

□ File No.: EXP202203041

## RESOLUTION OF SANCTIONING 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 9, 2022  
filed a claim with the Spanish Data Protection Agency. claims her-  
tion is directed against WE RENT, S.L. with NIF B98924947 (hereinafter, the party claiming  
mada). The reasons on which the claim is based are the following:

“has installed a series of video surveillance cameras on the façade of an in-  
furniture, which are oriented to adjoining houses, as well as access to a warehouse owned by  
mercy of another entity, not having prior authorization for it”

Provide Notarial Certificate dated January 25, 2022, which includes photos-  
graphs of the situation of the cameras, as well as the taking of photographs in the property  
where they have been installed—\*\*\*ADDRESS.1--.

Photographs 15 and 16 show the existence of vision cameras in the  
main façade of number \*\*\*ADDRESS.1, in which there are two of them and in one  
side wall of said building, in which there is the third of the aforementioned chambers.  
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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  
hereafter LOPDGDD), said claim was transferred to the party claimed on fe-  
date 03/11/22, 04/01/22 and 04/18/22, to proceed with its analysis and inform  
this Agency within a month, of the actions carried out to adapt to  
the requirements set forth in the data protection regulations.

After consulting the database of this Agency, the notification has been made

both electronically and by post, in the latter case being returned by the

Official Postal Service "Wrong Address".

THIRD: On June 9, 2022, in accordance with article 65 of the LO-

PDGDD, the claim presented by the claimant party was admitted for processing.

FOURTH: On July 29, 2022, the Director of the Spanish Agency for Pro-

Data Protection agreed to initiate a sanctioning procedure against the claimed party, with

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

Common Administrative Procedure of Public Administrations (hereinafter,

LPACAP), for the alleged infringement of Article 5.1.c) of the GDPR, typified in the

Article 83.5 of the GDPR.

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FIFTH: On 08/25/22, a written statement of allegations from the claimed party was received

manifesting the legality of the system, counting the cameras with privacy mask

as well as with an informative poster duly marked informing about it

that it is a "video-surveilled" area.

SIXTH: On 09/06/22 the "Proposal for a Resolution" is issued proposing the Archi-

vo, considering that the evidence provided does not allow us to verify an administrative infraction

any treatment in the matter that concerns us, considering the system according to law

cho.

SEVENTH: Consulted the database of this Agency on 12/02/22, no

received any allegation to the proposed resolution, notified to it.

Of the actions carried out in this procedure and of the documentation

in the file, the following have been accredited:

## PROVEN FACTS

First. The facts bring cause of the claim dated 03/09/22 through the

which translates the following fact:

“has installed a series of video surveillance cameras on the façade of an in-

furniture, which are oriented to adjoining houses, as well as access to a warehouse owned by

mercy of another entity, not having prior authorization for it”

Provide Notarial Certificate dated January 25, 2022, which includes photographs

of the situation of the cameras, as well as the taking of photographs in the property where

have been installed—\*\*\*ADDRESS.1--.

Second. The entity We Rent has been identified as the main responsible party, with NIF

B98924947, which confirms the presence of a video surveillance system.

Third. No processing of third-party data has been verified, nor has it affected other

private areas without justified cause, the installed cameras being equipped with

privacy masks.

Room. The system is duly informing with informative signage

indicating the person responsible and the way to exercise the rights in the current legal framework.

## FUNDAMENTALS OF LAW

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

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

quality of control and as established in articles 47, 48.1, 64.2 and 68.1 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 of Regulation (EU) 2016/679, in this organic law, by the regulations comments dictated in its development and, insofar as they do not contradict them, with a sub-sidario, by the general rules on administrative procedures."

## II

In the present case, the claim dated 03/09/22 is examined by means of gave from which the following is transferred as the main fact:

"presence of several video-surveillance cameras that affect various properties without justified cause" -folio nº 1--.

The art. 5.1 c) GDPR provides the following: Personal data will be:

"adequate, relevant and limited to what is necessary in relation to the purposes for which that are processed ("data minimization").

It should be remembered that individuals are responsible for ensuring that the systems installed felled comply with current legislation, certifying that it complies with all the requirements demanded by the regulations in force.

The installation of this type of device must have the mandatory informative poster tive, indicating the purposes and person responsible for the treatment, where appropriate, of the data of each personal character.

In any case, the cameras must be oriented towards the particular space, avoiding intimidate neighboring neighbors with this type of device, as well as control areas

transit thereof without just cause.

Neither with this type of device can you obtain an image(s) of public space.

since this is the exclusive competence of the Security Forces and Bodies of the State  
tado.

The recording of personal conversations both in companies and in communities  
of owners (as), supposes an invasion of the privacy of the user, for what with the  
except that there is prior judicial authorization and the recordings are made  
by the competent people to do so, this type of behavior is not allowed.  
cough.

It should be remembered that even if it is a "simulated" camera, the same  
should preferably be oriented towards private space, since it is considered  
that this type of device can affect the privacy of third parties, who are intimate  
measured by it in the belief of being the object of permanent recording.

On the part of individuals, it is not possible to install devices for obtaining  
images of public space and/or traffic of third parties, outside the cases allowed in  
the normative.

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The purpose of this type of device must be the security of the property and  
its inhabitants, avoiding the affectation of the rights of third parties who are intimidated  
two with the same

II

The party claimed on 08/25/22 proceeds to reply to this Agency with-

signing the presence of the cameras, although providing the necessary documentary evidence.

caesarias to prove the legality of the same.

Examined these by the investigating body, no infringement is found, at the

The cameras must be equipped with privacy masks and have the proper signage.

information in this regard, informing that it is a "video-surveilled area".

The principle of presumption of innocence prevents imputing an administrative offense

when a proof of accreditation of the facts has not been obtained and verified.

crimes that motivate the imputation or the intervention in them of the presumed infraction

tor. Applying the principle "in dubio pro reo" in case of doubt regarding a fact

concrete and determined, which obliges in any case to resolve said doubt in the most

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 the 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 sanctioning Law 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 set of evidence and a procedure

contradictory in which one's own 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, which in the appreciation of the authorities or bodies called to resolve, destroy this presumption (TCo Auto 3-12-81).

IV.

According to the allegations put forward and the evidence provided, it is considered that the system does not affect the rights of third parties, fulfilling a function of protection of the

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industrial warehouse where it is installed, not affecting the rights of third parties, which that justifies agreeing to file this procedure.

Therefore, the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: ORDER the FILING of this procedure as there is no accredited gives any infringement in the matter at hand.

SECOND: NOTIFY this resolution to the entity WE RENT, S.L.

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

Respondents may optionally file an appeal for reinstatement before the Director

of the Spanish Agency for Data Protection within a period of one month from the

the day following the notification of this resolution or directly contentious appeal

before the Contentious-Administrative Chamber of the National Court,

in accordance with the provisions of article 25 and section 5 of the additional provision

fourth clause of Law 29/1998, of July 13, regulating the Contentious Jurisdiction-

administration, within a period of two months from the day following the notification

tion of this act, as provided for in article 46.1 of the aforementioned Law.

Finally, it is noted 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 interested party

do states its intention to file a contentious-administrative appeal. If it is-

As the case may be, the interested party must formally communicate this fact in writing

addressed to the Spanish Data Protection Agency, presenting it through the Re-

Electronic registry of the Agency [<https://sedeagpd.gob.es/sede-electronica-web/>], or to

through any of the other registries provided for in art. 16.4 of the aforementioned Law

39/2015, of October 1. You must also transfer the documentation to the Agency

proving the effective filing of the contentious-administrative appeal. if the

Agency was not aware of the filing of the contentious-administrative appeal

treatment within two months from the day following notification of this

resolution, would terminate the precautionary suspension.

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