

□ File No.: EXP202204132

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 April 1,
2022, filed a claim with the Spanish Data Protection Agency. The
claim is directed against D. B.B.B. with NIF ***NIF.1 (hereinafter, the part
claimed), for the installation of a video surveillance system located in
***ADDRESS.1, CAMBRILS, TARRAGONA, there are indications of a possible
breach of the provisions of article 5.1.c) of the General Regulation of
Data Protection (hereinafter, GDPR).

The reasons for the claim are the following:

The claiming party states that the claimed party is a neighbor of an Urbanization
located in Cambrils and that has installed a camera that would be oriented to spaces
of the Urbanization and to a plot adjacent to yours, without authorization
for it. Provide images of the camera location.

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), was collected on April 27, 2022, as It appears in the acknowledgment of receipt that is in the file.

No response has been received to this letter of transfer.

THIRD: On June 10, 2022, in accordance with article 65 of the LOPDGDD, the claim presented by the claimant party was admitted for processing.

FOURTH: On July 20, 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,

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of the Common Administrative Procedure of Public Administrations (in hereinafter, LPACAP), for the alleged infringement of Article 5.1.c) of the GDPR, classified as 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 that:

I have been accused that I have video surveillance cameras at ***ADDRESS.1 (Cambrils).

The complaint is false.

I live for rent at ***ADDRESS.2 (Viniols i els Arcs) and I don't have any property nor land for rent anywhere in Spain.

In the place where I live with my family there is no video surveillance camera.

This complaint is in my name, but the NIE and the address ***ADDRESS.1 do not correspond.

SIXTH: On November 7, 2022, 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 the infringement of the Article 5.1.c) of the GDPR, typified in Article 83.5 of the GDPR.

The proposed resolution was notified on November 28, 2022, and

After the period granted to make claims has elapsed, no claims have been made 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 that the claimed party is a neighbor of a urbanization located in Cambrils and that has installed a camera that would be oriented to community spaces and a plot adjacent to yours, without authorization to do so.

Provide images of the camera location.

SECOND: The claimed party alleges that: I have been accused that I have security cameras video surveillance in ***ADDRESS.1 (Cambrils). The complaint is false. I live for rent at ***ADDRESS.2 (Viniols i els Arcs) and I do not have any property or land in rent anywhere in Spain. In the place where I live with my family does not exist no surveillance cameras.

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

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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), 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 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, there is no evidence that the building and the camera installed in it, as seen in the photographs provided, belong to the claimed party.

It can be concluded that we are faced with the impossibility of imputing an infraction administration when the intervention has not been accredited, by proof of charge of the alleged offender, for which the file proceeds.

II

Presumption of innocence

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

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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 the building and the chamber installed in it belong to the claimed party, which is why propose the file of this 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

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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Mar Spain Marti

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