

□ File No.: EXP202101346

RESOLUTION OF SANCTIONING PROCEDURE

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

BACKGROUND

FIRST: On July 29, 2021, he entered this Spanish Agency for
Data Protection document presented by D. A.A.A. (hereinafter, the part
claimant), through which he makes a claim against Ms. B.B.B. with NIF
***NIF.1 (hereinafter, the claimed party), for the installation of a
video surveillance at ***ADDRESS.1, with indications of a possible
breach of the provisions of the data protection regulations
staff.

The reasons that support the claim and, where appropriate, the documents provided
by the complaining party are the following:

The claimed party, a neighbor of the farm adjoining that of the claiming party, is
responsible for a video surveillance camera installed outside the entrance of
the farm of said claimed party, which, due to its location, is likely to capture
images of access to the property of the claimant, without authorization to
this and without being installed the mandatory informative signs of the area
video surveillance

The documents provided are:

- Photo report. Provide images of the camera location.

SECOND: Prior to the admission for processing of this claim, it is
transferred to the claimed party, on August 20, 2021, and reiterated on September 10
of 2021, in accordance with the provisions of article 65.4 of Organic Law 3/2018,

of December 5, Protection of Personal Data and guarantee of rights

digital (hereinafter, LOPDGDD).

There is no response from the claimed party.

THIRD: The claim was admitted for processing by resolution of the Director

of the Spanish Agency for Data Protection, of November 29, 2021.

FOURTH: On March 4, 2022, the Director of the Spanish Agency for

Data Protection agreed to initiate disciplinary proceedings against the claimed party,

in accordance with the provisions of articles 63 and 64 of Law 39/2015, of October 1,

of the Common Administrative Procedure of Public Administrations (in

hereinafter, LPACAP), for the alleged violations of Articles 5.1.c) and 13 of the

Regulation (EU) 2016/679 (General Data Protection Regulation, as regards

hereafter GDPR), typified in Article 83.5 of the GDPR.

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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 that:

There is no video surveillance system. The camera put on my property is so

just to scare away potential thieves and squatters. It's not a real camera, it's

just props (fake). There is no installation, no wiring or anything.

I attach photographs of said camera.

This is only because this neighbor has a grudge against me, and we are on the way

lawsuits for usurpation of property, and does not leave us alone with silly complaints.

SIXTH: On June 23, 2022, a resolution proposal was formulated, proposing that the Director of the Spanish Data Protection Agency archive the claim filed against Mrs. B.B.B., with NIF ***NIF.1, for an infringement of articles 5.1.c) and 13 of the GDPR, typified in article 83.5.a) and b) of the GDPR.

Notified the proposed resolution on July 7, 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 claiming party states in its claim that the claimed party, neighbor of the farm adjoining that of the claimant, is responsible for a video surveillance camera installed outside the entrance of the said farm claimed party, which, due to its location, is likely to capture images of the access to the farm of the claimant, without authorization to do so and without the mandatory informative signs for the video-monitored area must be installed.

Provide images of the camera location.

SECOND: The claimed party, in the allegations to the Commencement Agreement of this Sanctioning Procedure, indicates that there is no video surveillance system. The camera placed on your property is only to scare off potential thieves and you occupy It's not a real camera, it's just props. There is no any installation, no wiring or anything. Attach photographs of said camera.

FUNDAMENTALS OF LAW

Yo

By virtue of the powers that article 58.2 of Regulation (EU) 2016/679 (General Data Protection Regulation, hereinafter GDPR), recognizes each Control Authority, and as established in articles 47 and 48.1 of the Law

Organic 3/2018, of December 5, Protection of Personal Data and guarantee of digital rights (hereinafter, LOPDGDD), the Director of the Spanish Agency of Data Protection is competent to initiate and resolve this procedure.

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Article 63.2 of the LOPDGDD determines that: «The procedures processed by the Spanish Data Protection Agency will be governed by the provisions of the 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

In response to the allegations presented by the claimed party to the agreement of At the beginning of this procedure, the following should be noted:

Examining the allegations of the claimed party, it can be concluded that we we are faced with a non-operative system, which has been installed for reasons dissuasive, obeying a legitimate purpose of protecting the home, its belongings and residents, so that "data processing" is not taking place any" associated with the complaining party.

Notwithstanding the foregoing, the defendant is free to make the decision of the operability of the same, as long as it meets the requirements set legally, and the images obtained can be used to prove conduct uncivil or criminal (threats, attacks, property damage, etc.) against the presumed material author of the same, which must be made available to the

Security Forces and Corps or the Investigating Judge closest to the place of the facts.

It is recalled that the camera must be limited to the private part of your property, should avoid, where appropriate, the capture of public space, and in case of activation, have an informative poster, indicating at least the person responsible for the treatment and the way to exercise rights within the framework of current regulations (art. 22 LOPDGDD).

II

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.

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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.

In accordance with the foregoing, it has not been proven that the device in question is producing data processing, which is why it is appropriate to propose the Archive of this procedure.

The parties are reminded that this Agency should not be instrumentalized in issues outside its jurisdictional framework, owing the rest of the issues, in its case, be transferred to the pertinent judicial instances, where they may present the questions they deem necessary.

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 Ms. 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

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.

Mar Spain Marti

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