

□ Procedure No.: PS/00006/2020

938-300320

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. (hereinafter, the claimant) dated October 21, 2019

filed a claim with the Spanish Data Protection Agency. The

claim is directed against B.B.B. with NIF ***NIF.1 (hereinafter, the claimed one) by the

installation of a video surveillance system located in a building on STREET

***ADDRESS.1 (ASTURIAS), with indications of a possible breach of the

provided in the data protection regulations.

The claim is based on the following grounds:

“Installation of recording surveillance cameras that are oriented towards places

of public domain that record the rest of the users of the road and without the corresponding

identification on the corresponding poster of before whom to exercise the right of

recording protection. Attached are 3 photos of the cameras installed and the

incomplete poster.

Together with the claim, it provides a photographic report.

SECOND: Prior to the acceptance of this claim for processing, it is

transferred the claimed, in accordance with the provisions of article 65.4 of the Law

Organic 3/2018, of December 5, on the Protection of Personal Data and guarantee of

digital rights (hereinafter, LOPDGDD), being notified on 11/28/2019.

On 12/27/2019, there was a written reply to the claimant with the following

contents:

"[...]Second. - Information provided on the existence of a video-monitored area, through poster photographs or informative posters, in which the location as the data shown.

We have placed two informative signs in the access area to the space video surveillance, which is displayed in a visible manner and according to the approved model that facilitates the website of the data protection agency, in which it is reported:

- the existence of the treatment (video surveillance).
- the identity of the data controller or of the video surveillance system, the

Email address of the same and the property.

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Likewise, an informative poster has been placed in which it is warned that the zone Video monitored is a PRIVATE PROPERTY.

(DOCUMENTS NUMBER 1, NUMBER 2, NUMBER 3 AND NUMBER 4, NUMBER 5, NUMBER 6 AND NUMBER 7 ARE ATTACHED)

[...] Fifth, - Scope of the cameras and places where they are installed, accrediting by photography of the images captured by the cameras as displayed on the monitor or equivalent system, that the space for catchment so as not to affect adjoining land and houses, public roads or any other alien or reserved space.

Being a single-family home and sheds, the images captured by the cameras are limited to the dwelling and to the same, not capturing images of the road public, that is, images are captured that correspond to the minimum bands of

security of access to housing.

Nor are images of adjoining land and houses or any other

off-property space. Installing in a place of visible access a sign that

reports the existence of video surveillance cameras (model APPROVED by

the Data Protection Agency), as well as a sign indicating that it is a

PRIVATE PROPERTY.

After several tests on the location, 3 cameras have definitely been installed,

attached place of final location of the same and of the images captured by

each of them.

ATTACHED. PLACES OF INSTALLATION OF THE CAMERAS AND IMAGE

CAPTURED BY EACH OF THEM:

- document no. 8 (camera 1) and document no. 9 (image captured by camera 1)

- document no. 10 (camera 2) and document no. 11 (image captured by camera 2)

- document no. 12 (camera 3) and document no. 13 (image captured by camera 3)

Seventh. - Any other information that you consider of interest to assess the

adequacy of the installation of video surveillance cameras to the regulations of

Data Protection.

The RGPD establishes in its article 6.1 the assumptions that legitimize the treatment of

personal data and therefore the use of video surveillance cameras, including:

- that the treatment is necessary to protect the vital interests of the interested party or of

another natural person.

- that the treatment is necessary for the satisfaction of legitimate interests

pursued by the data controller, in particular when the interested party reads

child.

Therefore, and since the purpose of video surveillance is to guarantee the

security of people, property and facilities, the public interest legitimizes said

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treatment. In the case at hand, with the installation we intend to avoid the commission of criminal acts, as well as the access of any person outside the property, especially when two children of 6 and 13 years of age live there, under age.

With its installation, the principle of proportionality has been fulfilled, by installing the minimum number essential to achieve the intended purpose, thus avoiding capturing and record excessive images, in a way that is always respectful of the rights of the people.

As it is a private property and always with the aim of improving and guaranteeing the security of the family unit, three cameras have been strategically placed, whose final location is documented, which allow to fulfill the function desired, without violating the privacy or intimacy of neighbors or passers-by. your installation it is carried out in such a way that in no case is the neighbors' facades invaded, property of others or public roads. The captured images only reach farms and facades of buildings owned by me and their security perimeters.

It is attached to prove, the ownership of the land and buildings that are visualized in the images captured by the cameras, a copy of the cadastre of the property, in which the aforementioned properties owned by Mr.

C.C.C.:

- Property cadastral mapping: Document No. 14 and Document No. 15
- ID copy of the owner of the buildings: Document No. 16

- Copy of the DNI of the person in charge of the treatment: Document nº 17

For all these reasons, within the period indicated for this purpose in your request, I am sending this letter and the complementary documentation, in which it is accredited that the installation of the cameras for which I am responsible is in accordance with the regulations for the protection of data. [...]

THIRD: The claim was admitted for processing by resolution of January 13 of 2020.

FOURTH: On March 9, 2020, 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 Regulation (EU) 2016/679 (Regulation General Data Protection, hereinafter RGPD), typified in article 83.5 of the same legal text.

FIFTH: On June 30, 2020, the respondent submits a brief of allegations in who requests the file of the procedure and states the following:

"[...] FIRST.

[...]

[...]since the purpose of video surveillance is to ensure the safety of people, goods and facilities, the public interest legitimizes such treatment. [...]

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With its installation, the principle of proportionality has been fulfilled, by installing the minimum number essential to achieve the intended purpose, thus avoiding capturing and record excessive images, in a way that is always respectful of the rights of

people.

In the documentation held by the Agency, since it was provided on the 27th of December 2019 in response to your request, the private property of all spaces that are monitored with security cameras, not only through a photographic report of the location of the cameras and the spaces they record, but that are accompanied by plans, property deeds, simple notes from the registry of the property and cadastral records that certify the private ownership of the property in which installed cameras are located (family home and outbuildings around a patio called antojana which is accessed by private road).

This documentation that accompanies the photographs has been ignored by the Agency, constituting the legal basis for the installation of the cameras since they certify NATURE OF PRIVATE PROPERTY both of the facades where the cameras as of the PRIVATE SPACES that it records [...]

SECOND. [...]

[...]

In the case at hand, the installation conforms to the assumptions provided for in art.

6, sections d) and e). The images that are treated are of a PRIVATE SPACE, limiting its use to the environment to be installed. [...]

[...]

Camera No. 2 captures a private access space to the property as well as the façade in which the entrance door to my home is located, which in no case can be considered excessive, since it is a piece of land that adjoins a path with a height difference of several meters with respect to the public path and that is a private access road to my home and other properties I own

[...]

[...]

Camera No. 3 captures a private space, comprised between the building where

The chamber and the rest of the buildings that comprise the farm are located

private

[...]

In compliance with this principle of data minimization, 3

video surveillance cameras strategically, to visualize access to the

housing through the main door, the two side facades that have windows on the

ground floor from which the house can be accessed by strangers and the doors

of access to the rest of the buildings that comprise the farm of my property. Their

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installation is carried out respecting the privacy and intimacy of neighbors and passers-by,

without invading the facades of neighbors, foreign properties or public roads, capturing

images exclusively of the properties of my property and its perimeters of

security.

[...]

Likewise, [...] in its installation, the set of rights established in

Articles 15 to 22 of the RGPD [...].

THIRD. The presumption of innocence must govern without exceptions in the legal system

punisher and must be respected in the imposition of sanctions, since the exercise of

ius puniendi in its various manifestations is conditioned to the game of evidence.

[...]”

Attach the following documents:

☐ Simple notes of the Registry of Property No. X of Oviedo corresponding to the farms N° XXXXX, XXXXX and XXXXX (Document n° 1)

☐ Planimetry of the farms of the respondent and the public road of ***LOCATION.1 (Document no. 2)

☐ Cadastral mapping of the property ***FINCA.1 (Document No. 3)

☐ Photographic images of the buildings, access roads and space captured by Chambers No. 2 and No. 3 (Documents No. 4, 6 and 8).

☐ Explanatory video (Document No. 5)

☐ Certificate from the Oviedo City Council regarding the Technical Engineering report Topographer of the Oviedo City Council issued on February 14, 2020 within the Non-public ownership certificate application file for the strip bordering the road and that gives access to the farm ***FINCA.1. (Document no. 7).

SIXTH: The instructor of the procedure agreed, on July 28, 2020, to open of a period of practice of tests, considering incorporated the claim presented by the claimant and his documentation, the documents obtained by the Subdirector General for Data Inspection and the allegations presented by the reclaimed.

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: The claimant submits a document accompanied by a photographic report denouncing the installation of a video surveillance system installed in the property

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located at the address indicated in the first antecedent, without information device and that could be capturing areas of public space.

SECOND: In accordance with the written response to the transfer of the claim and its attached documentation, submitted on December 27, 2019, the system installed on that date consists of three chambers:

1. Camera No. 1: It is located on a façade and its field of view is one of the private patios of the farm.
2. Chamber No. 2: It is located under the auxiliary building's arcade. Your pickup angle reaches the access road to the farm and the building of the residence of the requested.
3. Camera nº 3: It is located on a facade and its field of view corresponds with a space between buildings. The buildings cannot be identified as belonging to the same farm of the claimed.

The placement of informative devices is photographically accredited.

THIRD: According to the pleadings brief filed by the respondent on June 30, 2020 and its attached documentation, the following information is provided with respect to the chambers that are the object of the sanctioning procedure initiated (No. 2 and No. 3).

☐ Chamber No. 2: The respondent provides a certificate from the Oviedo City Council regarding the issuance of a report by the topographical technical engineer where it is considered that the access road is not part of the adjoining public road.

☐ Chamber 3. It is observed that the field of view of this camera covers a patio private between buildings corresponding to the same farm of the claimed.

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

The facts made known to the Spanish Data Protection Agency motivated the initiation of this sanctioning procedure for assuming a possible violation of article 5.1.c) of the RGPD that indicates that personal data will be “adequate, relevant and limited to what is necessary in relation to the purposes for which that are processed (“data minimization”)”.

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This infringement is typified in article 83.5 of the RGPD, which considers as such:

“The infractions of the following dispositions will be sanctioned, in accordance with the 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;

III

The present sanctioning procedure brings its cause in the presumed illegality of the cameras identified as No. 2 and No. 3 that are part of the video surveillance system installed in the property located at the address indicated in the first fact of this resolution. These cameras could be in breach of the principle of minimization of

data by disproportionately capturing public space.

As regards the possibility of installing a video surveillance system with the purpose of guaranteeing the security of the dwelling and of the private space of the claimed, article 22 of the LOPDGDD, regarding treatment for purposes of video surveillance, provides that, in order to guarantee the safety of people and goods, images of public thoroughfares may be captured "to the extent that it is essential", in correspondence with the mentioned principle of minimization of data. It is reported that, regarding the capture and images on the road, it is reported that the power to capture images on public roads is attributed, in general, to the Security Forces and Bodies in accordance with the provisions of the Organic Law 4/1997 which regulates the use of video cameras by the Forces and Corps Security in public places and its development regulations.

However, taking into account the allegations and the documentation provided by the claimed in its reply brief to the agreement to initiate this sanctioning procedure, with regard to camera No. 2, the field of viewing is limited to an access road to the property, with respect to which a certificate from the accidental secretary of the City Council of Oviedo about the report issued by the topographical technical engineer on February 14, 2020, which considers that the aforementioned road is not part of the adjoining public road; As far as camera nº3 is concerned, the field of vision shows that the courtyard captured is made up of a private space between the property's buildings.

IV

The principle of the right to the presumption of innocence, recognized as a right fundamental subjective in article 24 of the Spanish Constitution, prevents imposing an administrative sanction when proof of accrediting charge of the facts that motivate the imputation or of the intervention in the

themselves of the alleged offender and applying the principle "in dubio pro reo" in case of doubt regarding a concrete and determined fact, which obliges in any case to resolve said doubt in the most favorable way for the interested party.

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The aforementioned right to the presumption of innocence is also included in a expressed in article 53.2.b) of Law 39/2015, of October 1, on the Procedure Common Administrative of Public Administrations (hereinafter, LPACAP), which establishes that:

"two. In addition to the rights provided for in the previous section, in the case of administrative procedures of a punitive nature, the alleged responsible will have the following rights:

[...]b) To the presumption of non-existence of administrative responsibility while the contrary is proven."

In relation to this principle, the Constitutional Court in its Judgment 76/1990, of 26 of April, considers that the right to the presumption of innocence entails: "that the sanction is based on acts or means of proof of charge or incriminating the reproached conduct; that the burden of proof corresponds to the person who accuses, without no one is obliged to prove their own innocence; and that any insufficiency in the result of the tests carried out, freely valued by the sanctioning body, must be translated into an acquittal pronouncement."

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In accordance with the foregoing, based on the documentation provided by the claimed

It cannot be concluded that the devices that are the subject of this sanctioning procedure capture space outside the exclusive one, so you can not talk about conduct infringing within the scope of the regulatory framework of data protection, reason for which the file of this procedure is proceeded.

Therefore, in accordance with the applicable legislation, the Director of the Agency Spanish Data Protection RESOLVES:

FIRST: ORDER the FILE of this procedure as there is no evidence gives the commission of any administrative infraction.

SECOND: NOTIFY this resolution to B.B.B. and inform A.A.A.

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

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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, may provisionally suspend the firm resolution in administrative proceedings if the

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.

Sea Spain Marti

Director of the Spanish Data Protection Agency

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