

□ File No.: EXP202211676

RESOLUTION OF SANCTIONING PROCEDURE

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

BACKGROUND

FIRST: VALLE DE EGÜÉS/EGUESIBAR CITY COUNCIL (*hereinafter, the
complaining party) dated 10/26/22 sent a letter to the Spanish Agency for
Data Protection. The initial claim/complaint is directed against the person who identifies
like A.A.A. with NIF ***NIF.1. The reasons on which the claim is based are the following:
following:

“existence of video surveillance cameras on the façade of the house of the
claimed party, which would continue to be oriented towards public roads, without the authorization being recorded.
prior administrative authorization for it and without being duly marked
through the mandatory informative posters of the video-surveilled area, a situation that
persists at the time of the new claim”—folio no. 1-.

Along with the notification, Police Report No. XXX/2022 is provided, which certifies what
narrated by the force acting at the scene (Annex I).

SECOND: After consulting the database of this Agency, it is clear that a letter was sent
information sheet (Exp. 20220XXXX) reminding you of the obligation of informative poster,
as well as he was oriented so that the system in question adjusted to the regulations vi-
people on data protection.

THIRD: On January 12, 2023, 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 violation of Article 5.1.c) of the GDPR and Article 13 of the GDPR, typified in Article 83.5 of the GDPR.

FOURTH: On January 12, 2023, 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 violation of Article 5.1.c) of the GDPR and Article 13 of the GDPR, typified in Article 83.5 of the GDPR.

FIFTH: Notified of the aforementioned start-up agreement in accordance with the rules established in Law 39/2015, of October 1, on the Common Administrative Procedure of Public Administrations (hereinafter, LPACAP), the claimed party submitted a written

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of allegations in which it provides extensive documentary (including) video in real time of what in your case is captured with the devices object of claim.

SIXTH: On 02/08/23 <Proposed Resolution> is issued where analyzed the facts and arguments of the parties, the File of the same is proposed, since it does not be accredited the commission of any administrative offense within the framework of data protection, as it is a camera system that, although visible externally, it does not affect the public and/or private space of a third party.

SEVENTH: On 02/09/23, a written expansion of the initial allegations of the party claimed (reported) in relation to the facts described, where states the following:

"I want to make allegations to the letter of the city council since the cameras do not

They are oriented to the public thoroughfare and, as can be seen in the images, they are installed given in the frame of the window and with total orientation towards the interior of the house (Videos of capturing what they are capturing are also attached).

In view of the fact that the City Council does not report either in the 2020 resolution or in the from 2022 to the AEPD and can report on the installed system and that its purposes are for the protection of the people who live inside it; I file an Appeal before the administrative court of Navarra to report that the City Council is not competent attempt to establish sanctions for said circumstance, since the competition exclusive in terms of data protection belongs to the Spanish Protection Agency of Data-AEPD-.

Also through AEPD entry registration number O00007128e22P000XX-

XX on date and time 05/05/2022 21:49:06 I send all the information voluntarily.

I would go to the Agency to check if the installed systems are perfectly in order.

give (...)"

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 Complaint transferred by the FFCC on date 10/26/22 by means of which the presence of at least two devices is transferred without inform on the exterior facade of the house located ***ADDRESS.1 (Navarra).

Second: It is accredited as the main person in charge of A.A.A., who does not deny the pre-presence of two devices on the facade of his home.

Third. Analyzed the photographic evidence provided by the denounced devices

They do not capture any public space, limiting themselves to the private property itself.

day of the claimed

Fourth: There is no "data processing" associated with an identified natural person or identifiable, nor has the acting force provided any material evidence to that effect.

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FUNDAMENTALS OF LAW

Yo

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

On 10/26/22, a letter sent by the City Council of Valle de Egüés through which the presence of vigilance devices is communicated. deo-surveillance on a private farm, without being duly informed through the corresponding informative signage, there being "suspicions" of the wrong orientation of the same.

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

fulfilled 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

intimidate neighboring neighbors with this type of device, as well as control areas

transit thereof without just 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.

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On the part of individuals, it is not possible to install devices for obtaining

images of public space and/or traffic of third parties, outside the cases allowed in

the normative.

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

The cameras must adhere to the protection of the property of their ownership in such so that they do not affect the area of third parties who are intimidated by them. affect your free transit zone.

II

On 02/05/23 and 02/07/23, the written statement(s) of the claimant party was received.

gives providing extensive documentation of what is captured in your case with the devices object of complaint, which are limited to the personal and domestic sphere.

Article 2 GDPR "Regulation (EU) 2016/679 OF THE EUROPEAN PARLIAMENT PEO AND THE COUNCIL of April 27, 2016 provides: "This Regulation does not applies to the processing of personal data:

c) carried out by a natural person in the exercise of exclusive activities personal or domestic mind;

The mere visualization from the outside of the cameras in question does not imply unauthorized "processing" of third-party data and/or capture of public space co, beyond the exposed which are visible from the public sidewalk.

The arguments of the defendant, as well as the predisposition to collaborate with this Agency do not imply an intentional conduct to transgress the regulations in force, rather, on the contrary, to clarify the facts arguing what is necessary to it.

The Police Report presented does not prove that the devices installed cap- have public space, are limited in line with the above to transfer the "presence" their presence on the exterior façade", an issue that is not contested by the defendant.

The presence of an informative poster(s) is not necessary either, since the they are limited to their <personal and domestic> scope, so the images in their case obtained are limited to your personal and/or family nucleus.

Individuals on their private property have complete freedom to install this type of device, without having to inform third parties (eg, neighbor).

us) or require any administrative authorization, as long as they are limited to your personal and domestic sphere, otherwise assuming the responsibility that any infringing conduct may imply the current regulations.

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IV.

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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 infractor. 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.

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

Based on the foregoing, it can be concluded that, having extensively examined the evidence provided, it is not found that the devices in question capture "public space" or that its installation is disproportionate in light of the facts exposed, reasons all of them that justify the proposal of Archive of the present procedure.

Therefore, in accordance with the applicable legislation and assessed the graduation criteria tion of the sanctions whose existence has been accredited, 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 framework of the protection of data.

SECOND: NOTIFY this resolution to A.A.A. and report the result of

proceedings to the complaining party.

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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.

Finally, it is noted that in accordance with the provisions of art. 90.3 a) of the LPACAP,

may provisionally suspend the firm resolution in administrative proceedings if the interested party

do states its intention to file a contentious-administrative appeal. If it is-

As the case may be, the interested party must formally communicate this fact in writing

addressed to the Spanish Data Protection Agency, presenting it through the Re-

Electronic registry of the Agency [<https://sedeagpd.gob.es/sede-electronica-web/>], or to

through any of the other registries provided for in art. 16.4 of the aforementioned Law

39/2015, of October 1. You must also transfer the documentation to the Agency

proving the effective filing of the contentious-administrative appeal. if the Agency was not aware of the filing of the contentious-administrative appeal treatment within two months from the day following notification of this resolution, would terminate the precautionary suspension.

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