

□ File No.: EXP202205743

RESOLUTION OF SANCTIONING PROCEDURE

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

BACKGROUND

FIRST: D. A.A.A., represented by D. B.B.B. (hereinafter, the claiming party)

On May 17, 2022, he filed a claim with the Spanish Agency for

Data Protection against D.C.C.C. with NIF ***NIF.1 (hereinafter, the part

claimed), for the installation of a video surveillance system located in

*** ADDRESS.1, there being indications of a possible breach of the provisions of

Article 5.1.c) of Regulation (EU) 2016/679 (General Protection Regulation

of Data, (hereinafter, GDPR).

The claiming party states that his neighbor on an adjoining property, the claimed party,

You have installed two video surveillance cameras in your home that are located

oriented to the interior of the farm where the claimant has his home, being

capable of capturing images of areas belonging to the property of the complaining party.

It provides images of the location and orientation of the cameras object of claim.

SECOND: In accordance with article 65.4 of Organic Law 3/2018, of 5

December, Protection of Personal Data and guarantee of digital rights (in

hereinafter, LOPDGDD), said claim was transferred to the claimed party,

to proceed with its analysis and inform this Agency within a month,

of the actions carried out to adapt to the requirements established in the

data protection regulations.

The transfer, which was carried out in accordance with the regulations established in Law 39/2015, of

October 1, of the Common Administrative Procedure of the Administrations

Public (hereinafter, LPACAP) by certified postal mail, was returned by “wrong address”; reiterating the transfer by the same means, with the same result.

The transfer is retried again, through the messaging service, being notified on July 20, 2022.

On August 19, 2022, this Agency received a written response indicating that he has eight video surveillance cameras installed for his personal use. "It is noteworthy that the house on one of its sides is adjacent to the house of my in-laws (...) who, at their own request, have asked us that the camera that give it to the entrance of your house, also record it, for the same reasons of security (...) A document signed by them that accredits it is attached.

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(...) Access to the house is through a street that at a certain moment, Being a dead end street, it becomes a private road with exclusive access by my in-laws and my family (...)

An image of the viewing of all the cameras is attached, as well as the announcing poster of the installation of the video surveillance system (...).

Examining the images provided, the following can be observed:

- Cameras 4, 5, 6, 7 and 8: capture interior areas of the property.
- Cameras 1 and 3, although they capture an exterior part of the property, could be considered to be adjusted to the law, capturing a minimum part of the abroad.

- Camera 2: In the image it can be seen that it records the entire environment of its property, including the house located opposite, considering that said recording is excessive.

The claimed party has attached a plan showing his property, and those of his in-laws, with whom they have an agreement for the joint capture of images. Without However, other properties are also included in said plan, without it having been accredited that the images captured by that camera 2 correspond to the property adjoining his father-in-law.

THIRD: On August 17, 2022, in accordance with article 65 of the LOPDGDD, the claim presented by the claimant party was admitted for processing.

FOURTH: On October 26, 2022, the Director of the Spanish Agency for Data Protection agreed to initiate disciplinary proceedings against the claimed party, for the alleged infringement of article 5.1.c) of the GDPR, typified in article 83.5 of the GDPR.

FIFTH: Notified of the aforementioned start-up agreement in accordance with the rules established in the LPACAP, the claimed party submitted a pleading in which, in summary, stated that "(...) Camera 2 records the access door to my property, being from the beginning of the street, where the border of my property begins, when the road is Private, with exclusive access to my in-laws and my family.

(...) The construction of chamber 2 corresponds to the Association of Neighbors to the that more than a year ago, they intentionally set fire to it, being then when the President of the Association (...) asked me to take the part of the association with camera 2.

Camera 2 was previously focused further down, but after the fire deliberately, the President asked me to have camera 2 focus on the rear façade of the Association. I cannot provide an affidavit from the President (...) having died

unfortunately a few months ago in a traffic accident, although this

The petition was witnessed by the person who was in Association D that day. (...) of the person who

I provide his sworn statement in that sense (...)"

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Provide a copy of both your own and your father-in-law's deeds stating that

"(...) the access road is private and common for both."

"(...) In any case, I immediately proceed to lower camera 2, so that

the Neighborhood Association disappears (Photo attached)."

SIXTH: On January 13, 2023, a resolution proposal was formulated, in the

that, after having examined the photographs of the claimed party, in which in

none of them appeared the property of the complaining party, it was proposed that they be

file the claim filed.

In this proposal, a period of 10 days was granted for the claimed party to

could allege whatever it considers in its defense, as well as present the documents

and information that it considers pertinent, in accordance with article 89.2 of the

LPACAP, with no response received.

In view of all the proceedings, by the Spanish Agency for Data Protection

In this proceeding, the following are considered proven facts:

PROVEN FACTS

FIRST: On May 17, 2022, he entered this Spanish Agency for

Data Protection a claim that shows that the claimed party

You have two video surveillance cameras installed in your home that are located

oriented to the interior of the farm where the claimant has his home, being capable of capturing images of areas belonging to the property of the complaining party.

Provide photo report.

SECOND: Existence of two cameras installed in ***ADDRESS.1

THIRD: The claimed party has provided several photographs of what the cameras and in none of them does the property of the complaining party appear.

FUNDAMENTALS OF LAW

Yo

In accordance with the powers that article 58.2 of the GDPR grants to each authority of control and as established in articles 47 and 48.1 of the LOPDGDD, it is competent to initiate and resolve this procedure the Director of the Agency Spanish Data Protection.

Likewise, article 63.2 of the LOPDGDD determines that: "Procedures processed by the Spanish Data Protection Agency will be governed by the provisions in Regulation (EU) 2016/679, in this organic law, by the provisions regulations dictated in its development and, insofar as they do not contradict them, with character subsidiary, by the general rules on administrative procedures."

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II

On June 14, 2022, he entered this Spanish Protection Agency

Data claim for the installation of a video surveillance system with cameras capable of capturing the public thoroughfare.

Article 5.1 c) of the GDPR provides that personal data shall be "adequate, pertinent 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 installed comply with current legislation.

The cameras should be oriented towards the particular space, avoiding intimidating neighboring neighbors with this type of device, as well as control transit areas of the same without just cause.

On the part of individuals, it is not possible to install imaging devices of public space, outside the cases allowed by the regulations, as this is exclusive competence of the State Security Forces and Bodies.

The treatment of images through a video surveillance system, to be

In accordance with current regulations, it must meet the following requirements:

- Respect the principle of proportionality.

- When the system is connected to an alarm center, it can only be

installed by a qualified private security company

contemplated in article 5 of Law 5/2014 on Private Security, of April 4.

- The camcorders will not be able to capture images of the people who are

outside the private space where the video surveillance system is installed, since

Image processing in public places can only be performed, unless

there is government authorization, by the Security Forces and Bodies. Neither

spaces owned by third parties may be captured or recorded without the consent of

their owners, or, where appropriate, the people who are in them.

This rule admits some exceptions since, on some occasions, for the protection

of private spaces, where cameras have been installed on facades or inside,

it may be necessary to guarantee the security purpose the recording of a

portion of the public road. That is, cameras and camcorders installed for the purpose of security will not be able to obtain images of the public thoroughfare unless it is essential for said purpose, or it is impossible to avoid it due to the location of the those and extraordinarily the minimum space for said purpose. Therefore, the cameras could exceptionally capture the portion minimally necessary for the intended security purpose.

- The duty to inform those affected provided for in articles 12 and 13 of the GDPR and 22.4 of the LOPDGDD.

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Specifically, in the video-surveilled areas, at least one badge must be placed informative located in a sufficiently visible place, both in open spaces and closed, which will identify, at least, the existence of a treatment, the identity of the person responsible and the possibility of exercising the rights provided for in said precepts. Likewise, the information must be kept available to those affected. to which the aforementioned GDPR refers.

- The controller must keep a record of processing activities carried out under his responsibility in which the information to which he makes reference article 30.1 of the GDPR.

- Installed cameras cannot get images from third-party proprietary space and/or public space without duly accredited justified cause, nor can they affect the privacy of passers-by who move freely through the area. It is not allowed, for therefore, the placement of cameras towards the private property of neighbors with the purpose of

to intimidate them or affect their private sphere without just cause.

- In no case will the use of surveillance practices be accepted beyond the environment object of the installation and in particular, not being able to affect public spaces surroundings, adjoining buildings and vehicles other than those that access the space guarded.

II

The claimed party, in its pleadings to the initial agreement, has provided photographs of what the installed cameras capture.

Examined the same, in none of them did the ownership of the part appear. claimant.

IV.

In the present case, it is necessary to analyze the presumed illegality of the installation of a video surveillance system in ***ADDRESS.1.

Examining the file as a whole, it has been established that the cameras object of this proceeding do not capture the property of the complaining party.

V

The principle of the right to the presumption of innocence, recognized as a right fundamental subjective in article 24 of the Spanish Constitution, prevents imposing an administrative sanction when proof of charge accrediting the facts that motivate the imputation or the intervention in the of the alleged offender and applying the principle "in dubio pro reo" in case of doubt regarding a specific and determined fact, which in any case obliges resolve said doubt in the most favorable way for the interested party.

The aforementioned right to the presumption of innocence is also included in a expressed in article 53.2.b) of the LPACAP, which establishes that:

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"2. In addition to the rights provided for in the previous section, in the case of administrative procedures of a punitive nature, the presumed responsible will have the following rights:

[...]b) To the presumption of non-existence of administrative responsibility until proven otherwise."

In relation to this principle, the Constitutional Court in its Judgment 76/1990, of 26 April, considers that the right to the presumption of innocence entails: "that the sanction is based on acts or means proving the charge or incriminating the reproached conduct; that the burden of proof corresponds to the accuser, without no one is obliged to prove their own innocence; and that any insufficiency in the result of the tests carried out, freely assessed by the sanctioning body, must be translated into an acquittal."

Therefore, according to the above,

the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: TO ORDER the ARCHIVE of the present proceedings as there are no accredited the commission of any administrative infraction.

SECOND: NOTIFY this resolution to D.C.C.C..

In accordance with the provisions of article 50 of the LOPDGDD, this

Resolution will be made public once the interested parties have been notified.

Against this resolution, which puts an end to the administrative process in accordance with article 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 reversal before the

Director of the Spanish Agency for Data Protection within a period of one month from count 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 for in article 46.1 of the referred Law.

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Finally, it is noted that in accordance with the provisions of article 90.3 a) of the LPACAP,

The firm resolution may be temporarily suspended in administrative proceedings if the

The interested party expresses his intention to file a contentious-administrative appeal.

If this is the case, the interested party must formally communicate this fact through

writing addressed to the Spanish Data Protection Agency, presenting it through

of the Electronic Registry of the Agency [[https://sedeagpd.gob.es/sede-electronica-](https://sedeagpd.gob.es/sede-electronica-web/)

[web/](https://sedeagpd.gob.es/sede-electronica-web/)], or through any of the other records provided for in article 16.4 of the

aforementioned Law 39/2015, of October 1. You must also transfer to the Agency the

documentation proving the effective filing of the contentious appeal-

administrative. If the Agency was not aware of the filing of the appeal

contentious-administrative proceedings within a period of two months from the day following the

Notification of this resolution would terminate the precautionary suspension.

Mar Spain Marti

Director of the Spanish Data Protection Agency

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