

Procedure No.: PS/00418/2018

## RESOLUTION OF PUNISHMENT PROCEDURE

Of the procedure instructed by the Spanish Agency for Data Protection before A.A.A.,

by virtue of a claim filed by D.G. OF THE CIVIL GUARD-POST P. DE

CARTAYA (hereinafter, the claimant) based on the following:

### BACKGROUND

FIRST: The claim filed by the claimant has an entry dated 11

October 2018 at the Spanish Data Protection Agency. The claim is directed

against A.A.A. with NIF \*\*\*NIF.1 (hereinafter, the claimed one). The reasons on which the

claim are that while the agents performed citizen security functions

around the town of Cartaya (Huelva), they locate a camera at the height of the

\*\*\*ADDRESS.1 of said population.

Said camera is located on the façade of the aforementioned dwelling, which is

is in a position to record people wandering on public roads.

Interviewed with the resident in the aforementioned dwelling and the owner of said dwelling

video surveillance camera, and after being required to show an authorization to

being able to install and use this type of cameras, states that it lacks authorization

any and that he does not intend to remove the camera from said location, continuing to

use of this.

Along with your written complaint, a photographic report of the location is provided

of the camera.

SECOND: In view of the facts denounced in the claim and the documents

provided by the claimant, as a result of the investigative actions

practiced, it is verified that the person in charge of the treatment is the claimed one,

in accordance with the provisions of Regulation (EU) 2016/679 (General Regulation of

Data Protection, hereinafter RGPD).

In addition, the following extremes are noted:

As can be seen from the photographs provided by the Civil Guard, the camera could be taking images disproportionately, although this fact has not been been able to verify since the owner does not collaborate and it has not been possible to verify the scope and the width of the images on the display monitor.

The request for information made to verify the foundation of the reported facts was picked up on October 30, 2018 by B.B.B. with NIF \*\*\*NIF.2, who does not appear in the register of the city council of Cartaya as a resident in the same home. There has been no response to the requested information.

THIRD: On December 19, 2018, the Director of the Spanish Agency for Data Protection agreed to initiate a sanctioning procedure against the claimed party, in accordance with the provisions of articles 63 and 64 of Law 39/2015, of October 1, on the Procedure Common Administrative of Public Administrations (hereinafter, LPACAP), by the alleged infringement of article 5.1 c) in connection with article 6 of the RGPD of the C/ Jorge Juan, 6

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Regulation (EU) 2016/679 of the European Parliament and of the Council of April 27, 2016 on the protection of natural persons with regard to data processing data and the free movement of these data and by which the Directive is repealed 95/46/CE (General Data Protection Regulation) (hereinafter, RGPD), typified in art. 83.5 a) of the GDPR.

FOURTH: Since the agreement to initiate this procedure cannot be notified to the

denounced at the address indicated for being absent from delivery, this is published in the BOE of \*\*\*DATE.1, indicating that the interested party for the purposes of this notification, or your representative may request, proving your identity, a copy of the Corresponding resolution, appearing from Monday to Friday from 9:00 a.m. to 2:30 p.m. Citizen Attention Service of the headquarters of the Spanish Agency for the Protection of Data, calle Jorge Juan, 6 28001 Madrid, or by contacting through <https://sedeagpd.gob.es/sede-electronica-web/>, within a maximum period of 10 business days, counted from the day following the publication of this announcement.

FIFTH: In accordance with articles 64.2.f) and 85 of Law 39/2015, of October 1, of the Common Administrative Procedure of Public Administrations (LPACAP), by not allegations to be made in time to the aforementioned initial agreement, it has become considered motion for a resolution.

In view of everything that has been done, by the Spanish Agency for the Protection of Data in this procedure are considered the following,

#### PROVEN FACTS

FIRST: The D.G. OF THE CIVIL GUARD-POST P. DE CARTAYA has had knowledge through the agents who performed citizen security functions in the town of Cartaya (Huelva), of the existence of a camera at the height of the \*\*\*ADDRESS.1 of said population, in the home of A.A.A. with NIF \*\*\*NIF.1

According to photographs provided by the Civil Guard, the camera could be taking images disproportionately, although this fact has not been verified since that the owner does not collaborate and it has not been possible to verify the scope and breadth of the images on the display monitor

SECOND: The agents interview the resident in the aforementioned dwelling and owner of the aforementioned video surveillance camera, and after being required to show an authorization to be able to install and make use of this type of cameras, states that

he lacks any authorization and that he does not intend to remove the camera from said location, continuing to use it.

## FOUNDATIONS OF LAW

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By virtue of the powers that article 58.2 of the RGPD recognizes to each authority of control, and according to what is established in art. 47 of the Organic Law 3/2018, of 5 December, of Protection of Personal Data and guarantee of digital rights (in what hereinafter LOPDGDD), the Director of the Spanish Data Protection Agency is competent to resolve this procedure.

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The treatment of images of a video surveillance system, in accordance with the current regulations, you must follow the following requirements:

II

- Respect the principle of proportionality.
- When the system is connected to an alarm center, it can only be installed by a private security company that meets the requirements set forth in Article 5 of Law 5/2014 on Private Security, of April 4.
- The video cameras will not be able to capture images of people who are outside the private space since the treatment of images in public places only it can be carried out, where appropriate, by the Security Forces and Bodies. Either spaces owned by third parties may be captured or recorded without the consent of their holders, or, where appropriate, of the people who are in them.

- The duty to inform those affected provided for in article 12 must be complied with of the RGPD 2016/679, of April 27, 2016, in the terms referred to both in the aforementioned article, as in articles 13 and 14 of said norm, resulting from application -by not contradict the provisions of the aforementioned Regulation-, the manner provided for in article 3 of Instruction 1/2006, of November 8, of the Spanish Data Protection Agency, on the Processing of Personal Data for Surveillance Purposes through Information Systems Cameras or Video Cameras (Instruction 1/2006, of November 8, of the Spanish Agency Data Protection).

Specifically, it must:

1 Place in the video-monitored areas, at least one informative badge located in a sufficiently visible place, both in open and closed spaces.

In accordance with the provisions of articles 13 and 14 of Regulation (EU) 2016/679, of 27 of April 2016, in the previously mentioned informative badge, it must be identified, least, the existence of a treatment, the identity of the person in charge and the possibility of exercise the rights provided for in said precepts.

1 Keep available to those affected the information referred to in the cited Regulation (EU) 2016/679, of April 27, 2016.

Article 5 section 1 letter c) RGPD "Principles related to treatment" provides that personal data will be processed:

III  
c) adequate, pertinent and limited to what is necessary in relation to the purposes for those who are treated. (data minimization).

For its part, article 6.1 of the RGPD (Legality of the treatment) establishes the Specific assumptions under which the processing of data is considered lawful interested parties.

In this case, from the documentation contained in the procedure, the

existence of a video surveillance system made up of several security cameras,  
that are installed without just cause, and may be capturing images

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disproportionate from the public road.

The treatment of images in public places can only be carried out -in your  
case and prior compliance with the legally enforceable requirements-, by the Forces and  
Security Forces, unless the exception established in article 4.3 of the  
Instruction 1/2006, of November 8, of this Agency, which establishes: "the cameras and  
camcorders installed in private spaces will not be able to obtain images of spaces  
public unless it is essential for the intended surveillance purpose, or  
it is impossible to avoid it due to their location. In any case, you must  
Avoid any unnecessary data processing for the purpose pursued.

However, on some occasions the protection of private spaces is only  
possible if the cameras are located in spaces such as facades. Sometimes it also turns out  
necessary to capture the accesses, doors or entrances, so that although the camera is  
is inside the building, it is impossible not to record the minimum and essential  
of the public thoroughfare, which is inevitably captured.

For this exception to apply, there must not be a possibility of  
alternative installation. Bearing in mind that:

- The person responsible for processing the data carried out through cameras and/or  
video cameras will adapt the use of the installation, so that the impact on human rights  
of pedestrians is the minimum possible.

- In no case will the use of surveillance practices beyond the environment be admitted.

object of the installation and in particular, not being able to affect public spaces

surrounding buildings, adjoining buildings and vehicles other than those accessing the space

guarded.

Article 83.5 a) of the RGPD, considers that the infringement of "the basic principles

for processing, including the conditions for consent under the

articles 5, 6, 7 and 9" is punishable, in accordance with section 5 of the aforementioned article

83 of the aforementioned Regulation, with administrative fines of €20,000,000 maximum or,

in the case of a company, an amount equivalent to a maximum of 4% of the volume

of total annual global business of the previous financial year, opting for the one with the highest

amount.

IV

In the present case, the investigated party is accused of committing an infraction for

violation of article 5.1 c) in connection with article 6 of the RGPD, which states that "the

personal data will be adequate, pertinent and limited to what is necessary in relation to

the purposes for which they are processed (minimization of data)," punishable in accordance with

provided in art. 58.2 of the aforementioned RGPD. The infraction is typified in article 83.5 a) of the

RGPD, considers that the infringement of "the basic principles for the treatment, including

the conditions for consent under articles 5, 6, 7 and 9".

v

This infraction can be sanctioned with a maximum fine of €20,000,000 or,

in the case of a company, an amount equivalent to a maximum of 4% of the volume

of total annual global business of the previous financial year, opting for the one with the highest

amount, in accordance with article 83.5 of the RGPD.

However, the provisions of article 83.5, sections a) and b), of the RGPD, its art.

58.2 b) establishes the possibility of sanctioning with a warning, in relation to what is indicated

in Recital 148:

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“In the event of a minor offence, or if the fine likely to be imposed

would constitute a disproportionate burden for a natural person, rather than a sanction

A warning may be imposed by means of a fine. However, special attention must be paid

attention to the nature, seriousness and duration of the infraction, to its intentional nature, to

the measures taken to alleviate the damages suffered, to the degree of

liability or any relevant prior violation, to the manner in which the authority

of control has been aware of the infraction, to the fulfillment of measures

ordered against the person in charge or person in charge, adherence to codes of conduct and

any other aggravating or mitigating circumstance.”

According to what was stated,

SAW

By the Director of the Spanish Data Protection Agency,

HE REMEMBERS:

1.- WARN A.A.A. with NIF \*\*\*NIF.1 for an infraction of article 5.1 c) in connection

with article 6 of the RGPD, typified in art. 83.5 a) of the RGPD, a sanction of

warning.

2.- REQUIRE A.A.A. with NIF \*\*\*NIF.1 so that within a month from this act

of notification proves to this body the fulfillment of the following measures:

☐ Withdrawal of any video-surveillance device towards the public space, providing

documentary evidence (photograph date and time) that proves such end.



☐ Provision, if applicable, of supporting documentation on the characteristics of the cameras if it is a simulated (fake) device.

3.- NOTIFY this Agreement to A.A.A. with NIF \*\*\*NIF.1

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.

Against this resolution, which puts an end to the administrative procedure (article 48.2 of the

LOPD), and in accordance with the provisions of articles 112 and 123 of Law 39/2015,

of October 1, of the Common Administrative Procedure of the Administrations

Public, the interested parties may optionally file an appeal for reconsideration before

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

from the day following the notification of this resolution, or, directly appeal

contentious-administrative before the Contentious-administrative Chamber of the High Court

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

additional fourth of Law 29/1998, of July 13, regulating the Jurisdiction

Contentious-Administrative, within a period of two months from the day following the

notification of this act, as provided in article 46.1 of the aforementioned legal text.

Sea Spain Marti

Director of the Spanish Data Protection Agency

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