

□ Procedure No.: PS/00055/2020

938-300320

## RESOLUTION OF PUNISHMENT PROCEDURE

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

### FACTS

FIRST: Don A.A.A. (\*hereinafter, the claimant) dated October 2, 2019

filed a claim with the Spanish Data Protection Agency. The

claim is directed against SUSANA PALMA ORTODONCIA S.L. with NIF  
B13467626 (hereinafter, the claimed).

The grounds on which the claim is based are "installation of a  
video-surveillance cameras" with presumed orientation towards public space.

Together with the claim, it provides documentary evidence (Annex I) that proves the  
presence of the devices on the facade of the establishment.

SECOND: In view of the facts denounced in the claim and the documents  
data provided by the claimant, the Subdirector General for Data Inspection pro-  
vided to carry out preliminary investigation actions for the clarification  
of the facts in question, by virtue of the powers of investigation granted to the  
control authorities in article 57.1 of Regulation (EU) 2016/679 (Regulation  
General Data Protection, hereinafter RGPD), and in accordance with the provisions  
in Title VII, Chapter I, Second Section, of Organic Law 3/2018, of 5  
December, of Protection of Personal Data and guarantee of digital rights (in  
hereinafter LOPDGDD).

As a result of the research actions carried out, it is confirmed  
that the data controller is the claimed party.

THIRD: On 11/04/19, the claim is TRANSFERRED to the party

denounced, so that he could allege in law what he deemed appropriate, not receiving any response in this Agency.

FOURTH: On June 8, 2020, 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.

FIFTH: On 07/10/20, this Agency received a written statement of allegations from the defendant, stating the following:

-The installation of the cameras was entrusted to an external company as a result of the acts of vandalism suffered against the facade and door of the establishment.

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-The installation company certifies the legality of the installation in terms of data protection by applying security masks to the recordings so that the data collected are "adequate, relevant and limited" (Certification is attached as Doc. No. 1).

-The facility has sufficient signage indicating the purposes and the person responsible for processing personal data.

Together with the allegations, it provides a Certificate issued by the installation company Rentavisión S.L that certifies the legality of the system in the terms set forth (Doc. evidence 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 10/02/19, this Agency received a claim from the complainant for

through which he conveys the following suspicions:

“installation of a video-surveillance camera system” with alleged

orientation towards public space” (folio nº 1).

Second. The team is accredited as the main person responsible for the installation.

of Control Rentavisión S. L, who is responsible for the installation of a system of

video surveillance.

Third. According to the defendant, the establishment has the signage

enough informing that it is a video-monitored area.

Fourth. The installed cameras have a privacy mask, collecting the

exterior cameras exclusive images of the facade of the establishment that

manager (Proof document No. 1).

Fifth. All recordings made by the cameras are deleted

automatically in a period of 20 days.

## FOUNDATIONS OF LAW

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By virtue of the powers that article 58.2 of the RGPD recognizes to each authori-

control, and according to the provisions of articles 47 and 48 of the LOPDGDD, the Di-

rector of the Spanish Agency for Data Protection is competent to initiate and

to solve this procedure.

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## II

In the present case, the claim dated 10/02/19 is examined by me-

of which the complainant reports as the main fact the following:

“installation of a video-surveillance camera system” with alleged orientation towards public space.

According to the complainant's criteria, they could be poorly oriented, consider that they can obtain disproportionate images of public space without just cause.

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 more installed 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 sign informative, indicating the purposes and responsible for the treatment in your case of the data of a personal nature.

In any case, the cameras should preferably be oriented towards the private space, avoiding intimidating neighboring neighbors with this type of device, as well as control their transit areas without just cause.

With this type of device it is also not possible to obtain image(s) of space public service, as this is the exclusive competence of the Security Forces and Corps of the State.

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

It should preferably be oriented towards private space, since it is

considers that this type of device may affect the privacy of third parties, which they are intimidated by it in the belief of being permanently recorded tea.

III

In accordance with the available evidence, it was considered that the claimed (a) had a video-surveillance system that could be misguided ted to public space.

The known facts could constitute an infraction, attributable to the claimed, for violation of article 5.1 c) RGD.

The art. 83.5 RGD provides the following: "Infringements of the following provisions will be sanctioned, in accordance with section 2, with administrative fines of 20

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EUR 000,000 maximum or, in the case of a company, an equivalent amount.

to a maximum of 4% of the total global annual turnover of the financial year

above, opting for the highest amount:

a)

the basic principles for the treatment, including the conditions for the consent under articles 5, 6, 7 and 9;

For the party denounced, in a letter dated 07/10/20, it is stated that it has

of a video-surveillance system for reasons of security of the establishment, when

have been the same object of vandalism attacks, having the chambers of the mas-

timely privacy faces.

The establishment has an informative poster(s) indicating the person in charge of the treatment, to which you can go in case of exercise of rights (articles 15-22 GDPR).

It should be remembered that "the data that is subject to treatment through the vi-surveillance will be treated for the purpose that has motivated the installation of the same. and that is linked to guaranteeing the safety of people, goods and installations. nes".

In such a way that the cameras obtain images of an area proportional to the facade of the establishment that runs what is essential for the safety of the same.

#### IV

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 punisher and must 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

contradictory procedure 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).

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The mere appreciation of the cameras does not imply that they obtain images of public space, as they are equipped with privacy masks that limit the recording area to what is necessary to fulfill its purpose of protecting the establishment.

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In accordance with the foregoing, it can be concluded that the denounced system does not infringe the current regulations on data protection, which is why it is appropriate to order file the FILE of this procedure.

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 will be no accredited the commission of any administrative infraction.

SECOND: NOTIFY this resolution to SUSANA PALMA ORTHODONCIA SL and INFORM the complainant Mr. A.A.A.

In accordance with the provisions of article 50 of the LOPDGDD, the

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 period of

month 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

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