

□ File No.: PS/00027/2022

RESOLUTION OF PUNISHMENT PROCEDURE

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

BACKGROUND

FIRST: A.A.A. (*hereinafter, the complaining party) dated March 16, 2021
filed a claim with the Spanish Data Protection Agency. claims her-
tion is directed against B.B.B. with NIF ***NIF.1 (hereinafter, the claimed party). The
The reasons on which the claim is based are the following, as reflected in the claim-
tion:

“The defendant is the owner of a gas station in which he has cameras installed.
video surveillance gangs. Taking advantage of this circumstance, he has installed one on the
door of my house, located on Calle ***DIRIMIENTO.1, that is, very far from ***DI-
RECTION.2 where you have the gas station.

The person in question is my cousin, who for reasons that are not relevant to explain,
he doesn't have a good personal relationship with me, and he's taking advantage of the media
that he has due to his status as an entrepreneur to coerce me and keep the entry of
my house controlled and monitored, when this is far from the purpose that should be pursued.
installation of cameras in his business, which as I have explained, is quite late.
jos from my house I understand that you are not entitled to install them, since the regulations
of data protection does not allow you to monitor beyond what your business reaches, and
has done 1.2 km away.

This fact was reported to the Civil Guard on February 27, 2020.

The camera installed is a DOME MODEL with a range of 60 meters, not understanding-
Doing what you are doing 1.2 km from your business. You have it installed from the window

upstairs and oriented to the two entrances of my house as can be seen in the photos.

cough that are attached. It should be noted that the upper floor is not his property,

but of direct relatives of him. It is unacceptable that personal differences or

bad relationship that may exist between us allows you to subject us to this surveillance.

We must also take into account that it watches over everyone who approaches our house.

We request protection so that you uninstall them and stop knowing all our movements.

lies.

We provide photos of the day 03.11.21, which show that it has not been interrupted

this behavior despite its lack of legitimacy. We request protection from this body.”

SECOND: In accordance with article 65.4 of Organic Law 3/2018, of 5

December, of Protection of Personal Data and guarantee of digital rights (in

hereinafter LOPDGGDD), said claim was transferred to the claimed party in fe-

cha 04/06/21, 04/27/21 and 05/21/21, to proceed with its analysis and inform

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this Agency within a month, of the actions carried out to adapt to

the requirements set forth in the data protection regulations.

THIRD: This Agency ex officio proceeds to verify that the Start Agreement of the

initial procedure PS/00350/2021, the party was not legally notified.

you claimed, proceeding to revoke the Resolution of the Director of this Agency of

dated 11/15/21 by act dated 01/18/22.

REVOKE the resolution issued on November 15, 2021 by which

sanctioned Don B.B.B. as the notification of the start agreement has not been made.

FOURTH: On February 9, 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 the RGPD, typified in Article 83.5 of the GDPR.

FIFTH: On 03/21/22 collaboration is requested from the Security Forces and Bodies authority of the town, receiving a report from the Civil Guard Command (04/13/22) in which the following is stated:

- That there is only one video-surveillance camera in the house, which is si-located on its façade (photographs 1 and 2), providing the person in charge of the installation screen impression of what is captured with it.
- That in relation to the facts object of the complaint, IF there are conflicts between the parties, facts which have been denounced in the Civil Guard Command of Lerin.
- What is carried out Photographic report in which the indicated facts are detailed previously.

SIXTH: On 05/23/22, a "Resolution Proposal" is issued, in which it is agreed to propose the File of the procedure when the commission of infraction is not accredited any administrative obligation in the matter at hand.

In view of everything that has been done, by the Spanish Data Protection Agency

In this proceeding, the following are considered proven facts:

PROVEN FACTS

First. The facts bring cause of the claim presented in this Agency by the following reasons:

"presence of video-surveillance cameras in the family home" by close friend of the claimant, who states "he could be recording the public thoroughfare", as well as access to family-owned housing (folio no. 1).

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Second. It is identified as the main person in charge of the B.B.B. with

DNI ***NIF.1.

Third. The presence of a single camera on the facade of the property is accredited.

oriented downwards towards the access door to the Garage, being

of a sidewalk of limited dimensions.

Fourth. The presence of several informative posters in the visible area is accredited

informing that it is a "video-monitored area" with an indication of the person in charge of the

treatment.

Fifth. There is no evidence that the claimant's data is being processed, nor that

controlling the accesses to the home, nor affecting the rights of third parties.

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FOUNDATIONS OF LAW

Yo

In accordance with the powers that article 58.2 of Regulation (EU) 2016/679 (Re-

General Data Protection Regulation, hereinafter RGPD), grants each authori-

control and as established in articles 47, 48.1, 64.2 and 68.1 of the Law

Organic 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 Data Protection Agency.

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

ted by the Spanish Agency for Data Protection will be governed by the provisions of

Regulation (EU) 2016/679, in this organic law, by the regulatory provisions dictated in its development and, as long as they do not contradict them, with a subsidiary, by the general rules on administrative procedures.”

II

In the present case, we proceed to examine the initial claim dated 03/16/21 by means of which the following facts are transferred:

“presence of video-surveillance cameras in the family home” that “could be filming the public thoroughfare”, as well as access to family-owned housing.

The facts bring cause, apart from other implications in your criminal case, of the installation of a video-surveillance camera system in a family home from which

The claimant temporarily provides the usufruct.

The installation of video surveillance cameras on the street corresponds solely and exclusively to the State Security Forces and Bodies in the performance of functions security.

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The facts denounced could imply an affectation to the content of art.

5.1 c) RGPD (regulations currently in force) that provides: "personal data is ran:

c) adequate, pertinent and limited to what is necessary in relation to the purposes for which they are processed (“data minimization”) (...)."

Individuals are responsible for the installed video-surveillance systems to be comply with current legislation, and must be able to prove such extremes.

We report to the competent authority.

Cameras installed by individuals must be oriented towards their private space.

vative avoiding the capture of private area of third parties without just cause.

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

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

contiguous buildings and vehicles other than those accessing the guarded space.

A certain "caution" must be taken when installing this type of device.

tives, weighing their usefulness in the absence of a less harmful means, given their

affectation of the right (image) of third parties by treating them.

Likewise, in the case of false cameras, they must be oriented

to a private area, avoiding intimidation of neighboring neighbors who are unaware

know whether or not they process personal data.

III

In accordance with the "evidence" available in this proceeding

sanctioning party, it is considered that the claimed party has proceeded to install a system

of video-surveillance cameras, consisting of a single camera that captures from the

facade of the property a minimum portion of sidewalk, coinciding with the access to the

house garage.

The installed system has an informative poster(s) indicating that it is

of a video-monitored area, informing of the person responsible for the treatment and the way of

exercise rights within the framework of the regulations in force.

It has not been verified that a control of the entrances/exits is being exercised

of the property that affect the rights of the claimant and/or third parties, nor that it is

Tea producing a "treatment of your data" outside the permitted assumptions.

It should be specified that the analysis of the claims in the matter that we

occupies must be carried out according to the context of the specific case, not being disproportionate

mentioned the presence of the device to avoid graffiti on the door as a guide.

ta access to the garage.

Article 22 section 2 of the LOPDGDD (LO 3/2018, December 5) provides:

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“Images of public roads may only be captured to the extent that it is

essential for the purpose mentioned in the previous section.

Therefore, sometimes a capture of minimum public space is allowed

essential for the protection of persons or property, as is the case of

this analysis due, among other reasons, to the small portion of public sidewalk that limits

with access to the garage of the house.

It is recalled that with this type of device it is not possible to control the

the entrances/exits of the property, as it can be considered a means of coercion of

the freedom of its inhabitants, who can be intimidated by this type

of devices being a conduct with reproach in other fields of law.

The presumption of innocence governs without exceptions in the sanctioning system and has

to be respected in the imposition of any sanction, whether criminal or administrative

(TCo 13/1981), since the exercise of the sanctioning right in any of its

manifestations, is conditioned to the test game and to a procedure

contradictory environment in which their own positions can be defended.

Pursuant to this principle, no penalty may be imposed on the basis of the

guilt of the accused if there is no activity to prove the charge, which in the

appreciation of the authorities or bodies called to resolve, destroy this

presumption (TCo Auto 3-12-81).

IV

Based on the foregoing, it can be concluded that excessive control has not been proven.

of public area that affects neighbors close to the property in question, considering-

I know that the installation of the camera is proportionate to the purpose pursued and that the

itself is duly informed, a reason that justifies the filing of this proceeding.

ment.

Lastly, the parties are reminded of the importance of the rights at stake,

avoiding the instrumentalization of this body for issues outside the

data protection or that may well be resolved in the appropriate judicial instances.

tunas for an alleged violation of the right to privacy of the claimant or any

any other contentious issue between them.

the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: ORDER the FILE of this procedure as there is no evidence

gives any administrative infraction in the matter that concerns us.

SECOND: NOTIFY this resolution to the party claimed B.B.B. and inform

of the result of the proceedings to the complaining party.

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.

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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

resents may optionally file an appeal for reconsideration before the Director of the Spanish Agency for Data Protection within a month from the date of the day following the notification of this resolution or directly contentious appeal before the Contentious-Administrative Chamber of the National High Court, in accordance with the provisions of article 25 and section 5 of the additional provision Final fourth of Law 29/1998, of July 13, regulating the Contentious Jurisdiction-administrative, within a period of two months from the day following the notification of this act, as provided for in article 46.1 of the aforementioned Law.

Sea Spain Marti

Director of the Spanish Data Protection Agency

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