

□ Procedure No.: PS/00254/2020

- RESOLUTION OF PUNISHMENT PROCEDURE

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

FACTS

FIRST: MONTCADA I REIXAC CITY COUNCIL (*hereinafter, the claimant)

On July 22, 2020, he filed a claim with the Spanish Agency for

Data Protection. The claim is directed against A.A.A. with NIF ***NIF.1 (in

later, the claimed one). The grounds on which the claim is based are "installation of
a system of cameras oriented towards public space" (folio nº 1).

"That on May 20 it was registered through the Registry of the Town Hall of Montcada i

Rexac an instance that reported the existence of a possible breach of the

LO 3/2018, December 5.

That according to it there are several video-surveillance cameras located in a
private residence (...) that face directly onto public roads

"That in this Act mention is made of the installation of two cameras of
surveillance on the facade of the ***ADDRESS.1 building, identifying himself to the
denounced referenced as the author of the infraction"

"That the AEPD resolved through document E/06983/2015 that it was
producing an infraction for having the cameras focused on the public road"

"When asked about the video surveillance cameras, Mr. B.B.B. he has
recognized that they received the requirements of the AEPD but that they have NOT
compliment ".

"that the Agents have reported that they would inform the AEPD for the purposes
timely legal"

Together with the claim, it provides documentary evidence that proves the presence of installed cameras. (Annex Doc. I).

SECOND. On 08/11/20, the present document is accepted for processing.

Complaint giving rise to the present actions.

THIRD. When the database of this organization was consulted, it was associated with the File E/06983/2015 was denounced.

“You are informed, in relation to the video surveillance system installed in your housing, of the following:

Camcorders will not be able to capture images of people who are train on public roads or in places of public access, since it can only be done

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by the Security Forces and Bodies in the manner and with the requirements set forth in Organic Law 4/1997, of August 4, which regulates the use of videocamera maras by the Citizen Security Forces and Bodies in public places (...). ”

FOURTH: On November 16, 2020, the Director of the Spanish Agency of Data Protection agreed to initiate a sanctioning procedure against the claimed, for the alleged infringement of Article 5.1.c) of the RGPD, typified in Article 83.5 of the GDPR.

FIFTH: On 12/22/20 it is requested by the Instructor of the procedure in the instruction irrefutable accreditation of the simulated nature of the cameras installed in the House.

SIXTH: On 01/20/21, a written statement was received from the respondent

providing a copy of the burofax of the installation company certifying that the two

Exterior cameras of the house located at ***ADDRESS.1 are dissuasive.

Attached as Doc. No. 1.

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. On 07/22/20 a claim was received from the City Council of Montcada I

Reixac through which the following is transferred as the main fact:

“presence of video-surveillance cameras outside the house

being able to affect public transit areas without just cause.

Along with the claim, provide documentary evidence that proves the presence of the

installed cameras. (Annex Doc. I).

Second. It consists of identifying as the main person in charge Ms. A.A.A.

Third. It is proven that the installed cameras are false, fulfilling a

dissuasive function of the facade of the house against acts of vandalism.

Fourth. Attached is a burofax (01/15/21) of the installation company of the cameras that

certifies that the two outer chambers are dissuasive.

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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, the claim dated 07/22/20 is examined by me- gave from which the following is transferred as the main fact:

“placement of camera(s) oriented towards public roads” (folio nº 1).

The art. 5.1 c) RGPD provides the following: The 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 felled 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.

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

Article 22 section 4 of LO 3/2018, December 5, provides the following:

“The duty of information provided for in article 12 of the Regulation (EU) 2016/679 will be understood to be fulfilled by placing an informative device in a sufficiently visible place identifying, at least, the existence of the treatment, the identity of the person in charge and the possibility of exercising the rights provided for 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 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.

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, that they are inti-
measured 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.

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III

On 12/14/20, a written statement was received from the accused, 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 section 7 of Law 39/2015 (October 1) provides: "Those interested in
two will be responsible for the veracity of the documents they present".

It should be noted that individuals can install fake cameras on their private property.
sas, although they must be oriented exclusively towards their property,
avoiding intimidating third parties with said devices.

The accused party provides a document that proves the fictitious nature of the
the same (vgr. Installer report Proof document invoice 1st) taking for good the
allegations made, being aware that at any time this body
you can proceed to check the system in question.

In the installation of this type of "simulated" devices, the necessary caution to avoid intimidating third parties who are unaware of the fictitious nature of these, who may believe they are recorded by them, in such a way that its orientation towards public space should be avoided.

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 simulated cameras 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 false video surveillance camera, of identical appearance to other fully operational, is likely to restrict the freedom of third parties.

The TS reasons that when an individual is unaware that he is being filmed, he behaves naturally. It comes with a naturalness and spontaneity that do not occur otherwise. And that "the de-privatization of the plaintiff's right to the tranquility of his private life also includes that of not having to endure permanent uncertainty" about whether the camera in question is operational or not, or whether "RCRE has replaced it with another fully functional and of identical appearance."

Therefore, it must be taken into account that the behavior described in the event of excessive orientation towards public space can have consequences in other areas of law, being recommended to adopt the necessary precautions to avoid an excessive orientation towards public space, limiting itself to the facade of the house to be protected.

Likewise, it is advisable to follow the indications of the Forces and Bodies of the town, who can guide you on the matter if you need it, avoiding with them new complaints about it.

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Based on the foregoing, it is proven that the exterior cameras are false, that is, they do not obtain any image of an identified natural person or identifiable, so that since there is no processing of personal data, it cannot be to speak of an administrative infraction 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 A.A.A. and REPORT the result of the actions CITY COUNCIL OF MONTCADA I REIXAC.

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

938-131120

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