

□ Procedure No.: PS/00170/2020

938-300320

RESOLUTION OF PUNISHMENT PROCEDURE

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

FACTS

FIRST: AAA (*hereinafter, the claimant) dated November 21, 2019

filed a claim with the Spanish Data Protection Agency. The

claim is directed against B.B.B. with NIF ***NIF.1 (hereinafter, the claimed one).

The reasons on which the claim is based are "installation of peepholes with
possibility of recording" controlling the entrance door.

SECOND: On 12/11/2019, the claim is transferred to the part of-
announced, without any allegation having been made in this regard.

THIRD: On September 8, 2020, the Director of the Spanish Agency
of Data Protection agreed to initiate a sanctioning procedure against the claimed, for the
alleged infringement of Article 5.1.c) of the RGPD, typified in Article 83.5 of the
GDPR.

FOURTH. When the database of this organization was consulted on 10/12/20, no
received any allegation in relation to the device in question.

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

In this proceeding, the following are considered proven facts:

FACTS

First. On 11/21/20 a claim is received through which the

as the main "fact" the following "installation of peepholes with the possibility of
recording" by controlling the input door.

Second. It is identified as the main person in charge Doña B.B.B., which has not made any claim in this regard.

Third. It is not possible to determine that the device in question "processes data of personal character" of the affected party or their personal and/or family environment.

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

2/5

FOUNDATIONS OF LAW

Yo

By virtue of the powers that article 58.2 of the RGPD recognizes to each authority 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 solve this procedure.

II

In the present case, we proceed to examine the claim dated 11/21/19 by means of gave from which the following is transferred as the main fact:

"Installation of two recording peepholes in its two doors, the garage door nothing more to enter the portal, focusing directly on the portal and my garage (...) "-folio nº 1--.

It should be remembered that individuals are responsible for ensuring that the systems installed felled comply with current legislation, proving that they comply with all two the requirements demanded by the regulations in force.

Devices called direct peepholes are readily available today.

digital, which act as a traditional peephole, sometimes installed as a convenience.

to observe who knocks at our door.

Article 4.1 a) RGPD provides the following:

“personal data”: any information about an identified or identifiable natural person

ble ("the interested party"); An identifiable natural person shall be deemed to be any person whose

identity can be determined, directly or indirectly, in particular by means of a

identifier, such as a name, an identification number, location data,

identification, an online identifier or one or more elements of the physical identity

ca, physiological, genetic, psychic, economic, cultural or social of said person (...).

In the case of peepholes that do not record data, but are limited to the mere capture

tion of the space located at the entrance of the house does not apply the regulations in

matter of data protection, since it would be a data treatment carried out by

natural persons in the exercise of exclusively personal or domestic activities.

case

The installation of devices that simulate to be a camera is not prohibited either.

with a luminous device, which makes believe that it is a real device for mo-

deterrents.

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

3/5

III

In accordance with the "evidence" available in this pro-

sanctioning procedure, it is considered that the defendant (a) has some type of "dispensation

positive" without identifying, although it is not possible to determine that with it this pro-

conducting a treatment of your personal data.

The known facts could constitute an infraction, attributable to the

claimed (a), for violation of the content of art. 5.1 c) RGPD, by not clarifying the same
mo the characteristics of the reported device.

Article 83.5 of the RGPD, which provides the following:

“Infractions of the following provisions will be sanctioned, in accordance
with paragraph 2, with administrative fines of a maximum of EUR 20,000,000 or, alternatively,
being from a company, of an amount equivalent to a maximum of 4% of the volume
overall annual total turnover of the previous financial year, opting for the
higher amount:

a) the basic principles for the treatment, including the conditions for the
consent under articles 5, 6, 7 and 9;

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.

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.

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

4/5

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).

In the present case, it is taken into account that the complainant only relies on
mere "suspicion", as well as the lack of allegation of the accused to order the
File of this procedure.

The foregoing does not prevent taking into account that the conduct may be reprehensible
in other areas of law (eg civil law) in the case of a conduct
that the complainant does not have the legal duty to support—STS Civil Chamber, sec-
tion 1, of November 7, 2019, nº 600/2019, rec. 5187/2017, EDJ 2019/724119-.

The TS reasons that when an individual does not know that he is being filmed,
behaves with a naturalness and spontaneity that would not occur otherwise. And that
“The plaintiff's right to the tranquility of his private life also includes the

of not having to endure permanent uncertainty” about whether the camera in question is or is not operational, or whether it has been replaced by another fully functional and identical appearance.

The denounced party must prove the nature of the device(s) installed.

hand, having to sufficiently explain the reasons for the installation with a view to its analysis by this body, without prejudice to the allegations that it deems necessary to make (vgr. Complaints between the parties, etc), indicating the number of the procedure indicated. fallen.

The accused is reminded that the repeated lack of collaboration with this

Agency may give rise to the opening of an administrative procedure of a

sanctioning, with the imposition of an economic fine, for the infraction of art. 72 letter o)

LOPDGDD (LO 3/2018, December 5).

Therefore, in accordance with the applicable legislation and having assessed the criteria for graduation of 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 gives the commission of any administrative infraction.

SECOND: NOTIFY this resolution to Doña B.B.B. and REPORT the result of the proceedings to Don A.A.A.

In accordance with the provisions of article 50 of the LOPDGDD, the

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 LOPDGDD, and in accordance with the provisions of article 123 of the LPA-

CAP, 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

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

5/5

counting from the day following the notification of this resolution or directly

contentious-administrative case before the Contentious-administrative Chamber of the Au-

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 Jurisdiction

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

Following the notification of this act, as provided in article 46.1 of the aforementioned

Law.

Sea Spain Marti

Director of the Spanish Data Protection Agency

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es