

□ Procedure No.: PS/00162/2020

## 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 claimant) dated November 19, 2019

filed a claim with the Spanish Data Protection Agency. The

claim is directed against the neighbor (a) of the locality B.B.B. with NIF \*\*\*NIF.1 (in

later, the claimed one). The grounds on which the claim is based are "installation of

video-surveillance camera" oriented towards the property of the denouncing party without  
just cause.

Along with the claim, provide documentary evidence that proves the presence

of device (Proof Document No. 1), which is visible from its property.

SECOND: On 12/11/19, the claim is TRANSFERRED to the party

denounced, so that it can express in law what it deems appropriate about the facts  
in question.

THIRD: When the database of this organization was consulted on 08/14/20, no

No response has been received in relation to the facts described.

FOURTH. On September 1, 2020, the Director of the Spanish Agency for

Data Protection agreed to initiate a sanctioning procedure against the claimant, for the  
alleged infringement of Article 5.1.c) of the RGPD, typified in Article 83.5 of the  
GDPR.

FIFTH. The publication of the Start Agreement of PS/00162/2020 in the BOE of  
date 10/14/20.

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 11/19/19 a claim was filed with this AEPD through the

which was transferred as the main fact the following:

"installation of a video-surveillance camera" oriented towards the property of the complaining party without just cause.

Second. It is identified as the main person responsible for the installation of the system.

B.B.B., when so indicated by the complainant.

C/ Jorge Juan, 6

28001 – Madrid

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

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

2/5

Third. The presence of a camera on the facade of the building located in front of his private property, although it is not possible to specify that the same Get pictures of your private home.

Fourth. It has not been possible to verify the presence of an informative poster, although the same It is not necessary if the recruitment is limited to your personal and/or domestic environment.

Fifth. There are no allegations of the accused in relation to the facts subject to transfer by this Agency.

## 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.

In the present case, the claim dated 11/19/19 is examined by me-

gave from which the following is transferred as the main fact:

“installation of video-surveillance cameras” oriented towards the property of the complaining party without just cause.

The art. 5.1 c) RGPD provides the following: The personal data will be:

“adequate, relevant and limited to what is necessary in relation to the purposes for which they are processed ("data minimization").

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.

The installed cameras cannot control public roads, as they exceed the function of the same, so that they can only be installed for reasons of security of the property, not being able to video-monitor the outside area, nor the pedestrians who transit down the sidewalk

Article 22 section 2 of the LOPDGDD provides: “Only images may be captured genes of the public thoroughfare to the extent that it is essential for the purpose mentioned in the previous section”.

The cameras must be oriented towards the particular property, not being able to affect the rights of third parties who may feel intimidated by this type of disposition. sites.

C/ Jorge Juan, 6

28001 – Madrid

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

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

### III

In accordance with the "evidence" available in this proportioning procedure, the presence of a small device to video-surveillance camera mode, although it is not possible to determine the illegality of the same.

The dwellings as can be deduced from the photograph provided by the complainant They are located one in front of the other, which allows the mere visualization of the camera, although this does not imply an affectation with it of private property of the same.

Individuals can install this type of cameras, which, as in the case we are dealing with are oriented towards the main access of their own home for reasons of security, which does not imply intentionality in obtaining images that ex-give up their own private property.

The known facts could constitute an infraction, attributable to the claimed, for violation of the content of article 5.1 c) RGD, previously transcribed.

Article 83.5 of the RGD, 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 greater 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

C/ Jorge Juan, 6

28001 – Madrid

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

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

4/5

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).

v

Based on the foregoing, it has not been possible to determine that the camera denounced is poorly oriented, the mere external visualization of it being insufficient to decree the commission of an administrative infraction, given that it is about housing located one opposite the other.

Thus, in the absence of objective evidence to determine the illegality camera denounced, it is advisable to respect the presumption of innocence of the one denounced, considering that the camera is oriented exclusively towards her private property, thus ordering the File of this procedure.

In cases such as the one exposed, it is advisable to address the complaint in your case to the local Security Forces and Corps, which can verify in situ, the system installed, proceeding in case of "irregularity" send the claim again tion to this Agency.

Therefore, based on the foregoing,

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 gives the commission of any administrative infraction.

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

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 resents may optionally file an appeal for reconsideration before the Director

C/ Jorge Juan, 6

28001 – Madrid

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

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

5/5

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

Sea Spain Marti

Director of the Spanish Data Protection Agency

938-300320

C/ Jorge Juan, 6

28001 – Madrid

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

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