

Procedure No.: PS/00349/2018

## RESOLUTION OF PUNISHMENT PROCEDURE

From the procedure instructed by the Spanish Data Protection Agency before D.

A.A.A. and Mrs. B.B.B. (hereinafter the claimed), by virtue of claim

Presented by D.C.C.C. (hereinafter the claimant) and based on the following:

### BACKGROUND

FIRST: On 06/11/2018, the Spanish Agency for the Protection of

Written data of the claimant in which he claims against the claimed, through the

which shows feeling intimidated by the recording, through a camera

located in the patio of the house, focused on its terrace, violating its right to

privacy.

Along with your written complaint, you provide photographs of the location of the

cameras and surveillance points, although the images taken are not appreciated

correctly due to the blurriness of the contributed copies.

SECOND: The defendants were required by this Agency to accredit

in the reference file E/03631/2018, the documentation that proves that the

video surveillance installation was in accordance with data protection regulations and

which was properly signposted.

In a written statement dated 07/18/2018, they replied to this body stating

the denounced the criminal acts that they had been suffering from the denouncer,

brother of his wife and denounced, derived from the hereditary procedure that was

is in the delivery phase.

It states that the sole purpose of the video surveillance system is that all the images

obtained will be placed at the disposal of the judicial authority in case of aggression; a

below, it indicates in detail that the installed system is

composed of three video surveillance billboards, a recorder, a camera

in the private patio of the house and two outside, to the left and right.

Likewise, together with the letter, he submits a complaint to the police for damage to the motorcycle,

proceedings of the Fuengirola court and a brief from the defendant detailing the situation

through which they cross and copies of photographs.

THIRD: On 12/04/2018, the Director of the Spanish Protection Agency

of Data agreed to initiate a sanctioning procedure for the presumed infraction of the

article 5.1 c) of the RGPD, in accordance with the provisions of article 58 section 2

of the same norm, considering that the sanction that could correspond would be

WARNING, without prejudice to what may result from the investigation.

FOURTH: The defendants have provided a written statement in which they declare that they have eliminated

the video surveillance system installed in your home, although pointing out that in no

time they had captured images of the adjoining house, providing photographs

where you can see the place where the camera had been installed.

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Of the actions carried out in this proceeding, there have been

accredited the following:

#### PROVEN FACTS

FIRST: On 06/11/2018, the AEPD received a written document from the claimant stating

the existence of a video surveillance camera in the courtyard of the house capturing

images and violating their right to privacy. In the photographs provided

correctly appreciates those noted because of their shortcomings.

SECOND: Those claimed in writing on 07/08/2018 have stated that the system

installed is made up of three video surveillance billboards, a recorder, a camera in the private courtyard of the house and two outside, to the left and right. Along with his letter, he submits a complaint to the police for motorcycle damage, proceedings of the Fuengirola court and a brief from the defendant detailing the situation through which they cross and photographs captured by the cameras.

THIRD: Those claimed in writing on 01/04/2019 declare that it is a the only single-family home without division, that the area captured by the images is a patio outside of your property. It is a single house, although in the name of two.

In a subsequent letter, he indicates that the cameras have been withdrawn, so he cannot provide images as there is no record of these, providing photographs of where They found the cameras installed.

## FOUNDATIONS OF LAW

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By virtue of the powers that article 58.2 of the RGPD recognizes to each control authority, and as established in art. 47 of the Organic Law 3/2018, of December 5, Protection of Personal Data and guarantee of rights (hereinafter LOPDGDD), the Director of the Spanish Agency for Data Protection is competent to resolve this procedure.

The third transitory provision of the new LOPDGDD establishes: "Regime transitory procedures:

II

1. The procedures already initiated at the entry into force of this organic law shall be shall be governed by the above regulations, unless this organic law contains provisions more favorable for the interested party.

Article 63.2 of the LOPDGDD indicates: "The procedures processed by the Spanish Agency for Data Protection will be governed by the provisions of the

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.”

It is necessary to point out some of the requirements that the treatment of images through a video surveillance system to be in accordance with the regulations in force:

III

- Respect the principle of proportionality.

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- When the system is connected to an alarm center, you can only

be installed by a private security company that meets the requirements contemplated in article 5 of Law 5/2014 on Private Security, of April 4.

- The video cameras will not be able to capture images of the people who are outside the private space since the treatment of images in places public can only be carried out, where appropriate, by the Forces and Bodies of Security. Nor can spaces owned by third parties be captured or recorded without the consent of their owners, or, as the case may be, of the persons who are find.

- The duty to inform those affected provided for in article

12 of the RGPD 2016/679, of April 27, 2016, in the terms referred to both in the cited article, as in articles 13 and 14 of said rule, resulting from the application

-by not contradicting the provisions of the aforementioned Regulation-, the manner provided in the

Article 3 of Instruction 1/2006, of November 8, of the Spanish Agency for

Data Protection, on the Processing of Personal Data for the Purpose of

Surveillance through Camera Systems or Video Cameras (Instruction 1/2006, of 8

of November, of the Spanish Data Protection Agency).

Specifically, it must:

1. Place at least one informative badge in the video-monitored areas

located in a sufficiently visible place, both in open and closed spaces.

In accordance with the provisions of articles 13 and 14 of the RGPD, in the distinctive

aforementioned information must identify, at least, the existence of a

treatment, the identity of the person in charge and the possibility of exercising the rights

provided for in these regulations.

2. Keep available to those affected the information referred to in the

quoted GDPR.

The defendant is charged with the violation of article 5 RGPD, Principles relating to

to treatment, which provides the following:

IV

"1. 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");

Also Organic Law 3/2018, of December 5, on Data Protection

Personal and Guarantee of Digital Rights (LOPDGDD), in its article 22,

Treatment for video surveillance purposes, in its sections 1, 2, 4 and 5 establishes that:

"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

is essential for the purpose mentioned in the previous section.

However, it will be possible to capture the public road in an extension

superior when necessary to guarantee the security of goods or

strategic installations or infrastructures linked to transport, without

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In no case may it involve capturing images of the interior of a home private.

3. The data will be deleted within a maximum period of one month from its collection, except when they had to be kept to prove the commission of acts that threaten the integrity of persons, property or facilities. In that case, the images must be made available to the competent authority in within a maximum period of seventy-two hours from the date of knowledge of the existence of the recording.

The blocking obligation provided for in article 32 of this organic law.

4. The duty of information provided for in article 12 of the Regulation (EU) 2016/679 will be understood to be fulfilled by placing an informative device in a sufficiently visible place identifying, at least, the existence of the treatment, the identity of the person in charge and the possibility of exercising the rights provided for 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 data controller must keep available to those affected the information referred to in the aforementioned regulation.

5. Under article 2.2.c) of Regulation (EU) 2016/679, it is considered excluded from its scope of application the treatment by a natural person of images

that they only capture the interior of their own home.

This exclusion does not cover processing carried out by a security entity private that had been contracted for the surveillance of a home and had access to the images.

(...)

The facts denounced are specified in the installation of a system of video surveillance in the home for the possible capture of images in the outside and in the neighboring house, violating the regulations on data protection.

Article 83 of the RGPD, General conditions for the imposition of fines administrative, in its section 5, letter a) states that:

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"5. Violations of the following provisions will be sanctioned, in accordance with paragraph 2, with administrative fines of a maximum of EUR 20,000,000 or, in the case of a company, an amount equivalent to a maximum of 4% of the global total annual turnover of the previous financial year, opting for the largest amount:

a) The basic principles for the treatment, including the conditions for the consent under articles 5, 6, 7 and 9".

And article 72 of the LOPDGDD, Infractions considered very serious, establishes:

"1. Based on the provisions of article 83.5 of the Regulation (EU) 2016/679 are considered very serious and the infractions that suppose a substantial violation of the articles mentioned in that and, in particularly the following:

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a)

The processing of personal data violating the principles and guarantees established in article 5 of Regulation (EU) 2016/679.

(...)"

However, article 58.2 of the RGPD provides the following: "Each authority of control will have all the following corrective powers indicated below:

continuation:

(...)

b) sanction any person responsible or in charge of the treatment with warning when the processing operations have violated the provisions of this Regulation;

(...)"

Therefore, the RGPD, without prejudice to the provisions of its article 83, contemplates in its article 58.2 b) the possibility of going to the warning to correct the processing of personal data that do not meet your expectations. About when it is appropriate to opt for one or the other route, the application of article 83 of the RGPD or the corrective measure of warning of article 58.2.b), the rule itself in its Recital 148 establishes the following:

"In the event of a minor offence, or if the fine likely to be imposed would constitute a disproportionate burden for a natural person, rather than sanction by means of a fine, a warning may be imposed. must however Special attention should be paid to the nature, seriousness and duration of the infringement, its intentional nature, to the measures taken to alleviate the damages suffered, the degree of liability or any relevant prior violation, the manner in which that the control authority has been aware of the infraction, compliance of measures ordered against the person responsible or in charge, adherence to codes of conduct and any other aggravating or mitigating circumstance."



It should be noted that the respondent has proven that the system of video surveillance installed and that captured images has been eliminated, providing evidence of the manifested.

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In the same way, the adoption of any specific measure is not urged to take, having proven the adoption of the appropriate measures to put an end to the infraction revealed and its adaptation to the new principles that it has GDPR of course.

To conclude, taking into account the absence of intentionality, the absence of damages, the behavior of the claimed collaborating with the Agency in the solution of the incidence produced and the measures adopted mitigate more if There is guilt in the present case, for which a warning is appropriate.

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:

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HE REMEMBERS:

FIRST: IMPOSE D. A.A.A. and Ms. B.B.B., with NIFs \*\*\*NIF.1 and \*\*\*NIF.2

respectively, for an infringement of article 5.1 c) of the RGPD, sanctioned in accordance with the provisions of article 83.5 of the aforementioned RGPD and, classified as very serious in article 72.1 a) of the LOPDGDD, a sanction of WARNING of in accordance with the provisions of article 58.2.b) of the RGPD.

SECOND: NOTIFY this resolution to D. A.A.A. and Mrs. B.B.B., and,

according to art. 77.2 of the RGPD, INFORM the claimant, about the result of the claim.

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

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.

114.1 c) of the LPACAP, 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 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, the firm resolution may be provisionally suspended in administrative proceedings if

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.

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Director of the Spanish Data Protection Agency