

Procedure No.: PS/00033/2019

## RESOLUTION OF PUNISHMENT PROCEDURE

From the procedure instructed by the Spanish Data Protection Agency before D.

A.A.A., by virtue of a claim filed by D. B.B.B. (hereinafter, the claimant) and based on the following:

### BACKGROUND

FIRST: The claim filed by the claimant has an entry dated 19 October 2018 at the Spanish Data Protection Agency. the claim is directed against D.A.A.A. with NIF \*\*\*DNI.1 (hereinafter, the claimed one). The motives on which he bases his claim is the existence of several video surveillance cameras installed outside the home owned by the respondent, which are directed towards the outside focusing on the claimant's home, in addition to the road public.

Documentary evidence (photograph) is provided that proves the installation of the video surveillance cameras.

SECOND: On February 13, 2019, 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 letter c) in connection with article 6 of the RGPD, punishable in accordance with the provisions of art.58.2 of the aforementioned RGPD.

THIRD: On February 20, 2019, D. AAA, makes the following allegation to the start agreement:

"The cameras installed in your home (second residence) located in \*\*\*ADDRESS.1 are false cameras, whose sole objective is to dissuade".

Provide the following documentation:

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Invoice for cameras purchased on Aliexpress.

Screenshots of the purchase tracking and delivery of these in your home.

Photographs with the identification sign of the person in charge of the installation, as well as the place where you can exercise the right to protection of data.

In view of everything that has been done, by the Spanish Protection Agency of Data in this procedure the following are considered proven facts.

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#### PROVEN FACTS:

FIRST: On October 19, 2018, filed a claim D. B.B.B. by existence of several video surveillance cameras installed outside the home property of the claimed, which are directed outward focusing the claimant's home, in addition to the public road.

SECOND: It is accredited as the main person responsible for the installation of the D. AAA cameras, which indicates security reasons for the installation of the themselves.

THIRD: It is accredited that it is a non-operative system, so that does not obtain images of the private space of the claimant.

#### FOUNDATIONS OF LAW:

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By virtue of the powers that article 58.2 of the RGPD recognizes to each control authority, and as established in art. 47 of the Organic Law 3/2018, of December 5, Protection of Personal Data and guarantee of rights (hereinafter LOPDGDD), the Director of the Spanish Agency for Data Protection is competent to resolve this procedure.

II

The defendant is imputed the commission of an infraction for violation of the Article 5, section 1, letter c) of the RGPD, "Principles related to treatment" provides that the personal data will be:

"c) adequate, pertinent and limited to what is necessary in relation to the purposes for which they are treated. (data minimization)".

For its part, article 6.1 of the RGPD (legality of the treatment) establishes the Specific assumptions under which the processing of data is considered lawful interested parties.

In this case, from the documentation contained in the procedure, the existence of a video surveillance system consisting of a security camera, that is installed without just cause, and may be capturing images disproportionate from the public road.

The treatment of images in public places can only be carried out -in your case and prior compliance with the legally enforceable requirements-, by the Forces and Security Forces, unless the exception established in article 4.3 operates of Instruction 1/2006, of November 8, of this Agency, which establishes: "the cameras and video cameras installed in private spaces will not be able to obtain images of public spaces unless it is essential for the purpose of

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surveillance that is intended, or is impossible to avoid because of the location of those. In any case, any unnecessary data processing should be avoided.

for the intended purpose”

However, on some occasions the protection of private spaces is only

it is possible if the cameras are located in spaces such as facades. Sometimes also

it is necessary to capture the accesses, doors or entrances, so that although the

camera is inside the building, it is impossible not to record minimum and

essential of the public road, which is inevitably captured.

For this exception to apply, there must not be a possibility of

alternative installation. Bearing in mind that:

- The person responsible for processing the data carried out through cameras and/or

video cameras will adapt the use of the installation, so that the impact on the

rights of pedestrians is the minimum possible.

- In no case will the use of surveillance practices be admitted beyond the

environment object of the installation and in particular, not being able to affect the spaces

surrounding public, adjoining buildings and vehicles other than those accessing the

guarded space.

Article 83.5 a) of the RGPD, considers that the infringement of “the principles

basic for the treatment, including the conditions for the consent in accordance with

of articles 5, 6, 7 and 9” is punishable, in accordance with section 5 of the

mentioned article 83 of the aforementioned Regulation, with administrative fines of

€20,000,000 maximum or, in the case of a company, an equivalent amount

at a maximum of 4% of the total global annual turnover of the financial year

above, opting for the highest amount.

### III

By virtue of the provisions of article 58.2 RGPD, the Spanish Agency for

Data Protection, as a control authority, has a set of

corrective powers, among which is the power to impose fines, in the

in the event of an infringement of the provisions of the RGPD.

Article 58 section 2 GDPR provides the following:

“Each supervisory authority shall have all of the following powers

corrections listed below:

b) sanction any person responsible or in charge of the treatment with

warning when the processing operations have violated the provisions of

this Regulation;

i) impose an administrative fine under article 83, in addition to or in

instead of the measures mentioned in this paragraph, depending on the circumstances

of each individual case.

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In the present case, it is identified as the main person responsible for the

installation of the D. AAA cameras, which does not deny the installation of the cameras, if

well states that they are not operational.

### IV

The principle of presumption of innocence prevents the imputation of an infraction

administrative when proof of charge has not been obtained and confirmed  
accrediting the facts that motivate the imputation or the intervention in the  
of the alleged offender. Applying the principle "in dubio pro reo" in case of doubt  
with respect to a concrete and determined fact, which obliges in any case to resolve  
said doubt in the most favorable way for 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  
punisher and must 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  
contradictory procedure 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).

Having examined the allegations and evidence presented by the defendant, it is  
conclude that we are faced with a non-operative video surveillance system,  
so that there is no "processing of personal data" associated with a person  
identified or identifiable physical

From the point of view of data protection, since there is no treatment of  
data, fulfilling the cameras a dissuasive purpose, it is only possible to order  
the FILE of this procedure, as there is no administrative infraction.

According to what was stated,

By the Director of the Spanish Data Protection Agency,

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HE REMEMBERS:

FIRST: PROCEED to FILE this sanctioning procedure

PS/00033/2019, instructed D. A.A.A., having accredited by virtue of the documents  
contributed with their allegations to the initiation agreement that has a system of  
video surveillance not operational.

SECOND: NOTIFY this resolution to D. A.A.A. and, according to art. 77.2 of the  
RGPD, INFORM the claimant about the result of the claim.

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. 114.1 c) of  
the LPACAP, 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.

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Director of the Spanish Data Protection Agency

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