

□ Procedure No.: PS/00346/2020

RESOLUTION OF PUNISHMENT PROCEDURE

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

FACTS

FIRST: LOCAL POLICE (** LOCATION.1) (hereinafter, the claimant) with
dated June 24, 2020 transfers Minutes (Complaint) to the Spanish Agency for
Data Protection. The claim is directed against the resident of the town A.A.A.
with NIF **NIF.1 (hereinafter, the claimed one). The grounds on which the claim is based
They are succinctly the following:

“That you want to file a complaint against your neighbors from your address at number
3 because the appearing party has observed that video cameras have been installed
surveillance (...)

“They have installed a camera in the back of the house facing their
private property, which engraves its roof...”

“Which informs the Benacazón Local Police of this fact, pre-
filing a complaint so that the pertinent measures can be taken”.

SECOND: On 08/26/20, this Agency received a reply from the respondent
providing a copy of the Bricomart purchase receipt for an amount of € XX where it reads "Camera
fictitious Dome type", dated **DATE.1.

He himself states that the two cameras are fictitious, that they do NOT record anything, nor
nobody, putting them because of the "great crime in the locality". “That in the town
There is no law, they call it the town without law”.

THIRD: On January 5, 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.

FOURTH: The database of this Agency consulted on 03/01/21 does not contain any allegation in this regard in relation to the facts subject to transfer.

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

In this proceeding, the following are considered proven facts:

FACTS

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First. On 06/24/20, this Agency received a complaint from the Local Police

(Benacazón) through which the following is transferred:

“They have installed a camera in the back of the house facing their private property, which engraves its roof...”

Together with the claim, it provides documentary evidence that proves the presence of a web-cam oriented towards the adjoining property. (Annex I).

Second. The neighboring neighbor Mr.

A.A.A.

Third. The defendant states that the cameras are "fictitious" although the ticket of purchase contributed is subsequent to the events that are the subject of the complaint, making a untrue festation on the facts object of imputation.

Fourth. It is accredited according to the attached documentary (Annex I Complaint) that the de-

The respondent has a webcam that he places in a window of his home

with obvious orientation towards the private area of third party (s) for the "treatment of damage"

cough” of their adjoining neighbors.

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 according to the provisions of articles 47 and 48 of the LOPDGDD, the Director of the Spanish Agency for Data Protection is competent to initiate and to resolve this procedure.

II

In the present case, the claim dated 06/24/20 is examined by me-
gave from which is transferred as the main fact:

“They have installed a camera in the back of the house facing their private property, which engraves its roof...”

It should be remembered that individuals are responsible for ensuring that the systems installed felled 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 informative sign.
tive, indicating the purposes and responsible for the treatment, where appropriate, of the data of each personal character.

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.

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With this type of device it is not possible to obtain image(s) of public space either.

co, as this is the exclusive competence of the State Security Forces and Bodies
ted.

It should be remembered that even in the case of a "simulated" camera, the same
must be oriented towards private space, since it is considered that this type of
devices can affect the privacy of third parties, who are intimidated by the
herself in the belief of being the object of permanent recording.

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

III

In accordance with the "evidence" available in this proceeding,
sanctioning procedure, it is considered that the defendant has a visual device
Deo-surveillance that could affect the adjoining property in an unjustified manner.

It should be specified that the acting force moves to the scene of the events
day 06/24/20, where the presence of the camera that comes out from the window is verified-
na of the accused (Proof No. 1); while the purchase invoice that provides
ta of two chambers that do not correspond to the one denounced is dated ***FE-
CHA.1.

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

"The documents formalized by the officials who are recognized as
condition of authority and in which, observing the corresponding legal requirements,
teeth the facts verified by those are collected will prove them except
that the contrary be proven"

The allegations of the accused do not correspond to the reality of the
chos, given that the invoice that it provides for the fictitious cameras is much later than the
date of the events that are the subject of the complaint.

It is recalled that a web-cam is a device that allows the "processing of data" being subject to current regulations on data protection, you cannot being used in matters of neighborhood quarrels with the purpose of intimidating or obtaining images of third parties furtively for spurious purposes.

The evidence provided is considered sufficient to undermine the right to presumption of innocence, since they prove that the accused has a web cam, that it is connected to a computer in your home and that the guides at will to the property of its neighbors without just cause, specifically to an outdoor patio of the same.

The known facts constitute an infraction, attributable to the claimant. mado, for violation of art. 5.1 c) GDPR, cited above.

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IV

The art. 83.5 RGD provides the following: "Infringements of the provisions following will be sanctioned, in accordance with section 2, with administrative fines EUR 20,000,000 maximum or, in the case of a company, an equivalent amount. equivalent to a maximum of 4% of the total global annual turnover of the fiscal year previous financial statement, opting for the highest amount:

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

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Without prejudice to the provisions of article 83 of the RGD, the aforementioned Regulation provides

ne in your art. 58.2 b) the possibility of sanctioning with a warning, in relation to what stated in Recital 148:

“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 a sanction.

tion by means of a fine, a warning may be imposed. You must, however, pay

Special attention is paid to the nature, seriousness and duration of the infraction, its character

intentional ter, to the measures taken to alleviate the damages suffered, to the

degree of responsibility or any relevant prior violation, the manner in which

the control authority has become aware of the infraction, to the fulfillment of

measures ordered against the person in charge or in charge, adherence to codes of

conduct and any other aggravating or mitigating circumstance.”

The respondent is warned that not complying with the requirements of this organization

nism or in case of persisting in their behavior, a new process will be opened.

sanctioning procedure with an economic fine where it will be valued in its

case the broad recommendations put forward.

Complainants in case of reiteration of the conduct can obtain a photograph

(with date and time) of the camera and transfer the facts again to the Local Police or

where appropriate to this Agency for the purpose of purging the responsibility of the same in

case of persisting in the behavior described or ignoring the warnings of

this agency.

Therefore, in accordance with the applicable legislation and after assessing the graduation criteria

tion of the sanctions whose existence has been proven,

the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: IMPOSE A.A.A., with NIF ***NIF.1, for an infraction of Article 5.1.c)

of the RGPD, typified in Article 83.5 of the RGPD, a sanction of WARNING.

SECOND: NOTIFY this resolution to A.A.A. and REPORT the result

of the actions to the LOCAL POLICE (** LOCATION.1).

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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

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

Sea Spain Marti

Director of the Spanish Data Protection Agency

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