

□ File No.: EXP202103444

RESOLUTION OF SANCTIONING PROCEDURE

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

BACKGROUND

FIRST: Ms. A.A.A. (hereinafter, the complaining party), dated October 13
of 2021, filed a claim with the Spanish Agency for Data Protection. The
claim is directed against D. B.B.B. with NIF ***NIF.1 (hereinafter, the part
claimed), for the installation of a video surveillance system located in CALLE
*** ADDRESS.1, there being indications of a possible breach of the provisions of
Article 5.1.c) of the General Data Protection Regulation (hereinafter,
GDPR).

The reasons for the claim are the following:

The claimant party declares that the claimed party, a neighbor of the latter, has installed in
your home a video surveillance camera that, due to its location and orientation, is
capable of capturing the home of the claimant and a common corridor of the
Community. Provide images from the camera and a copy of emails sent to the
Community of Owners on the aforementioned camera.

The documents provided are:

- Photo report

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
forward, LOPDGDD), said claim was transferred to the claimed party, on 3
November 2021, to proceed with its analysis and inform this Agency
within a month, of the actions carried out to adapt to the requirements

provided for 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), was returned due to absent distribution on 15 November 2021. It is reiterated on November 25, 2021 and returned due to absenteeism distribution, on December 13, 2021. For this reason, there is no response from the party claimed.

THIRD: On January 13, 2022, in accordance with article 65 of the LOPDGDD, the claim presented by the claimant party was admitted for processing.

FOURTH: On April 27, 2022, the Director of the Spanish Agency for Data Protection agreed to initiate disciplinary proceedings against the claimed party,

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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 (in hereinafter, LPACAP), for the alleged violation of Article 5.1.c) of Regulation (EU) 2016/679 (General Data Protection Regulation, hereinafter 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:

Of the manifest enmity existing with the complaining neighbor.

For months I have been suffering continuous harassment from the neighbor who lives in the

apartment next to mine, the (...). The neighbor who responds to the name of C.C.C. ha carried out acts of harassment towards me such as: - Placing posters in the door of the apartment with the phrase handwritten: "This is a residential area. Is not a hotel. Respect the neighbor. Long live Spain". - Throwing a stone onto my terrace. - Stand up from standing next to the entrance of the apartment waiting to rebuke me for different reasons. - Spy on the interior of the apartment from the terrace and monitor continuously my routines. - Filming the interior of my apartment with his mobile phone from the window or terrace. The neighbor also does it in a visible way so that it is aware that you are recording the house. - Send to silence at all times of bad shapes and by shouting or banging on the walls. - Make a deafening noise by placing loudspeakers as revenge when he considers that he has been troubled. - Hitting the dividing wall and threatening with aggressive gestures. These facts were denounced in the guard court of ***LOCALIDAD.1 in the past September 28, 2021 and as far as we know the criminal proceedings continue being processed as of today.

Given this unfair situation, and because my fiscal residence is in the United Kingdom, which is where I am most of the year, we decided to install a video surveillance camera on the inside door of the apartment as a security measure additional security.

The installed video surveillance camera only focuses on the private terrace of the house, in no case take images of the neighbor's property or of the areas common.

The installed camera is the IPCAM-BE01 model from the manufacturer "Chacon". The its technical specifications are as follows: 720p resolution (1280x720), Angle of view: 120°, Night vision: 10m, Connection: Wi-Fi 802.11b/g

/n...

The camera does not store data of any kind, it is only used to view the images captured live. That is, the camera has continuously activated motion detection mode and starts capturing images and sends a notice to the mobile exclusively when someone accesses the interior of the home.

The camera has been installed on the interior door of the house and has been oriented towards the private terrace of the apartment.

The terrace that the camera focuses on is a private space that is surrounded by its entire perimeter by a wall approximately two (2) meters high, so can hardly capture images of the common areas or the apartment of the neighbor.

The camera only captures images of the private terrace. To the left is find the wall of my house, and in the background and to the right we can see the

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exterior walls of the property with an approximate height of two (2) meters high.

The neighboring house of the neighbor is out of the field of vision of the camera, and any other common area of the complex. The enormous distance at which the adjoining house and the communal corridor, although there were no walls, the field angle of the image and the distance would not make it possible to clearly distinguish the features of people.

The camera has been installed for security reasons since my tax address

You are in the UK and the property is empty for long periods of time.

time. Likewise, the camera is located in a strategic place that allows to control the

the interior door of the house and the exterior door at the same time (without capturing anything that not my property).

At no time are images being taken and/or personal information collected of any person, since the camera does not focus on the public road, nor on any mischief.

With its allegations, the claimed party attaches documentation consisting of photographs, in which you can see what is the view of the video surveillance camera installed.

SIXTH: On August 22, 2022, a resolution proposal was formulated, in which

A response was given to the allegations presented, as set out below, and the file was proposed to the Director of the Spanish Agency for Data Protection of the claim filed against D. B.B.B., with NIF ***NIF.1, for an infringement of Article 5.1.c) of the GDPR, typified in Article 83.5 of the GDPR.

In response to the allegations presented by the defendant against the agreement Initially, the following was noted:

"After examining these allegations, and evaluating the images provided by both parts of the procedure, it can be concluded that the camera obtains images only inside the home of the claimed party, in what is essential for safety Of the same".

It should be remembered that "the data that is processed through the video surveillance will be processed for the purpose that motivated the installation of the itself and which is linked to guaranteeing the safety of people, goods and facilities".

The proposed resolution was notified on September 1, 2022, and after the term granted to argue, no arguments have been presented to said proposal.

Of the actions carried out in this procedure and of the documentation

in the file, the following have been accredited:

PROVEN FACTS

FIRST: The claiming party states that the claimed party, a neighbor of the latter, has installed a video surveillance camera in your home which, due to its location and orientation, is likely to capture the home of the claimant and a corridor community common.

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SECOND: The claimed party, in the allegations to the Commencement Agreement of this Sanctioning Procedure, indicates that:

The installed video surveillance camera only focuses on the private terrace of the house, in no case take images of the neighbor's property or of the areas common.

The installed camera is the IPCAM-BE01 model from the manufacturer "Chacon". The its technical specifications are as follows: 720p resolution

(1280x720), Angle of view: 120°, Night vision: 10m, Connection: Wi-Fi 802.11b/g

/n...

The camera does not store data of any kind, it is only used to view the images captured live. That is, the camera has continuously activated motion detection mode and starts capturing images and sends a notice to the mobile exclusively when someone accesses the interior of the home.

The camera has been installed on the interior door of the house and has been oriented towards the private terrace of the apartment.

The terrace that the camera focuses on is a private space that is surrounded by its entire perimeter by a wall approximately two (2) meters high, so can hardly capture images of the common areas or the apartment of the neighbor.

The camera only captures images of the private terrace. To the left is find the wall of my house, and in the background and to the right we can see the exterior walls of the property with an approximate height of two (2) meters high.

The neighboring house of the neighbor is out of the field of vision of the camera, and any other common area of the complex. The enormous distance at which the adjoining house and the communal corridor, although there were no walls, the field angle of the image and the distance would not make it possible to clearly distinguish the features of people.

The camera is located in a strategic place that allows to control at the same time the interior door of the house and the exterior door (without capturing anything that is not my property).

At no time are images being taken and/or personal information collected of any person, since the camera does not focus on the public road, nor on any mischief.

FUNDAMENTALS OF LAW

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Competence

In accordance with the powers that article 58.2 of Regulation (EU) 2016/679 (General Data Protection Regulation, hereinafter GDPR), grants each control authority and as established in articles 47 and 48.1 of the Law Organic 3/2018, of December 5, Protection of Personal Data and guarantee of digital rights (hereinafter, LOPDGDD), is competent to initiate and resolve

this procedure the Director of the Spanish Data Protection Agency.

Likewise, article 63.2 of the LOPDGDD determines that: "Procedures

processed by the Spanish Data Protection Agency will be governed by the provisions

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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."

II

Presumption of Innocence

The principle of presumption of innocence prevents imputing an administrative offense

when proof of charge accrediting the charges has not been obtained and verified.

facts that motivate the imputation or of the intervention in them of the presumed

offender. Applying the principle "in dubio pro reo", in case of doubt regarding a

concrete and determined fact, obliges in any case to resolve said doubt in the manner

more 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 ius puniendi, in its various manifestations, is conditioned to the

game of evidence and an adversarial 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 charges or incriminating

of the reproached conduct; that the burden of proof corresponds to the accuser, without that 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 body sanctioning, must be translated into an acquittal.

The presumption of innocence governs without exceptions in the penal system, and has to be respected in the imposition of any sanction, whether criminal or administrative (TC 13/1981), since the exercise of the sanctioning right, in any of its manifestations, is conditioned to the set of evidence and a procedure contradictory in which one's positions can be defended.

Pursuant to this principle, no sanction may be imposed based on the guilt of the accused, if there is no probative activity that, in the appreciation of the authorities or bodies called to resolve, destroy this presumption (TC Auto 3-12-81).

II

Conclusion

In accordance with the foregoing, it can be concluded that the denounced system does not infringe the regulations in force on data protection, which is why the FILE of this procedure.

The parties are reminded that this Agency should not be instrumentalized in issues outside its jurisdictional framework, owing the rest of the issues, in its case, be transferred to the pertinent judicial instances, where they may present the questions they deem necessary.

Therefore, in accordance with the applicable legislation, the Director of the Spanish Agency of Data Protection RESOLVES:

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FIRST: ORDER the FILE of this procedure, since there is no

accredited the commission of any administrative infraction within the framework of the regulations in force regarding data protection.

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

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 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 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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