

□ Procedure No.: PS/00154/2020

938-300320

## RESOLUTION OF PUNISHMENT PROCEDURE

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

### FACTS

FIRST: D. G. OF THE CIVIL GUARD - POSITION OF \*\*\*LOCATION.1 (\*in  
hereinafter, the claimant) on December 4, 2019 filed a claim with  
the Spanish Agency for Data Protection. The claim is directed against A.A.A.  
with NIF \*\*\*NIF.1 (\*hereinafter, the claimed one). The grounds on which the claim is based  
They are succinctly the following:

“It is observed that in house number 20 there are two video-surveillance cameras,  
that are facing the public road”

“that the house has been occupied by Don A.A.A. which keeps active  
video-surveillance cameras” (page No. 1).

Along with the claim, provide a copy of the Minutes (Doc. No. 1) dated 10/23/19,  
provided by the Agents involved.

SECOND: On dates 01/31/20 and 02/17/20, the TRANSFER of the  
claim to the accused without any response having been made in this regard  
in relation to the facts that are the subject of the complaint.

THIRD: On July 1, 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: The database of this Agency consulted on 08/28/202 does not contain

any allegation in this regard in relation to the facts that are the subject of the complaint.

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. It is identified as the main person in charge of the A.A.A.

Second. It is accredited that it has a video-surveillance camera system

which is poorly oriented, specifically according to the manifestation of the acting force towards public space.

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Third. There is no evidence that there is an information poster indicating, where appropriate, the person responsible. saber of the system, before which to be able to exercise the opportune rights.

Fourth. No allegation has been made in relation to the facts under investigation.

nuncia.

## FOUNDATIONS OF LAW

Yo

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

In the present case, the claim dated 12/04/19 is examined by me-

from which it is transferred as the main fact by the Civil Guard General Directorate

(Position of \*\*\*LOCATION.1) the following:

“It is observed that in house number 20 there are two video-surveillance cameras,  
that are facing the public road”

“that the house has been occupied by Don A.A.A. which keeps active  
video-surveillance cameras” (page No. 1).

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").

It should be remembered that individuals are responsible for ensuring that the systems  
more installed 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 sign  
informative, indicating the purposes and responsible for the treatment in your case of the data  
of a personal nature.

In any case, the cameras should preferably be oriented towards the  
private space, avoiding intimidating neighboring neighbors with this type of device,  
as well as control their transit areas without just cause.

With this type of device it is also not possible to obtain image(s) of space  
public service, as this is the exclusive competence of the Security Forces and Corps  
of the State.

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It should be remembered that even in the case of a "simulated" camera, the

It should preferably be oriented towards private space, since it is considers that this type of device may affect the privacy of third parties, which they are intimidated by it in the belief of being permanently recorded tea.

Therefore, capturing images of public spaces by security cameras private surveillance, must be limited to what is strictly necessary, applying in any case the principle of proportionality.

Article 22 section 2 of the LOPDGDD provides the following: "They may only capture images of public roads to the extent that it is essential to the purpose mentioned in the previous section.

III

In accordance with the multiple evidence available in the pre-present sanctioning procedure, it is considered that the defendant has a system video-surveillance system that does not comply with current legislation, as it is oriented towards public space, without just cause.

Article 77 section 5 of Law 39/2015 (October 1) provides the following:

"5. The documents formalized by the officials who are recognized as condition of authority and in which, observing the corresponding legal requirements, teeth the facts verified by those are collected will prove them except prove the contrary".

The known facts constitute an infraction, attributable to the claimant. mado, for violation of the content of art. 5.1 c) GDPR.

The art. 83.5 RGPD provides the following: "Infringements of the provisions following will be sanctioned, in accordance with section 2, with administrative fines EUR 20,000,000 maximum or, in the case of a company, an equivalent amount. equivalent to a maximum of 4% of the total global annual turnover of the fiscal year

previous financial statement, 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;

IV

Without prejudice to the provisions of article 83 of the RGPD, the aforementioned Regulation

has in its art. 58.2 b) the possibility of sanctioning with a warning, in relation

with what is stated in Considering 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 a sanction.

tion by means of a fine, a warning may be imposed. You must, however, pay

Special attention is paid to the nature, seriousness and duration of the infraction, its character

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intentional ter, to the measures taken to alleviate the damages suffered, to the

degree of responsibility or any relevant prior violation, the manner in which

the control authority has become aware of the infraction, to the fulfillment of

measures ordered against the person in charge or in charge, adherence to codes of

conduct and any other aggravating or mitigating circumstance.”

The defendant must prove that the system complies with current legislation,

providing all those documents that are necessary, remembering that a lack of

Collaboration with this body may entail a sanction of an economic nature.

ca or prove that the device has been removed from the current location

current (eg providing photograph with date and time).

Therefore, in accordance with the applicable legislation and having assessed the criteria for graduation of sanctions whose existence has been proven,

the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: IMPOSE Don A.A.A., with NIF \*\*\*NIF.1, for a violation of Article 5.1.c) of the RGPD, typified in Article 83.5 of the RGPD, a sanction of Warning.

SECOND: NOTIFY this resolution to Don A.A.A. and REPORT the result of the actions D. G. OF THE CIVIL GUARD - POSITION OF \*\*\*LOCATION.1

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.

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 period of

month 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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