

938-0419

Procedure No.: PS/00050/2019

## RESOLUTION OF PUNISHMENT PROCEDURE

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

### FACTS

FIRST: On 02/14/18, this Agency received a claim sent by the  
City Council of Tarrassa (Local Police), through which it transfers the following  
facts:

"That displaced members of the local Police to \*\*\*ADDRESS.1,  
notes that sexual services are being offered there, noting the  
presence of a video-surveillance camera, in order to control the  
workers who are at home

"That the Agents observe how in the corridor (...) there is a video camera-  
surveillance. Which is connected through an IP that gives access to the number of  
telephone \*\*\*TELEFONO.1, which allows identifying the person responsible for the activity --  
(folio no. 1)--.

Together with the claim, it provides photographic material (Annex I) that allows  
verify the presence of a hidden camera oriented towards the corridor area and  
entrance of the house, where there are several rooms on both sides of it.

Mr. A.A.A. is identified as the main person responsible, by the acting force,  
which does not proceed to explain the cause/reason for the installation of the device.

SECOND: On May 8, 2019, the Director of the Spanish Agency for  
Data Protection agreed to initiate a sanctioning procedure against the claimant, for the  
alleged infringement of Article 5.1c) of the RGPD, typified in Article 83.5 of the

GDPR.

THIRD: When the database of this organization was consulted (07/10/19), there is no evidence that the defendant has made any allegation in this regard, stating as “Notified” the Start Agreement with the facts mentioned above.

FOURTH: Of the actions carried out, the following have been accredited proven facts:

First. On 02/14/18, this Agency received a claim sent by the City Council of Tarrasa (Local Police), through which it transfers the following facts:

“That displaced members of the local Police to \*\*\*ADDRESS.1, notes that sexual services are being offered there, noting the

C/ Jorge Juan, 6

28001 – Madrid

[www.aepd.es](http://www.aepd.es)

[sedeagpd.gob.es](http://sedeagpd.gob.es)

presence of a video-surveillance camera, in order to control the workers who are at home

“That the Agents observe how in the corridor (...) there is a video-surveillance camera.

Which is connected through an IP that gives access to the phone number

\*\*\*TELEPHONE.1, which allows identifying the person responsible for the activity --(folio nº 1)-

Second. It is identified as the main person in charge of the facility Mr.

A.A.A.

Third. The installation of a recording device of images, in the corridor area of the property, confirming the presence of the same by the declaration of the State Security Forces and Bodies.

Fourth. It is proven that there was no informative poster, being the

installed with a clear purpose of control inside the property.

Fifth. The defendant has not argued in the way that in his case

informed the employees of the property about the treatment of their personal data

staff.

## FUNDAMENTALS OF

### LAW

Yo

By virtue of the powers that article 58.2 of Regulation (EU) 2016/679 of the

European Parliament and of the Council of 04/27/2016 regarding the protection of

natural persons with regard to the processing of personal data and the free

circulation of these data (hereinafter GDPR); recognizes each authority of

control, and as established in art. 47 of the Organic Law 3/2018, of 5/12, of

Protection of Personal Data and guarantee of digital rights (hereinafter

LOPDGDD), the Director of the Spanish Data Protection Agency is

competent to initiate and resolve this procedure.

## II

In the present case, we proceed to examine the claim transferred to this Agency

by the City Council of Terrassa (Municipal Police) through which they transfer

The main fact is the following:

"That displaced members of the local Police to \*\*\*ADDRESS.1,

notes that sexual services are being offered there, noting the

presence of a video-surveillance camera, in order to control the

workers who are at home" --(folio nº 1)--.

Together with the claim, it provides photographic material (Annex I) that allows

verify the presence of a hidden camera facing the corridor area,

where there are various rooms on both sides of it.

3/6

Don A.A.A. is identified as the main person responsible, by the acting force.

It should be noted that the installation of video surveillance cameras cannot be carried out with the purpose of carrying out a control of areas reserved for the workers of the Center, such as the hallway and entrance area of the home.

The foregoing supposes an affectation to the privacy of the employees, who are controlled in their activities by the person in charge of the system without just cause.

There is no evidence that the employees have been informed of their rights in relation to the "processing of your data" of a personal nature, nor is the presence of this type of device inside a private home.

The foregoing supposes a conduct that violates the content of the provisions in article 5.1 letter c) RGPD, "The personal data will be:

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

Since this type of device is not designed to control the activity of employees of the home, nor exercise uninformed control over potential visitors of the same.

The LOPGDD in its article 72.1.a) indicates: "Infringements considered very serious

"1. Based on the provisions of article 83.5 of Regulation (EU) 2016/679, considered very serious and will prescribe after three years the infractions that suppose a substantial violation of the articles mentioned therein and, in particular, the following:

a The processing of personal data violating the principles and guarantees established in article 5 of Regulation (EU) 2016/679".

III

The defendant is imputed the commission of an infraction for violation of art. 5

section 1 letter c) RGPD. "Personal data will be:

b

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

The defendant has proceeded to install a video-surveillance device inside of the property, without just cause, so that you can control through the mobile device, what happens inside it, thus controlling the employees who carry out their activity in it, affecting their right to privacy and image without just cause.

C/ Jorge Juan, 6

28001 – Madrid

[www.aepd.es](http://www.aepd.es)

[sedeagpd.gob.es](http://sedeagpd.gob.es)

Article 77 section 5 of Law 39/2015 (October 1) provides the following:

"The documents formalized by the officials who are recognized as condition of authority and in which, observing the legal requirements corresponding the facts verified by those are gathered will prove of unless proven otherwise".

Documentary evidence is attached (Image nº 1 and 2) that proves the presence of the device in question, oriented towards the corridor area, in such a way that it allows control the entrances/exits of the rooms of the property, exercising control on their privacy in a disproportionate manner and lacking any type of information.

SAW

According to the evidence provided in this proceeding, it is confirmed that

presence of a video-surveillance device inside a private home,  
with the presumed purpose of controlling the employees of the same, without stating that  
they have been informed of their rights within the framework of the regulations in force  
and without justifying the presence of the device in question in the area where it is  
found installed.

Article 83 section 2 of the RGPD provides the following: "The fines  
administrative will be imposed, depending on the circumstances of each case  
individually, in addition to or as a substitute for the measures referred to in article  
58, section 2, letters a) to h) and j).

When deciding the imposition of an administrative fine and its amount in each case  
individual, due account shall be taken of:

- ☐ The nature of the infraction, since the installed device affects privacy  
of the employees who are controlled by it, without having been  
informed of their rights, also affecting an area that lacks  
sense to video-monitor it as is the interior of the property
- ☐ the intentionality or negligence in the infraction; in the present case, the  
denounced must know that the installation of this type of  
devices and even less not informing the employees and/or clients of the  
domicile, so their behavior should be considered at least serious.

The foregoing, without prejudice to the fact that, as a result of this procedure, it may be  
required the immediate removal of the apparatus in question from the corridor area, providing  
documentary evidence (photograph with date and time) that proves such end before this  
body, based on the provisions of art. 58.2 d) RGPD, as well as any other  
measure deemed appropriate to adapt the irregular situation to the regulations of  
personal data protection.

When motivating the economic sanction, it is taken into account that the conduct

described supposes a full affectation to the right to privacy (art. 18 CE) of the workers of the Center, who are permanently controlled by the device

5/6

in question, "treating your data" without any information about it in a free transit zone.

The conduct must be qualified as malicious because the intention of the itself seems blatant, which is none other than controlling the employees and clients of the property (art. 83.2 b).

It has not collaborated in any way with this Control Authority, mitigating adverse effects, such as with the removal of the camera from the scene of the events (art.83.2 f).

In accordance with the foregoing, it is considered correct to order the imposition of an administrative sanction encrypted in the amount of €9,000 (Nine Thousand Euros) depending on the circumstances of the specific case.

the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: IMPOSE Don A.A.A., with NIF \*\*\*NIF.1, for a violation of Article 5.1 c) of the RGPD, typified in Article 83.5 of the RGPD, a fine of €9,000 (nine A thousand euros).

SECOND: NOTIFY this resolution to the defendant Mr. A.A.A.

THIRD: Warn the sanctioned party that he must make the imposed sanction effective once

Once this resolution is enforceable, in accordance with the provisions of the art. 98.1.b) of Law 39/2015, of October 1, on Administrative Procedure

Common Public Administrations (hereinafter LPACAP), within the payment term voluntary established in art. 68 of the General Collection Regulations, approved by Royal Decree 939/2005, of July 29, in relation to art. 62 of Law 58/2003, of December 17, through its entry, indicating the NIF of the sanctioned and the number

of procedure that appears in the heading of this document, in the account restricted number ES00 0000 0000 0000 0000 0000, opened on behalf of the Agency Spanish Data Protection at Banco CAIXABANK, S.A. Otherwise, it will be collected during the executive period.

Received the notification and once executed, if the date of execution is between the 1st and 15th of each month, both inclusive, the term to make the payment voluntary will be until the 20th day of the following month or immediately after, and if between the 16th and last day of each month, both inclusive, the payment term It will be until the 5th of the second following month or immediately after.

In accordance with the provisions of article 50 of the LOPDPGDD, this Resolution will be made public once it has been notified to the interested parties.

Against this resolution, which puts an end to the administrative procedure in accordance with art. 48.6 of the LOPDPGDD, and in accordance with the provisions of article 123 of the LPACAP, the Interested parties may optionally file an appeal for reconsideration before the Director of the Spanish Agency for Data Protection within a month from counting from the day following the notification of this resolution or directly

C/ Jorge Juan, 6

28001 – Madrid

[www.aepd.es](http://www.aepd.es)

[sedeagpd.gob.es](http://sedeagpd.gob.es)

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 in article 46.1 of the aforementioned Law.



Finally, it is pointed out 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

The interested party expresses his intention to file a contentious-administrative appeal.

If this is the case, the interested party must formally communicate this fact by

writing addressed to the Spanish Agency for Data Protection, presenting it through

Electronic Register of the Agency [[https://sedeagpd.gob.es/sede-electronica-](https://sedeagpd.gob.es/sede-electronica-web/)

web/], or through any of the other registers provided for in art. 16.4 of the

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

documentation proving the effective filing of the contentious appeal-

administrative. If the Agency was not aware of the filing of the appeal

contentious-administrative within a period of two months from the day following the

notification of this resolution would end the precautionary suspension.

Sea Spain Marti

Director of the Spanish Data Protection Agency