

□ File No.: EXP202207043

RESOLUTION OF SANCTIONING PROCEDURE

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

BACKGROUND

FIRST: D.A.A.A. (hereinafter, the complaining party), dated June 22,

2022, filed a claim with the Spanish Data Protection Agency. The

The claim is directed against D. B.B.B., with NIF ***NIF.1 (hereinafter, the party

claimed), for the installation of a video surveillance system located in CALLE

*** ADDRESS.1, CANTABRIA, there being indications of a possible breach of the

provided in article 5.1.c) of the General Data Protection Regulations (in

forward, GDPR).

The reasons for the claim are the following:

The claiming party states that the claimed party is a neighbor of a farm contiguous to the

farm in which the claimant has his home and that it has security cameras

video surveillance located on the façade of his farm, oriented both to the farm of the

complaining party, as well as public roads.

It provides images of the location of the cameras and the affected areas.

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, for

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) by certified postal mail, made the 06/23/2022, delivered on 07/05/2022. In view of the lack of response, the 08/29/2022, and is delivered again on 09/05/22.

No response has been received to this letter of transfer.

THIRD: On September 22, 2022, in accordance with article 65 of the LOPDGDD, the claim presented by the complaining party was admitted for processing.

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2/5

FOURTH: On November 18, 2022, the Director of the Spanish Agency of 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 infringement of Article 5.1.c) of the 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:

Video surveillance cameras have been installed in the house, with the sole and urgent need to protect the security, life and physical integrity of the exponent and his family, since his house has been the object of two arson attacks, at night, while they were sleeping, having survived them because their neighbors

They noticed in time, and the Civil Guard and Firefighters appeared. The severity of it

happened and the fear and risk of it happening again, is what has led to the installation of the cameras, by own recommendation of the Forces and Bodies of Security.

Said arson has been the subject of a complaint, which is processed in the Court (...) of Santander, as Preliminary Proceedings. Shots are accompanied Photographs of the last fire.

The cameras do not record adjoining land, nor the interior of any house outside their property, nor reserved spaces, nor public roads, there being only one camera that focuses outside the house, but it is fictitious. Accompanied are photographs of all cameras and dummy camera affidavit.

A sign has been placed on the facade of the house, warning of the existence of these cameras, as can be seen in the photographs.

Due to the same facts, another file has been processed and archived in that Agency, considering that there are no rational indications of the existence of an infringement.

SIXTH: On March 15, 2023, a resolution proposal was formulated, proposing to the Director of the Spanish Data Protection Agency the file of the claim filed against D. B.B.B., with NIF ***NIF.1, for an infringement of Article 5.1.c) of the GDPR, typified in Article 83.5 of the GDPR.

Notified the proposed resolution on March 23, 2022, and after the term granted to argue, no arguments have been submitted 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 is a neighbor of the farm adjacent to the property in which the claimant has his home and that he has with video surveillance cameras located on the façade of his farm, oriented both to

the property of the claiming party, as well as the public highway.

It provides images of the location of the cameras and the affected areas.

SECOND: The defendant, in his allegations, states that the cameras do not they record adjoining land, nor the interior of any house outside their property, nor

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3/5

reserved spaces, nor on public roads, there being only one camera that focuses outside the house, but it is fictitious. Photographs of all the cameras and sworn statement of the fictitious camera.

A sign has been placed on the facade of the house, warning of the existence of these cameras, as can be seen in the photographs.

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, 48.1, 64.2 and 68.1 of the Organic Law 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 Protection Agency of data.

Likewise, article 63.2 of the LOPDGDD determines that: "The 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

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

Having examined the allegations of the claimed party, said allegations are accepted, not record rational evidence of the existence of an infringement, since the only

The camera that could record public roads is fictitious, and the rest of the cameras do not record the estate of the claiming party.

To this we must add that a previous claim for the same facts was

archived, having answered the claimed party to the transfer of the claim and the rectification requirement in the same terms as in this procedure.

It can be concluded that we are faced with the impossibility of imputing an infraction

administration when it has not been accredited, by proof of charge, that the

cameras record the farm of the claimant and/or the public thoroughfare, for which reason the archive.

II

Presumption of innocence

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4/5

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).

IV.

Conclusion

In accordance with the foregoing, it has not been proven that public roads are being recorded nor the farm of the claiming party, reason for which the File of the present proceeds procedure.

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 D. 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 www.aepd.es

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5/5

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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