

□ Procedure No.: PS/00339/2020

## RESOLUTION OF PUNISHMENT PROCEDURE

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

### BACKGROUND

FIRST: On June 12, 2020, it had entry in this Spanish Agency of  
Protection of Data a document presented by GUARDIA CIVIL - POSITION P. DE  
JEREZ DE LA FRONTERA (hereinafter, the claimant), through which he formulates  
claim against A.A.A. with NIF \*\*\*NIF.1 (hereinafter, the claimed one), for 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 reasons that support the claim and, where appropriate, the documents provided  
by the claimant are the following:

«It is observed from the public road how one of the cameras points to the public road,  
so it could be collecting personal data.

Likewise, the placement of a video-surveillance zone sign next to the  
camera.

There are 3 more cameras in the home, which can be seen from the neighbor's home  
that shows their complaints when they consider their privacy invaded, since they point to the  
windows of the bedrooms of their minor children and towards the roof of the  
living place."

Provides Act-complaint completed by staff of the Civil Guard of the Post  
Main of Jerez de la Frontera.

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

transferred the claimed, in accordance with the provisions of article 65.4 of the Law Organic 3/2018, of December 5, on the Protection of Personal Data and guarantee of digital rights (hereinafter, LOPDGDD).

The shipment was returned to this Spanish Agency for Data Protection by the service post office with the annotation "Absent in delivery". For this reason, said shipment was reiterated, with the same result.

THIRD: The claim was admitted for processing by means of a resolution of 25 September 2020.

FOURTH: On December 18, 2020, the Director of the Spanish Agency for Data Protection agreed to initiate a sanctioning procedure against the claimant, for the alleged infringement of Article 5.1.c) of the RGPD, typified in Article 83.5 of the GDPR.

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FIFTH: On January 29, 2021, allegations were received by this Agency regarding initiation agreement formulated by the respondent in which it shows:

"(...) this video surveillance camera is not processing data any personal information on public roads since it does not collect even minimally images of public thoroughfares, it only collects images of people who located inside the private space of the estate. (...)

Secondly, it includes the claim made by the Civil Guard regarding the existence of three chambers inside my mother's house, specifically in the patio interior, which point towards the windows of the house that adjoins the aforementioned patio.

(...) We again provide a descriptive and graphic consultation of cadastral data of the aforementioned real estate to illustrate the placement of these cameras in the aforementioned courtyard (...). It can be verified that the patio adjoins directly with the dwelling, with no greater separation than the façade of the adjoining dwelling.

We make annotations on this to illustrate the placement of these cameras,

As you can see, the recording of the facade, minimally, is unavoidable and does not allow any alternative facilities to be able to collect the animals and cages that are next to the adjoining house. (...)"

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: Installation of cameras that only collect images of people who are inside the private space of the farm located in

\*\*\*ADDRESS 1.

SECOND: The person responsible for the devices is A.A.A. with NIF \*\*\*NIF.1.

THIRD: The respondent declares in the pleadings brief to the initial agreement that the exterior camera only collects images of people who are in the interior of the private space of the estate. It states that there is no physical delimitation, gate or gate between the public road and the front yard of the farm.

As for the cameras inside the house, they record minimally the facade, since it is unavoidable and does not allow an alternative installation.

The respondent has provided a plan of the property and the placement of the cameras in the inner courtyard.

#### 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 arts. 47 and 48.1 of the LOPDGDD, the Director of

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The Spanish Agency for Data Protection is competent to resolve this process.

II

The defendant is imputed the commission of an infraction for violation of Article 5.1.c) of the RGPD, which states 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”).

This infringement is typified in Article 83.5 of the RGPD, which considers as such:

“The infractions of the following dispositions will be sanctioned, in accordance with the 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:

- a) the basic principles for the treatment, including the conditions for the consent under articles 5, 6, 7 and 9;
- b) the rights of the interested parties according to articles 12 to 22; [...].”

III

In the present case, it is appropriate to analyze the alleged illegality of the installation of a video surveillance system consisting of four cameras placed in the building located at \*\*\*ADDRESS.1.

The proven facts show the existence of a camera installed in the  
in front of the property that, according to the allegations of the defendant in his  
response to the agreement to initiate this procedure, they do not capture the public thoroughfare,  
only collects images of people who are inside the space  
estate private.

Likewise, in relation to the three cameras installed inside, they record  
minimally the facade, since it is unavoidable and does not allow alternative installation.

#### IV

The principle of the right to the presumption of innocence, recognized as a right  
fundamental subjective in article 24 of the Spanish Constitution, prevents imposing  
an administrative sanction when proof of  
accrediting charge of the facts that motivate the imputation or of the intervention in the  
themselves of the alleged offender and 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 in the most favorable way for the interested party.

The aforementioned right to the presumption of innocence is also included in a  
expressed in article 53.2.b) of Law 39/2015, of October 1, on the Procedure

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Common Administrative of Public Administrations (hereinafter, LPACAP), which  
establishes that:

"two. In addition to the rights provided for in the previous section, in the case of  
administrative procedures of a punitive nature, the alleged

responsible will have the following rights:

[...]b) To the presumption of non-existence of administrative responsibility while the contrary is proven.”

In relation to this principle, the Constitutional Court in its Judgment 76/1990, of 26 of April, 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 the reproached conduct; that the burden of proof corresponds to the person who accuses, without no one is obliged to prove their own innocence; and that any insufficiency in the result of the tests carried out, freely valued by the sanctioning body, must be translated into an acquittal pronouncement.”

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Based on the foregoing, it cannot be concluded that the devices subject to the claim capture images beyond a minimum space outside your property particular, so that it is not possible to speak of infringing conduct in the field of framework of the data protection regulations, which is why it is proceeds to the Archive of this procedure.

Therefore, in accordance with the applicable legislation, the Director of the Agency

Spanish Data Protection RESOLVES:

FIRST: ORDER the FILE of this procedure as there is no accredited administrative infraction.

SECOND: NOTIFY this resolution to A.A.A. with NIF \*\*\*NIF.1 and inform

CIVIL GUARD - P. DE JEREZ DE LA FRONTERA POST.

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.

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