

□ File No.: EXP202102400

## 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 25, 2021, it had entry in this Spanish Agency  
of Data Protection a document presented by D. A.A.A. (hereinafter the  
claimant), through which he makes a claim against D.B.B.B. with NIF \*\*\*NIF.1  
(hereinafter, the claimed), for the installation of a video surveillance system  
installed in \*\*\*ADDRESS.1, with indications of a possible breach of the  
provided in the personal data protection regulations.

The claimant states that the workshop, managed by the respondent, has a  
camera capable of capturing public roads.

"They have a surveillance camera at the entrance of the workshop focusing on public roads,  
when the normal thing would be that it was on the opposite side focusing towards the part  
workshop interior.

With this they monitor who passes in front of the premises and use it improperly.

The camera also seems that they can move it from below where they have the  
monitors."

Provides photographic report of the camera at the entrance.

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 respondent has provided a copy of the rental contract for services of

security signed with the company Europea de Servicios y Vigilancia, S.L., two photographs in which two informative posters of the video-monitored area appear, and four photographs from four cameras. Three of them are located inside the establishment, and the fourth of them, located above the entrance door, which is of this procedure.

Given that the information provided is incomplete, a letter was sent to him, giving him a period of five working days to complete the documentation initially presented, so that "It contributes the captures made through the cameras that make up the video surveillance system as displayed on the monitor, mobile screen or equivalent system, which is used for viewing the same, in which you can see the areas that remain within your field of vision, especially, the one located in the access space to the establishment. The cameras must not, in any case, record or allow the view of adjoining land of other

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owners, or inside the homes or any other private space or reserved, nor of the public thoroughfare, except for the portion of the public thoroughfare minimally necessary for the intended security purpose.

There is no record in this Agency of any response from the respondent.

THIRD: The claim was admitted for processing by means of a resolution of 25 November 2021.

FOURTH: On February 18, 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 5.1.c) of Regulation (EU) 2016/679

(General Data Protection Regulation, hereinafter RGPD), typified in the

article 83.5 of the RGPD.

FIFTH: On March 16, 2022, the instructor of the procedure agreed to the

opening of a period of practice of tests, taking for reproduced, for purposes

evidence of the claim filed by the claimant and its documentation, the

documents obtained and generated by the Subdirector General for Inspection of

Data and allegations presented by the respondent.

SIXTH: On March 17, 2022, a resolution proposal was formulated in the

that, in accordance with the evidence available at this

sanctioning procedure, it was considered that the claimed party had arranged

several video surveillance cameras, one of which could capture images not only

of its establishment, but of the public thoroughfare and adjoining areas.

Likewise, no photograph or any evidence had been provided that would allow an assessment of the

area that is captured with the claimed camera.

Based on the foregoing, it was appropriate to propose imposing on the claimed party the sanction of

€500 (five hundred Euros), for the alleged infringement of article 5.1.c) of the RGPD, and

that, under the provisions of article 58.2.d) of the RGPD, it was proposed that

order the respondent party that, within one month from the date on which the

resolution in which it is so agreed to be notified, proceed to withdraw the

camera that records the street, or to the reorientation of the same reducing the

pickup angle.

In this proposal, a period of 10 days was granted so that the person claimed could

allege what he considers in his defense as well as present the documents and

information that it considers pertinent, in accordance with article 89.2 of the Law

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

Public Administrations (hereinafter, LPACAP).

SEVENTH: The respondent, in his brief of allegations to the proposed resolution, indicates that "(...) the premises have two doors; one of them the gate is the one found open that is recessed with painted yellow and black lines and the part that is captured is 95% private area of the workshop, access corridor to the premises where we leave car The 2 door is entrance with access to a bell to open where the camera is installed, it will have that corridor about 5 meters (attached

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location sketch). The few images that can be captured from the sidewalk are

When they pass by, they are masked and only the legs and feet of the person can be seen.

walk ahead (...)"

It has provided a letter from the company that maintains the video surveillance system that points out that the system "(...) captures the interior area of the garage up to the access gate, the outer street zone being masked." Also, attached a photo.

of the monitor where the images of the camera are seen in which only one is observed small part of the width of the sidewalk.

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 August 25, 2021, it had entry in this Spanish Agency

of Data Protection a claim that shows that the claimed party has

installed a video surveillance system, with one of the cameras capable of capturing

public roads.

Provides photographic report of the camera at the entrance.

SECOND: The respondent, in his brief of allegations to the proposed resolution, has provided a letter from the company that maintains the video surveillance system that points out that the system "(...) captures the interior area of the garage up to the access gate, the outer street zone being masked."

In addition, he has attached a photograph of the monitor where the images of the camera in which only a small part of the width of the sidewalk is observed.

#### FOUNDATIONS OF LAW

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In accordance with the powers that article 58.2 of the RGPD grants to each authority of control and according to what is established in articles 47 and 48.1 of the LOPDGDD, it is competent to initiate and resolve this procedure the Director of the Agency Spanish Data Protection.

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

II

On August 25, 2021, it had entry in this Spanish Agency of Data Protection claim for the installation of a video surveillance system, with one of the cameras capable of capturing public roads.

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Article 5.1 c) 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").

It should be remembered that individuals are responsible for ensuring that the systems installed comply with current legislation.

The cameras must be oriented towards the particular space, avoiding intimidating neighboring neighbors with this type of device, as well as control transit areas of them without just cause.

On the part of individuals, it is not possible to install imaging devices of public space, outside the cases allowed in the regulations, as this is exclusive jurisdiction of the State Security Forces and Bodies.

The treatment of images through a video surveillance system, to be

In accordance with current regulations, it must meet the following requirements:

- Respect the principle of proportionality.
- When the system is connected to an alarm center, it can only be installed by a private security company that meets the requirements contemplated in article 5 of Law 5/2014 on Private Security, of April 4.
- The video cameras will not be able to capture images of people who are outside the private space where the video surveillance system is installed, since the treatment of images in public places can only be carried out, unless Government authorization concurs, by the Security Forces and Bodies. Either spaces owned by third parties may be captured or recorded without the consent of their owners, or, where appropriate, of the people who are in them.

This rule admits some exceptions since, on some occasions, for the protection

of private spaces, where cameras have been installed on facades or inside, it may be necessary to guarantee the security purpose the recording of a portion of public road. That is, cameras and video cameras installed for the purpose of security will not be able to obtain images of public roads unless it is essential for said purpose, or it is impossible to avoid it due to the location of those and, extraordinarily, the minimum space for said purpose. Therefore, the cameras could exceptionally capture the portion minimally necessary for the intended security purpose.

- The duty to inform those affected provided for in articles 12 and 13 of the RGPD and 22.4 of the LOPDGDD.

Specifically, at least one badge must be placed in video-monitored areas. informative located in a sufficiently visible place, both in open spaces and closed, which will identify, at least, the existence of a treatment, the identity of the person in charge and the possibility of exercising the rights foreseen in said

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precepts. Likewise, the information must be kept available to those affected.

to which the aforementioned RGPD refers.

- The person in charge must keep a record of treatment activities carried out under its responsibility, including the information to which it makes reference article 30.1 of the RGPD.

- Installed cameras cannot get images from third-party proprietary space and/or public space without duly accredited justified cause, nor can they affect

the privacy of passers-by who move freely through the area. not allowed, for

Therefore, the placement of cameras towards the private property of neighbors with the purpose to intimidate them or affect their privacy without just cause.

- In no case will the use of surveillance practices beyond the environment be admitted.

object of the installation and in particular, not being able to affect public spaces

surrounding buildings, adjoining buildings and vehicles other than those accessing the space guarded.

### III

The respondent, in his brief of allegations to the proposed resolution, has provided a letter from the company that maintains the video surveillance system stating that the system "(...) captures the interior area of the garage up to the access gate, being masked the outer street area."

In addition, he has attached a photograph of the monitor where the images of the camera in which only a small part of the width of the sidewalk is observed.

### IV

In the present case, it is appropriate to analyze the alleged illegality of the installation of a video surveillance system in \*\*\*ADDRESS.1.

The proven facts show the existence of a system of video surveillance composed of several cameras, one of which, object of this procedure, it only captures a small part of the sidewalk width when masked the outer street area.

### v

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 the LPACAP, which establishes that:

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"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."

7th

Examining the file as a whole, it has been proved that the camera object of this procedure only captures a small part of the public road, being masked the outer street area.

Therefore, according to the above,

the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: ORDER the ARCHIVE of these proceedings as there is no accredited the commission of any administrative infraction.

SECOND: NOTIFY this resolution to D.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.

Against this resolution, which puts an end to the administrative procedure in accordance with article 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.

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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

938-100322

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