

□ Procedure No.: PS/00034/2021

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 12, 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 article 5.1.c) of the RGPD.

The defendant has installed a video surveillance camera on the stone wall of the
border between his property and that of the claimant, and that records the property of the latter.
Attach photographic report 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 to this Agency by
unknown.

For this reason, the aforementioned transfer was reiterated, being returned again by the same
reason.

THIRD: On February 12, 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.

FOURTH: On March 15, 2021, this Agency receives allegations to the initiation agreement formulated by the respondent in which he indicates that the chamber is fictitious

Provide a copy of the device purchase document.

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

In this proceeding, the following are considered proven facts:

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FACTS

FIRST: Installation of a video surveillance camera on the stone wall of the border between his property and that of the claimant, and that records the property of the latter.

SECOND: The person responsible for the device is B.B.B. with NIF ***NIF.1.

THIRD: The respondent declares in the pleadings brief to the initial agreement that the camera is simulated, providing a copy of the purchase document of the device.

FOUNDATIONS OF LAW

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By virtue of the powers that article 58.2 of the RGD 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 12 of 2020 by means of which the placement of a

video surveillance camera on the stone wall of the boundary between the properties of the claimed and the claimant and that records the property of the latter.

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")".

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".

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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 15, 2021, a written statement was received from the respondent
stating that the installed system is of a simulated nature, that is, it does not obtain
any image fulfilling 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.

The accused party provides a document that proves the fictitious nature of the same
taking for granted the allegations put forward, being aware that in any
This body can then proceed to check the system in question.

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
fictitious of these, who may believe they are 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

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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.

Based on the foregoing, it is proven that the camera is false, 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.

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. with NIF ***NIF.1

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

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