

□ Procedure No.: PS/00353/2020

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 June 26, 2020

filed a claim with the Spanish Data Protection Agency. The

claim is directed against B.B.B. with NIF ***NIF.1 (hereinafter, the claimed one). The

The reasons on which the claim is based are the installation of video-surveillance cameras without presence of an informative poster in this regard (folio nº1).

Along with the claim, provide documentary evidence that proves the installation of

the cameras on the facade of the establishment (Annex I).

SECOND: On 07/10/20, the claim is TRANSFERRED to the

denounced, so that it could express in law what it deems appropriate.

THIRD: On 10/05/20, the claim is admitted for processing,

After the established period has elapsed without any response from the person denounced.

FOURTH: On December 30, 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 13 of the RGPD, typified in Article 83.5 of the RGPD.

FIFTH: On 02/12/21, a written statement was received from the claimed manifesto.

taking the following:

“That the company was formed as a sole proprietor, instead of as autonomous, for

advisory recommendation. I am the only partner, who has tried to undertake with

a lot of effort, and more now with the situation that the hotel industry is going through, we are in-

trying to keep the business afloat.

The posters were installed on February 19, 2020, the day the company visited us, prior to installation and opening. There are plane tickets from the consultant of *** LOCATION.1, to prove the visit, which are available to the agency, in if you consider it necessary and require them.

The installation consists of 4 informative video surveillance posters, one general training, and 6 cameras, and a single mobile of the owner to view the images genes.

The cameras DO NOT RECORD, nor is there a hard drive. They just do a viewing for the protection of people and property. Now, because of the Covid, sometimes I

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I connect to verify the number of people who are inside, and that we comply with the closing times on the days I'm not there.

That the complaint has been filed by a problematic neighbor that we have, who does not want us to there is a Pub on your street, and that he had several lawsuits with the previous owner, until transfer the business.

That the complaining neighbor himself has several cameras on his balcony, from where it records and controls all the people who access my establishment, my employees, and myself; loading and unloading schedules, cleaning, etc.

What I understand is not lawful, is that he does it by committing flagrant violation of the privacy of people, and that until now had been overlooked so as not to have have more conflicts with him, and for fear of his reprisals, but this is the straw that has filled the glass.

And by virtue of all the above, we beg the instructor of this procedure

informative lie:

Proceed to the FILE of the same, without opening a sanctioning procedure.

nator on my behalf to verify that we have complied with all the provisions of the

regulations, in addition to having established more informative guarantees for the parties, which

many multinationals.

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 re-

solve this procedure.

II

In the present case, the claim dated 06/26/20 is examined by me-

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

“I inform the data protection agency. That the local, Pub

XXXXX, located on the street ***ADDRESS.1, ***LOCATION.2, has installed 02

surveillance cameras on the facade of the premises, without any warning sign of the installation.

tion, neither to the clients, nor to the pedestrians. Supposedly he doesn't even have di-

cha installation (...)”-folio nº 1--.

It should be remembered that individuals are responsible for ensuring that the systems installed

felled comply with current legislation, proving that it complies with all

the requirements demanded by the regulations in force.

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The installation of this type of device must have the mandatory informative sign.

tive, indicating the purposes and responsible for the treatment, where appropriate, of the data of each personal character.

Article 22 section 4 of the LOPDGG (LO 3/2018, December 5) provides:

“The duty of information provided for in article 12 of the Regulation (EU)

2016/679 will be understood to be fulfilled by placing a computerized device

in a sufficiently visible place identifying, at least, the existence of the treatment

to, the identity of the person in charge and the possibility of exercising the rights foreseen in

Articles 15 to 22 of Regulation (EU) 2016/679. It may also be included in the

informative positive a connection code or internet address to this information.

In any case, the data controller must keep available

of those affected the information referred to in the aforementioned regulation.

III

On 02/12/21, a written statement was received from the accused, arguing that

The premises have the mandatory informative posters.

Specifically, it alleges the following: “The posters were installed on February 19,

2020, the day the company visited us, prior to installation and opening

(...)”.

Documentary evidence is attached (Annex I) that accredits the argument,

Therefore, no administrative infraction is found in this regard.

The obligation to inform interested persons of the circumstances relating to

to the treatment of your data falls on the person in charge of the Treatment.

The RGPD obliges data controllers to offer data subjects

more information about the treatments that are carried out and the way to exercise the

Rights. All those responsible must comply with this obligation of transparency.

regardless of its size as an organization. Therefore, those responsible

they have to make sure that they have this information and have foreseen the appropriate means.

squares to offer it to those interested. Its objective is to guarantee the principle of trans-

parency of the organizations regarding the data processing that is carried out.

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

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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 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).

IV

In accordance with the foregoing, the commission of an administrative infraction is not accredited
guna, which is why it is appropriate to order the FILE of this procedure.

The parties are reminded of the importance of the rights at stake, and must
avoid instrumentalizing this Agency for issues of bad relationship between the parties,
having to settle the rest of the issues raised in the appropriate instances, where applicable.
or by denouncing the events to the local Security Forces and Corps.
dad.

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 within the framework of data protection.
cough.

SECOND: NOTIFY this resolution to B.B.B. and REPORT the result

of the proceedings to the A.A.A. claimant.

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

resorts may optionally file an appeal for reconsideration before the Director

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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

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

Sea Spain Marti

Director of the Spanish Data Protection Agency

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