

□ File No.: EXP202104052

RESOLUTION OF SANCTIONING PROCEDURE

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

BACKGROUND

FIRST: Ms. A.A.A. (hereinafter, the complaining party) dated October 26
of 2021, filed a claim with the Spanish Agency for Data Protection. The
claim is directed against Mrs. B.B.B. with NIF ***NIF.1 (hereinafter, the part
claimed), for the installation of a video surveillance system located in CALLE
***ADDRESS.1, URBANIZATION ***URBANIZATION.1, OVIEDO, ASTURIAS,
there being indications of a possible non-compliance with the provisions of the
Personal data protection.

The reasons for the claim are the following:

The claimant states that the claimed party, a neighbor of a house next to
the home of the claimant, has installed security cameras on its terrace
video surveillance that are capable of capturing both the terrace of the complaining party,
as common areas of the Community of Owners in which they reside, both the
complaining party as the claimed party and the public highway, without finding the
cameras duly marked by means of the mandatory informative signs of
video surveillance area.

The documents provided are:

- Photo report

SECOND: In accordance with article 65.4 of Organic Law 3/2018, of 5
December, Protection of Personal Data and guarantee of digital rights (in
forward, LOPDGDD), said claim was transferred to the claimed party, to

to proceed with its analysis and inform this Agency within a month of the actions carried out to adapt to the requirements established in the regulations of Data Protection.

The transfer, which was carried out in accordance with the regulations established in Law 39/2015, of October 1, of the Common Administrative Procedure of the Administrations Public (hereinafter, LPACAP), was delivered on November 15, 2021.

Given the lack of response from the claimed party, the transfer is reiterated, which is delivered on January 10, 2022.

No response has been received to this letter of transfer, despite having been notified the same on two occasions to the claimed party.

THIRD: On January 26, 2022, in accordance with article 65 of the LOPDGDD, the claim presented by the claimant party was admitted for processing.

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2/5

FOURTH: On May 3, 2022, the Director of the Spanish Agency for Data Protection agreed to initiate disciplinary proceedings against the claimed party, pursuant to the provisions of articles 63 and 64 of the LPACAP, for the alleged breaches of Articles 5.1.c) and 13 of Regulation (EU) 2016/679 (Regulation General Data Protection, hereinafter GDPR), typified in Article 83.5 of the GDPR.

FIFTH: Notified of the aforementioned start-up agreement in accordance with the rules established in the LPACAP, the claimed party submitted a pleading in which, in summary, stated that:

1st.- That, on June 4, 2020 and given the constant inappropriate behavior of the husband of the claimant towards the defendant, files the corresponding complaint in front of the claimant's husband at the Civil Guard Post in

*** MUNICIPALITY.1, of the Oviedo Company, Asturias Command; complaint that Subsequently, it derived in the Orders TRIAL ON MINOR CRIMES of the Court of Instruction No. X of Oviedo. A copy of the initiation procedure is provided for a complaint of criminal offense as document number 2. A copy of the summons document is provided the aforementioned Orders as document number 3.

2nd.- That, due to the harassment suffered by her neighbor and prey to fear, the The defendant decides to put a simulated camera on her terrace using some simple sticky tape. The camera, despite being fake, focuses solely and exclusively to the private property of the defendant. Purchase receipts are provided for the aforementioned adhesive tapes and fake camera, issued by AMAZON, as a document number 4. A photographic report is provided in which the falseness of the camera is observed placed and focus directed downwards, exclusively owned by the defendant, as document number 5.

3ª.- That, once this part of the gravity that supposes the placement of fake cameras for a subjectively long time, said elements (camera and adhesive tapes) have been removed as soon as it has been possible. A signed responsible statement is provided regarding the falsity of the camera and its withdrawal as document number 6. A photographic report is provided by the that the uninstallation of the controversial camera is observed and its falsity by the materials that constitute it, as document number 7.

4th.- That it can be verified that a simulated camera has been placed directing its false objective solely and exclusively towards the floor of the terrace owned by the claimed, without affecting in any way the private spheres of others; and what bliss

installation has its origin in the situation of harassment suffered by the person of the claimed by the claimant's husband's neighbor. The fake camera does not record any image, that its placement does not invade or project into areas belonging to people other than the one claimed and that their placement would not oblige them to inform with any identifying sign, both for its fictitious nature and for its installation in private property only.

SIXTH: On September 9, 2022, a resolution proposal was formulated, proposing that the Director of the Spanish Data Protection Agency archive the claim filed against Mrs. B.B.B., with NIF ***NIF.1, for the infringement of articles 5.1.c) and 13 of the GDPR, typified in article 83.5.a) and b) of the GDPR.

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3/5

Notified of the proposed resolution on September 12, 2022, on December 23, September 2022, the period for making them available for access expired, without has become effective, which has motivated the lack of allegations to said proposal.

Of the actions carried out in this procedure and of the documentation in the file, the following have been accredited:

PROVEN FACTS

FIRST: The claimant states that the claimed party, a neighbor of the home adjacent to the claimant's home, has installed security cameras on its terrace video surveillance that are capable of capturing both the terrace of the complaining party, as common areas of the Community of Owners in which they reside, both the complaining party as the claimed party and the public highway, without finding the

cameras duly marked by means of the mandatory informative signs of video surveillance area.

SECOND: The claimed party decides to put a simulated camera on his terrace using some simple adhesive tapes. The fake camera, focuses only and exclusively to the private property of the defendant. Delivery notes are provided purchase of the aforementioned adhesive tapes and a fake camera, issued by AMAZON. HE provides a photographic report in which the falseness of the camera and the focus is observed directed downwards, exclusively owned by the defendant.

That camera and adhesive tapes have been removed as soon as possible. HE provides a signed responsible statement regarding the falsehood of the camera and its withdrawal. A photographic report is provided in which the uninstallation of the camera and its falsehood by the materials that constitute it.

FUNDAMENTALS OF LAW

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Competence

In accordance with the powers that article 58.2 of Regulation (EU) 2016/679 (General Data Protection Regulation, hereinafter GDPR), grants each control authority and as established in articles 47 and 48.1 of the Law Organic 3/2018, of December 5, Protection of Personal Data and guarantee of digital rights (hereinafter, LOPDGDD), is competent to initiate and resolve this procedure the Director of the Spanish Data Protection Agency.

Likewise, article 63.2 of the LOPDGDD determines that: "Procedures processed by the Spanish Data Protection Agency will be governed by the provisions in Regulation (EU) 2016/679, in this organic law, by the provisions regulations dictated in its development and, insofar as they do not contradict them, with character subsidiary, by the general rules on administrative procedures."

II

Response Allegations

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4/5

In response to the allegations presented by the claimed party, it should be noted that following:

Examined the allegations of the claimed party, and assessed the images provided by both parties to the procedure, the allegations and the evidence that the cameras are fictitious.

It can be concluded that we are dealing with a non-operative system and that it has not been produced data processing, so the file proceeds.

It should be remembered that "the data that is processed through the video surveillance will be processed for the purpose that motivated the installation of the itself and which is linked to guaranteeing the safety of people, goods and facilities".

II

Presumption of Innocence

The principle of presumption of innocence prevents imputing an administrative offense when proof of charge accrediting the charges has not been obtained and verified. facts that motivate the imputation or of the intervention in them of the presumed offender. 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 of the way more favorable to the interested party.

The presumption of innocence must govern without exceptions in the legal system sanctioning, and must be respected in the imposition of any sanctions, since the exercise of ius puniendi, in its various manifestations, is conditioned to the game of evidence and an adversarial procedure in which they can defend themselves own positions. In this sense, the Constitutional Court in its Judgment 76/1990, of 04/26, considers that the right to the presumption of innocence entails: "that the sanction is based on acts or means of proof of charges or incriminating of the reproached conduct; that the burden of proof corresponds to the accuser, without that no one is obliged to prove their own innocence; and that any insufficiency in the result of the tests carried out, freely assessed by the body sanctioning, must be translated into an acquittal.

The presumption of innocence governs without exceptions in the penal system, and has to be respected in the imposition of any sanction, whether criminal or administrative (TC 13/1981), since the exercise of the sanctioning right, in any of its manifestations, is conditioned to the set of evidence and a procedure contradictory in which one's positions can be defended.

Pursuant to this principle, no sanction may be imposed based on the guilt of the accused, if there is no probative activity that, in the appreciation of the authorities or bodies called to resolve, destroy this presumption (TC Auto 3-12-81).

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IV.

Conclusion

In accordance with the foregoing, it has not been proven that the device in question was producing data processing, which is why it is appropriate to propose the Archive of this procedure.

The parties are reminded that this Agency should not be instrumentalized in issues outside its jurisdictional framework, owing the rest of the issues, in its case, be transferred to the pertinent judicial instances, where they may present the questions they deem necessary.

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

FIRST: ORDER the FILE of this procedure, since there is no accredited the commission of any administrative infraction within the framework of the regulations in force regarding data protection.

SECOND: NOTIFY this resolution to B.B.B.

In accordance with the provisions of article 50 of the LOPDGDD, this Resolution will be made public once the interested parties have been notified.

Against this resolution, which puts an end to the administrative process 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 reversal before the Director of the Spanish Agency for Data Protection within a period of one month from count 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 for in article 46.1 of the

referred Law.

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Mar Spain Marti

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