

□ File No.: EXP202103988

RESOLUTION OF PUNISHMENT PROCEDURE

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

FACTS

FIRST: A.A.A. (*hereinafter, the complaining party) dated October 20,
2021 filed a claim with the Spanish Data Protection Agency. The
claim is directed against the one who identifies as Don B.B.B. with NIF ***NIF.1 (in
hereafter, the party claimed). The grounds on which the claim is based are
following:

“The presence of a video surveillance camera oriented towards me continues.
private property affecting my personal and/or family privacy” (folio nº 1).

Together with the claim, it provides documentary evidence (Annex I) that proves the
presence of at least one device affecting its private area.

SECOND: On November 8, 2021, the Director of the Spanish Agency
of Data Protection agreed to admit for processing the claim presented by the party
claimant.

THIRD: After consulting the database of this Agency, it is associated with the
claimed a previous procedure with number PS/00497/2020 that ended with
Resolution of Warning to the same for identical facts to those now analyzed,
imposing compliance with measures in relation to the system subject to
claim.

ADDRESS a warning to B.B.B. with NIF ***NIF.1, for an infraction of
articles 5.1.c) and 13 of the RGPD, typified in article 83.5 of the RGPD, a sanction
warning tion.

FOURTH: On January 18, 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 02/07/22, a reply is received from the party complained against expressing "his disagreement with the accusation made against him" by having the cameras on your property and recording only your private space and arguing various irregularities in the cameras installed by the claimant.

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

In this proceeding, the following are considered proven facts:

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

2/5

FACTS

First. The facts bring cause of the claim dated 10/20/21 through the which translates as the main fact the following:

"The presence of a video surveillance camera oriented towards me continues. private property affecting my personal and/or family privacy" (folio nº 1).

Second. It is identified as the main responsible B.B.B., who states that

"Third-party space is not affected, but private space."

In support of his arguments, he provides documentary evidence (Annex I) with which observed with the installed cameras.

Third. There is no accredited capture of the claimant's private space, nor is there observe the dwelling of the same in the frames provided by the claimed.

FOUNDATIONS OF LAW

Yo

By virtue of the powers that article 58.2 of the RGPD recognizes to each authority of control, and according to the provisions of articles 47 and 48 of the LOPDGDD, the Director of the Spanish Agency for Data Protection is competent to initiate and to resolve this procedure.

II

In the present case, the claim dated 10/20/21 is examined by me- which is transferred as the main fact "presence of video-surveillance camera company that is oriented towards my particular property" (folio nº 1).

The facts denounced suppose an affectation to the content of art. 5.1 c) GDPR (regulations currently in force) that provides: "personal data will be: 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.

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

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.

Fake cameras can also affect personal privacy.

of the claimed, in such a way that it is a criterion maintained by this Agency that they limit their radius of action (orientation) towards a private area, respecting the tranquility of the private life of the affected, who does not have to know the nature of the system, but neither can he bear to be intimidated by it in his personal sphere.

nal and/or domestic.

The video-surveillance sign(s) must contemplate the current regulations—RGPD—indicating at least the person responsible for the treatment, how to exercise the rights of Articles 12-22 RGPD and a contact address must be visible from the exterior.

III

In accordance with the allegations put forward by the respondent, it is not verified capture of private space of the claimant, being the same oriented towards his private property, as can be seen in the photographs provided (Annex I).

The accredited facts do not allow to determine any "irregularity" in the system. issue installed, nor affectation to space reserved for the privacy of the claimant has been verified, beyond the presence of the cameras, an aspect that is not denied by the reclaimed.

It is remembered, however, as a result of one of the frames provided by the reclaimed (a) that he must proceed to place some type of cover in his case (vgr. a mesh), since, although the camera is inside your property, where it is observes a guard dog, it captures, being a fence with separation, a por-

minimal tion from outside.

Article 89.1 Law 39/2015 (October 1) provides: "The investigating body will resolve the completion of the procedure, with filing of the proceedings, without it being necessary would the formulation of the resolution proposal, when in the procedural instruction It becomes clear that any of the following circumstances exist:

c) When the proven facts do not constitute, in a manifest way, an infringement administrative.

IV

The principle of presumption of innocence prevents imputing an administrative offense when proof of charge accrediting the criminals has not been obtained and verified. facts that motivate the imputation or the intervention in them of the presumed infraction thor. 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.

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

4/5

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 diverse manifestations is conditioned to the game of evidence and a contradictory 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 charge or incriminating

of the reproached conduct; that the burden of proof corresponds to the one who accuses, without that no one is obliged to prove his own innocence; and that any insufficiency in the result of the tests carried out, freely assessed by the sanctioning, must be translated into an acquittal pronouncement.

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

In accordance with the foregoing, no administrative infraction has been accredited in the framework of data protection, which is why it is appropriate to order the File of the present procedure.

Both parties are reminded of the importance of the rights at stake, and must avoid try to instrumentalize this body with issues more typical of "bad relationship of neighborhood", which are related to data protection, recommending adjusting your behavior to the minimum rules of neighborhood coexistence or, where appropriate, transferring the facts to the nearest Investigating Court or, where appropriate, Security Forces of the locality.

Therefore, in accordance with the applicable legislation and after assessing the graduation criteria tion of the sanctions whose existence has been proven, the Director of the Spanish Data Protection Agency RESOLVES:

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

give any administrative infraction.

SECOND: NOTIFY this resolution to B.B.B..

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.

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

5/5

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

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

Sea Spain Marti

Director of the Spanish Data Protection Agency

938-270122

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

