

- Procedure No.: PS/00203/2019

RESOLUTION: R/00391/2019

In procedure PS/00203/2019, instructed by the Spanish Agency for Data Protection to Don A.A.A., given the complaint filed by B.B.B. and by virtue of the following,

FACTS

FIRST: Mrs. B.B.B. (hereinafter, the claimant) dated February 21, 2019 filed a claim with the Spanish Agency for Data Protection, motivated by the processing of data carried out through cameras of a video surveillance system whose owner identifies as the neighbor Don A.A.A. with NIF ***NIF.1 (*hereinafter the claimed) installed at ***ADDRESS.1.

The reasons on which the claim is based are "installation of a video camera-surveillance by the neighboring neighbor towards my plot" (folio nº 1).

Along with the claim, provide documentary evidence that proves the installation of a camera oriented towards an area adjoining the land of the part complainant.

SECOND: In view of the reported facts, in accordance with the evidence that is available, the Data Inspection of this Spanish Agency for the Protection of Data considers that the treatment of personal data that is carried out by the denounced through the chambers to which the complaint refers, does not meet the conditions imposed by the regulations on data protection, for which reason the opening of this sanctioning procedure.

THIRD: On 03/12/19, the claim is TRANSFERRED to the party denounce, without any response having been given in relation to the "facts" transferred.

FOURTH: On 08/06/19 a letter is received from the accused party alleging the

Next:

“What is mentioned in the claim is totally UNCERTAIN...because

my farm has never been, nor is any camera installed with video systems-

surveillance (...)

The only electronic equipment that has been installed on said property is

of a homemade design and construction device (...) intended to scare off the

birds in a reduced area of cultivation (...)

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The aforementioned sensor acts in a reduced experimental field of about 15

linear meters in the airspace (...)

In any other random point of the farm, a wireless device has been installed.

buzzer speaker that is driven by the RF signal receiver, which is activated by

the emitted sequence described above.

Attached as PROOF is the certificate issued (...), with report

photo attached to it.

Therefore, there is NO recording camera, so I have NOT

committed any illicit action subject to sanction by that Agency”.

“In short, the File of the indicated sanctioning procedure proceeds, for

be totally FALSE the complaint and claim made.

PROVEN FACTS

First. On 02/21/19 a claim is received through which the

as main fact:

“Installation of a video-surveillance camera by the neighboring neighbor towards me parcel” (folio nº 1).

Second. It is identified as the main responsible Mr. A.A.A., which denies the facts imputed to him.

Third. It is proven that the reported device is not a video camera. surveillance but a home-made device to scare away birds.

Fourth. Provide documentary evidence (Annex I) that includes certificate and evidence photographs that support their statements.

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 initiate and resolve this procedure.

II

In this case, the claim dated 02/21/19 is examined through which translates as the main fact the following:

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“Installation of a video-surveillance camera by the neighboring neighbor towards me parcel” (folio nº 1).

The facts described may imply an affectation of the content of art. 5.1 c)

RGPD, having installed a video surveillance camera that can affect the privacy of the accused party.

Individuals can install video-surveillance cameras, although they are responsible for ensuring that they comply with current legislation.

With this type of device, it is generally intended to protect property property, in the face of hypothetical attacks and/thefts with force on things, although may be used for different purposes, always within the current legal framework.

These types of devices cannot be used to obtain images of spaces of free transit, thereby affecting the privacy of third parties who are seen intimidated by them.

On 08/06/19, allegations were received from the accused party denying the facts that are imputed to him, stating that he does not have any camera, but a self-made artifact to scare away birds in order to avoid damage to their crops.

Provides documentary evidence (Annex I) that allows verifying what is stated, so it is not a video surveillance device.

In the investigation phase, the evidence provided is analyzed, concluding that it is indeed a homemade device, which does not allow the processing of personal data, the purpose of which is: scare away the birds that access your private farm.

III

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

punisher and must be respected in the imposition of any sanction, whether criminal

or administrative (TCo 13/1981), since the exercise of the sanctioning right in

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any of its manifestations, is conditioned to the test game and to a

contradictory procedure 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).

IV

In accordance with the foregoing, having analyzed the allegations of the accused party, it is

conclude that the device is not a video surveillance camera, but an artifact of

own manufacture, intended to scare away birds from the cultivation area of its

private property, so since there is no data processing, it can be concluded that

orders the Archive of this procedure.

According to what was stated,

By the Director of the Spanish Data Protection Agency,

HE REMEMBERS:

1.- PROCEED to decree the FILE of this procedure as there is no accredited the commission of any administrative infraction.

2.- NOTIFY this Agreement to Don A.A.A. and INFORM the party plaintiff Doña B.B.B..

Against this resolution, which puts an end to the administrative procedure (article 48.2 of the LOPD), and in accordance with the provisions of articles 112 and 123 of the Law 39/2015, of October 1, of the Common Administrative Procedure of the Public Administrations, the interested parties may optionally file appeal for reconsideration before the Director of the Spanish Data Protection Agency within one month from the day following the notification of this resolution, or, directly contentious-administrative appeal before the Chamber of the Contentious-administrative of the National Court, in accordance with the provisions of the Article 25 and in section 5 of the fourth additional provision of Law 29/1998, of July 13, regulating the Contentious-Administrative Jurisdiction, within the period of two months from the day following the notification of this act, as provided for in article 46.1 of the aforementioned legal text.

Sea Spain Marti

Director of the Spanish Data Protection Agency

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