

Procedure No.: PS/00373/2018

## RESOLUTION OF PUNISHMENT PROCEDURE

Of the procedure instructed by the Spanish Agency for Data Protection before the

entity BAR THE RED MILLS, by virtue of a claim filed by Mr. A.A.A.

(hereinafter, the claimant) and based on the following:

### BACKGROUND

FIRST: The claim filed by the claimant has an entry dated the 5th of

August 2018 at the Spanish Data Protection Agency.

The claim is directed against BAR THE RED MILLS (hereinafter, the respondent).

The reasons on which the claim is based are "that it has proceeded to place

an exterior chamber of the building without the authorization of the Board of

owners" (folio nº 1).

Together with the claim, it provides documentary evidence (photograph No. 1) that proves

the installation of a camera outside the establishment.

SECOND: On 10/04/18, the claim was TRANSFERRED to the

denounced entity so that it proceeded to certify that the installation of the system was

complied with the regulations in force in the matter at hand.

Responding, at least, to the following general points:

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Identification of the person responsible for the installation, providing their NIF and telephone number contact.

Information provided on the existence of a video-monitored area through

photographs of the poster or informative posters in which it is possible to appreciate

both its location and the data displayed.

- If a third party has been entrusted with the visualization and treatment of the images captured by the cameras, provide a copy of the signed contract.
- Brand and model of the cameras, providing the documents (manual of installation, technical sheet, invoice or purchase ticket, ...) that allow Check its characteristics and mode of operation.
- Scope of the cameras and places where they are installed, accrediting through photography of the images captured by the cameras, as are displayed on the monitor or equivalent system, which has limited the catchment space so as not to affect adjoining land and homes, the public thoroughfare or any other alien or reserved space.
- Any other information that you consider of interest to assess the adequacy of the installation of video surveillance cameras to the data protection regulations.

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THIRD: On 11/16/2018, a written statement was received from the entity denounced, providing means of evidence that corroborate what was stated.

Identification of the person in charge: LA HERRERÍA DE LA ARGANZUELA S.L.

CIF: B87685731 \*\*\*ADDRESS.1.

Information on the existence of a video-monitored area. 3 are attached photographs as document no. 1.

- A third party has not been entrusted with the visualization and treatment of the images captured by the cameras, only in the event of an alarm jump, the receiver of

alarms has access to the images from the cameras. Access contract is attached to data on behalf of third parties as document no. 2

Photographs of the images captured by the cameras are provided, such as document no 6.

Copy of communications sent to employees: A copy is attached as document no. 7.

FOURTH: On December 3, 2018, 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 of the RGPD, infringement typified in article 83 of the RGPD and classified as very serious; in connection with the powers contemplated in the section 2 of article 58 RGPD.

In view of everything that has been done, by the Spanish Protection Agency of Data in this procedure the following are considered proven facts,

#### PROVEN FACTS

FIRST: On 08/05/18, a claim from the complainant by means of which he transfers as the main fact "installation of a camera exterior of the property without having the authorization of the Board of Owners" (folio no. 1).

SECOND: It is accredited as the main person responsible for the installation of the camera the entity La Herrería de Arganzuela S.L.

THIRD: It is accredited that the system has 5 MiniDome cameras model DS-2CD1121-I and 1 Bullet camera model WBXIL 136RT for purposes deterrents, not connected, no images are displayed or recorded.

Invoice is attached as document no. 3 and Data Sheet in documents no. 4 and

The accused party does not proceed to specify which camera is dissuasive, through the corresponding documentary evidence.

no 5.

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FOURTH: It is accredited that the establishment has the mandatory sign informative indicating that it is a video-monitored area at the entrance door the same.

FIFTH: There is no evidence that the establishment has a form(s) to available to any client who may require it.

SIXTH: Documentary evidence is provided (Doc. No. 6) with various photographs of the interior of the establishment in question: storage area, cashier area and interior of the establishment, without any of the cameras obtaining images of the public road.

SEVENTH: It is certified (Doc. No. 7) that the workers of the establishment of the existence of a video-surveillance system.

## 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 art. 47 of the Organic Law 3/2018, of 5 December, of Protection of Personal Data and guarantee of digital rights (in hereinafter LOPDGDD), the Director of the Spanish Agency for Data Protection is competent to resolve this procedure.

II

The defendant is imputed the commission of an infraction for violation of article 5 of the RGPD, which states that: "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").

Cameras installed by individuals cannot obtain images of public and/or private space of third parties, and should preferably be oriented towards their private space (eg access door, windows, balconies, etc).

The purpose of this type of system is the security of the property/establishment against possible theft, and must avoid intimidating third parties that can be affected by the mere presence of the devices.

Article 83 section 5 RGPD provides the following: "Infringements of the following provisions will be sanctioned, in accordance with section 2, with fines administrative fees of EUR 20,000,000 maximum or, in the case of a company, of an amount equivalent to a maximum of 4% of the total annual turnover of the previous financial year, 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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III

Without prejudice to the provisions of article 83.5, sections a) and b), of the RGPD, in its art. 58.2 b) establishes 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 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.”

#### IV

In the present case, we proceed to examine the claim dated 08/05/18 by through which the referenced claimant transfers as the main fact "" that has been proceeded to place an exterior chamber of the building without the authorization of the Board of Owners” (folio n° 1).

The defendant recognizes the installation of a camera system of video-surveillance, alleging that one of them has a "deterrent" character, given that in his pleadings brief he has not specified which of them is the false camera, he infers that it is the outer chamber that is the object of the complaint.

The installation of simulated cameras is not prohibited in our legal system, although some caution must be exercised in the installation of them, preventing them from intimidating passers-by or being oriented disproportionately (eg towards neighbors' windows, public parks, etc.).

Since it does not proceed to "process personal data" it is not can speak of an administrative infraction, as it does not affect data associated with a person identified or identifiable.

The transferred issue would therefore be reduced to a subject framed in the Law Horizontal Property, having proceeded to install a device on the facade of the

property without informing the President of the Community.

Article 7 LPH provides the following: "The owner of each flat or premises may modify the architectural elements, facilities or services of that when it does not undermine or alter the security of the building, its general structure, its external configuration or condition, or prejudice the rights of another owner, having to give an account of such works previously to whoever represents the community".

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This has been repeatedly recognized by the jurisprudence of our Supreme Court, such as STS 419/2013, of June 25, when it states that there is no doubt that "the facade enjoys the character of a common element by nature. The jurisprudence of this Chamber has repeatedly stated that the execution of works in common elements require the unanimous consent of the community (judgment of February 17, 2010 [RC 1958/2005], December 15, 2008 [RC 245/2003])...", adding that "obtaining an administrative license for the execution of the works, it is only useful for the purpose of verifying that its execution was adjusted to the administrative prescriptions that are required by the ordinance planning, but in no way exempts from compliance with mandatory regulations collected in the LPH, regarding the necessary concurrence of consent unanimous consent of the co-owners so that validity can be granted to the works made."

The latter issue is far from the competence framework of this body and that must be treated, where appropriate, in the appropriate instances.

Examined the system as a whole (the remaining cameras), it complies with current legislation, by having the mandatory information poster and being the images provided for its purpose, exclusively capturing the area inside the establishment.

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According to the above, the reported camera does not obtain images of space public and/or private third party, fulfilling a dissuasive function.

In order to avoid a "new" confrontation between the parties, this body recommends that the following be taken into account, on the one hand, that it is usual for the closures of the establishments are subject to acts of vandalism (e.g. graffiti) and, on the other hand, that it is enough to fulfill the dissuasive function, that the camera is oriented towards the access door of the establishment and not towards the public area, given that could be the subject of new complaints.

Being the foregoing in any case conditioned, to bring it to the attention of the President of the community of owners, as guarantor of the facade of the property, in the legally stated terms above.

From the point of view of data protection, being a device "simulated" it is not possible to speak of an administrative infraction, for the reasons widely exposed.

Therefore, in accordance with the applicable legislation and after assessing the facts set forth and the evidence provided

the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: PROCEED to decree the FILE of this procedure by not be accredited the commission of any administrative infraction in the framework of the current regulations on data protection.

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SECOND: NOTIFY this resolution to the entity BAR THE RED MILLS and, according to art. 77.2 of the RGD, INFORM the claimant about the result of the claim.

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. 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 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.

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Director of the Spanish Data Protection Agency

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