

□ Procedure No.: PS/00401/2020

## RESOLUTION OF PUNISHMENT PROCEDURE

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

### FACTS

FIRST: AJUNTAMENT DE \*\*\*LOCALIDAD.1 (\*hereinafter, the claimant) with  
dated July 21, 2020 filed a claim with the Spanish Agency for  
Data Protection. The claim is directed against who identifies as A.A.A. with  
NIF \*\*\*NIF.1 (hereinafter, the claimed). The grounds on which the claim is based are  
succinctly the following:

“Complaint against a local resident for having a video-surveillance camera  
who has obtained an image of the municipal police, proceeding to hang the video on  
the platform to share videos \*\*\*PLATAFORMA.1” (folio nº 1).

Along with the claim, it provides documentary evidence (Doc. No. 1) consisting of the  
own Complaint made by the reported neighbor claiming to have the images  
in question.

SECOND: On 08/13/20, the claim is TRANSFERRED  
presented in this body to the respondent so that he can allege what in law he deems  
prompt.

THIRD: On 10/13/20, a reply is received from the respondent stating the  
following about it:

"I have to inform you that this is only a persecution by the  
City Council of \*\*\*LOCALIDAD.1 to me, because at the time the old al-  
calde (already expelled from the mayor's office, after 32 years of cacicadas, for this issue) asked me  
I quote a bribe that I did not agree to.

Regarding the recording that you provide in your file, I know it perfectly, because one of the security cameras recorded it AFTER THE FEMALE POLICE IN QUESTION WILL PASS THROUGH SENSOR CABLE LOCATED IN SOIL (...)

I also request the file in question AND TO VARY YOU THEY BROKEN THE LAW AGAIN AND DID NOT SEND IT.

The law says so, gentlemen, THE LAW (that which you are the first to not comply with) plir), I don't know if they know what I'm talking about (...)"

FOURTH: After consulting the database of this body, there is a prior complaint against the same associated with File number E/10137/2018, for the installation of external chambers not adjusted to the regulations in force.

C/ Jorge Juan, 6

28001 – Madrid

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

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

2/9

FIFTH: On March 5, 2021, the Director of the Spanish Agency for Pro-Data Protection agreed to initiate a sanctioning procedure against the defendant, in accordance with the provisions of articles 63 and 64 of Law 39/2015, of October 1, on the Procedure Common Administrative Procedure of Public Administrations (hereinafter, LPA-CAP), for the alleged infringement of Article 5.1.c) of the RGPD, typified in Article 83.5 of the GDPR.

SIXTH: On 03/22/21 this Agency is requested "copy of the File" pointing out that tendentiously "we have forgotten to send it".

SEVENTH: Having been notified of the aforementioned initiation agreement, the respondent submitted a written allegations 03/24/21 in which, in summary, it stated the following:

"That his requests for his last request are ignored, requesting the certification of the Instructors of this Agency (...) noting that the cameras meet perfectly current legislation.

would not be competent in this regard, if not the judicial authorities, since from the moment a flagrant criminal act was detected, you had to have sent as a complaint to the courts, and ONLY A JUDGE COULD DECLARE RARE A PARTIAL OR TOTAL SUMMARY SECRET, and that even if he did, the accused party, SHOULD ALWAYS HAVE THE RIGHT TO KNOW ALL THE EVIDENCE COMPANY THAT SAYS THE ACCUSER HAS (...)"

EIGHTH: On 03/31/21 we proceed to send you a complete copy of the File administrative, as recorded in the database of this body.

NINTH: On 03/31/21 the defendant is required to prove the legality of the system, providing all the necessary documentation, warning you of the consequences of a permanent obstruction to the inspection work.

TENTH: On 04/10/21 a reply is received from the respondent, stating the following- following:

"That their request for a requirement is ignored again (...) I only hired Some time ago the installation of the surveillance system to a home security company mologada of which I already communicated your name and address at the time. Remember that the burden of incriminating proof rests with you, for that of "everyone is innocent until proven guilty", it is not if it sounded like something (...)"

ELEVEN: On 04/15/21, a "Resolution Proposal" was issued in which notes the violation of art. 5.1 c) RGPD, when the claimant has a system of cameras that allows you to obtain images disproportionately, pro- having a sanction encrypted in the amount of €2,000.

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

3/9

Of the actions carried out in this procedure and the documentation

in the file, the following have been accredited:

#### PROVEN FACTS

First. The facts take shape in the presence of a video-surveillance system on

which disproportionately obtains images of public transit areas, without

justified cause, having obtained images of the acting force displaced to the

surroundings and its alleged “publication” on the video portal \*\*\*PLATAFORMA.1.

Second. It is accredited as the main person in charge Mr. A.A.A., which has

of a video-surveillance system with characteristics that allow you to control

perimeter of an area with containers.

Third. The person responsible for the traffic is not identified on the posters of the video-monitored area.

tion of the images to which to be able to go.

Fourth. The accused does not make any allegation in relation to the video obtained from the

work of the force acting in the property located at \*\*\*ADDRESS.1.

“Of course, and in case you doubted it, there is a security video recorded and saved.

do in \*\*\*PLATFORMA.1” (folio nº1 Claim).

Fifth. Technical report from the installer on the characteristics of the cameras is not provided.

maras, although they have built-in mobility and zoom.

Sixth. It is proven that the accused carries out an excessive collection of the area

adjacent, obtaining images of the public sidewalk, to the point of controlling the

itself and obtain the license plate of parked vehicles.

It is verified in print frame No. 2 (Written dated 01/26/19).

Seventh. It is proven that the accused does not have a computerized form(s)

I am available to those affected who may require it.

Eighth. The defendant does not make any statement in relation to the period of conservation of the images that, in your case, you obtain with the installed system.

Nineth. On 0/15/19, a letter was sent to him from this Agency in which he was already spilled from the consequences of not regularizing in legal form the system installed in

\*\*\*ADDRESS.1-\*\*\*CITY-Barcelona.

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.

C/ Jorge Juan, 6

28001 – Madrid

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

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

4/9

II

Before going into the substance of the matter, it should be noted that on 03/22/21 he was given transfer of all the documentation contained in this file in the fiscal year of the right contained in art. 53.1 a) Law 39/15 (October 1); reiterating this Agency on 03/31/21 to make the appropriate allegations to the facts subject to transfer.

By the accused there is an "obstructive" behavior to answer the facts

object of transfer, maintaining an attitude of contempt for the inspection work, by means of expressions and demands not adjusted to the law, for which reason it is held by attended the corresponding procedure.

He repeatedly points out that it is impossible for him to know the "facts" that are transferred by not knowing which cameras this Agency refers to (folio No. 1 date 04/10/21).

"I do not deny that I have interests in the same (multi) property, and that from time to time when I spend some time in it... but since it is NOT my property I could not en- send them NOTHING (with a view to collaborating, (...) I got reprimanded by my lawyers, because I am not authorized to act on behalf of this property), and since I told them, I also have many other (multi)properties all over the world"

Contrary to what was argued by the defendant, in the claim the transfer given by the City Council of \*\*\*LOCALIDAD.1 (Barcelona), it is specified where the facts are established, attaching the claim of the accused in which he indicates "If you doubt it, there is a security video saved and recorded in \*\*\* PLATFORM.1".

Furthermore, in the File numbered E/10137/2018, it is already had made a response to the respondent on 01/26/19 on the same system.

video-surveillance theme, installed in the timeshare of the same (a).

Therefore, the "facts" subject to transfer by this body are clear, not there is no doubt about where they occur and who is responsible for the "treatment" of the data" as it is the person in charge of the video-surveillance system, which is the person that video has at its disposal, determines what is recorded, what it is recorded for, and how is recorded.

Therefore, it is appropriate to reject any claim of defenselessness, not specifically in what way it is producing obstruction to their right to defense sa.

The alleged "qualification" of the Inspectors of this Agency is not something that incumbent on the accused, being personnel extensively trained in the offending conduct described, this aspect being something totally unrelated to the exercise of their right to defense, reminding him of the character of personnel outside any conflict that could exist between the parties.

C/ Jorge Juan, 6

28001 – Madrid

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

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

5/9

III

On 07/21/20 a claim is received through which the complaint is transferred against a local resident for having a video-surveillance camera that he has obtained image of the municipal police, proceeding to post the video on the platform to share videos \*\*\*PLATFORM.1.

The defendant himself provided a screen print of what was captured in his case. ta with the installed system (property that now does not recognize), where it is observed an excessive uptake of the public road, to the point that the width is observed of the sidewalk and the cars parked on it.

The above facts suppose an affectation to the content of art. 5.1 c) RGPD, by having exterior cameras that affect public areas without just cause. each.

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

In any case, the cameras should preferably be oriented towards the

private space, avoiding intimidating neighboring neighbors with this type of device, as well as control their transit areas without just cause.

With this type of device it is also not possible to obtain image(s) of space public service, as this is the exclusive competence of the Security Forces and Corps of the State.

The legislation is very precise about this possibility: the installation of video surveillance gangs on the street corresponds solely and exclusively to the Armed Forces and State Security Bodies, always in compliance with security functions. which rules out the power to do so of private security companies or by part of the individuals.

#### IV

In accordance with the evidence available in this proceeding punisher, it is considered that the defendant has a video-surveillance system which it has used to "process data of third parties" affecting with it the area of public transit, by controlling the entire public sidewalk adjacent to your home.

This body has already spoken widely about the fact that individuals cannot direct their cameras towards a public area, even in the case of to park their vehicles at the top of the sidewalk, because by doing so they affect to rights of third parties, which are recorded without just cause.

On 01/26/10 the respondent replied to this Agency providing impression screen of the system where the excessive capture of public space is verified (Annex Doc. I).

C/ Jorge Juan, 6

28001 – Madrid

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

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



The installed system allows capturing images of the adjacent area, according to documents mention provided by the defendant himself, which implies a disproportion in the measure taken.

Although the capturing of images of public officials in the exercise of its mission, it is necessary to be especially careful with the treatment further processing of the same; as a guideline if irregular behaviors are recorded res must be made available to the competent authorities for analysis corresponding, and must preserve their safety for reasons that are not require more explanation.

The installation of a video-surveillance system on private property has as a purpose the protection of the same and its belongings against external aggressions, not being allowed to record the outside surreptitiously with it. cia affecting the right of third parties, whose data is processed without knowing about.

Security cameras installed in private spaces will not be able to obtain images public spaces, the security function of public spaces corresponding to exclusively to the State Security Forces and Bodies, not to the Companies. Private Security companies.

It must be taken into consideration that the fundamental right to the protection of data, unless any of the exceptions provided for in the applicable regulations apply. cable or that any other norm is applicable that establishes some limit to said de- right, it is not an absolute right, being a right of every natural person, regardless depending on whether it is an individual, an official, a user or an operator.

The installed system is excessive insofar as it captures public space, equipped with motion detectors, which allow images of areas

Unnecessary perimeter fences for the main purpose: protection of the belongings in the timeshare where they are installed.

The images obtained are stored by him, who in his writings to the Town Hall of the locality (\*\*LOCALIDAD.1) describes situations that occur on the outside of the timeshare where the cameras are installed.

“they made a strange hole in the opposite wall (...) right where it is close-giving the street” (folio No. 1 Claim).

“They have dedicated themselves to photographing the sawdust and when they have seen me appear they have ran away with the excuse that there was an accident” (folio No. 1 Claim).

"which means that the crack there is quite large and I understand that the strange works they have been doing for two months in \*\*\*DIREC-TION.2 is also due to an issue of water leakage (...)" (Folio No. 2 Claim).

This fact is corroborated by the images provided by the claimant.

where you can clearly see the entire width of the sidewalk and adjacent area to the timeshare where the cameras are located.

C/ Jorge Juan, 6

28001 – Madrid

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

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

7/9

The defendant has been widely informed of the limits in terms of deo-surveillance, not making an allegation in this regard about the specific aspects that have been required (vgr. technical characteristics of the installed cameras), therefore that it is considered that the conduct of the same is considered at least negligence serious agency.

Among others (SAN 112/2013, Resource No. 342/2011 FJ4<sup>a</sup>).

“Therefore, it turns out that the appellant entity was aware of the existing limitations.

tes for the recording of images on public roads and despite this, it did not adopt the

precise precautions to prevent said recording from taking place by capturing

public services not necessary for the intended purpose for which people transited

The images were already captured and temporarily stored and, therefore, treated

without the consent of those affected. And that means you have to be responsible.

of said excess in the recording produced by the cameras”.

The known facts constitute an infraction, attributable to the defendant, for

violation of the content of art. 5.1 c) GDPR.

Article 83.5 RGPD provides the following:

IV

“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

greater amount:

a)

the basic principles for the treatment, including the conditions for the

consent under articles 5, 6, 7 and 9;

When motivating the sanction, the following is taken into account:

-the nature of the infraction by having a video-surveillance system that

is oriented towards a public transit area without just cause, dealing with data

of identifiable natural persons (art. 83.5 a) RGPD).

-the intentionality or negligence of the infringement, (art. 83.2 b) RGPD), since

with the video-surveillance system, it performs an excessive control of the area outside the property.

piety without any just cause.

The defendant had already been warned by letter from this organization that he should regularize the system in accordance with the Video Surveillance Guide of this AEPD.

For all this, a sanction is agreed in the amount of €2,000 (Two Thousand Euros), by having a camera system that records excessive transit area public, sanction located in the lower scale of this type of infractions.

C/ Jorge Juan, 6

28001 – Madrid

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

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

8/9

The acknowledgment of responsibility for the imputed infringement does not exempt compliance with regularizing the video-surveillance camera system installed in your private property, providing all the necessary documentation for this purpose.

The defendant is warned that the persistence in the breach of the regulations in force, may lead to the opening of a new procedure sanctioning, where the "continuity in the offending conduct" can be assessed at the time to graduate a pecuniary sanction of greater amount than the one imposed, being able to Such extremes must be verified by the local security forces and bodies. after the period of one month established for regularization.

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: IMPOSE A.A.A., with NIF \*\*\*NIF.1, for an infraction of Article 5.1.c) of the RGPD, typified in Article 83.5 of the RGPD, a fine of 2000 euros (Two Thousand euros).

SECOND: That the accused party proceed within the non-extendable period of 1

Month to contribute to this Agency based on the provisions of art. 58.2 d) GDPR

Next:

-Photograph(s) with visible date and time of the informative poster duly approved.

-Technical report with the characteristics of the video-surveillance system or must allow for on-site inspection.

-Accreditation by means of a technical report that the camera (s) of so that public space is not captured, limiting the scope of the camera exclusively to the timeshare area.

-Accreditation of the recording time of the images and destruction of the video (s) with images of the State Security Forces and Bodies.

-Availability of informative form(s) for the appropriate legal purposes.

THIRD: NOTIFY this resolution to A.A.A. and REPORT the result of the proceedings to the claimant TOWN HALL OF \*\*\*LOCALITY.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 in accordance with art. 48.6 of the LOPDGDD, 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-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

938-131120

C/ Jorge Juan, 6

28001 – Madrid

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

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