

□ File No.: EXP202201049

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 January 19, 2022

filed a claim with the Spanish Data Protection Agency. claims her-

tion is directed against B.B.B. with NIF ***NIF.1 (hereinafter, the claimed party). The

The reasons on which the claim is based are the following:

“has installed two cameras at the pedestrian entrance to a farm owned by the re-

claimed, with the intention of monitoring the entrance to the claimant's farm, adjacent to the

of the claimed”.

Together with the notification, documentary evidence is provided (Annex I) that proves the
presence of said devices.

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 02/04/22 and 04/06/22, to proceed with its analysis and inform this Agency

within a month, of the actions carried out to adapt to the requirements

provided for in the data protection regulations.

THIRD: On 04/26/22, a response to the request made by

this body, expressing various conflicts with the complaining party, although not

clarifies what is captured with the same (s), pointing out various judicial cases among which

parties and providing a photograph of the informative poster available for this purpose.

FOURTH: On April 19, 2022, in accordance with article 65 of the LO-

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

FIFTH: On July 20, 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.

SIXTH: Notified the aforementioned start agreement in accordance with the rules established in

Law 39/2015, of October 1, on the Common Administrative Procedure of

Public Administrations (hereinafter, LPACAP), the claimed party submitted a written

of allegations dated 09/08/22 in which, in summary, he stated the following:

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"Once this background is exposed, the whistleblower's fabrication

discover even more if we focus on what he should have specified in his writing that is the

road pass number XX (...) and not number XX that moved me to carry out the

initial allegations (...)

The two cameras to which the complainant appears to be referring are located in the

stone wall of my road pass and gateway to my ***PLOT A.A.A.

***ADDRESS.1, kilometer point XX,XX, right bank"

The road pass is a concession in my favor from the Highway Service of the

Provincial Delegation in Ciudad Real of the Ministry of Development, for the entry

of agricultural machinery to my plot (...).

The access adaptation works were authorized by the Highway Service as owner, petitioner and promoter of that access, in the exclusive terms that the attached documents (Docs. 23-24) referring to the Act of conformity and restatement (...)

Regarding the area of public domain that the complainant is talking about, it is NOT true because the distance of the door between the entrance door and the curb line varies between 10-15 meters, it happens that the exterior vision camera is limited to control the short space that exists from the metal gate to the fence of my property to the left of the photo (doc. number 22) ...

My electricity meter has been looted several times, it was destroyed by a vehicle whose identification cost me work to find out to demand responsibility (...)

My neighbor and his indicated circumstances—addictions and violence—led me to the installation of cameras on my property, with vision of what is on my domain exclusively and for no other purpose than the protection of my family and patrimony (...)

Therefore I REQUEST: that considering this writing and accompanying documents, this Agency agrees to have fulfilled my obligation to inform by means of these allegations within the period granted (...)

SEVENTH: On 09/14/22 a new letter was received from the claimant providing new documentation regarding the installation of antennas to provide service to a system of CCTV that registers my exclusive entrance of vehicles, the pedestrian and the domain public in contravention of the regulations in this regard.

EIGHTH: On October 17, 2022, a resolution proposal was formulated, pro-putting the FILE of the actions as the commission is not considered accredited of any administrative infraction in the matter at hand.

NINTH: On 11/06/22, a written statement of allegations to the "Resolution Proposal" was received.

resolution" indicating the total conformity with it and that "nothing has to allege the regard".

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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 01/19/2022 through which translates the following:

“has installed two cameras at the pedestrian entrance to a farm owned by the re-claimed, with the intention of monitoring the entrance to the claimant's farm, adjacent to the of the claimed”.

Second. He is accredited as the main person in charge of the B.B.B. installation, with NIF***NIF.1, who does not deny the facts, although he points out that they affect only his environment. to privative the images obtained with the installed devices.

Third. The presence of an informative poster in the access to the farm in visible area and approved in accordance with current regulations.

Room. There is evidence of the presence of two cameras at the access door to the property owned by the defendant (...).

Fifth. After analyzing the photographs provided by the defendant as part of the cular, the uptake of the adjacent career zone is not inferred, nor is the affectation of the zone exclusive of the claimant, beyond the dispute in the area of access to it.

FUNDAMENTALS OF LAW

Yo

In accordance with the powers that article 58.2 of Regulation (EU) 2016/679 (Re-General Data Protection Regulation, hereinafter GDPR), grants each authority 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 subsidiary, by the general rules on administrative procedures."

II

In the present case, the claim dated 01/19/22 is examined by means of gave from which the presence of video-surveillance cameras that could

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affect their freedom of movement by excessively controlling public and/or private areas of the same.

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 those who 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 to intimidate neighboring neighbors with this type of device, as well as control areas nas of transit of the same without justified 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.

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, outside the cases allowed in the regulations.

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

On 09/05/22, a written statement of allegations was received in relation to the facts object of claim, in essence "denying the same" brandishing the bad relations between the parties and the various conflicts between them.

“The two chambers to which the denouncer finally seems to refer are located

They are in the stone wall of my road pass and gateway to my ***PARCE-

THE A.A.A. ***ADDRESS.1, kilometer point XX,XX, right bank”

Focusing the matter on the cameras that are the object of the claim, they affirm the defendant are on his property and are not oriented towards public space. public, nor affecting the private zone of a third party.

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Examined the documentary evidence provided by the claimed party (Documents nº 21-22) the catchment of the road area adjacent to the itself, limiting itself to the necessary space for access to the farm, necessary perimeter and cancel this.

Article 22 section 2 of the LOPDGDD (LO 3/2018) provides: “2. Just po- Images of the public thoroughfare will be captured to the extent that it is essential for the purpose mentioned in the previous section.

The system has an informative badge indicating that it is a residential area. deo-supervised, complying with the duty to inform the person responsible for the treatment and way to exercise rights in the current legal framework.

Both parts are widely known, one area being the catchment that only affects both entrances and exits, being also a conflict zone between them and not reserved for their privacy, as it is an access area to the end- AC.

Likewise, the argumentation of various acts of vandalism suffered against the devices to justify at least temporarily the presence of the cameras. gangs in question.

As a reminder, note that this body can at any time

time to go to the place of the facts to verify the veracity of what was asserted

In his writings, cameras cannot capture public roads, and must mask the devices or redirect them only to the necessary area of access and control of the access door and necessary perimeter.

The complaining party has not been accredited as manifest by "data processing" associated with you and/or third parties in your environment, nor capture of an area reserved for the privacy of the same (vgr. nearby windows as an example).

Regardless of issues more specific to civil law, this body considers that the presence of the cameras is justified as it is an authorized access to the main property on which the defendant has a right of way, redounding in the security of the properties inside the estate, including that of the claimant, not considering a measure disproportionate to the intended purpose, being a point of access to it and especially if any act of vandalism has occurred on property of the defendant.

Lastly, remember that when faced with acts of vandalism, whatever nature, this body considers video surveillance cameras as a suitable preventive measure, against situations of bad neighborly relations, being able to

The images obtained must be made available to the competent Authorities in order to purify the responsibility of the presumed author (a) of the same.

Any issue related to the right to privacy must be transfer to the appropriate judicial instances, where the assessment of the facts does not have to coincide with those of this body, which limits its action to verify compliance with the requirements in the framework of data protection,

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as is the case of the presence of a cartel, the suitability of the measure and the context that leads to their presence in said area, as well as the possible real affectation rights of third parties in a treatment of your data not adjusted to law.

IV.

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).

V

After analyzing the facts and arguments presented, it can be concluded that it is not the commission of any administrative infraction, reason for which it is appropriate to agree on the Archive of this procedure.

The parties are reminded of the importance of the rights at stake, and must avoid using this body in matters already prosecuted or as a result of the bad relations between the parties, but not related to data protection, being the Courts of justice those in charge of analyzing the issues of diverse nature that they face.

Therefore, in accordance with the applicable legislation and assessed the graduation criteria of the sanctions whose existence has been accredited,

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the Director of the Spanish Data Protection Agency RESOLVES:

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

tad the commission of any administrative infraction in the matter at hand.

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 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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