

Procedure No.: PS/00387/2018

## RESOLUTION OF PUNISHMENT PROCEDURE

Of the procedure instructed by the Spanish Agency for Data Protection before Mr.

A.A.A., by virtue of a claim filed by AYTO. OF MOGUER--POLICE

LOCAL-- (hereinafter, the claimant) and based on the following:

### BACKGROUND

FIRST: The claim filed by the claimant has an entry dated 26

June 2018 at the Spanish Data Protection Agency.

The claim is directed against the neighbor A.A.A. with NIF \*\*\*NIF.1 (hereinafter, the reclaimed).

The reasons on which the claim is based are the existence of "complaints" from neighbors of the property due to the presence of a video-surveillance device that affects the privacy of the same, without just cause (folio No. 1).

SECOND: On 07/04/18, the claim is TRANSFERRED to the denounced party, so that he may allege what he deems appropriate in law, providing the corresponding test means(s).

Specifically, the legality of the installed system, which is duly signposted and that adjusts to the proportionality required in the installation of this type of systems.

THIRD: On 07/24/18 a handwritten letter is received from the accused party alleging that "it does not have any video-surveillance camera installation", although the mere manifestations of the same are considered insufficient to decree the Archive of the complaint filed by the acting force.

FOURTH: On December 4, 2018, 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, of the RGD, very serious infringement, by the installation video-surveillance device without just cause and in a disproportionate manner for this, and may be subject to an administrative sanction in the terms set forth in article 58.2 in connection with art. 83.5 of the GDPR.

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

In this proceeding, the following are considered proven facts:

#### PROVEN FACTS

FIRST: On 06/26/18, this body received a complaint transferred by the Moguer City Council, as a result of the act-complaint of the Forces and Corps of State Security.

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“...informs the performers of the location of the camera, which also informs who feel observed, said camera violating their privacy and that of the rest of the neighbors, who want to denounce the existence of said camera (...)”-folio nº 1--.

SECOND: It is identified as the main responsible, the denounced Mr.

A.A.A., of legal age, with DNI \*\*\*NIF.1.

THIRD: The presence of a Play Station Eye device in the front door of the house, without just cause.

FOURTH: There is no evidence that the defendant has requested any permission to install the device, nor that it has been brought to the attention of the person primarily responsible for the Community of owners.

FIFTH: According to the defendant, the installation is carried out by his son, for reasons

“discomfort from unknown persons when he was alone in the house”.

SIXTH: It is hereby accredited that the device has been removed from its current location (Proof Document No. 3).

SEVENTH: There is no proof that he has obtained images from third parties (neighbors) of the property without just cause, stating that "it was not connected".

## 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 art. 47 of the Organic Law 3/2018, of 5 December, of Protection of Personal Data and guarantee of digital rights (in hereinafter LOPDGDD), the Director of the Spanish Agency for Data Protection is competent to resolve this procedure.

II

The defendant is imputed the commission of an infraction for violation of article 5 RGPD, which provides: “Personal data will be:

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

It is not covered by current regulations, the installation of devices in common areas of a building, which may affect the privacy of neighbors, which do not have to know the "deterrent" nature of the device in question.

The installed device has the ability to obtain images of person physical, not being justified the installation of the same, especially when it is not no cause/reason has been proven, nor has the main person responsible for the property (eg President and/or Administrator).

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The hypothetical "treatment of images" of third parties is not justified in the exposed case, as it is not one of the cases covered by the regulations, Considering the measure adopted to be disproportionate, which has created a situation of "discomfort" in the community, with the consequent intervention of the Local Police of the location.

Article 83 section 5 of the RGPD provides the following: "Infringements of the following provisions will be sanctioned, in accordance with section 2, with fines administrative fees of EUR 20,000,000 maximum or, in the case of a company, of an amount equivalent to a maximum of 4% of the total annual turnover of the previous financial year, opting for the highest amount:

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

Privately installed cameras cannot monitor activities (entry/exit) of the residents of the property, thereby affecting their right to privacy (art. 18 EC), and this type of privacy may even have civil repercussions. conduct contrary to the legal system.

III

Without prejudice to the provisions of article 83.5, sections a) and b), of the RGPD, in its art. 58.2 b) establishes the possibility of sanctioning with a warning, in relation to what stated in Recital 148:

"In the event of a minor offence, or if the fine likely to be imposed would constitute a disproportionate burden for a natural person, rather than

sanction by means of a fine, a warning may be imposed. must however  
Special attention should be paid to the nature, seriousness and duration of the infringement, its  
intentional nature, to the measures taken to alleviate the damages suffered,  
the degree of liability or any relevant prior violation, the manner in which  
that the control authority has been aware of the infraction, compliance  
of measures ordered against the person responsible or in charge, adherence to codes of  
conduct and any other aggravating or mitigating circumstance.”

#### IV

In the present case, we proceed to examine the claim of date of entry into  
this body 06/26/2018 through which the following is transferred by force  
acting:

“...informs the performers of the location of the camera, which also informs  
who feel observed, said camera violating their privacy and that of the rest of the  
neighbors, who want to denounce the existence of said camera (...)”-folio nº 1--.

The "facts" therefore materialize in the installation of some kind of  
device, which affects the privacy of the neighbors, who are intimidated by the  
same, considering video-surveillance.

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The defendant, in a letter dated 07/24/18, denies “having any installation of  
video surveillance”; while in brief of arguments 12/26/18 it states the  
installation of a “Play Station Eye camera”.

It is worth remembering that the Play Station Eye is a digital camera, similar to

a webcam, for PlayStation 3.

Its external appearance, as it is equipped with a lens, is similar to that of any type of security camera, being able to create the fiction of being a video surveillance device.

Article 1 "in fine" of Instruction 1/2006 (AEPD) provides the following:

"The references contained in this Instruction to video cameras and cameras are shall also be understood to be made by any analogous technical means and, in general, by any system that allows the treatments provided for in it.

Therefore, the complaint is sufficiently corroborated by the actions of the acting force and the presence of a device capable of obtaining images, installed in an inappropriate place for this type of device.

The justification put forward "inconvenience at the door of a third party unknown" does not justify the installation of the device, which has resulted in a situation of intimidation of the neighbors of the property, to the point of cause the transfer of this claim.

Remember that no type of device can be installed in the areas of the property, to control the neighbors or as a deterrent, especially if not there is just cause.

Article 7.1 LPH establishes that "The owner of each flat or premises may modify the architectural elements, facilities or services of the former when undermines or alters the security of the building, its general structure, its configuration or foreign state, or harm the rights of another owner, having to account of such works previously to whoever represents the community. In the rest of the property will not be able to make any alteration and if it notices the need for Urgent repairs must be communicated without delay to the administrator.

The complainant argues that the device in question "has never been

operative" and that it has proceeded to remove it from the place in question (Doc. evidence no. 3).

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According to the above, it is not possible to specify that the device in question "processes data of third parties", having proceeded to the withdrawal of the same of the place of location.

The facts analyzed, point to the fact that it is a "chiquillada" when proceeding to place the device on a minor as a deterrent in a common area,

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making the neighbors of the building believe that it was a camera operative.

By means of this resolution, the accused party is informed, that the device in question is equated for legal purposes to a video camera-surveillance, being able in case of relocating in common area the referred device, thus intimidating the neighbors, face a procedure of sanctioning nature, which is communicated for the appropriate legal purposes.

Therefore, once the facts have been analyzed, it is ordered to proceed to the File of this procedure, since the commission of an infringement is not proven any administrative.

Therefore, in accordance with the applicable legislation and after assessing the facts set forth and analyzed the evidence provided,

the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: PROCEED to decree the FILE of this procedure by not

be accredited the commission of any administrative infraction in the framework of the

Data Protection.

SECOND: NOTIFY this resolution to Don A.A.A. and, according to art. 77.2

of the RGPD, INFORM the claimant about the result of the claim.

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. 114.1 c) of

the LPACAP, 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

Director of the Spanish Data Protection Agency

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