

□ Procedure No.: PS/00014/2021

## RESOLUTION OF PUNISHMENT PROCEDURE

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

### BACKGROUND

FIRST: Dated September 19, 2020, entered this Agency

Spanish Data Protection, a document presented by A.A.A. (hereinafter the  
claimant), through which he makes a claim against B.B.B. with NIF \*\*\*NIF.1 (in  
hereinafter, the claimed), for the installation of a video surveillance system installed  
at \*\*\*ADDRESS.1, with indications of a possible breach of the provisions  
in the personal data protection regulations.

The claimant states that "I have detected that my neighbors on \*\*\*ADDRESS.1 street,  
have installed a hidden camera in the flowerpot on their balcony, focusing  
straight onto my balcony (I'm from the adjoining farm), and possibly my driveway  
main (I do not know the exact angle of vision) as well as public road. There is not  
any signaling about the existence of this camera in a public area/street."

Attach photographic report of the location of the cameras.

SECOND: Prior to the acceptance of this claim for processing, it is  
transferred the claimed, in accordance with the provisions of article 65.4 of the Law  
Organic 3/2018, of December 5, on the Protection of Personal Data and guarantee of  
digital rights (hereinafter, LOPDGDD).

Given the lack of proof of receipt of said transfer in October 2020,  
proceeded to reiterate the same, in November 2020, without there being any  
proof of receipt.

THIRD: The claim was admitted for processing by resolution of January 13

of 2021.

FOURTH: On February 16, 2021, 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 Regulation (EU) 2016/679 of the Parliament European and Council, of April 27, 2016, on the protection of people regarding the processing of personal data and the free circulation of these data and by which Directive 95/46/CE (hereinafter, RGPD) is repealed, typified in article 83.5 of the RGPD.

FIFTH: On May 18, 2021, this Agency entered the allegations presented by the respondent, who, in summary, indicates that he does not reside in the claimed address.

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In addition, he indicates that during his visits to said home he has never seen a security camera. some video surveillance installed, and therefore, there is no sign.

“(…) Mr. B.B.B. nor does he reside on the farm where the camera supposedly exists, nor is he owner of said dwelling nor does he have any contract or title over it (…)”

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 September 19, 2020, it entered this Agency

Spanish Data Protection claim for the installation of a security camera

video surveillance hidden in the planter on the balcony of the defendant, oriented towards the

claimant's home and towards the public road, without any information sign

video surveillance area.

SECOND: The respondent, in his pleadings brief, has indicated that he does not reside in the claimed address.

In addition, he indicates that during his visits to said home he has never seen a security camera.

some video surveillance installed, and therefore, there is no sign.

## 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 as established in arts. 47 and 48.1 of the LOPDGDD, the Director of

The Spanish Agency for Data Protection is competent to resolve this process.

II

On September 19, 2020, it had entry in this Spanish Agency of

Data Protection claim for the installation of a video surveillance camera

hidden in the planter on the balcony of the requested person, oriented towards the home of the claimant and towards the public road, without there being any informative sign of the area video surveillance.

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

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

It should be remembered that individuals are responsible for ensuring that the systems installed comply with current legislation.

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The cameras must be oriented towards the particular space, avoiding intimidating neighboring neighbors with this type of device, as well as control transit areas of them without just cause.

On the part of individuals, it is not possible to install imaging devices of public space, outside the cases allowed in the regulations, as this is exclusive jurisdiction of the State Security Forces and Bodies.

The treatment of images through a video surveillance system, to be

In accordance with current regulations, it must meet the following requirements:

- 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 contemplated 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 where the video surveillance system is installed, since the treatment of images in public places can only be carried out, unless Government authorization concurs, by the Security Forces and Bodies. Either spaces owned by third parties may be captured or recorded without the consent of their owners, or, where appropriate, of the people who are in them.

This rule admits some exceptions since, on some occasions, for the protection of private spaces, where cameras have been installed on facades or inside, it may be necessary to guarantee the security purpose the recording of a portion of public road. That is, cameras and video cameras installed for the purpose of security will not be able to obtain images of public roads unless it is essential for said purpose, or it is impossible to avoid it due to the location of

those and, extraordinarily, the minimum space for said

purpose. Therefore, the cameras could exceptionally capture the portion

minimally necessary for the intended security purpose.

- The duty to inform those affected provided for in articles 12 and

13 of the RGPD and 22.4 of the LOPDGDD.

Specifically, at least one badge must be placed in video-monitored areas.

informative located in a sufficiently visible place, both in open spaces and

closed, which will identify, at least, the existence of a treatment, the

identity of the person in charge and the possibility of exercising the rights foreseen in said

precepts. Likewise, the information must be kept available to those affected.

to which the aforementioned RGPD refers.

- The person in charge must keep a record of treatment activities

carried out under its responsibility, including the information to which it makes

reference article 30.1 of the RGPD.

- Installed cameras cannot get images from third-party proprietary space

and/or public space without duly accredited justified cause, nor can they affect

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the privacy of passers-by who move freely through the area. not allowed, for

Therefore, the placement of cameras towards the private property of neighbors with the purpose

to intimidate them or affect their privacy without just cause.

- 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.

III

The respondent, in his pleadings brief of May 18, 2021, has indicated that does not reside at the claimed address. In addition, he indicates that during his visits to said address has never seen any video surveillance camera installed, and therefore, not there is a poster

Examining the file as a whole, it has not been proven that the responsible for the installation of the video surveillance system is the one claimed.

Therefore, according to the above,

the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: ORDER the ARCHIVE of these proceedings as there is no accredited the commission of any administrative infraction.

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 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

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.

Sea Spain Marti

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