

□ Procedure No.: PS/00205/2020

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 July 1, 2020

filed a claim with the Spanish Data Protection Agency. The

claim is directed against B.B.B. (10 DOWING STREET, IRISH PUB) with NIF

***NIF.1 (hereinafter, the claimed one). The grounds on which the claim is based are

“presence of two cameras outside the establishment towards public space without
just cause.”

Together with the claim, it provides documentary evidence (Annex I) that proves what
complaint, with the presence of two cameras to the outside.

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-

yielded 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

ed 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 07/06/20, the Preliminary Actions Report is prepared.

tracks with reference number E/07273/23019.

The background information is the following:

Within the admission file E/05003/2019, an attempt is made to transfer the re-claim on two occasions resulting in both notifications being returned dated 4 June and June 20, 2019, as they have not been collected from the post office.

Dated June 30, 2019, within the admission procedure E/05003/2019, it is agreed to open these investigation actions in relation with the claim filed by the claimant. The claimant is notified on the date of July 9, 2019.

☐ Made a request for collaboration to the State Administration Agency

to find out the CIF under which the claimed pub operates, dated

On August 5, 2019, a communication is received in this Agency indicating

www.aepd.es

sedeagpd.gob.es

C/ Jorge Juan, 6

28001 – Madrid

2/6

that it has not been possible to obtain the required data with the information provided.

gives.

☐ On October 15, 2019, notification of the request for information was made.

information about the person in charge of the pub claimed from the Municipal Police of Valladolid without until the date of preparation of this report has received response in this Agency.

☐ A request is made for information on the installation of video surveillance.

cia addressed to the claimed being returned on June 23, 2020

□ Made a new request for information about the person in charge of the pub

appealed to the City Council of Valladolid, dated July 1, 2020, received

be in this Agency, with registration number 022557/2020, reply sent

given by that City Council informing that the record is recorded on the date

of October 16, 2009 of the change of ownership of the opening license to

D.B.B.B. with NIF ***NIF.1 and domiciled at ***ADDRESS.1

FOURTH: On July 20, 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 08/22/20, this AEPD received a written statement of allegations from the party

reported stating the following:

“The current installation of a security camera is recognized

anchored to the facade of the premises owned by the appearing party in which it is located

set up a hospitality business called the Irish Pub 10 Downing Street.

These chambers are simple ORNAMENTS, fulfilling a fusion only

dissuasive to prevent theft and acts of vandalism, as they have been taking place

recently and have motivated the need to undertake the cleaning of the façade.

...the initiation of any sanctioning file is not appropriate since the

fact sanctioned, not being able to constitute an infraction, nor any sanction (...)

As we said, this part of Mr.

Sesma, ignoring this part of the specific facts that were the subject of the complaint, which

they could be combated if they were known (...).

It is evident the animosity and spurious spirit of the unjustified denunciation

submitted to the Spanish Agency for Data Protection by the aforementioned

complainant.

For all the above, I REQUEST that this document be considered presented (...)

and Archive of this procedure as I so request and sign (...)."

In view of everything that has been done, by the Spanish Protection Agency

Data in this procedure are considered the following:

PROVEN FACTS

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

3/6

First. On 07/01/20, this AEPD received a claim through which

The following is transferred as the main fact:

"presence of two cameras outside the establishment towards space

public without just cause.

Second. It is identified as the main responsible B.B.B., which acknowledges being

responsible for the installation for security reasons of the hotel establishment

which runs

Third. The respondent informs that the cameras are dissuasive, in such a way that

They are operational, not processing any personal data.

Fourth. It is proven that the establishment 10 Downing Street has suffered various

acts of vandalism, providing a copy of the invoice for its repair (Doc.

evidence no. 1).

FOUNDATIONS OF LAW

Yo

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.

II

Before going into the substance of the matter, it is convenient to analyze the request for NULI-DAD of the file requested by the accused, stating the lack of referral of the complaint.

It should be noted that the facts object of the complaint were widely exposed in the Start Agreement notified in a timely manner to the same, as evidenced in the computer system of this Agency.

Similarly, there is no evidence that the defendant has requested any copy of the integrated documentation in this procedure, under the terms of article 53.1 a) "in fine" of Law 39/2015 (October 1).

Therefore, no right has been affected, even less the right to defence, since he has been able to fully understand the facts imputed to him and defend of the same, which is why it is appropriate to reject your request for Nullity of the present performances.

III

In the present case, we proceed to examine the claim dated 07/01/20 by means of which the following is transferred as the main fact:

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

4/6

"The owner of the business called "10 Downing Street", residing at Calle Verbena 1 of Valladolid, has placed two video surveillance cameras outside the

their establishment, which, due to their location, would be capturing images of spaces public services" (folio nº 1).

The "facts" are specified in the installation of a video-surveillance system that controls part of public space without just cause, if the complainant alone accredits the presence of the exterior cameras.

It should be noted that individuals can install video surveillance cameras, although they are responsible that they comply with current legislation.

With this type of device, the privacy of third parties cannot be affected, as close neighbors who can be intimidated by them.

The facts described above may affect the content of art.5.1 c) RGPD. "Personal data will be:

c) adequate, pertinent and limited to what is necessary in relation to the purposes for those that are processed ("data minimization").

Video surveillance cameras cannot obtain images of public space. outside the cases permitted by law, and must be oriented towards the principles pale entrances of the establishment to be protected.

Article 22 section 2 of the LOPDGDD (Lo 3/2018, December 5) provides the

Next:

"Images of public roads may only be captured to the extent that it is essential for the purpose mentioned in the previous section.

Security cameras installed in private spaces will not be able to obtain images of public spaces, the security function of public spaces corresponds exclusively to the State Security Forces and Bodies, not to individuals or private security companies.

III

On 08/22/20, this Agency received a written statement of allegations from the party

denounced, stating the “non-operative” nature of the camera that is the object of the complaint, reason why no personal "data processing" is carried out.

Individuals can install “dummy” cameras as long as they are facing preferentially towards their private space, not affecting the right to intimidation of third parties who may be intimidated by them, in the belief that they are permanently observed.

The evidence provided confirms what was stated by the defendant, so that no personal "data processing" has taken place, fulfilling a

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

5/6

cameras installed for the protection of the establishment are of a dissuasive nature.

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).

Notwithstanding the foregoing, the recent pronouncement of the STS, Chamber Civil Law, section 1, of November 7, 2019, No. 600/2019, rec. 5187/2017, EDJ 2019/724119, where the presence of this type of device that may affect the rights of third parties without just cause may have consequences in other areas. bits of law.

IV

Based on the foregoing, it can be concluded that the reported device is not deals with any personal data, as it is not operational, which is why there is no If any administrative infraction has been verified, it is appropriate to order the Archive of this penalty procedure.

The rest of the issues do not fall within the competence framework of this Agency, so no statement will be made in this regard.

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 evidence gives the commission of administrative infraction according to the facts object of transfer to this Agency.

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

6/6

SECOND: NOTIFY this resolution to Don B.B.B. (10 DOWING STREET,
IRISH PUB) and REPORT the result of the proceedings to 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 LPA-

CAP, the interested parties may optionally file an appeal for reconsideration before

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

counting from the day following the notification of this resolution or directly

contentious-administrative case before the Contentious-administrative Chamber of the Au-

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 Jurisdiction

Contentious-administrative diction, within a period of two months from the day following

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

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

