

□ Procedure No.: PS/00185/2021

## RESOLUTION OF PUNISHMENT PROCEDURE

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

### BACKGROUND

FIRST: On November 5, 2020, you entered this Agency

Spanish Data Protection, a document presented by COMMUNITY OF

OWNERS R.R.R. (hereinafter, the complaining party), by which it formulates

claim against A.A.A. with NIF \*\*\*NIF.1 (hereinafter, the claimed party), by the

installation of a video surveillance system installed in \*\*\* ADDRESS.1, existing

indications of a possible breach of the provisions of the data protection regulations.

Personal data.

The claim is based on the fact that the defendant has installed a security camera

video surveillance in your parking space oriented towards common areas, and that, in addition,

the informative poster is incomplete.

Attach photographic report.

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

transferred to the claimed party, in accordance with the provisions of article 65.4 the

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

guarantee of digital rights (hereinafter, LOPDGDD), being received

dated 02/12/2021, as stated in the acknowledgment of receipt issued by the

post.

There is no evidence that any brief of allegations has been received by this Agency.

THIRD: The claim was admitted for processing by resolution of April 23

of 2021.

FOURTH: On July 1, 2021, the Director of the Spanish Agency for Data Protection agreed to initiate a sanctioning procedure against the claimant, for the alleged infringement of articles 5.1.c) and 13 of the RGPD, typified in article 83.5 of the GDPR.

FIFTH: On July 14, 2021, the respondent submitted a document in which states that, on February 12, 2021, he sent an email to this Agency with your allegations.

However, upon receipt of the Agreement to Commence this Sanctioning Procedure, has sent a new letter, by post, providing a copy of said mail and several Photographs.

The claimed indicates that the camera does not record, that it only has a blinking red light. That he put it because there were many robberies happening in the storage rooms.

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“I have a sign downloaded from the internet warning that there is a camera, that is true but only to give credibility and that my storage room is not stolen (...)”

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: On November 5, 2020, a claim was filed in this

Agency because the respondent has a video surveillance camera installed in his parking space oriented towards common areas, and that, in addition, the information poster it is incomplete.

A photographic report has been attached.

SECOND: It is identified as the main responsible D. A.A.A. with NIF

\*\*\*NIF.1.

THIRD: The defendant wields security reasons for the installation of the camera, which is fictitious, which does not record and only has a flashing red light.

He provides photographs of the camera and the poster that he claims to have downloaded from Internet.

FOURTH: Examining the file as a whole, it has been verified that in the e-mail that the respondent declares to have sent to this Agency in February 2021, there is an address not authorized to receive this type of documentation.

## FOUNDATIONS OF LAW

I

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

In the present case, we proceed to examine the claim dated November 5 of 2020 by means of which the placement of a video surveillance camera in the garage of the defendant oriented towards areas common, and that has an incomplete information poster.

Article 5.1 c) of the RGPD provides that "Personal data will be adequate, relevant and limited to what is necessary in relation to the purposes for which they are processed ("data minimization")".

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It should be remembered that individuals are responsible for ensuring that the systems installed 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 sign informative, indicating the purposes and responsible for the treatment in your case of the data of a personal nature.

Article 22.4 of the LOPDGDD provides that:

"The duty of information provided for in article 12 of Regulation (EU) 2016/679 is understood fulfilled by placing an informative device instead sufficiently visible identifying, at least, the existence of the treatment, the identity of the person in charge and the possibility of exercising the rights foreseen 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 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.

Nor can images of public spaces be obtained with this type of device, as this is the exclusive competence of the State Security Forces and Bodies.

It should be remembered that even in the case of a "simulated" camera, the same should preferably be oriented towards private space, since it is considered that this type of device can affect the privacy of third parties, which are seen

intimidated by it in the belief of being the subject of permanent recording.

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

III

On July 14, 2021, a written statement was received from the respondent stating that the camera is fictitious, that it does not record and only has a red light flashing.

“I have a sign downloaded from the internet warning that there is a camera, that is true but only to give credibility and that my storage room is not stolen (...)”

Article 28.7 of Law 39/2015, of October 1, on Administrative Procedure Common of Public Administrations (LPACAP, hereinafter) provides: "The Interested parties will be responsible for the veracity of the documents they submit.

It should be noted that individuals can install cameras on their private property false, although they must be oriented exclusively towards your property, avoiding intimidating third parties with said devices.

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In the installation of this type of “simulated” devices, caution must be taken. necessary to avoid intimidating third parties who are unaware of the character "fictitious" of these, who can believe they see themselves recorded by them, in such a way that they should avoid its orientation towards public space.

Although in the past the AEPD has sanctioned data controllers for use of this type of device, it is currently understood that the use of cameras

simulated does not imply an infringement of the fundamental right to data protection.

The Judgment of the First Chamber of the Supreme Court of November 7, 2019

declares that the installation of a fake video surveillance camera, apparently

identical to other fully operative ones, is likely to restrict the freedom of

third parties.

The TS reasons that when an individual does not know that he is being filmed,

behaves with a naturalness and spontaneity that would not occur otherwise. And that

“The plaintiff's right to the tranquility of his private life also includes the

of not having to endure a permanent uncertainty” about whether the camera in

question is operational or not, or whether "RCRE has replaced it with another fully

identical in appearance and functional.

Therefore, it must be taken into account that the behavior described in the event of

excessive can have consequences in other areas of law, being

It is advisable to take the necessary precautions to avoid excessive orientation

towards public space, limiting itself to the façade of the house to be protected.

Likewise, it is recommendable to follow the indications of the Forces and Bodies of the

locality, which can guide you in the matter if you need it, avoiding with

them new complaints about it.

#### IV

Based on the foregoing, it is considered that the camera is simulated, this

is, that it does not obtain any image of an identified or identifiable natural person, therefore

that since there is no processing of personal data, it cannot be said

administrative offense in the matter at hand.

The parties are reminded of the importance of the rights at stake and must avoid

instrumentalize institutions in matters beyond their competence,

having to adjust the relationships between them to the minimum requirements of the

good neighbor rules

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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FIRST: ORDER the FILE of this procedure as there is no accredited the commission of any administrative infraction in the matter that we occupies.

SECOND: NOTIFY this resolution to 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

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-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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