

□ Procedure No.: PS/00115/2021

## RESOLUTION OF PUNISHMENT PROCEDURE

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

### FACTS

FIRST: A.A.A. (\*hereinafter, the claimant) dated November 24, 2020

filed a claim with the Spanish Data Protection Agency. The

claim is directed against B.B.B. with NIF \*\*\*NIF.1 (hereinafter, the claimed one). The

reasons on which the claim is based are succinctly:

“presence of a camera facing outwards that may not meet

with current regulations affecting the right of the declarant without just cause” (folio

No. 1).

Along with the claim, provide documentary evidence (Doc. No. 1) that proves the

presence of a dome camera placed in an exterior window, without a sign

informative about it.

SECOND: On 12/18/20, the claim is TRANSFERRED to the claim-

so that he may claim in law what he deems appropriate, without any manifestation of

guna has been made for this purpose to date.

THIRD: On May 7, 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 06/03/21 a written statement of allegations is received from the respondent

stating the following:

“For some time now, approximately two years, they have been organizing

I frequently attend youth meetings right under the windows of my house,  
with all the inconvenience that this entails, to listen to music with portable speakers.  
useful, drink alcohol and smoke or consume other types of substances that I prefer not to enter  
appreciate.

For these reasons I decided to install a camera to generate a di-  
suasorio that I must admit that it does its function perfectly since for a long time  
I haven't had that kind of problem in a while. I understand that both the in-  
police interventions, such as the pandemic situation in which we find ourselves  
They have made it possible to prevent the events from happening again.

Said camera is a dome-type camera, but it lacks connection, that is,  
that does not obtain any image of an identified or identifiable natural person, so  
since there is no obtaining of images, I consider that I am not violating the LOPD”.

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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. The facts bring cause of the claim dated 11/24/20 being subject to  
transfer to this Agency the following:

“presence of a camera facing outwards that may not meet  
with current regulations affecting the right of the declarant without just cause” (folio  
No. 1).

Along with the claim, provide documentary evidence (Doc. No. 1) that proves the

presence of a dome camera placed in an exterior window, without a sign

informative about it.

Second. It is identified as the main responsible Mr. B.B.B., who does not deny be responsible for the installation of the device that is the subject of the complaint.

Third. It is accredited that the chamber object of the complaint does not process of any personal data as it is a simulated device, without any connection.

Fourth. There is no evidence that any personal data processing has been carried out, given the fictitious character of the device in question.

## 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 and 48 of the LOPDGDD, the Director of the Spanish Agency for Data Protection is competent to initiate and to resolve this procedure.

II

In the present case, we proceed to examine the claim dated 11/24/20 by me-gave from which the following is transferred as the main fact:

“presence of a camera facing outwards that may not meet with current regulations affecting the right of the declarant without just cause” (folio No. 1).

The facts are specified in the installation of a video-surveillance system, that according to the statement of the claimant "manages the defendant himself", that he himself has been installed without authorization from the Board of Owners and whose characteristics cases have not been duly communicated.

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Article 5 section 1 GDPR "Principles related to treatment" provides that: "The

personal data will be:

c) 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

fulfilled 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 informative sign.

ive, indicating the purposes and responsible for the treatment, where appropriate, of the data of each

personal character.

They will be installed at the different entrances to the video-monitored area and, in a visible place, one or

several posters that inform that you are accessing a video-monitored area.

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.

With this type of device it is not possible to obtain image(s) of public space either.

co, as this is the exclusive competence of the State Security Forces and Bodies

ted.

The recording system will be located in a guarded place or with restricted access. At

recorded images will be accessed only by authorized personnel, who must enter a code

say username and password. Once the system is installed, it is recommended

regular password change, avoiding easily deductible ones.

It should be remembered that even in the case of a "simulated" camera, the same

must be oriented towards private space, since it is considered that this type of devices can affect the privacy of third parties, who are intimidated by the herself in the belief of being the object 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.

The camera(s) cannot focus on public roads. If it is necessary to protect the entrance from a house or that of the garage or establishment, the installation must pass the judgments of proportionality, suitability and minimal intervention.

All these requirements must be met by the claimed party, who must prove the totality their legal form before this body.

III

On 06/03/21, a written statement was received from the respondent party stating dissuasive character of the installed device, but not carrying out the same treatment

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storage of any personal data, having installed it in the face of noise problems in the vicinity of your home.

Documentary evidence is provided (Doc. No. 1) that proves what is argued by the itself, so that the device in question has a simulated character.

The principle of presumption of innocence prevents imputing an administrative offense when proof of charge accrediting the criminals has not been obtained and verified.

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

thor. 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 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 sanctioning system 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 test game and to a procedure contradictory environment 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).

However, in relation to this type of device that does not record any image, na, remember the recent pronouncement of the TS (STS 3505/2019, of November 7), which determines that "no one has the obligation to endure a permanent uncertainty" about whether or not the camera is operative", and the conduct described may be objecti-

of reproach in other branches of law.

The falsity of the installed camera is something that only the person who installs them knows, and

This is not an obstacle for people to feel observed by their placement, since

Although they do not record images, they also affect the “tranquility of the plaintiff and his family”.

Therefore, according to the criteria of this body, their installation must

be carried out with the required caution (eg, not affecting the private area of third parties, or if blatantly located towards public roads), pondering the exceptionality of the

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measure with the intended purpose, preserving at all times the rest of the fundamental rights that may be affected by it.

IV

According to the above, after analyzing the statements of the parties and the whole

From the evidence provided, it can be concluded that the chamber object of the complaint is of a simulated, not performing any “data processing” associated with an identified natural person.

each or identifiable, which is why it is appropriate to order the Archive of this proceeding proceeding, without prejudice to a different assessment in the appropriate judicial instances.

The rest of the issues raised exceed the competence framework of this

Agency and must be settled in your case in the pertinent instances.

Therefore, in accordance with the applicable legislation and after assessing the graduation criteria tion of the 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 evidence

gives the commission of any administrative infraction.

SECOND: NOTIFY this resolution to B.B.B. and REPORT the result

of the actions to the claimant 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

resents may optionally file an appeal for reconsideration before the Director

of the Spanish Agency for Data Protection within a month from the date of

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

before the Contentious-Administrative Chamber of the National High Court,

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

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

administrative, 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.

Sea Spain Marti

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