

- File No.: EXP202101897

## RESOLUTION OF SANCTIONING PROCEDURE

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

### BACKGROUND

FIRST: On August 22, 2021, he entered this Spanish Agency

of Data Protection written presented by D. A.A.A. (hereinafter, the part  
claimant), through which he makes a claim against STAR PROP

PATRIMONIAL, S. L. with NIF B05380993 (hereinafter, the claimed party), for the  
installation of a video surveillance system located at \*\*\*ADDRESS.1, with

indications of a possible breach of the provisions of the regulations for the protection of  
Personal data.

The reasons that support the claim and, where appropriate, the documents provided  
by the claimant are as follows:

The claimed party has installed four cameras on the façade of its establishment  
video surveillance that, due to their location and orientation, are likely to capture the  
public highway, without the mandatory administrative authorization for it.

The documents provided are:

- Two photographs showing the location and orientation of the  
video surveillance cameras.

SECOND: Prior to the admission for processing of this claim, it is  
transferred to the claimed party, on September 13, 2021 and reiterated on  
September 2021 (refused on November 8, 2021), in accordance with the  
established in article 65.4 of Organic Law 3/2018, of December 5, of  
Protection of Personal Data and guarantee of digital rights (hereinafter,

LOPDGDD).

There is no response from the claimed party.

THIRD: The claim was admitted for processing by resolution of the Director of the Spanish Agency for Data Protection, dated November 29, 2021.

FOURTH: On March 4, 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 (in hereinafter, LPACAP), for the alleged violation of Article 5.1.c) of Regulation (EU) 2016/679 (General Data Protection Regulation, hereinafter GDPR), typified in Article 83.5 of the GDPR.

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FIFTH: Notified of the aforementioned start-up agreement in accordance with the rules established in the LPACAP, the claimed party submitted a pleading in which, in summary, stated that:

On the cause that has motivated the incidence.

Appearance of being able to capture the public road, since the cameras are installed externally. In no case do these cameras focus on the public thoroughfare, in the way that that are placed focus from above towards the entrance of Star Prop Patrimonial (hereinafter, Star) and its crystals, only people who are going to access the venue. Due to the elevated placement and angle, no image would be captured recognizable from people passing by on the street.

As for the informative sign, it is also clearly placed next to the camera.

On March 30, 2022, Star receives a visit from local police officers, who may

Check how the facilities and cameras are not working and that the

local is not yet open to the public. They also note how the cameras, due to their

angle of placement could not capture recognizable images of passers-by without

intention to enter the premises and that the sign is placed next to it.

On March 31, Star presents a letter to the City Council with photographic detail and

documentary of the adequacy of video surveillance cameras.

SIXTH: On July 1, 2022, a resolution proposal was formulated,

proposing

that the Director of the Spanish Data Protection Agency archive the

claim filed against STAR PROP PATRIMONIAL, S.L., with NIF

B05380993, for a violation of Article 5.1.c) of the GDPR, typified in Article

83.5 of the GDPR.

Of the actions carried out in this procedure and of the documentation

in the file, the following have been accredited:

#### PROVEN FACTS

FIRST: The claiming party states in its claim that the claimed party

has installed four video surveillance cameras on the façade of its establishment

which, due to their location and orientation, are likely to capture the public thoroughfare, without

the mandatory administrative authorization for it is recorded.

SECOND: The claimed party, in the allegations to the Commencement Agreement of this

Sanctioning Procedure, indicates that in no case do these cameras focus on the road

public, the way they are placed they focus from above towards the entrance

of Star Prop Patrimonial (hereinafter, Star) and its crystals, would only be captured

the people who are going to access the premises. Because of the elevated placement and angle, it will not would capture a recognizable image of people passing by on the street.

As for the informative sign, it is also clearly placed next to the camera.

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intention to enter the premises and that the sign is placed next to it.

On March 31, Star presents a letter to the City Council with photographic detail and

documentary of the adequacy of video surveillance cameras.

## FUNDAMENTALS OF LAW

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In accordance with the powers that article 58.2 of Regulation (EU) 2016/679

(General Data Protection Regulation, hereinafter GDPR), grants each

control authority and as established in articles 47 and 48.1 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: "Procedures

processed by the Spanish Data Protection Agency will be governed by the provisions

in Regulation (EU) 2016/679, in this organic law, by the provisions

regulations dictated in its development and, insofar as they do not contradict them, with character subsidiary, by the general rules on administrative procedures.”

II

In response to the allegations presented by the respondent entity, it should be noted the next:

The claimed party states that in no case do the cameras focus on public roads, the way they are placed they focus from above towards the entrance of Star Prop Patrimonial (hereinafter, Star) and its crystals, would only be captured at people who are going to access the premises. Because of the elevated placement and angle, it will not would capture a recognizable image of people passing by on the street.

The informative sign is clearly placed next to the camera.

On March 30, 2022, Star receives a visit from local police officers, who may

Check how the facilities and cameras are not working and that the local is not yet open to the public. They also note how the cameras, due to their angle of placement could not capture recognizable images of passers-by without intention to enter the premises and that the sign is placed next to it.

On March 31, Star presents a letter to the City Council with photographic detail and documentary of the adequacy of video surveillance cameras.

It should be remembered that "the data that is processed through the video surveillance will be processed for the purpose that motivated the installation of the itself and which is linked to guaranteeing the safety of people, goods and facilities".

Having examined the allegations of the defendant, it can be concluded that the chambers obtain images of the area proportional to the façade of the establishment, in what essential for its safety.

The principle of presumption of innocence prevents imputing an administrative offense when proof of charge accrediting the charges has not been obtained and verified. facts that motivate the imputation or of the intervention in them of the presumed offender. 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 of the way more 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 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.

The presumption of innocence governs without exceptions in the penal system, and has to be respected in the imposition of any sanction, whether criminal or administrative (TC 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 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 that, in the appreciation of the authorities or bodies called to resolve, destroy this presumption (TC Auto 3-12-81).

IV.

In accordance with the foregoing, it is considered appropriate to order the ARCHIVE of this procedure as the commission of any administrative offense has not been accredited in the matter at hand.

The parties are reminded that this Agency should not be instrumentalized in issues outside its jurisdictional framework, owing the rest of the issues, in its case, be transferred to the pertinent judicial instances, where they may present the questions they deem necessary.

Therefore, in accordance with the applicable legislation, the Director of the Spanish Agency for Data Protection RESOLVES:

FIRST: ORDER the FILE of this procedure, since there is no accredited the commission of any administrative infraction within the framework of the regulations in force regarding data protection.

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SECOND: NOTIFY this resolution to STAR PROP PATRIMONIAL, S.L.

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 may optionally file an appeal for reversal before the

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

count 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 for in article 46.1 of the

referred Law.

938-120722

Mar Spain Marti

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