

□ Procedure No.: PS/00070/2021

## RESOLUTION OF PUNISHMENT PROCEDURE

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

### BACKGROUND

FIRST: On November 4, 2020, he entered this Agency

Spanish Data Protection, a document presented by A.A.A. (hereinafter, the  
claimant), through which he makes a claim against B.B.B. with NIF \*\*\*NIF.1 (in  
hereinafter, the claimed), for the installation of a video surveillance system installed  
at \*\*\*ADDRESS.1, with indications of a possible breach of the provisions  
in the personal data protection regulations.

The claimant indicates that a neighbor has a camera located in the  
back of the facade facing your home, supposedly capturing the different  
rooms of your property (terraces, balconies, bedrooms, living room and common areas).  
Provides Expert Report with photographs of the location of the camera.

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 returned by the service of  
Absentee mail.

Said transfer was reiterated, being returned again for the same reason.

THIRD: The claim was admitted for processing by means of a resolution of 12  
February 2021.

FOURTH: On February 26, 2021, 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.

FIFTH: On March 31, 2021, the respondent filed a written statement

statements in which, in summary, indicates the person responsible for the installation of the system

of video surveillance is her husband, C.C.C., with NIF \*\*\*NIF.2, who installed the 4 cameras

several years ago, that they are real, not fictitious, but that they are broken and do not

none works.

He states that they did not remove them because it gives them peace of mind and a feeling of protection

people in the area think there are cameras.

It indicates that the claimant, who is the neighbor, is the one who takes photos of her daughter and goes into

her property, harassing and threatening her, and that part of the neighborhood is personified

against the claimant in court.

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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: On November 4, 2020, a claim was filed in this

Agency because the respondent has installed a video surveillance camera located in

the back of the facade facing his home, supposedly capturing the

different rooms of your property (terraces, balconies, bedrooms, living room and

common).

Provides Expert Report with photographs of the location of the camera.

SECOND: It is identified as the main person in charge D. C.C.C., with NIF

\*\*\*NIF.2.

THIRD: The respondent wields reasons of personal and housing security for the installation of the cameras, which are real, not fictitious, although it states that are damaged and none of them work, but they didn't remove them because it gives them tranquility and feeling of protection that people in the area think there is cameras.

FOURTH: Examining the file as a whole, it has been verified that, although it is It is true that the transfer of the claim that was made by mail was returned to this Agency by the postal service, the attempt of electronic notification of the same transfer was received by the respondent on March 24, 2021, once initiated the present sanctioning procedure.

#### FOUNDATIONS OF LAW

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By virtue of the powers that article 58.2 of the RGPD recognizes to each authority of control, and as established in arts. 47 and 48.1 of the LOPDGDD, the Director of The Spanish Agency for Data Protection is competent to resolve this process.

II

In the present case, we proceed to examine the claim dated November 4 of 2020 by means of which the placement of a video surveillance camera on the back of the facade of the house of the claimed oriented to the claimant's home, supposedly capturing the different rooms of the same (terraces, balconies, bedrooms, living room and areas common).

The art. 5.1 c) of the 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").

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It should be remembered that individuals are responsible for ensuring that the systems 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.

Article 22.4 of the LOPDGDD provides that:

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

In any case, the cameras must be oriented towards the particular space, avoiding intimidate neighboring neighbors with this type of device, as well as control areas transit of the same without just cause.

Nor can images of public spaces be obtained with this type of device, as this is the exclusive competence of the State Security Forces and Bodies.

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, which are seen intimidated by it in the belief of being the subject of permanent recording.

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

### III

On March 31, 2021, a written statement was received from the respondent stating that the installed system, although it is real, is broken and does not work, remaining as a mere dissuasive function.

Article 28.7 of Law 39/2015, of October 1, on Administrative Procedure Common of Public Administrations (LPACAP, hereinafter) provides: "The Interested parties will be responsible for the veracity of the documents they submit. It should be noted that individuals can install cameras on their private property false, although they must be oriented exclusively towards your property, avoiding intimidating third parties with said devices.

In the installation of this type of "simulated" devices, caution must be taken. necessary to avoid intimidating third parties who are unaware of the character

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"fictitious" of these, who can believe they see themselves recorded by them, in such a way that they should avoid its orientation towards public space.

Although in the past the AEPD has sanctioned data controllers for

use of this type of device, it is currently understood that the use of cameras simulated does not imply an infringement of the fundamental right to data protection.

The Judgment of the First Chamber of the Supreme Court of November 7, 2019 declares that the installation of a fake video surveillance camera, apparently identical to other fully operative ones, is likely to restrict the freedom of third parties.

The TS reasons that when an individual does not know that he is being filmed, behaves with a naturalness and spontaneity that would not occur otherwise. And that "The plaintiff's right to the tranquility of his private life also includes the of not having to endure a permanent uncertainty" about whether the camera in question is operational or not, or whether "RCRE has replaced it with another fully identical in appearance and functional.

Therefore, it must be taken into account that the behavior described in the event of excessive can have consequences in other areas of law, being

It is advisable to take the necessary precautions to avoid excessive orientation towards public space, limiting itself to the façade of the house to be protected.

Likewise, it is recommendable to follow the indications of the Forces and Bodies of the locality, which can guide you in the matter if you need it, avoiding with them new complaints about it.

#### IV

Based on the foregoing, it is considered that the camera is simulated, this is, that it does not obtain any image of an identified or identifiable natural person, therefore that since there is no processing of personal data, it cannot be said administrative offense in the matter at hand.

The parties are reminded of the importance of the rights at stake and must avoid instrumentalize institutions in matters beyond their competence,

having to adjust the relationships between them to the minimum requirements of the

good neighbor rules

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: ORDER the FILE of this procedure as there is no

accredited the commission of any administrative infraction in the matter that we

occupies.

SECOND: NOTIFY this resolution to B.B.B..

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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 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 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.

Sea Spain Marti

Director of the Spanish Data Protection Agency

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