

□ File No.: EXP202203570

## RESOLUTION OF SANCTIONING PROCEDURE

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

### BACKGROUND

FIRST: Ms. A.A.A. (hereinafter, the complaining party) dated March 18  
of 2022 filed a claim with the Spanish Agency for Data Protection. The  
claim is directed against Ms. B.B.B. with NIF \*\*\*NIF.1 (hereinafter, the part  
claimed), for the installation of a video surveillance system located in  
\*\*\* ADDRESS.1, ALCOBENDAS, MADRID, 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 has installed a security camera  
video surveillance in your home that is likely to capture images of access to  
adjoining homes, among others that of the claimant. Provide images of the  
location of the camera and its location plan.

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 04/06/2022, as stated in the acknowledgment of receipt in the file.

On 06/01/2022, this Agency received a written response indicating that:

"There is not one, nor more than one, video surveillance cameras in my home, windows or no...", without providing any evidence to justify his statements, not even the signed responsible declaration admitted in similar cases. You have to keep in It also states that with the claim images of a device were provided installed in one of the windows of the home of the claimant, which is oriented towards the outside, with the appearance of a camera and on which the complaining party has not

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stated nothing, despite having been sent the copy of the file that he requested which included the quoted image.

THIRD: On June 18, 2022, in accordance with article 65 of the LOPDGDD, the claim presented by the claimant party was admitted for processing.

FOURTH: On September 6, 2022, the Director of the Spanish Agency for 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 that:

1. It is strictly false that there is one (singular), or more than one (plural),

video surveillance cameras in my home, windows or not.

2. To date, the only evidence on which the file is based is some

photographs provided by the claimant, but such photographs do not show or

prove that there is no video surveillance camera installed in my home, for

the simple and elementary reason that there are none.

3. Contrary to what is unfoundedly stated in the second fact of the

Resolution: a) It is not possible to provide more evidence of negative facts about the fact that

I have a video surveillance camera installed;

b) I do not have to make any additional <responsible statement> about that

particular, because there is no camera installed;

c) what the resolution calls <camera appearance> is not such, but is a

element that belongs to the bathroom of my home for the purposes of

all bathroom;

d) It does not seem in the least serious, nor, of course, lawful, that the claimant, neither by herself nor

through that Data Protection Agency, pretend to know what I have in

my bathroom.

4. The photographs taken by the claimant are in no way a means of

proof, for the simple reason that they are totally illegal, since their content affects

directly to my personal and family privacy, since they refer to the window of

a bathroom in my home, and who has been illegally photographed without my

knowledge or consent.

5. The complainant's conduct is the umpteenth demonstration of her total hostility

towards me and my family and their contempt for the most elementary rules of coexistence

in a community of owners.

That in the file there is not a single piece of evidence, not even a simple indication, of the reality.

On November 3, 2022, I filed a complaint with the AEPD against, among others, the complainant here.

SIXTH: On December 12, 2022, a resolution proposal was formulated, proposing to the Director of the Spanish Data Protection Agency the file of the claim filed against Ms. B.B.B. with NIF \*\*\*NIF.1, for the infraction of Article 5.1.c) of the GDPR, typified in Article 83.5 of the GDPR.

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The proposed resolution was notified on December 12, 2022, and after the term granted to argue, no arguments have been presented 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 has installed a video surveillance camera in your home that is capable of capturing images of the access to adjoining homes, among others that of the claimant. Provide images of the location of the camera and its location plan.

SECOND: The claimed party states that it is strictly false that there is one or more than one video surveillance camera in your home, windows or not.

#### 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 being accredited that there is a video surveillance camera in the indicated place by the complaining party.

It can be concluded that we are faced with the impossibility of imputing an infraction administration when the existence of any video surveillance camera, so the file proceeds.

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## 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 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 there is a camera of video surveillance in the place indicated by the claimant, reason for which it proceeds 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 Ms. B.B.B..

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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.

938-181022

Mar Spain Marti

Director of the Spanish Data Protection Agency

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