RCRE has replaced it with another fully identical in appearance and functional.

Therefore, it must be taken into account that the behavior described in the event of excessive can have consequences in other areas of law, being

It is advisable to take the necessary precautions to avoid excessive orientation towards public space, limiting itself to the façade of the house to be protected.

Likewise, it is recommendable to follow the indications of the Forces and Bodies of the locality, which can guide you in the matter if you need it, avoiding with them new complaints about it.

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Based on the foregoing, it has not been possible to prove that the object camera of claim obtain any image of an identified or identifiable natural person, by the claimed party having declared that the camera is simulated; so, since there is no processing of personal data, there can be no question of infringement administration in the matter at hand.

Therefore, in accordance with the applicable legislation and having assessed the criteria for graduation of sanctions whose existence has been proven,

the Director of the Spanish Data Protection Agency RESOLVES:

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

accredited the commission of any administrative infraction in the matter that we

occupies.

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SECOND: NOTIFY this resolution to A.A.A. with NIF ***NIF.1.

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

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.

Sea Spain Marti

Director of the Spanish Data Protection Agency

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