

□ Procedure No.: PS/00002/2020

938-300320

## RESOLUTION OF PUNISHMENT PROCEDURE

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

### BACKGROUND

FIRST: On October 8, 2019, it had entry in this Spanish Agency  
of Data Protection a document presented by A.A.A. (hereinafter the  
claimant), through which he makes a claim against B.B.B. with NIE \*\*\*NIE.1 (in  
hereinafter, the claimed), for the installation of a video surveillance system located in  
C/ \*\*\*ADDRESS.1, - \*\*\*LOCALITY.1, (ILLES BALEARS) within a building  
divided into a horizontal property regime, with respect to which there are indications of a  
possible breach of the provisions of the data protection regulations. The  
The aforementioned system would be oriented towards public roads, a right of way and  
community spaces without the proper authorization of the Community of Owners.  
In addition, it would not have an information poster.

The claimant attaches a copy of the cadastral information of parcels and real estate (Doc.  
1), photocopy of simple registration notes of the dwellings owned by the claimant and  
claimed (Doc. 3 and 4), photographic report (Doc. 6) and a simple copy of the record of  
notarial presence of 09/10/2019 made by the Notary of \*\*\*LOCATION.1 D.  
C.C.C., with protocol number \*\*\*PROTOCOL.1 (Doc.5).

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 notified on 11/08/2019.

There is no reply in the file.

THIRD: The claim was admitted for processing by resolution of January 8 of 2020.

FOURTH: On February 24, 2020, the Director of the Spanish Agency for Data Protection agreed to initiate a sanctioning procedure against the claimant, for the alleged infringement of articles 5.1.c) and 13 of Regulation (EU) 2016/679 (General Data Protection Regulation, hereinafter RGPD), typified in the article 83.5 of the same legal text.

FIFTH: On March 8, 2020, allegations were received by this Agency regarding initiation agreement formulated by the respondent on March 3, 2020 in which reveal:

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“[...]Referring to your letter, we will forward our response to you because we do not believe that you have received it. We had two fake protection cameras outside our house and we remove them as soon as we receive your letter. We didn't know we couldn't have them. They were very old and were placed there when our godfather was robbed who lived in the house above. [...]”

SIXTH: On March 19, 2020, the instructor of the procedure agreed to the opening of a period of practice tests, considering incorporated the claim filed by the claimant and its documentation, the documents obtained by the Subdirector General for Data Inspection and the allegations filed by the claimant. Likewise, the respondent was required to prove

the removal of the cameras by means of a photograph stating the date of their realization.

SEVENTH: On June 28, 2020, you have entry into this Agency in writing from the claimed by means of which it sends two photographs of the front of the property, as well as a photograph of one of the withdrawn cameras stating that:

“We attach the photo of the front of our house where we removed the two cameras.

Also, a photo of the two cameras we removed. [...] We cannot guarantee

a date when we remove the cameras because we did not think about taking a picture of it

at that moment. The first letter we sent you was dated November 23

2019, so we must have removed it around that time. [...]”

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: Installation of some cameras, without a sign, in front of the

property located at C/ \*\*\*ADDRESS.1, - \*\*\*LOCALITY.1, (ILLES BALEARS),

accredited by means of the photographic report and the notarial certificate of presence provided

by the claimant in the document presenting the claim dated March 8,

October 2019.

SECOND: The person responsible for the devices is B.B.B. with NIE \*\*\*NIE.1.

THIRD: The respondent declares in the pleadings brief to the initial agreement that

the devices placed were false and were withdrawn.

FOURTH: In response to the requested documentary evidence, the respondent submits

some photographs where the property is shown without the devices placed with

anteriority.

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## 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 according to the provisions of articles 47, 48.1, 64.2 and 68.1 of the LOPDGDD, The Director of the Spanish Agency for Data Protection is competent to initiate and solve this procedure.

II

The facts made known to the Spanish Data Protection Agency motivated the initiation of this sanctioning procedure for assuming a possible violation of article 5.1.c) of the RGPD that indicates that personal data will be “adequate, relevant and limited to what is necessary in relation to the purposes for which that are processed (“minimization of data”)”, and article 13 of the same legal text, provision that the information that must be provided to the interested party at the time of collection of your data.

These infractions are typified in Article 83.5 of the RGPD, which considers as such:

“The infractions of the following dispositions will be sanctioned, in accordance with the paragraph 2, with administrative fines of a maximum of EUR 20,000,000 or, in the case of a company, an amount equivalent to a maximum of 4% of the global total annual turnover of the previous financial year, opting for the largest amount:

- a) the basic principles for the treatment, including the conditions for the consent under articles 5, 6, 7 and 9;
- b) the rights of the interested parties according to articles 12 to 22; [...].”

In the present case, it is appropriate to analyze the presumed illegality of the installation of a video surveillance system consisting of two cameras placed on the facade of the property located at C/ \*\*\*DIRIMIENTO.1, - \*\*\*LOCATION.1.

The proven facts show the existence of some cameras installed in front of the property, which, according to the allegations made by the claimed in its response to the agreement to initiate this procedure, were of simulated nature with a dissuasive purpose and that, according to the photograph sent in response to the documentary evidence requested (and in respect of which the requested date was that of its effective taking), were withdrawn.

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As regards the possibility of installing a video surveillance system with the purpose of guaranteeing the security of the dwelling and of the private space of the claimed, it means, in the first place, that individuals who use this type of devices are responsible for ensuring that they comply with current legislation, and must comply, when the property is under the regime of community of owners, with the requirements established in Law 49/1960, of July 21, on horizontal property (LPH). Thus, the installation of a video surveillance system by a particular will require, for the treatment to be legitimate, authorization from the board of community of owners both when its location is projected in an area common as when, even installed in an area of private use, it is oriented to areas surrounding commons and captures —respecting in any case the principle of minimization

of data established in article 5.1.c) of the RGPD - tangentially areas

common.

Regarding the collection of public roads, article 22 of the LOPDGDD, relative to

processing for video surveillance purposes, provides that, in order to guarantee the

security of persons and goods, images of public thoroughfares may be captured "in the

to the extent that it is essential", in accordance with the principle

mentioned data minimization. It is reported that, regarding the recruitment and

images on the road it is reported that the power to capture images on public roads is

attributed, in general, to the Security Forces and Bodies in accordance with

with the provisions of Organic Law 4/1997, which regulates the use of

video cameras by the Security Forces and Bodies in public places and their

development regulations and that, in any case, the possibility of capturing a portion

essential of the same for security reasons would correspond, for the

characteristics of the building in question, to the community of owners.

On the other hand, with regard to compliance with the duty of information contained in the

article 12 of the RGPD, article 13 of the same legal text provides the information that

must be provided when the personal data is obtained from the interested party,

situation that occurs in cases of image capture by a system of

video surveillance. In this sense, article 22.4 of the LOPDGDD establishes 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 another order of things, it is pointed out that it is possible to use a system of video surveillance that focuses on land covered by a right of way always that the person in charge has legitimacy to do so and respects the principle of data minimization.

Notwithstanding what is stated in the preceding paragraphs, taking into account the allegations of the claimed, in this case the cameras that were installed were of a simulated responding to a dissuasive purpose and were also withdrawn.

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It is worth remembering, in relation to this type of device, the recent Judgment of the Supreme Court, Civil Chamber (STS 3505/2019, 11/07/19) which states that "That fake security cameras also represent an illegitimate intrusion into intimacy since those affected do not have to endure "uncertainty permanent" on whether or not the device is operational."

The plaintiff's right to the tranquility of his private life also includes that of not having to endure permanent uncertainty as to whether the camera oriented towards his farm is operational or not, since his external appearance prevents him from verify it and, on the other hand, the defendant would always have the possibility of substituting the non-operative chamber for another operative.

For the same reasons, the installation of the camera facing the garden of the plaintiff cannot be considered an exercise of a *ius usus inocui* in the field of neighborhood relations, because far from being innocuous, it objectively disturbed, and without necessity, the life of the plaintiff."

This type of conduct may have repercussions in other spheres of law, affect the privacy of third parties, so it is recommended that they be exclusively oriented towards your particular property. The deterrent function of this type of device is limited, therefore, by the proportionality of the measure, which is fulfilled by avoiding intimidating third parties and being oriented towards the main strategic points of the house (eg orientation towards street, adjoining windows, etc.).

#### IV

The principle of the right to the presumption of innocence, recognized as a right fundamental subjective in article 24 of the Spanish Constitution, prevents imposing an administrative sanction when proof of accrediting charge of the facts that motivate the imputation or of the intervention in the themselves of the alleged offender and applying the principle "in dubio pro reo" in case of doubt regarding a concrete and determined fact, which obliges in any case to resolve said doubt in the most favorable way for the interested party.

The aforementioned right to the presumption of innocence is also included in a expressed in article 53.2.b) of Law 39/2015, of October 1, on the Procedure Common Administrative of Public Administrations (hereinafter, LPACAP), which establishes that:

"two. In addition to the rights provided for in the previous section, in the case of administrative procedures of a punitive nature, the alleged responsible will have the following rights:

[...]b) To the presumption of non-existence of administrative responsibility while the contrary is proven."

In relation to this principle, the Constitutional Court in its Judgment 76/1990, of 26 of April, considers that the right to the presumption of innocence entails: "that the



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sanction is based on acts or means of proof of charge or incriminating the reproached conduct; that the burden of proof corresponds to the person who accuses, without no one is obliged to prove their own innocence; and that any insufficiency in the result of the tests carried out, freely valued by the sanctioning body, must be translated into an acquittal pronouncement.”

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Based on the foregoing, it cannot be concluded that the withdrawn devices subject to the claim were endowed with the capacity to obtain or record an image any, so that by not being able to determine the existence of an effective treatment of data it is not possible to speak of infringing conduct within the framework of the regulations data protection regulator, which is why we proceed to the File of the present procedure.

Therefore, in accordance with the applicable legislation, the Director of the Agency

Spanish Data Protection RESOLVES:

FIRST: ORDER the FILE of this procedure as there is no accredited administrative infraction.

SECOND: NOTIFY this resolution to B.B.B. with NIE \*\*\*NIE.1 and inform

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 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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