

□ File No.: EXP202104229

## RESOLUTION OF SANCTIONING PROCEDURE

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

### BACKGROUND

FIRST: Don A.A.A. (\*hereinafter, the complaining party) dated November 5 of 2021 filed a claim with the Spanish Agency for Data Protection. The claim is directed against B.B.B. with NIF \*\*\*NIF.1 (hereinafter, the party claiming gives). The reasons on which the claim is based are briefly the following:

“They have installed a video-surveillance camera that points towards my house so that I have to keep the blinds completely down” (folio no. 1).

Along with the claim, provide documentary evidence (Annex I CD) that proves the presence of the device that is the object of the claim.

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 hereafter LOPDGDD), said claim was transferred to the party claimed on fe-date 11/08/21, to proceed with its analysis and inform this Agency on the plan within one month, of the actions carried out to adapt to the foreseen requirements. cough in the data protection regulations.

No response has been received to this letter of transfer.

THIRD: On January 17, 2022, in accordance with article 65 of the LOPDGDD, the claim presented by the claimant party was admitted for processing.

FOURTH: On March 21, 2022, the Director of the Spanish Agency for Data Protection agreed to initiate disciplinary proceedings against the claimed party, 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 (hereinafter  
te, LPACAP), for the alleged infringement of Article 5.1.c) of the GDPR, typified in the  
Article 83.5 of the GDPR.

FIFTH: On 04/21/22, a letter was received from the defendant arguing the  
following:

“What the signatory has done is hire the security company  
called Securitas Direct so that prior information on the legality of what  
I was thinking of having security cameras put up to record my backyard.  
property where I usually install various plants and control any access from  
intruders to my private home (...) As soon as you receive this notification, contact the

C / Jorge Juan, 6

28001 – Madrid

[www.aepd.es](http://www.aepd.es)

[sedeagpd.gob.es](http://sedeagpd.gob.es)

2/5

company hired to ratify the legality of my actions through the  
documentation that they consider necessary and I request the contract signed with them (...)

The signatory, before acknowledging any type of responsibility, wants  
know the File, as well as the content of the complaint as well as the CD (Annex  
I), since it considers that it has not committed any irregularity but simply  
He has let himself be guided by the advice of a security company”.

SIXTH: On 06/27/22, a "resolution proposal" was issued proposing the  
continuation of the procedure, since the arguments of the  
claimed in relation to the facts described, proposing a sanction encrypted in the  
amount of €300, for the alleged violation of art. 5.1 c) GDPR.

SEVENTH: On 06/30/22, a written statement was received from the defendant that

confirms receipt of a copy of the administrative file, denying the facts of the counterpart, considering that the photograph provided does not respond to the reality of the facts, limiting its capture to a particular private space where of has various plants.

Accompanies as Evidence Document No. 3 (Copy of the Security Company contract) in support of their arguments, as well as photographs of what is captured with the camera in question.

Item, for the reasons stated, requests the File of the procedure considering rar that it has not breached current regulations on data protection.

Of the actions carried out in this procedure and of the documentation in the file, the following have been accredited:

#### PROVEN FACTS

First. The facts bring cause of the claim dated 11/05/21 through the which is transferred as main fact the following:

“They have installed a video-surveillance camera that points towards my house so that I have to keep the blinds completely down” (folio no. 1).

Second. B.B.B. is accredited as the main person in charge, who in writing pre-registered at the Official Postal Service dated 04/13/22 states that he has contracted given to a security company for the installation of the video surveillance system.

Third. The capture of private space of third party (s) is not verified, obeying the installation of the system for security reasons in the face of various damages in its materials. quotes by unknown author.

Room. The defendant has hired the services of a private security company for the management of the system, providing a copy of it, not having modified the angle of collection that is limited to its private patio (document evidence Annex I).

## FUNDAMENTALS OF LAW

Yo

In accordance with the powers that article 58.2 of Regulation (EU) 2016/679 (General Data Protection Regulation, hereinafter GDPR), grants each authority of control and as established in articles 47, 48.1, 64.2 and 68.1 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: "The procedures processed by the Spanish Data Protection Agency will be governed by the provisions of Regulation (EU) 2016/679, in this organic law, by the regulations comments dictated in its development and, insofar as they do not contradict them, with a subsidiary, by the general rules on administrative procedures."

II

In the present case, the claim dated 11/05/21 is examined by means of gave from which the following is transferred as the main fact:

"They have installed a video-surveillance camera that points towards my house so that I have to keep the blinds completely down" (folio no. 1).

The art. 5.1 c) GDPR provides the following: Personal data will be:

"adequate, relevant and limited to what is necessary in relation to the purposes for those who are processed ("data minimization").

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

felled comply with current legislation, certifying that it complies with all

the requirements demanded by the regulations in force.

The installation of this type of device must have the mandatory informative poster

tive, indicating the purposes and person responsible for the treatment, where appropriate, of the data of each personal character.

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

Neither with this type of device can you obtain an image(s) of public space.

since this is the exclusive competence of the Security Forces and Bodies of the State tado.

It should be remembered that even if it is 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, who are intimate measured by it in the belief of being the object of permanent recording.

C / Jorge Juan, 6

28001 – Madrid

[www.aepd.es](http://www.aepd.es)

[sedeagpd.gob.es](http://sedeagpd.gob.es)

4/5

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

The purpose of this type of device must be the security of the property and its inhabitants, avoiding the affectation of the rights of third parties who are intimidated two with the same

On 06/30/22, a written statement of the defendant's allegations was received, confirming the presence of the camera, although denying the facts of the counterpart since the angel was not there.

Orientation angle affecting the private area of the claimant.

He uses acts of vandalism against the plants he owns, although he does not know

The author does state that as a result of the installation of the camera(s) the themselves, fulfilling a deterrent function and contracting the service with a company industry security.

The evidence provided allows us to verify after their analysis that there is no private area is affected, being oriented towards its private patio, for

Therefore, it is not verified that the transferred facts constitute an ad hoc infringement ministerial.

There is also no evidence that a "data processing" of the claim has been carried out. and/or third party, nor have any further complaints been received in this regard in relation to the camera in question, which is limited to capturing a private patio.

IV.

The principle of presumption of innocence prevents imputing an administrative offense when a proof of accreditation of the facts has not been obtained and verified. crimes that motivate the imputation or the intervention in them of the presumed infraction tor. Applying the principle "in dubio pro reo" in case of doubt regarding a fact concrete and determined, which obliges in any case to resolve said doubt in the most 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 the 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.

C / Jorge Juan, 6

28001 – Madrid

[www.aepd.es](http://www.aepd.es)

[sedeagpd.gob.es](http://sedeagpd.gob.es)

5/5

The presumption of innocence governs without exceptions in the sanctioning Law and has to 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 set of evidence and a procedure contradictory in which one's own 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, which in the appreciation of the authorities or bodies called to resolve, destroy this presumption (TCo Auto 3-12-81).

V

In accordance with the above, after analyzing the allegations and evidence provided given by the defendant, no infringement is found, the system being in accordance with the regulations in force, so it is appropriate to order the File of this procedure.

The parties are reminded of the importance of the rights at stake and must avoid the instrumentalization of this body for issues typical of "quarrels

"neighbourhood" or bad neighborly relations, these must be resolved in the instants  
timely judicial decisions or redirect them to the minimum required parameters of  
neighborliness.

Therefore, in accordance with applicable law,

the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: ORDER the FILING of this procedure as there is no accredited  
gives the commission of any administrative infraction in the matter at hand

SECOND: NOTIFY this resolution to Mrs. 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

Respondents may optionally file an appeal for reinstatement before the Director

of the Spanish Agency for Data Protection within a period of one month from the

the day following the notification of this resolution or directly contentious appeal

before the Contentious-Administrative Chamber of the National Court,

in accordance with the provisions of article 25 and section 5 of the additional provision

fourth clause of Law 29/1998, of July 13, regulating the Contentious Jurisdiction-

administration, within a period of two months from the day following the notification

tion of this act, as provided for in article 46.1 of the aforementioned Law.

Mar Spain Marti

Director of the Spanish Data Protection Agency

C / Jorge Juan, 6

28001 – Madrid

938-050522

[www.aepd.es](http://www.aepd.es)



