

□ File No.: EXP202102486

RESOLUTION OF PUNISHMENT PROCEDURE

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

BACKGROUND

FIRST: Dated September 14, 2021, entered this Agency

Spanish Data Protection, a document presented by Ms. A.A.A. (hereafter,
the claimant), through which he makes a claim against D. B.B.B. with NIF

***NIF.1 (hereinafter, the claimed one), for the installation of a

video surveillance installed in *** ADDRESS.1, there are indications of a possible
breach of the provisions of the data protection regulations.

The claimant states that the respondent is responsible for cameras installed in
a house, together with a sensor and a spotlight, which are oriented towards the public road, capturing
images of the same, as well as its property, adjacent to that of the claimed, without
have prior administrative authorization to do so.

Attach photographic report.

SECOND: Prior to the acceptance of this claim for processing, it is
transferred the claimed, in accordance with the provisions of article 65.4 of the Law
Organic 3/2018, of December 5, on the Protection of Personal Data and guarantee of
digital rights (hereinafter, LOPDGDD), being received on 08
October 2021.

Given the lack of response, said transfer was reiterated, with a delivery date of the 02nd of
December 2021.

There is no record in this Agency of any response from the respondent.

THIRD: The claim was admitted for processing by means of a resolution of 14

December 2021.

FOURTH: On March 2, 2022, the Director of the Spanish Agency for

Data Protection agreed to initiate a sanctioning procedure against the claimed party,

for the alleged infringement of article 5.1.c) of Regulation (EU) 2016/679

(General Data Protection Regulation, hereinafter RGPD), typified in the

article 83.5 of the RGPD.

FIFTH: Having been notified of the aforementioned initiation agreement, the respondent submitted a document in the

which, in short, manifested the non-existence of cameras, that what is installed are

light sensors that are activated when someone passes by when accessing your property, and

that the fact that said sensor is powered by solar energy can give rise to

confusion with the plate.

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He provided several photographs of the devices.

He also pointed out the poor relationship between the respondent and the claimant.

SIXTH: On March 29, 2022, the instructor of the procedure agreed to the

opening of a period of practice of tests, taking for reproduced, for purposes

evidence of the claim filed by the claimant and its documentation, the

documents obtained and generated by the Subdirector General for Inspection of

Data and allegations presented by the respondent.

SEVENTH: On March 30, 2022, a resolution proposal was formulated in the

that, in accordance with the evidence available at this

sanctioning procedure, it was considered that there are no video surveillance cameras

installed, but light sensors, powered by solar energy, that are activated as of someone when accessing the property of the claimed.

Based on the foregoing, it was appropriate to propose filing the claim filed by the alleged infringement of article 5.1.c) of the RGPD.

In this proposal, a period of 10 days was granted so that the person claimed could allege what he considers in his defense as well as present the documents and information that it considers pertinent, in accordance with article 89.2 of the Law 39/2015, of October 1, of the Common Administrative Procedure of the Public Administrations (hereinafter, LPACAP), without having received any response.

In view of everything that has been done, by the Spanish Data Protection Agency

In this proceeding, the following are considered proven facts:

PROVEN FACTS

FIRST: Dated September 14, 2021, entered this Agency

Spanish Data Protection a claim that shows that the

claimed has installed cameras in a house, along with a sensor and a focus, which are oriented to the public road, capturing images of it, as well as its property, adjoining that of the claimed, without prior administrative authorization to it.

Provide photographic report.

SECOND: Existence of light sensors in ***ADDRESS.1, which are activated when of someone when accessing the property of the claimed, powered by energy solar.

THIRD: The respondent has provided several photographs of the sensors, as well as the product packaging.

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FOUNDATIONS OF LAW

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In accordance with the powers that article 58.2 of the RGPD grants to each authority of control and according to what is 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: "The procedures processed by the Spanish Agency for Data Protection will be governed by the provisions in Regulation (EU) 2016/679, in this organic law, by the provisions regulations issued in its development and, as long as they do not contradict them, with a subsidiary, by the general rules on administrative procedures."

II

On September 14, 2021, it had entry in this Spanish Agency of Data Protection claim for the installation of a video surveillance system with cameras capable of capturing public roads.

Article 5.1 c) RGPD provides that 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 installed comply with current legislation.

The cameras must be oriented towards the particular space, avoiding intimidating neighboring neighbors with this type of device, as well as control transit areas

of them without just cause.

On the part of individuals, it is not possible to install imaging devices of public space, outside the cases allowed in the regulations, as this is exclusive jurisdiction 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 private security company that meets the requirements contemplated in article 5 of Law 5/2014 on Private Security, of April 4.
- The video cameras will not be able to capture images of people who are outside the private space where the video surveillance system is installed, since the treatment of images in public places can only be carried out, unless Government authorization concurs, by the Security Forces and Bodies. Either

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spaces owned by third parties may be captured or recorded without the consent of their owners, or, where appropriate, of 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 public road. That is, cameras and video cameras installed for the purpose of security will not be able to obtain images of public roads unless it is

essential for said purpose, or it is impossible to avoid it due to the location of 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 RGPD and 22.4 of the LOPDGDD.

Specifically, at least one badge must be placed in video-monitored areas. 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 in charge and the possibility of exercising the rights foreseen in said precepts. Likewise, the information must be kept available to those affected. to which the aforementioned RGPD refers.

- The person in charge must keep a record of treatment activities carried out under its responsibility, including the information to which it makes reference article 30.1 of the RGPD.

- 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. not allowed, for

Therefore, the placement of cameras towards the private property of neighbors with the purpose to intimidate them or affect their privacy without just cause.

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

III

The respondent, in his brief of allegations to the initial agreement, has stated that he

that are installed are light sensors that are activated by the passage of someone when access your property, powered by solar energy.

He has provided several photographs of the sensors, as well as the product packaging.

IV

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

The proven facts show that there is no system of video surveillance, only light sensors that are activated by movement.

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 accrediting charge of the facts that motivate the imputation or of the intervention in the themselves of the alleged offender and applying the principle "in dubio pro reo" in case of doubt regarding a concrete and determined fact, which obliges in any case to 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:

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

[...]b) To the presumption of non-existence of administrative responsibility while the contrary is proven.”

In relation to this principle, the Constitutional Court in its Judgment 76/1990, of 26 of April, 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 the reproached conduct; that the burden of proof corresponds to the person who accuses, without no one is obliged to prove their own innocence; and that any insufficiency in the result of the tests carried out, freely valued by the sanctioning body, must be translated into an acquittal pronouncement.”

7th

Examining the file as a whole, the existence of no video surveillance system.

Therefore, according to the above,

the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: ORDER the ARCHIVE of these proceedings as there is no accredited the commission of any administrative infraction.

SECOND: NOTIFY this resolution to D. B.B.B., with NIF ***NIF.1.

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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 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 reconsideration before the Director of the Spanish Agency for Data Protection within a month from counting 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.

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

The firm resolution may be provisionally 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 by

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

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

web/], or through any of the other registers provided for in art. 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 within a period of two months from the day following the

notification of this resolution would end the precautionary suspension.

Sea Spain Marti

Director of the Spanish Data Protection Agency

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