

938-0419

Procedure No.: PS/00382/2018

## RESOLUTION OF PUNISHMENT PROCEDURE

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

### BACKGROUND

FIRST: On August 9, 2018, a claim has been filed with this Agency  
formulated by Don A.A.A. (hereinafter the claimant) communicating the installation of  
a traffic video surveillance camera at number 63 of \*\*\*ADDRESS.1  
endowed, as can be deduced from the information provided by the aforementioned  
City Hall on the social network Twitter, of a license plate recognition system.

The installation and use of said capture and reproduction device  
images is produced without informing the interested parties about their installation through the  
Placing an informative sign warning that the area is subject to  
video surveillance.

The claimant attaches the following documentation:

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Photograph of a capture obtained on the social network Twitter that shows  
the following content:

“Town Hall \*\*\* LOCATION.1. The Department of Security  
City Council of \*\*\*LOCALIDAD.1 is testing a camera equipped with a  
recognition of license plates, as a preliminary step to the installation of others in the  
main entrances to the municipality, which allow controlling the vehicles that access the  
himself and check them against a police database.”

Copy of the Notarial Certificate of Presence drawn up at the request of the

claimant in order to prove the existence of some cameras installed the

\*\*\* ADDRESS.1 of the City Council claimed by taking photographs

made in that place.

The copy of the Notarial Certificate provided states:

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"DILIGENCE.- "At twelve hours and forty-five minutes on the ninth of

July two thousand and eighteen, I am constituted, in the place indicated in the minutes

(\*\*\*ADDRESS.1-Madrid), in the company of the applicant (at the approximate height of the

number 63 of said street). There I note the taking of a series of photographs in relation

to the object of the preceding act, which will be incorporated herein by means of

diligence.

With which I conclude this diligence that, by reference to the notes

taken at the time of practicing it, I extend the tenth day of July two thousand

eighteen, on this folio of notarial paper from the State Stamp. ATTEST.

Signed: JDS. Signed and sealed.

DILIGENCE.- Today I receive a duplicate copy (one to join

this matrix and another to its copy) ten (10) photographs referred to in the diligence

previous.

I confirm that these photographs agree with the reality observed by me

in the previous diligence and, consequently, I hereby attach a copy of the

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mentioned photographs after signing, sealing and numbering them

correlatively from unity. (...)”

SECOND: Dated October 3, 2018, by the Inspection Services

of this Agency, information is requested from the person in charge of the mentioned system of video surveillance in order to verify its adequacy to the protection regulations

of data, registering entry in this Agency, dated November 5,

2019, written response from the respondent in which the Councilor for Security and

Civil protection of said City Council reported in the following terms:

“Second: From the existence of a device located at \*\*\*ADDRESS.1, to the

height of the number 64, of \*\*\* LOCATION.1. Company Installed Device

READER VISION, S.L. (...)

Third. That according to installation report, which is attached. It's about a

new device under test, called TRAFFICGUARD, whose reader makes it possible

efficiently carry out a count and classification of vehicles by type

(motorcycles, cars and trucks/buses). Being a device that once analyzed

transit internally, does not store images. For each transit, the device

generates an xml file.

Fourth. Hence, the non-existence of informative signs indicating the zone of

video surveillance, nor the existence of a person in charge of processing the images

captured, nor the possibility of providing images captured by the device.”

The City Council has not attached the installation report to which it refers.

On November 7, 2018, a Diligence was lifted in which the

Acting Data Inspector points out:

“DILIGENCE: To record that as of today's date, a

telephone conversation with D. B.B.B., technical manager of the company LECTOR

VISION, S.L. responsible for the installation on one of the roads in the municipality of

\*\*\*LOCATION.1 of the TRAFFICGUARD testing device that the Councilor of

Security and Civil Protection has identified in the response to the request for

information made by this Agency on October 3, 2018.

In the conversation, and before the question of the acting inspector in relation to what said product did not appear on the company's website, the technical manager states that TRAFFICGUARD is not a device, but a software module that works with the TRAFFIC EYE device (<http://www.lectorvision.com/es/traffic-eye/>) from which incorporates information in this Diligence, and that it is in the testing phase.

It refers that the application, whose purpose is to count and classify vehicles, as stated in his letter by the Councilor for Security and Protection Civil of the City Council of \*\*\*LOCALIDAD.1, is training through a data sampling and artificial intelligence techniques. The TRAFFIC EYE device It consists of a camera that captures images of the vehicles and performs a reading of license plates, processing the information obtained locally without comparing it with other sources of information or databases and saving the recorded images for a period of 24 hours after which the automatic deletion occurs.”

From the information contained in the technical data sheet of the device it is observed that It has the capacity to connect to other systems by fiber, GPS, etc., and that allows the connection with multiple applications and users.

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THIRD: On January 22, 2019, the Director of the Spanish Agency for Data Protection, in accordance with the provisions of articles 58.2.b) and 83.7 of the Regulation (EU) 2016/679 of the European Parliament and of the Council of April 27, 2016, regarding the protection of natural persons with regard to the treatment of personal data and the free circulation of these data (General Regulation of Data Protection, (hereinafter RGPD), agreed to initiate sanctioning procedure of warning to the claimed, for the alleged infringement of article 13 of the RGPD, typified in article 83.5.b) of the RGPD, without prejudice to what would result from the

instruction.

FOURTH: Notification of the aforementioned initiation agreement, dated February 12, 2019 on claimed submitted a brief of allegations requesting the completion of procedure in accordance with the provisions of article 89.1.c of Law 39/2015, of 1 October, of the Common Administrative Procedure of the Public Administrations (in hereinafter, LPACAP), given that the imputed facts did not constitute an infraction administrative as it falls outside the scope of article 2 of the RGPD and the Law Organic 3/2018, of December 5, on the Protection of Personal Data and guarantee of digital rights, (hereinafter LOPDGDD). What he justified under the following arguments:

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The device for capturing and reproducing images was installed along throughout the month of July 2018, prior to the approval of the Project of General Budgets of the Community of Madrid, in order to document the flow of traffic by counting vehicles circulating on the highway

\*\*\*CARRETERA.1 as it passes through the urban area of the municipality, in order to prove before the Community of Madrid the need to execute a splitting of the aforementioned path as it passed through the town.

This project was finally implemented through Law 9/2018, of 26 December, of General Budgets of the Community of Madrid for the year 2019, where an item is contemplated for the "Elaboration of Studies and Project of Works for the construction of the variant of the road \*\*\*CARRETERA.1 and the \*\*\* HIGHWAY.2 in \*\*\* LOCATION.1."

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As can be deduced from the technical report issued by the company that

supplied the vehicle counting device, a copy of which is attached, only records <<vehicular data of counting and classification, not saving images, since the their analysis is carried out>> (...) by the device itself, which only generates a file <<.xml>> with metadata that does not contain data identifying the vehicle license plates.

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Once its purpose had been fulfilled, on February 11, 2019, said vehicle counting device, which is accredited by means of a certificate from the municipal notary public and photographs taken of the traffic light located at the height of the C/ \*\*\*DIRECCION.1, 63 without said device.

SIXTH: Of the actions carried out, the following have been accredited facts:

First: On August 9, 2018, it is registered at the AEPD claim for the installation by the defendant of a camera equipped with

#### PROVEN FACTS

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license plate recognition system at c/ DIRECCION.1, 63 del

City council claimed.

Second: According to the respondent, in July 2018 a device under testing was installed called TRAFFICGUARD that allowed registering, by means of its counting, the flow of vehicles that circulated in the place outlined above the proven fact, crossing the Autonomous highway \*\*\*CARRETERA.1, with the purpose of documenting before the regional authorities the need to unfold this road as it passes through the

location.

Third: According to the information obtained on June 7, 2018 from a technical manager of the company LECTOR VISIÓN, S.L., the product TRAFFIC GUARD

worked through the device under test called

“TrafficEye”, also pointing out that the application used was intended

to carry out a counting and classification of vehicles and that it was being tested by means of a data sampling and artificial intelligence techniques.

Fourth: In the information that appeared as of June 7, 2018 on the website

<http://www.lectorvision.com/es/traffic-eye/> it was pointed out that said device was a automatic license plate reading equipment designed for control applications and traffic management on any type of road open to traffic, in the case of a system "All in One" that integrates in the same equipment camera, lighting, process and all control electronics.

Fifth: The procedure contains a report issued on November 22,

2018 by the company LECTOR VISION, S.L. indicating that it was a device under test, whose location was given by the claimed "in order to make the last adjustments with real traffic of our new product

“TRAFFICGUARD”, which is part of a project “whose objective is the development of complex algorithms based on artificial vision in order to carry out efficiently counting and classifying vehicles by type (motorcycles, cars and trucks/buses) in adverse weather conditions. (...). The devices the only data they keep is the vehicle counting and classification data, not saving images, since their analysis is carried out by the computer internally.

For each transit, the device generates an .xml file, with the following data (...) “

The report includes a capture of an .xml file generated from a series of data corresponding to the transit of a vehicle, such as: year, month, day, hour, minutes and vehicle pass seconds, size, vehicle type, coordinates. this record, generated on October 23, 2018, also contains a reference or identifier of the file, but does not include any information regarding the vehicle's license plate.

Sixth:

mentioned camera.

Seventh: On February 11, 2019, the respondent withdrew the aforementioned camera, as stated in the certificate of the same date issued by the Secretary General of the City Hall (the claimed).

The respondent did not inform by any means about the installation of the

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By virtue of the powers that articles 55.1 and 2, 56.2, 57.1 and 58.2 of the Regulation (EU) 2016/679 of the European Parliament and of the Council of April 27, 2016, regarding the protection of natural persons with regard to the treatment of personal data and the free circulation of these data, (hereinafter RGPD), recognize each control authority, and as established in arts. 47 and 48.1 of Organic Law 3/2018, of December 5, on the Protection of Personal Data and guarantee of digital rights (hereinafter LOPDGDD), the Director of the Spanish Agency for Data Protection is competent to resolve this process.

Article 63.2 of Organic Law 3/2018, of December 5, on the Protection of Personal data and guarantee of digital rights (hereinafter LOPDGDD) establishes that: "The procedures processed by the Spanish Protection Agency



of Data will be governed by the provisions of Regulation (EU) 2016/679, in this organic law, by the regulatory provisions issued in its development and, in as long as they are not contradicted, on a subsidiary basis, by the general rules on administrative procedures."

## II

Sections b), d) and i) of article 58.2 of the RGPD provide the following:

"2 Each supervisory authority shall have all of the following powers

corrections listed below:

(...)

b) sanction any person responsible or in charge of the treatment with warning when the processing operations have violated the provisions of this Regulation;"

(...)

"d) order the person responsible or in charge of the treatment that the operations of treatment comply with the provisions of this Regulation, where appropriate, in a specified manner and within a specified period;"

"i) impose an administrative fine in accordance with article 83, in addition to or in instead of the measures mentioned in this paragraph, depending on the circumstances of each particular case;

Article 83.7 of the RGPD establishes that:

Without prejudice to the corrective powers of the control authorities under of Article 58(2), each Member State may lay down rules on whether can, and to what extent, impose administrative fines on authorities and organizations public authorities established in that Member State.

For its part, regarding the "Regime applicable to certain categories of responsible or in charge of the treatment" in article 77.1.c) and 2 of the LOPDGDD,

the following is established:

"1. The regime established in this article will be applicable to treatments of which they are responsible or entrusted:

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c) The General Administration of the State, the Administrations of the autonomous communities and the entities that make up the Local Administration.

(...)

2. When the managers or managers listed in section 1 committed any of the offenses referred to in articles 72 to 74 of this organic law, the data protection authority that is competent will dictate resolution sanctioning them with a warning. The resolution will establish also the measures that should be adopted to stop the behavior or correct it. the effects of the infraction that had been committed.

The resolution will be notified to the person in charge or in charge of the treatment, to the body on which it reports hierarchically, where appropriate, and those affected who have the condition of interested party, if any."

III

With regard to cameras for traffic control purposes, the Provision Additional Eighth of the Organic Law 4/1997, of August 4, which regulates the use of video cameras by the Security Forces and Bodies in places public, constitutes the norm with legal rank enabling data processing resulting from the installation of cameras for traffic control purposes by providing that "The installation and use of video cameras and any other means of capturing and

reproduction of images for the control, regulation, surveillance and discipline of traffic shall be carried out by the authority in charge of traffic regulation for the purposes foreseen in the articulated text of the Law on Traffic, Circulation of Vehicles to Motor and Road Safety, approved by Royal Legislative Decree 339/1990, of 2 March, and other specific regulations on the matter, and subject to the provisions of Organic Laws 5/1992, of October 29, Regulating Treatment Automated Personal Data, and 1/1982, of May 5, of Civil Protection of the right to Honour, Personal and Family Privacy and Own Image, within the framework of the principles of use of the same provided in this Law." (The underlining is from the AEPD)

The use and installation of this type of cameras is developed in the Royal Decree 596/1999, of April 16, approving the Development Regulation and execution of Organic Law 4/1997, of August 4, which refers in its provision unique addition. "Regime applicable to video cameras for surveillance, control and traffic discipline", the following:

"1. The installation and use of video cameras and any other means of capture and reproduction of images for the control, regulation, surveillance and discipline of traffic on public roads, will be carried out subject to the provisions of the eighth additional provision of Organic Law 4/1997 and in this provision.

2.□ It will correspond to the Public Administrations with competence for the traffic regulation, authorize the installation and use of the devices referred to in the previous section.

3.□ The resolution ordering the installation and use of fixed security devices acquisition and reproduction, will generically identify public roads or sections of those whose image is likely to be captured, the measures aimed at guarantee the preservation of the availability, confidentiality and integrity of the

recordings or records obtained, as well as the body in charge of their custody and the resolution of requests for access and cancellation.

The validity of the resolution will be indefinite as long as the circumstances that gave rise to it.

Within the scope of the General State Administration, the decision-making power will fall to the Director General of Traffic.

4.□The use of mobile means of capturing and reproducing images, that will not require the resolution referred to in the previous section, will be adapted to the principles of use and conservation set forth therein.

5.□The custody and conservation of the recordings and the resolution of the Requests for access and cancellation of the same will correspond to the bodies that determined by the competent public administrations. In the case of General Administration of the State, will correspond to the person in charge of the services provincial offices of the Central Traffic Headquarters Autonomous Organism.

6.□When the means of capturing images and sounds to which referred to in this provision are complementary to other instruments intended to accurately measure, for the purposes of traffic discipline, magnitudes such as the speed of movement of motor vehicles, said devices must comply with the requirements that, where appropriate, provide for the corresponding metrological standards.

7.□The use of the video cameras contemplated in this provision by the Security Forces and Bodies for purposes other than those provided for in the same will be governed by the provisions of Organic Law 4/1997 and in this Regulation.

In the event that said use is made by the Police Units Judiciary in the strict sense, the provisions of the Law of Criminal Procedure will apply. Criminal and in its specific regulations.”

Consequently, matters such as those relating to the principle of proportionality, content of the resolution ordering the installation and use of video cameras and competent body to dictate it.

Likewise, the treatment of images derived from the installation and use of video cameras for traffic control purposes is applicable to all of the provided in the RGPD, and the mention contained in the Provision must be understood Additional Eighth of the aforementioned Organic Law 4/1997 to Organic Law 5/1992, of October 29, Regulation of the Automated Processing of Character Data Personal as referred to the RGPD.

Based on the foregoing, it is appropriate to determine whether the respondent has complied with the right of information of the interested parties about the installation of the video camera located for traffic control purposes at a traffic light owned by the municipality of the Highway \*\*\*CARRETERA.1, from which, according to the claimant, the license plates of the vehicles traveling on that road.

#### IV

Articles 1 and 2.1 of the RGPD provide the following:

“Article 1. Object

1. This Regulation establishes the rules relating to the protection of

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natural persons with regard to the processing of personal data and rules relating to the free movement of such data.

2. This Regulation protects the fundamental rights and freedoms of natural persons and, in particular, their right to data protection

personal.

3. The free movement of personal data in the Union may not be restricted or prohibited for reasons related to the protection of persons regarding the processing of personal data.

## Article 2. Material scope of application

1. This Regulation applies to the treatment in whole or in part automated processing of personal data, as well as the non-automated processing of data personal content or intended to be included in a file.”

Paragraphs 1 and 2 of article 4 of the RGPD define:

Section 1) of article 4.1 of the RGPD defines as “personal data”:

any information about an identified or identifiable natural person ("the data subject");  
an identifiable natural person shall be considered any person whose identity can be determined, directly or indirectly, in particular by means of an identifier, such as for example a name, an identification number, location data, a online identifier or one or more elements of physical identity, physiological, genetic, psychic, economic, cultural or social of said person;

In turn, section 2) of article 4 of the RGPD defines as “processing”:

any operation or set of operations carried out on personal data or sets of personal data, whether by automated procedures or not, such as the collection, registration, organization, structuring, conservation, adaptation or modification, extraction, consultation, use, communication by transmission, diffusion or any other form of authorization of access, collation or interconnection, limitation, deletion or destruction;”

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In accordance with the definitions contained in the aforementioned sections 1 and 2 of article 4 of the RGPD, the collection and storage of the images obtained

by the video surveillance cameras installed for traffic control purposes in the  
that the number plates of the vehicles circulating in the areas have been captured  
video surveillance constitutes a treatment of personal data, since  
These registrations provide the data controller with information that  
allows the identification, directly or indirectly, of the natural persons holding the  
vehicles circulating in the video-monitored area or, where appropriate, the drivers of  
the same.

Among the obligations derived from the RGPD that the person in charge must comply with  
of the aforementioned treatment for traffic control purposes is compliance with the  
right to information in accordance with the provisions of article 13 of the aforementioned  
Regulation.

Article 12 of the RGPD, referring to the "Transparency of information,  
communication and modalities of exercising the rights of the interested party", establishes in  
its section 1 the following:

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"1. The person responsible for the treatment will take the appropriate measures to facilitate  
to the interested party all the information indicated in articles 13 and 14, as well as any  
communication pursuant to articles 15 to 22 and 34 relating to processing, in the form  
concise, transparent, intelligible and easily accessible, with clear and simple language,  
in particular any information directed specifically at a child. Information  
shall be provided in writing or by other means, including, if applicable, by  
When requested by the interested party, the information may be provided  
verbally provided that the identity of the interested party is proven by other means."

Article 13 of the RGPD, referring to the "Information that must be provided  
when the personal data is obtained from the interested party" provides the following:

"1. When personal data relating to him is obtained from an interested party, the

responsible for the treatment, at the time these are obtained, will provide

all the information indicated below:

a) the identity and contact details of the person in charge and, where appropriate, of their representative;

b) the contact details of the data protection delegate, if any;

c) the purposes of the treatment to which the personal data is destined and the basis legal treatment;

d) when the treatment is based on article 6, paragraph 1, letter f), the legitimate interests of the person in charge or of a third party;

e) the recipients or categories of recipients of the personal data, in your case;

f) where appropriate, the intention of the controller to transfer personal data to a third country or international organization and the existence or absence of a decision to adequacy of the Commission, or, in the case of transfers indicated in the Articles 46 or 47 or Article 49, paragraph 1, second paragraph, reference to the adequate or appropriate warranties and the means to obtain a copy of these or to the fact that they have been borrowed.

2. In addition to the information mentioned in section 1, the person responsible for the treatment will facilitate the interested party, at the moment in which the data is obtained personal, the following information necessary to guarantee data processing fair and transparent

a) the period during which the personal data will be kept or, when not possible, the criteria used to determine this period;

b) the existence of the right to request from the data controller access to the personal data related to the interested party, and its rectification or deletion, or the limitation of its treatment, or to oppose the treatment, as well as the right to



data portability;

c) when the treatment is based on article 6, paragraph 1, letter a), or the Article 9, paragraph 2, letter a), the existence of the right to withdraw consent in any time, without affecting the legality of the treatment based on the consent prior to its withdrawal;

d) the right to file a claim with a supervisory authority;

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e) if the communication of personal data is a legal or contractual requirement, or a necessary requirement to sign a contract, and if the interested party is obliged to provide personal data and is informed of the possible consequences of not provide such data;

f) the existence of automated decisions, including profiling, to referred to in article 22, sections 1 and 4, and, at least in such cases, information about applied logic, as well as the importance and consequences provisions of said treatment for the interested party.

3. When the person in charge of the treatment projects the subsequent treatment of personal data for a purpose other than that for which it was collected, will provide the interested party, prior to said further treatment, information for that other purpose and any additional information relevant to the meaning of paragraph 2.

4. The provisions of sections 1, 2 and 3 shall not apply when and in to the extent that the interested party already has the information.

As far as this proceeding is concerned, it is necessary to determine whether the facts that have been proven in the procedure could constitute an infringement of the

provided in the aforementioned article 13 of the RGPD by the claimed party, since there has been no informed to the interested parties affected by the alleged treatment of data of personal character (license plates) by signaling with informative posters of area subject to video surveillance for traffic control purposes.

Given the specialties of traffic and vehicle circulation, the level requirement of the principle of information in the collection of personal data staff can also be considered fulfilled using other formulas or informative instruments, among which is the possibility that the information about the existence of the cameras and their location appears on the page website of the person responsible for the treatment in a place that is easily accessible to the interested parties.

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Article 83 of the RGPD, under the heading "General conditions for the imposition of administrative fines", in its sections 2 and 5.b) states that:

"two. Administrative fines will be imposed, depending on the circumstances of each individual case, in addition to or as a substitute for the measures contemplated in article 58, paragraph 2, letters a) to h) and j). (...)"

"5. Violations of the following provisions will be sanctioned, in accordance with paragraph 2, with administrative fines of a maximum of EUR 20,000,000 or, in the case of a company, an amount equivalent to a maximum of 4% of the global total annual turnover of the previous financial year, opting for the largest amount: (...)

b) The rights of the interested parties according to articles 12 to 22;"

For its part, article 71 of the LOPDGDD establishes that "They constitute infractions the acts and behaviors referred to in sections 4, 5 and 6 of the Article 83 of Regulation (EU) 2016/679, as well as those that are contrary to the this organic law.", establishing in article 72.1.h) of said Law that:

“Based on the provisions of article 83.5 of Regulation (EU) 2016/679

are considered very serious and will prescribe after three years the infractions that suppose a substantial violation of the articles mentioned therein and, in particular, the following:

i)

The omission of the duty to inform the affected party about the treatment of your personal data in accordance with the provisions of articles 13 and 14 of the Regulation (EU) 2016/679 and 12 of this organic law”

7th

In the case at hand, a sanctioning procedure was initiated for warning to the defendant for installing a camera for traffic control purposes to the height of the road of that City Council that is cited in Proven Fact First without place an informative sign of an area subject to traffic video surveillance, whenever that the documentation available at that procedural moment revealed that the aforementioned camera, apparently, collected images of the license plates of the vehicles circulating in the area controlled by the camera, conduct that could constitute an infringement of article 13 of the RGPD, typified in article 83.5.b) of the GDPR.

However, the defendant in his pleadings brief disputes that produced a treatment of personal data through the camera object of study that entailed the obligation to signpost the video-surveillance area by means of posters informative. Affirms that the actual operation of the technical device and the purpose of capturing images “was only to record the flow of traffic by counting it in order to prove to the regional authorities the need to split the regional highway \*\*\*CARRETERA.1 as it passes” through the town.

In support of its statements, it provides a technical report issued on the date November 22, 2018 by the company LECTOR VISION, S.L., in which it is indicated that the device under test "TrafficEye" was installed in order to perform the latest adjustments with real traffic of its new product "TRAFFICGUARD", whose objective "is the development of complex algorithms based on artificial vision in order to carry out efficiently carry out the counting and classification of vehicles by type (motorcycles, cars and trucks/buses) in adverse weather conditions".

This report indicates that for each transit an ".xml file" is generated to based on the analysis carried out with vehicle counting and classification data from the captured images, which are deleted 24 hours after your pick up. The document incorporates a capture printout of a ".xml file" generated on October 23, 2018 as a result of the analysis carried out with the data collected from the transit of a vehicle that was captured at 12:24 minutes and 36 seconds of that day, and among which the license plate is not found of the vehicle, (Fifth Proven Fact of this resolution).

Starting from the purpose for which the aforementioned camera was used until 11 February 2019, the date on which it was withdrawn, and without prejudice to the various functionalities that the device under test "TrafficEye" can develop in relation to the control and traffic management, it should be noted that of the actions carried out in the In this sanctioning procedure, no evidence has been obtained that allow to certify, irrefutably, that the camera integrated in the device installed in the aforementioned place has captured images containing

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information regarding the license plates of the vehicles circulating on said road,  
information, which, moreover, was not necessary to obtain for the purpose of counting  
and classification claimed by the respondent.

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The foregoing must be connected with the validity in our  
Sanctioning Administrative Law of the principle of presumption of innocence  
recognized in article 24.2 of the Spanish Constitution, so that the exercise of  
The sanctioning power of the State, in its various manifestations, is  
conditioned to the game of evidence and to a contradictory procedure in which  
can defend their own positions. The principle of presumption of innocence  
prevents imputing an administrative infraction when it has not been obtained and verified  
a charge evidence that proves the facts that motivate the imputation or the  
intervention in the same of the alleged offender.

The Constitutional Court (SSTC 131/2003 and 242/2005, for all) has  
pronounced in this sense when indicating that one of the requirements inherent to the right  
to the presumption of innocence is that the sanction is based on acts or means  
evidence of charge or incriminating of the imputed behavior and that falls on the  
Public administration acting the evidentiary burden of the commission of the illicit  
administrative and the participation in it of the accused.

For its part, article 28.1 of Law 40/2015, of October 1, on the  
Law of the Public Sector establishes as one of the principles of the power  
sanctioning that of "Responsibility", determining in this regard that:

They may only be sanctioned for acts constituting an infraction  
natural and legal persons administratively, as well as, when a Law  
recognize capacity to act, affected groups, unions and entities without  
legal personality and independent or autonomous estates, which result

responsible for the same by way of fraud or negligence".

Likewise, the provisions of article 53.2 of the law must be taken into account.

39/2015, of October 1, of the Common Administrative Procedure of the

Public Administrations, establishes that: "In addition to the rights provided in the

previous section, in the case of administrative procedures of a

sanctioning, the presumed responsible, will have the following rights: (...) b) To

the presumption of non-existence of administrative responsibility until

prove otherwise."

In accordance with the provisions of the aforementioned precepts, in this case

It has not been proven in the procedure that the images captured for

of traffic control have given rise to the processing of personal data

that may fall under the orbit of the provisions of articles 1 and 2.1 of the RGPD, since

that in the file there is no effective evidence of the acquisition of license plates of

the vehicles by the chamber object of analysis, not existing, therefore, obligation of the

claimed to comply with the provisions of article 13 of the RGPD.

Therefore, it is appropriate to file the actions carried out in this

administrative Procedure.

According to what was stated,

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The Director of the Spanish Data Protection Agency RESOLVES:

FIRST: FILE the actions carried out in this procedure

penalty of warning PS / 00382/2018.

SECOND: NOTIFY this resolution to the

\*\*\*LOCALIDAD.1, with CIF \*\*\*CIF.1.

TOWN HALL OF

In accordance with the provisions of article 50 of the LOPDGDD, the

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 period of

month 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, the firm resolution may be provisionally suspended in administrative proceedings if

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-](https://sedeagpd.gob.es/sede-electronica-web/)

[web/](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

C/ Jorge Juan, 6

28001 – Madrid

[www.aepd.es](http://www.aepd.es)

[sedeagpd.gob.es](http://sedeagpd.gob.es)