

□ Procedure No.: PS/00272/2020

RESOLUTION OF PUNISHMENT PROCEDURE

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

FACTS

FIRST: Don A.A.A. (*hereinafter, the claimant) dated June 23, 2020

filed a claim with the Spanish Data Protection Agency. The

claim is directed against who identifies as B.B.B. with NIF ***NIF.1 (in

later, the claimed one). The grounds on which the claim is based are "installation of

several chambers on the farm located on road nº ***CARRETERA.1, where

They record images of my property and the adjoining land, as can be deduced from the

field of vision" (folio nº 1).

"That said treatment supposes a violation of the privacy of the neighbors and

occupants of the dwellings, being totally disproportionate, not existing

private security reasons (...)"

Together with the claim, it provides documentary evidence that proves the presence of

the devices that are the subject of the complaint.

SECOND. On date 07/10/20, the TRANSFER is made to the denounced party, to

to express what it deems appropriate in relation to the facts that are the subject of the complaint.

THIRD. On 08/21/20, a reply was received from the defendant, which

declares to be responsible for the installation of the cameras (video-

surveillance).

The installation and/or management of the system has not been contracted (...).

It accompanies photographs of the cameras (Doc. nº 3).

Attached as Doc. No. 2 is a poster photograph without stating the person responsible for the

treatment, being devoid of any type of information in this regard.

: On November 24, 2020, the Director of the Spanish Agency

FOURTH

of Data Protection agreed to initiate sanctioning procedure to the claimed, with
in accordance with the provisions of articles 63 and 64 of Law 39/2015, of October 1, of the
Common Administrative Procedure of Public Administrations (hereinafter,
LPACAP), for the alleged infringement of Article 13 of the RGD, typified in Article
83.5 of the GDPR.

FIFTH: On 03/17/21, allegations were received from the respondent denying
the facts when considering them uncertain, stating that he does not make recordings of the
areas adjacent to your property.

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SIXTH: On 03/29/21 the instructor of the procedure agreed to open a
test practice period, requiring the collaboration of the Forces and Corps
of State Security (Civil Guard-Comandancia ***LOCALIDAD.1) so that
displaced to the scene of the events carried out the appropriate investigations.

SEVENTH: On 05/10/21 a Report is received from the Civil Guard (Comandancia
***LOCATION.1) which carries out the corresponding inquiries on site in relation to the
installed system.

Attached photograph (No. 2 and 9) where the presence of the posters is verified
informative.

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. The facts bring cause of the claim dated 06/23/20 through the

which translates the following:

“Installation of several cameras on the farm located on road no.

***CARRETERA.1, where images of my property and the land are recorded

adjoining as can be deduced from the field of vision” (folio nº 1).

“That said treatment supposes a violation of the privacy of the neighbors and

occupants of the dwellings, being totally disproportionate, not existing

private security reasons (...).”

Together with the claim, it provides documentary evidence that proves the presence of the

devices subject to complaint.

Second. It is accredited as the main person in charge of the installation Don B.B.B.

Third. It is accredited that there is an informative poster(s) indicating the res-

ponsible for the treatment and warning that it is a video-monitored area.

Fourth. After investigations by the Civil Guard it is confirmed that the recording is the

minimum necessary for the protection of the home and land of the claimant, not

verifying disproportionate affectation of the claimant's farm.

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

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In the present case, the claim dated 06/23/20 is examined by me-
gave from which he transfers the following facts:

“Installation of several cameras on the farm located on road no.

***CARRETERA.1, where images of my property and the land are recorded
adjoining as can be deduced from the field of vision” (folio nº 1).

On 08/21/20, a written statement was received from the defendant,
verifying this Agency that the informative posters placed do not indicate the
Responsible for the processing of personal data (Proof Document No. 2).

Article 22 section 4 of the LOPDGG provides the following:

“The duty of information provided for in article 12 of the Regulation (EU)
2016/679 will be understood to be fulfilled by placing an informative device
in a sufficiently visible place identifying, at least, the existence of the treatment,
the identity of the person in charge and the possibility of exercising the rights provided for in the
Articles 15 to 22 of Regulation (EU) 2016/679. It may also be included in the
informative site a connection code or internet address to this information.

In any case, the data controller must keep available to
those affected the information referred to in the aforementioned regulation”.

This badge will be displayed in a visible place, and at least, at the entrances to the
monitored areas whether indoors or outdoors. In the event that the video-monitored space
has several entrances, it must have said video surveillance zone badge.
gives in each of them.

Likewise, the rest of the information will also be made available to interested parties.

training that must be provided to those affected in compliance with the right to information regulated in the RGPD.

Article 13 RGPD provides that when the data is obtained from the interested party,

You must be informed by the person in charge, as well as in your case of the purpose of the treatment, complying with this obligation with the express mention on the informative poster placed than in your establishment or private property.

As a general rule, article 13.1 of the RGPD requires that the information re-wanted by the right to information must be provided to the interested party whenever data is obtained from it.

The obligation to inform interested persons about the circumstances regarding the processing of your data falls on the person responsible for the Treatment.

After the inquiries carried out by the Civil Guard (Comandancia Toledo) it was notes the installation of the system in an agricultural facility surrounded by a fence metal, noting the presence of an informative poster(s) on the façade of the property. ble, where if the person responsible for processing the images is accredited.

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The images obtained with the cameras are mainly of the pro-pity of the claimed, in such a way that it is necessary to approach the fenced area to be in your case recorded with them.

The mere observance of the cameras, given the proximity of the claimant's areas and the claimed, do not imply affectation to zones reserved to this, remote in all case of housing and spaces where they carry out their daily activities.

III

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 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, supporting this Resolution in the inquiries carried out by the Civil Guard, it is not confirmed that the installed system affects areas exclusive to the claimant, proving the presence of a sign(s) indicating that It is a video-monitored area, which is why it is appropriate to order the Archive of the present procedure.

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Lastly, the transcendence of the rights at stake is recalled, adjust the parties as far as possible their relations to the minimum standards of neighborliness.

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.

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