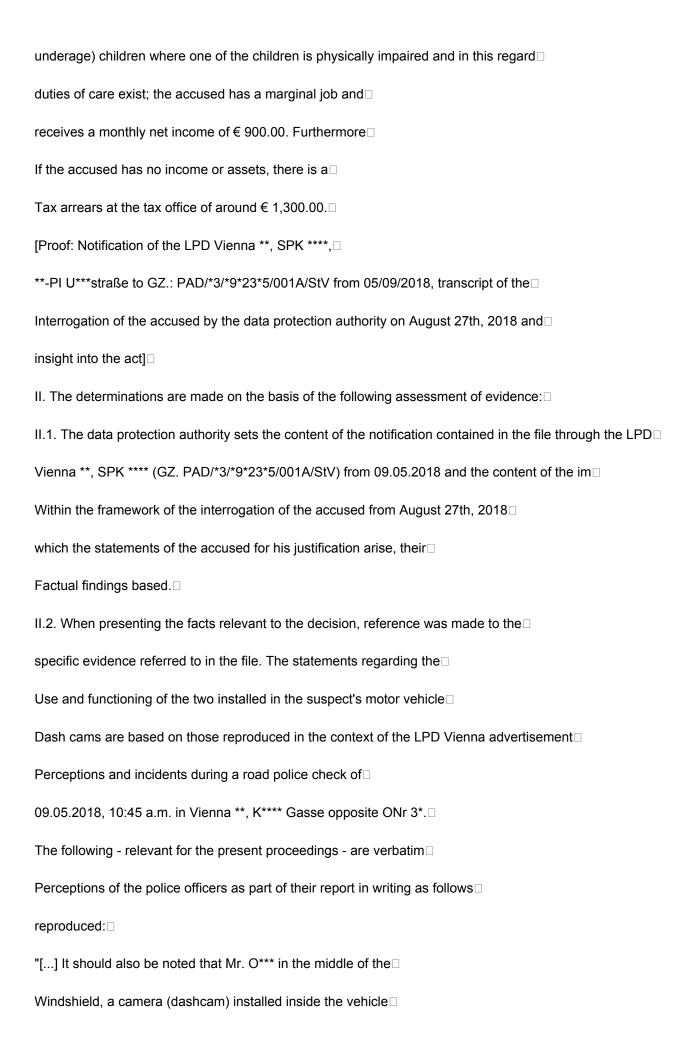
To Mr□
Istvan O***□
A-*** ****city□
penal decision□
As the registered owner of the Audi brand motor vehicle, you operate with the official □
Hungarian license plate R***2*4□
at least from that□
05/09/2018□
$around\square$
10:45 a.m□
anyway to□
until□
08/20/2018□
in the□
above motor vehicle and thus□
connected to public□
Traffic areas, at least in 1*** Vienna□
K**** alley opposite ONr 3*,□
as the person responsible within the meaning of Art. 4 Z 7 General Data Protection Regulation (GDPR).□
Image processing system (video surveillance) in the form of two in the interior of your □
Vehicle installed dash cams.□
1) The subject video cameras (dash cams) capture both the before and □
also the public space located behind the motor vehicle and thus the □
public road traffic. □
2) A suitable marking on the vehicle, which points to the two dash cams□

GZ: DSB-D550.084/0002-DSB/2018 from 27.9.2018

indicates missing. □
3) Regarding the allegation of violating the obligation to keep records□
§ 50b paragraph 1 DSG 2000 and § 13 paragraph 2 DSG becomes the administrative penal procedure □
according to § 45 Abs. 1 Z 1 (1st case) VStG. □
4) With regard to the allegation of violation of the obligation to delete according to § 50b□
Para. 2 DSG 2000 and § 13 Para. 3 DSG the administrative penal proceedings are carried out in accordance with □
§ 45 para. 1 no. 1 (1st case) of the VStG.□
By doing so, you have breached the following legal provisions:□
To 1):□
□ Article 5(1)(a) and (c) and Article 6(1) of Regulation (EU) 2016/679 (data protection □
Basic Regulation – GDPR), OJ No. L 119 of 4 May 2016, p. 1 (for the period from□
May 25, 2018)□
To 2):□
a) Section 50d (1) of the Data Protection Act 2000 – DSG 2000, Federal Law Gazette I No. 165/1999 as amended in Federal Law
No. 83/2013 (for the period before May 25, 2018)□
b) § 13 Para. 5 Data Protection Act - DSG, Federal Law Gazette No. I 165/1999 as amended (for the period from□
May 25, 2018)□
The following penalty will be imposed on you for this administrative offence(s):□
fine of euros□
if this is irrecoverable, \Box
substitute imprisonment of□
imprisonment from□
according to□
To 1): € 220 □
26 hours □
-

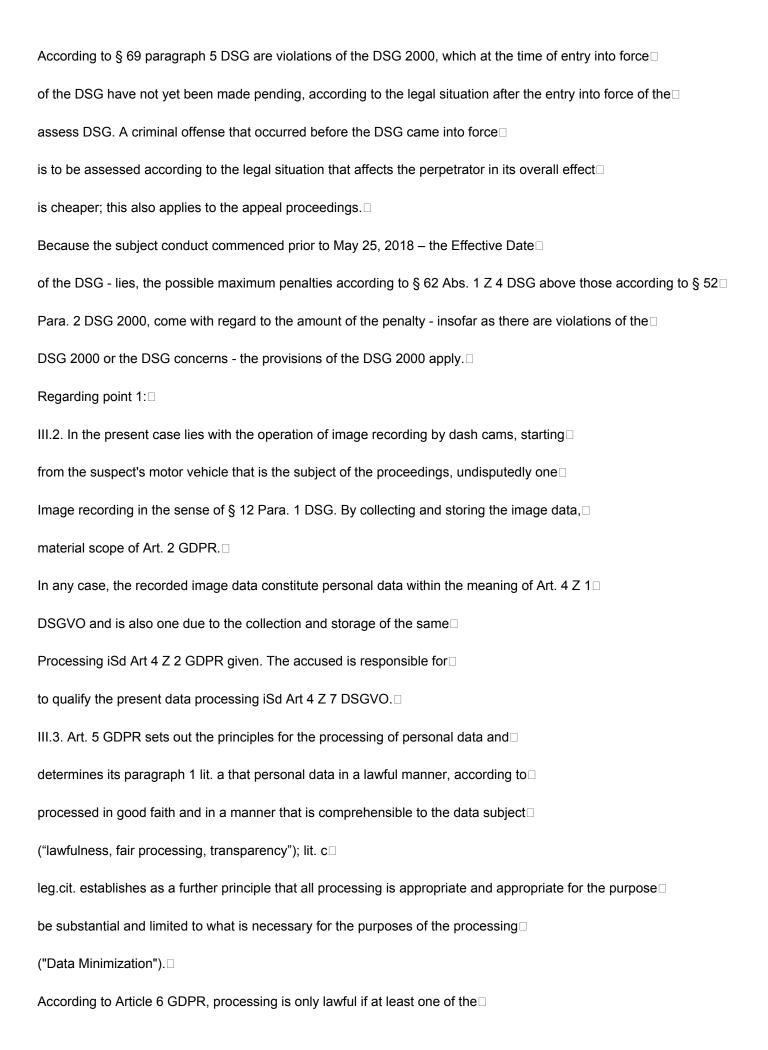
To 2): € 80 □
10 hours□
So in total:□
€ 300.00□
36 hours□
1) Art. 83 (5) lit□
GDPR□
2a) § 52 para. 2 no. 4□
DSG 2000 in conjunction with Section 69□
Paragraph 5 DSG□
2b) § 62 para. 1 no. 4□
DSG□
in connection with § 16 VStG□
Any other statements (e.g. on crediting prior detention, on forfeiture or□
about private law claims):□
Furthermore, you have to pay according to § 64 of the Administrative Penal Act 1991 - VStG:□
30.00□
Euro as a contribution to the costs of the criminal proceedings, that is 10% of the □
penalty, but at least 10 euros (one day imprisonment equals 100 euros);□
Euro as a replacement for the cash expenses for□
The total amount to be paid (penalty/costs/cash expenses) is therefore□
330.00□
Euro□
Payment term:□
If no complaint is lodged, this penal decision is immediately enforceable. the□
In this case, the total amount must be paid within two weeks after the entry into force of law

Account BAWAG P.S.K., Georg-Coch-Platz 2, 1018 Vienna, IBAN: AT46010000005490031,
BIC: BAWAATWW, in the name of the Data Protection Authority. When □
The reference number and the completion date may be given □
will. □
If no payment is made within this period, the total amount can be dunned. In $\!\Box$
In this case, a flat-rate contribution to costs of five euros must be paid. □
If no payment is made, the outstanding amount will be enforced and, in the case of his $\!\!\!\!\!\!\!\square$
uncollectibility, the penalty of imprisonment corresponding to this amount is enforced. $\hfill\Box$
Reason:□
In the second se
The following decision-relevant facts are due to the carried out□
evidentiary procedure:
I.1. Mr. Istvan O***, A-**** ****stadt, J***gasse *8/*2, is the registered owner of the □
Motor vehicle of the Audi brand with the official Hungarian registration number R***2*4.□
I.2. At least since May 9th, 2018 (10:45 a.m.) are in the interior of the present□
Motor vehicle installed two video cameras (dash cams). The two - at the front and $\!\square$
Rear window installed - video surveillance systems are each having one □
Motion sensor triggered in case of detected movements and be □
Captured images stored on an SD memory card. From the coverage of the two□
In any case, the public road traffic in front of and behind the vehicle is recorded by cameras.
I.3. Mr Istvan O*** has one of the video cameras at issue (dash cams)□
removed from his vehicle on 08/20/2018; the camera mounted on the rear window□
was not taken out of service until the issuance of this penal decision.□
I.4. Those of the two video cameras (dash cams) within the subject□
Motor vehicle emanating image recording is not suitably marked. □
I.5. The accused is a Hungarian citizen, married and has three (not□



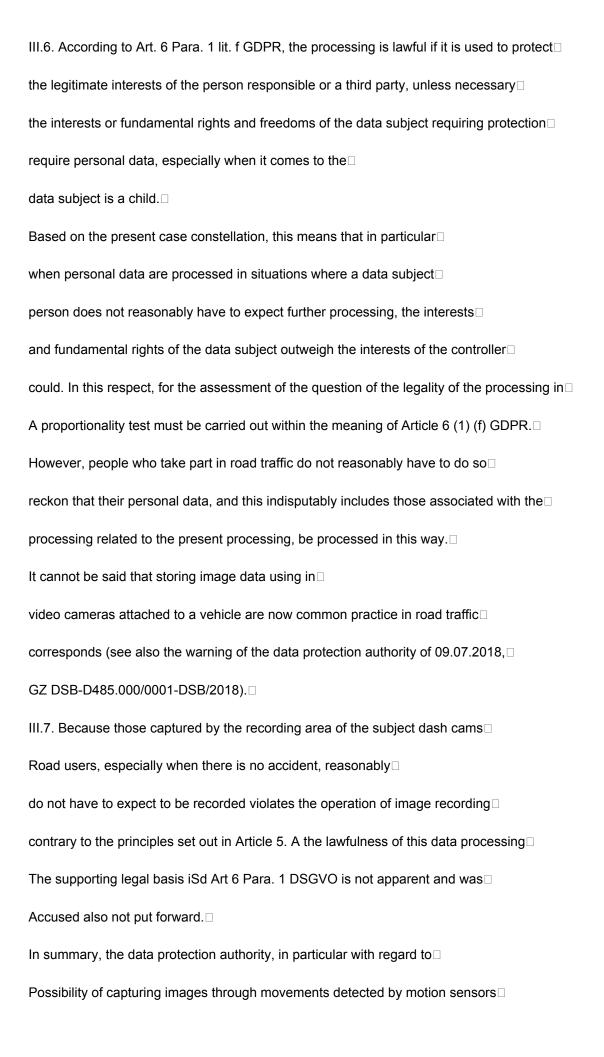
had, which immediately started recording as soon as something happened in front of the □
Camera moved or the sensor was triggered. The recording is according to Mr□
O*** stored on an SD card. Another camera that□
also recorded the traffic was located in the rear left area of the □
Rear window, also in the interior of the vehicle. When asked why□
he has cameras in the car and records and stores the traffic□
indicate that he needs it and use it as evidence in the event of an accident□
can. Mr. O*** went in front of the vehicle and ML could see how□
the sensor was triggered and the camera started recording. []"
Accordingly, the accused himself stated on the occasion of the police check that the □
image data generated by both dash cams are stored on SD memory cards□
According to the purpose of the recordings, the accused stated that they would be used in the event of an accident□
to need. Insist on the truthfulness of the ad content - especially in the light□
the official and disciplinary responsibility of police officers - no doubt. □
II.3. On the other hand, the interrogation of the accused by the $\!\Box$
Statements made by the data protection authority on 08/27/2018, according to which the two of him□
used dash cams were never operated in connection with a memory card and □
therefore never had the opportunity to take pictures, in contradiction to the□
made by the accused himself during the police check on May 9th, 2018□
Statements to the police officers and the findings made by them. □
With regard to his statement made during the interrogation, according to which□
the dash cam originally mounted on the windscreen of his vehicle is about one□
Week before his interrogation by the data protection authority - i.e. around August 20th, 2018 -□
had broken off the holder and had therefore been removed from the vehicle in the meantime□
been, the data protection authority in case of doubt for the accused of the□
credibility of this statement. For his submission, however, according to which the two□

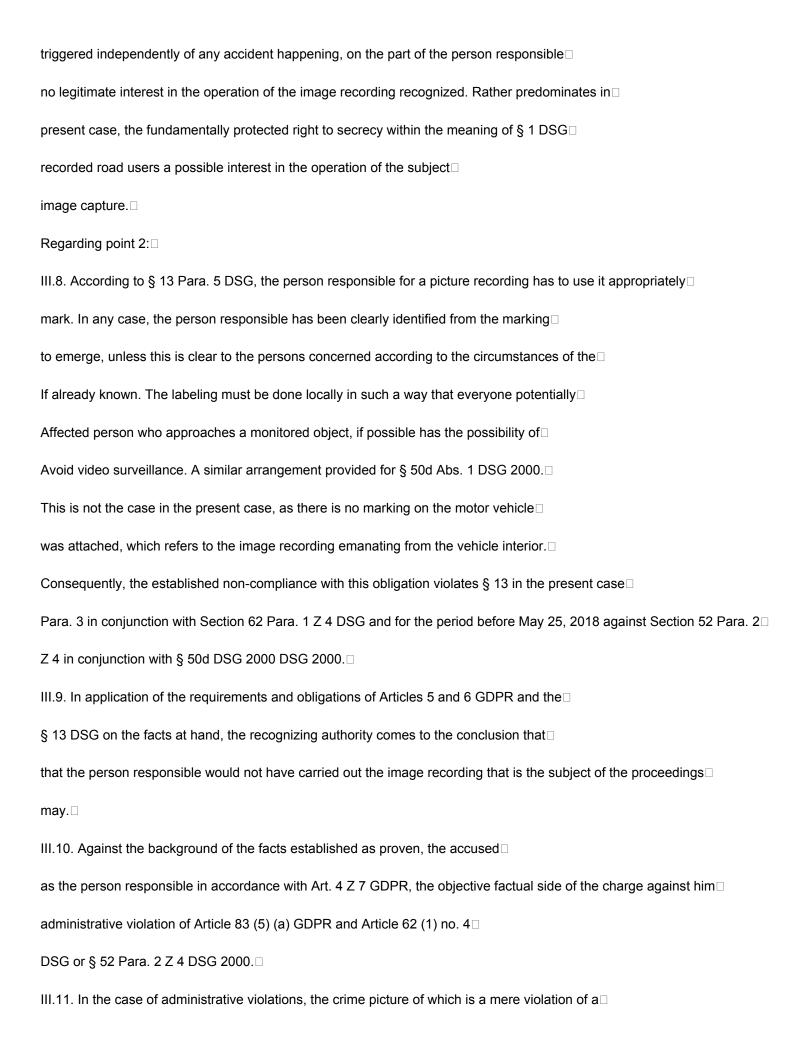
Cameras were never operated in connection with a storage medium□
and therefore it was never possible to take a picture or that the□
The camera on the rear window is only used as a parking aid□
Accused do not present any evidence and this also otherwise not on convincing□
way to make it believable. Overall, therefore, the responsibility of the accused arose□
contradictory and unrealistic over large parts and was therefore considered implausible □
to qualify a claim of protection.□
II.4. Consequently, the data protection authority arrives on the basis of general life experience□
to the conclusion that the two dash cams at issue until□
08/20/2018 - the rear dash cam also beyond - the traffic situation before and \Box
behind the vehicle and the image data on a storage medium□
were recorded. Ultimately, running two dash cams would come without any□
Storage option has no practical use, the latter is regularly used in detention□
and storage of image data for evidence purposes in the event of an accident or similar□
be seen.□
II.5. The information provided by the accused with regard to his financial circumstances and □
Duty of care is deemed credible. □
III. Legally it follows:□
Regarding administrative criminal liability:
III.1. Regarding the legal situation: According to § 62 Para. 1 Z 4 DSG, a fine of up to EUR 50,000 is payable □
punish anyone who carries out image processing contrary to the provisions of Section 3 of the □
Main piece (§§ 12 and 13 DSG) operates. □
Article 83 paragraph 5 lit□
6 GDPR fines of up to EUR 20,000,000 or in the case of a company of up to □
4% of its total worldwide annual sales for the previous financial year□
may be imposed, depending on which of the amounts is higher.□



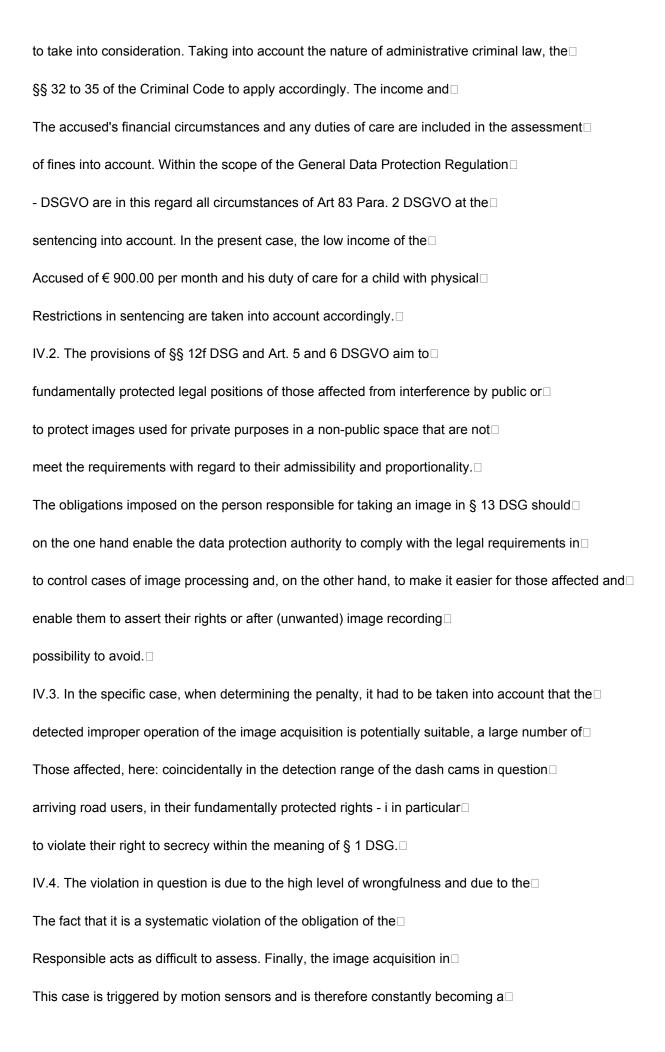
the following conditions are met:□
a) the data subject has given their consent to the processing of data concerning them
personal data given for one or more specific purposes;□
b) the processing is for the performance of a contract to which the data subject is party□
person is, or necessary to carry out pre-contractual measures,□
which are made at the request of the data subject;□
c) the processing is necessary for compliance with a legal obligation imposed by the $\!\!\!\!\!\square$
Controller is subject to;□
d) the processing is necessary to protect the vital interests of the data subject□
protect any person or other natural person;□
e) the processing is necessary for the performance of a task that is□
is in the public interest or in the exercise of public authority which $\!$
responsible has been transferred.□
f) the processing is to protect the legitimate interests of the person responsible $\!$
or a third party, unless the interests or fundamental rights and $\hfill\Box$
Fundamental freedoms of the data subject, the protection of personal data□
require, especially when the data subject is□
a child acts. □
Recital 47 leads, among other things, to the lawfulness of processing operations □
explanatory that this is due to the legitimate interests of a person responsible, also one □
Controller to whom the personal data may be disclosed, or one □
Third parties may be justified, provided that the interests or fundamental rights and freedoms of
data subject do not outweigh; including the reasonable expectations of those concerned
person based on their relationship with the controller. A $\!$
legitimate interest could exist, for example, if a relevant and □
there is an appropriate relationship between the data subject and the controller,□

e.g. B. if the data subject is a customer of the controller or in its service □
stands.□
In any case, the existence of a legitimate interest would be particularly careful□
to be weighed up, whereby it must also be checked whether a data subject was a data subject at the time of the collection□
of the personal data and given the circumstances in which it occurs,□
can reasonably foresee that there may be processing for this purpose□
will take place. Especially when personal data is processed in situations□
where a data subject is reasonably unrelated to further processing □
must be taken into account, the interests and fundamental rights of the data subject could be the interest□
of the person responsible prevail. □
III.4. From the recording area of the dash cams that are the subject of the proceedings – as under point□
I.2. detected - the public road traffic recorded in front of and behind the motor vehicle. the □
Recording of image data is triggered in each case by a motion sensor□
Image data stored on storage media (SD memory cards). □
In this regard, it should be noted that dash cams were already□
DSG 2000 were inadmissible (see decision of the Administrative Court of□
September 12, 2016, Zl. Ro 2015/04/0011); in this case, the VwGH came to the conclusion that□
the registration of a data application in the form of permanent storage of image data□
by a video camera mounted in a motor vehicle should be rejected, the operation of the there□
dash cam that is the subject of the proceedings would therefore have been unlawful. □
III.5. Section 1 (2) DSG (fundamental right to data protection) is still valid without any changes.
According to Article 5 (1) (c) GDPR, the principles of the GDPR also provide that□
personal data adequate and relevant to the purpose and to what is necessary for the purposes□
to the extent necessary for processing ("data minimization"). After this□
An examination shall be held as to whether a limitation to that for the purposes of the provision □
processing is necessary.□





prohibition or non-compliance with a commandment and that no damage has occurred □				
or a danger (disobedience offenses) - if not exclusively intentional□				
is required - criminal liability assumed if the perpetrator is not credible within the meaning of Section 5 (1) VStG				
makes that he is not at fault for the violation of the administrative regulation (cf. VwGH□				
from 13.12.2016, Ra 2016/09/0099). There is a presumption from the outset□				
fault (e.g. VwGH, 06/26/2018, Ra 2016/05/0005). It is up to the accused □				
to make credible that compliance with the administrative regulations without his□				
fault was impossible. In order to substantiate a lack of fault, the□				
Statement that the accused has taken measures that are below those foreseeable □				
Circumstances that compliance with the legal regulations could reasonably be expected. □				
III.12. On the part of the accused, it was not argued that compliance with the □				
Provisions of Article 5 Paragraph 1 lit. a and c and Article 6 Paragraph 1 lit. f GDPR and Article 13 Paragraph 5 DSG				
and § 50d para. 1 DSG 2000 would not have been possible.□				
Regarding points 3 and 4:□				
III.13. Since in the course of the investigation the fulfillment of the objective facts of the □				
Violation of the logging and deletion obligations with the for a□				
Criminal proceedings required security could be established, was the procedure □				
in this regard according to § 45 para. 1 no. 1 (1st case) VStG - in case of doubt for the accused -□				
set.□				
IV□				
The following should be noted for sentencing: □				
IV.1. According to Section 19 (1) of the VStG, the bases for determining the penalty are the □				
Importance of the legal interest protected by criminal law and the intensity of it□				
impairment by the act. Moreover, depending on the purpose of the threat of punishment, the □				
forthcoming aggravating and mitigating reasons, insofar as they do not already constitute the threat of punishment				
determine to weigh against each other. On the extent of culpability is special □				



unlimited number of road users who are naturally in motion □
recorded. As stated, image data can also be systematically independent of the presence of a□
Accident events are recorded. □
IV.5. This was therefore to be considered as an aggravating factor, with the intensity of the intervention increasing
through the operation of an inadmissible and disproportionate image processing, which here is a $\!\!\!\!\!\!\Box$
unlimited number of participants in public road traffic recorded, in the present□
Fall on the penalty imposed for point 1 - in relation to point 2 - accordingly□
put down. Refraining from the imposition is therefore out of the question. the□
Duration of the violation – the image capture has been in place for at least several, as noted □
months in operation - is also to be considered as aggravating. □
IV.6. As for the degree of culpability or the degree of culpability of the responsible □
In any case, negligent behavior was assumed. □
Negligent behavior is considered neither mitigating nor aggravating. □
IV.7. Therefore and to protect the accused from further criminal acts of the same kind□
held, the imposition of a penalty in the specific case was necessary. The need for $\!$
Special prevention also results from the fact that the image acquisition - at least by a□
of the two dash cams - is still in operation in the suspect's vehicle. $\hfill\Box$
IV.8. In the present case, mitigating consideration was given to the fact that the accused $\!$
admitted his guilt, took part in the proceedings and thereby made a contribution to□
found the truth; moreover, there are none against him at the data protection authority $\!$
relevant criminal record noted. □
IV.8. The specific penalty imposed therefore appears taking into account the □
Financial circumstances disclosed to the accused with regard to the realized □
Value of the offense measured against the available penalty range of up to €10,000 (§ 52□
Para. 2 Z 4 DSG 2000 in connection with § 69 Para. 5 DSG) or € 20,000,000 (Art. 83 Para. 5 DSGVO) actual and □
commensurate with their guilt and their imposition required to protect the accused and third parties from the □

committing the same or similar criminal acts.□					