

□ Procedure No.: PS/00184/2020

RESOLUTION OF PUNISHMENT PROCEDURE

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

FACTS

FIRST: Mrs. A.A.A. (*hereinafter, the claimant) dated November 18,
2019 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
reasons on which the claim is based are the installation of a video-surveillance camera
pointing to common areas without the consent of the Community of
owners.

Along with the claim, provide documentary evidence (Doc. No. 1) that proves the
presence of a camera at the top of the entrance door of the residence of the
denounced oriented towards common area.

SECOND. On 02/16/20, this Agency received a communication from the Agency
Taxpayer providing the DNI ***NIF.1 of the denouncer for the purpose of identification in
this administrative procedure.

THIRD: On October 13, 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.

FOURTH. On 11/12/20, this Agency received a written statement of allegations from the
reported stating the following:

“That in my country of origin and due to these pandemic circumstances,
They have issued regulations that prevent mobility (...).

Indeed, a camera is installed in my apartment number

70. This home is an attic, an area to which you do not have and should not access any another person who does not come to visit my home.

Said camera is installed pointing towards my home alone and exclusively (...)

So far everything is correct, but it should be noted that the installed camera is FALSE, as has been made known to the Community of Owners (...) in which

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it is perfectly observed that the camera has a simulated cable that is not directed to no current or track box for recording images (...).

“This camera is powered by portable batteries that supply power to the camera.

Red Red lamp that the device has installed (...).

For all of the above REQUESTS, that this document be considered presented of allegations (...) and the NULLITY of the file is agreed for the reasons equally exposed (...).

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. Mr. B.B.B. is accredited as the main person in charge, who does not deny the installation of the camera that is the subject of the complaint.

Second. It is proven that the installed device is a simulated camera, which

It has a simulated red pilot.

Third. There is no evidence that the defendant has authorization from the Property Board.

aries for installation in a common area of the camera in question.

Fourth. It does not provide a supporting document of the fictitious nature of the device, although

the images provided allow us to verify its simulated character, offering

where appropriate to allow verification in situ of the same.

FOUNDATIONS OF LAW

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By virtue of the powers that article 58.2 of the RGPD recognizes to each authori-

control, and according to the provisions of articles 47 and 48 of the LOPDGDD, the Di-

rector of the Spanish Agency for Data Protection is competent to initiate and

to solve this procedure.

II

Before going into the substance of the matter, it is convenient to answer the COMPLAINT raised by

the defendant, by wielding "that he was not in Spain at the time of production

tell the facts."

According to his own statements, he is the owner of the property,

where it has proceeded to install the camera that is the object of the complaint, assuming the obligation

tion of maintaining an effective address for the purposes of communications not only with this

agency, but also in case of a possible "theft" or any other type of incident.

event that occurs in your home (eg fire, leaks, etc.).

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The information poster itself (art. 13 RGPD) provides for the possibility of being

establish an effective contact address (eg personal email, telephone number, etc.)

or if it is expected that you will stay abroad for long periods

communicate an effective direction to the President and/or Administrator of the community of owners; this being a responsibility of the owner of the property.

Based on the foregoing, the Complaint should be dismissed, as there is no defenselessness having been able to state before this body, what it has deemed appropriate, after the notification of the Initiation Agreement of this administrative procedure.

On the other hand, the defendant indicates that he be notified of the corresponding Resolution pending in the mail address ***EMAIL.1.

Article 41 of Law 39/2015 (October 1) section 1 "in fine" provides the following:
following:

"Additionally, the interested party may identify an electronic device and/or an email address that will be used to send regulated notices in this article, but not for notification practice" (*bold belongs to this organism).

It is recalled that in order to be able to notify by electronic means must have an authorized electronic address (DEH), constituting one of the two mechanisms established by Law 39/2015, of October 1, on the Procedure Common Administrative of the Public Administrations, for the exercise of the notification-electronically.

Through the DEH, any natural or legal person may have a di-electronic direction for the reception of administrative notifications that, via telematics, can practice the General Administration of the State, public organizations and linked or dependent public law entities, the Autonomous Communities more and local administrations.

Therefore, it is also appropriate to dismiss his request as he lacks legal rights.

for this, not being this a valid means to practice the administrative notifications

treatative, for the reason stated.

III

In the present case, we proceed to examine the claim dated 11/18/19 in the

that the presumed illegality in the installation of a camera is transferred to this Agency

at the door of the defendant's home, without the informed consent

of the set of neighbors, affecting common areas of this 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").

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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.

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.

In any case, the cameras must be oriented towards the particular space, without

reach the spaces of the adjoining neighbors, or that control transit areas

of them without just cause.

Neither with this type of device can image(s) of public space be obtained.

co, as this is the exclusive competence of the State Security Forces and Bodies

ted.

It should be remembered that even in the case of a "simulated" camera, the same should preferably be oriented towards private space, since it is considered that this type of device can affect the privacy of third parties, that they are intimidated by it in the belief of being the subject of permanent recording.

On the part of individuals, it is not possible to install devices for obtaining images of public space, outside the cases allowed in the regulations.

The camera can fulfill a dissuasive function for housing protection, while making sure not to obtain images from public/private third-party space without justified cause.

IV

The denounced party proceeds to respond to this Agency on 11/12/20 manifests

Considering that the installed device is a false camera, which does not carry out "processing of any personal data".

Although the denounced for ignorance, does not provide any documentary evidence (vgr. purchase invoice of the device, etc), examined the images is considered that the installed camera is a simulated camera.

So, in the case of a simulated camera, it can be concluded that there is no may produce any administrative infraction in the matter at hand, by not exist as it is obvious "processing of personal data".

According to data protection regulations and jurisprudence, both the capture and the transmission and emission in real time of images of identified or identified persons. certifiable, constitutes a treatment of personal data subject to the LOPDGDD, being necessary therefore to be able to place the camera and capture the images, the consentment of the other residents of the property.

According to the Horizontal Property Law, it is possible to install or remove

porter services, concierge, surveillance or other common services of interest

general, as long as the necessary quorum is achieved. In this case, be-

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3/5 of the total number of owners would be necessary, which, in turn, represent 3/5 of participation fees.

For the protection of housing, there are means less harmful to the rights of ter-zeros (e.g. the installation of an audible alarm, etc), having to have in any case the consent of the Board of Owners to install a camera as described ta, not being able to exercise control of the common areas.

Likewise, the installation of a device inside of the dwelling that fulfills the same function (protection against theft) if well not affecting common areas of third parties, being able to be easily manageable in the country of residence of the accused.

Thus, we know that art. 7.2 LPH indicates that the President of the community must require those community members who carry out annoying activities, prohibit unhealthy, harmful or dangerous, granting them a term to cease they.

Therefore, the installation of the camera in question in a common element can be object of prosecution in the corresponding judicial channel, by not having the consent retention of the group of other owners; being able to have the behavior described proche in other areas of law.

In accordance with the foregoing, it being accredited that the camera is a device simulate (FALSE camera) it is appropriate to order the File of this procedure by the stated reasons.

The rest of the exposed questions are insignificant in the matter that we are dealing with.

occupies, and should be, where appropriate, results and/or raised in the corresponding Board regular owners.

Therefore, based on the foregoing,

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 in the matter of data protection. cough.

SECOND: NOTIFY this resolution to the defendant B.B.B. and inform of the result of the proceedings to the denouncing party Ms. 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

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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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