

□ File No.: EXP202101884

## RESOLUTION OF PUNISHMENT PROCEDURE

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

### BACKGROUND

FIRST: A.A.A. (\*hereinafter, the complaining party) dated August 18, 2021

filed a claim with the Spanish Data Protection Agency. claims her-

tion is directed against B.B.B. with NIF \*\*\*NIF.1 (hereinafter, the claimed party). The

The grounds on which the claim is based are as follows:

“I consider that I feel observed by the neighbor, affecting said camera to  
my privacy, therefore the visual field exceeds the legality of its own property.

ity in one of the cameras that it has placed in the window...” (folio nº 1).

Along with the claim, provide documentary evidence that proves the presence of the  
allegedly poorly oriented device affecting the lower area owned by the  
claiming party.

SECOND: In accordance with article 65.4 of Organic Law 3/2018, of 5

December, of Protection of Personal Data and guarantee of digital rights (in

hereinafter LOPDGDD), said claim was transferred to the claimed party in fe-

date 09/13/21, to proceed with its analysis and inform this Agency on the

period of one month, of the actions carried out to adapt to the foreseen requirements  
cough in the data protection regulations.

THIRD: On 12/02/21 a reply is received from the complainant stating

that at the indicated address “there is no device” that processes data from remote areas.  
served.

FOURTH: On December 9, 2021, in accordance with article 65 of the

LOPDGDD, the claim filed by the claimant was admitted for processing.

FIFTH: On February 4, 2022, the Director of the Spanish Agency for

Data Protection agreed to initiate a sanctioning procedure against the claimed party, for the alleged infringement of Article 13 of the RGPD, typified in Article 83.5 of the GDPR.

SIXTH: On 03/07/22 a letter is received from the respondent stating the following "I have received by mail the notification of the Agreement of Initiation of sanctioning procedure of the File. I already downloaded this document with previously from my citizen folder and the allegations were sent to him."

SEVENTH: On 03/22/22 a new brief of allegations is received from the claimed by means of which it states the following:

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"Contribution of frames of the images obtained" (Annex I).

In view of everything that has been done, by the Spanish Data Protection Agency

In this proceeding, the following are considered proven facts:

#### PROVEN FACTS

First. The facts bring cause of the claim dated 08/18/21 through the which the installation of a badly oriented camera is transferred to a private space, affecting the privacy of a neighbor.

Second. It is identified as the main responsible B.B.B., which does not deny the installation of the cameras, although the address provided by the counterpart was not that of their habitual residence, which is why they take so long to answer this body.

Third. It is proven that none of the chamber(s) affect the private area of the claimant, nor are they misguided.

Fourth. There is no evidence of any data processing associated with the claimant, or with any other third party. nor has he exercised any right in legal form against the person in charge of the system. topic in question.

## FOUNDATIONS OF LAW

Yo

In accordance with the powers that article 58.2 of Regulation (EU) 2016/679 (Regulation General Data Protection Regulation, hereinafter RGPD), grants each authority control and as established in articles 47, 48.1, 64.2 and 68.1 of the Law Organic 3/2018, of December 5, on the 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: "The formal procedures regulated by the Spanish Agency for Data Protection will be governed by the provisions of Regulation (EU) 2016/679, in this organic law, by the regulatory provisions dictated in its development and, as long as they do not contradict them, with a subsidiary, by the general rules on administrative procedures."

II

In the present case, the claim dated 08/18/21 is examined by me-gave from which the following fact is transferred "installation of cameras that affect my intimacy by adjoining neighbor" (folio nº 1).

Article 5.1.c) of the RGPD provides that personal data will be "adequate, pertinent, limited 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  
felled 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 informative sign.  
tive, indicating the purposes and responsible for the treatment, where appropriate, of the data of each  
personal character.

Article 22.4 of the LOPDGDD provides that:

“The duty of information provided for in article 12 of the Regulation (EU)  
2016/679 will be understood to be fulfilled by placing an informative device  
in a sufficiently visible place identifying, at least, the existence of the treatment,  
the identity of the person in charge and the possibility of exercising the rights provided for 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 a private space, since it is considered

It is believed that this type of device can affect the privacy of third parties, which is  
they are intimidated by it in the belief of being the subject of permanent recording.

### III

The principle of presumption of innocence prevents imputing an administrative offense when proof of charge accrediting the criminals has not been obtained and verified.

facts that motivate the imputation or the intervention in them of the presumed infraction thor. Applying the principle "in dubio pro reo" in case of doubt regarding a fact concrete and determined, which obliges in any case to resolve said doubt in the most 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 the ius puniendi in its diverse manifestations is conditioned to the game of evidence and a contradictory 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 charge or incriminating of the reproached conduct; that the burden of proof corresponds to the one who accuses, without that no one is obliged to prove his own innocence; and that any insufficiency in the result of the tests carried out, freely assessed by the sanctioning, must be translated into an acquittal pronouncement.

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The presumption of innocence governs without exceptions in the sanctioning system and has to be respected in the imposition of any sanction, whether criminal or administrative (TCo 13/1981), since the exercise of the sanctioning right in any of its

manifestations, is conditioned to the test game and to a procedure  
contradictory environment in which their own positions can be defended.  
Pursuant to this principle, no penalty may be imposed on the basis of the  
guilt of the accused if there is no activity to prove the charge, which in the  
appreciation of the authorities or bodies called to resolve, destroy this  
presumption (TCO Auto 3-12-81).

The mere observance of cameras from abroad does not presuppose an illegality  
of them, since sometimes they are provided with privacy masks that  
allow to limit the angle of what is observed with these, being the claimed part  
in your freedom to install the cameras you deem necessary for the protection of your  
private property without the need for the claimant to know the  
system characteristics or housing protection angles.

The presence of an information poster in a visible area is not necessary either, since  
they are oriented towards an exclusive space of the claimed one, which has  
of freedom to install it in case of expansion of the capture with the cameras or  
installation of new devices (for guidance to avoid graffiti on the  
Exterior facade).

#### IV

Based on the foregoing, it can be concluded that no infraction has been proven in  
the matter that occupies us, being the system object of claim fully adapted  
ted to the regulations in force, reason that justifies the Archive of this procedure.  
unto

It is worth noting the full collaboration of the requested party with this body, being  
provision of the same if deemed appropriate, which rules out any type  
of intentional conduct in disturbing a neighbor (a) in the vicinity with a device  
some.

Therefore, in accordance with the applicable legislation and after assessing the graduation criteria

tion of the sanctions whose existence has been proven,

the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: ORDER the FILE of this procedure as there is no evidence

gives the commission of any administrative infraction in the matter that concerns us.

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 it has been notified to the interested parties.

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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

resents may optionally file an appeal for reconsideration before the Director

of the Spanish Agency for Data Protection within a month from the date of

the day following the notification of this resolution or directly contentious appeal

before the Contentious-Administrative Chamber of the National High Court,

in accordance with the provisions of article 25 and section 5 of the additional provision

Final fourth of Law 29/1998, of July 13, regulating the Contentious Jurisdiction-

administrative, within a period of two months from the day following the notification

tion of this act, as provided for in article 46.1 of the aforementioned Law.

Sea Spain Marti

Director of the Spanish Data Protection Agency

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