

□ Procedure No.: PS/00095/2021

RESOLUTION OF PUNISHMENT PROCEDURE

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

BACKGROUND

FIRST: On January 27, 2021, it had entry in this Spanish Agency of
Data Protection a document presented by A.A.A. (hereinafter referred to as the claimant),
through which he makes a claim against B.B.B. with NIF ***NIF.1 (hereinafter, the
claimed), for the installation of a video surveillance system in ***ADDRESS.1,
There are indications of a possible breach of the provisions of the regulations of
Personal data protection.

The claimant states that his neighbor, the respondent, has security cameras installed
video surveillance oriented towards your property.

Provides a copy of some police actions of the Local Police of the City Council of
***LOCATION.1 of September 29, 2020 where it is stated that, according to the
claimed, "(...) these are surveillance cameras, which have all the
documentation in order, stating that (...) a company will appear at the place
to proceed to install more. Upon being required to show such documentation
to the agents, he states that he does not know where he has it, that he cannot find it but that at
The next day when the new ones are installed, he will keep all the documentation."

SECOND: These facts have already been the subject of a claim before this Agency through
of the City Council of ***LOCALIDAD.1, processing file E/03389/2019.

From this Agency the requested requirements were communicated to carry out
carry out personal data processing, indicating that, in the event of not adopting
the necessary measures to comply with those requirements, would incur in an infringement

of the provisions of the data protection regulations, which could lead to the start of the corresponding investigative and sanctioning actions.

In response, the respondent submitted a brief stating that “(...) the

The only outside cameras that record are those installed by contract with the

Security company Securitas Direct Spain SAU (...)

The aforementioned cameras only record if an intruder is detected in your home, being in

at all times the data controller and manager of these Securitas images

Direct España SAU and not the undersigned.

On the other hand and for greater abundance, as has been indicated only and exclusively

they record images, if you access the interior of their property and they do not record in a

I continue to passers-by or strollers.”

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2/7

Indicates that the claim is the result of a neighborhood conflict.

THIRD: The claim was admitted for processing by means of a resolution dated 23

February 2021.

FOURTH: On April 28, 2021, 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 May 20, 2021, this Agency entered the

allegations presented by the respondent, which, in short, indicates that he is not the

responsible for the cameras that are the object of this claim, that the person responsible is

the installation company.

SIXTH: On July 21, 2021, the instructor of the procedure agreed to the opening of a period of practice of tests, taking for reproduced, for purposes evidence of the claim filed by the claimant and its documentation, the documents obtained and generated by the Subdirector General for Inspection of Data and allegations presented by the respondent.

SEVENTH: On July 23, 2021, a resolution proposal was formulated, in which that, in accordance with the evidence available at this sanctioning procedure, it was considered that the party claimed had arranged several badly oriented video surveillance cameras, which capture images not only of their property, but also that of the claimant.

Likewise, no photographs or any evidence had been provided that would allow an assessment of the area that is captured with each of the installed cameras.

Based on the foregoing, it was appropriate to propose imposing on the claimed party the sanction of €1,000 (Thousand Euros), for the alleged infringement of article 5.1.c) of the RGPD, and that, by protection of the provisions of article 58.2.d) of the RGPD, it was proposed that it be ordered to the party claimed that, within one month from the date on which the resolution in that it so agrees to be notified, proceed to the withdrawal of the camera that records the property of the claimant, or to the reorientation of the same by reducing the angle uptake.

In this proposal, a period of 10 days was granted so that the person claimed could allege what he considers in his defense, as well as present the documents and information that it considers pertinent, in accordance with article 89.2 of the Law 39/2015, of October 1, of the Common Administrative Procedure of the Public Administrations (hereinafter, LPACAP).

EIGHTH: The respondent, in his brief of allegations to the proposed resolution,

reiterates, in short, that the responsible party is the installation company.

It has provided a copy of the contract with said company in which, in one of the clauses, indicates that:

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3/7

“f) If applicable, the activation of the services linked to the system or elements of

video surveillance will occur through any detection element installed at the

CLIENT, SECURITAS DIRECT will process the technical alarm signal and will record the

images and/or sounds received in local mode, as established in the regulations

Private Security and Data Protection applicable.

Therefore, everything related to data protection and regulations in relation to

Private security, is correspondence to the security company SECURITAS

DIRECT ESPAÑA SAU.”

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 January 27, 2021, it entered this Spanish Agency for

Data Protection a letter that shows that the claimed party has installed

a video surveillance system oriented towards the claimant's property.

A copy of some police actions of the Local Police of the

City Council of ***LOCALIDAD.1 of September 29, 2020 where it is stated that,

according to the respondent, “(...) these are surveillance cameras, which have all the

documentation in order, stating that (...) a company will appear at the place

to proceed to install more. Upon being required to show such documentation

to the agents, he states that he does not know where he has it, that he cannot find it but that at

The next day when the new ones are installed, he will keep all the documentation.”

SECOND: The respondent, in his pleadings brief, has indicated that he is not the responsible for these cameras.

To prove this circumstance, he has provided a copy of the contract with the company installer Securitas Direct España SAU in which, in one of the clauses, it is indicated that:

“f) If applicable, the activation of the services linked to the system or elements of

video surveillance will occur through any detection element installed at the

CLIENT, SECURITAS DIRECT will process the technical alarm signal and will record the images and/or sounds received in local mode, as established in the regulations

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4/7

FOUNDATIONS OF LAW

I

By virtue of the powers that article 58.2 of the RGPD recognizes to each authority of control, and as established in arts. 47 and 48.1 of the LOPDGDD, the Director of

The Spanish Agency for Data Protection is competent to resolve this

process.

II

On January 27, 2021, it had entry in this Spanish Protection Agency

Data claim for the installation of a video surveillance system oriented to the claimant's property.

Article 5.1 c) RGPD provides that 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 comply with current legislation.

The cameras must be oriented towards the particular space, avoiding intimidating neighboring neighbors with this type of device, as well as control transit areas of them without just cause.

On the part of individuals, it is not possible to install imaging devices of public space, outside the cases allowed in the regulations, as this is exclusive jurisdiction of the State Security Forces and Bodies.

The treatment of images through a video surveillance system, to be

In accordance with current regulations, it must meet the following requirements:

- Respect the principle of proportionality.
- When the system is connected to an alarm center, it can only be installed by a private security company that meets the requirements contemplated in article 5 of Law 5/2014 on Private Security, of April 4.
- The video cameras will not be able to capture images of people who are outside the private space where the video surveillance system is installed, since the treatment of images in public places can only be carried out, unless Government authorization concurs, by the Security Forces and Bodies. Either

spaces owned by third parties may be captured or recorded without the consent of their owners, or, where appropriate, of the people who are in them.

This rule admits some exceptions since, on some occasions, for the protection of private spaces, where cameras have been installed on facades or inside, it may be necessary to guarantee the security purpose the recording of a portion of public road. That is, cameras and video cameras installed for the purpose of

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5/7

security will not be able to obtain images of public roads unless it is essential for said purpose, or it is impossible to avoid it due to the location of those and, extraordinarily, the minimum space for said purpose. Therefore, the cameras could exceptionally capture the portion minimally necessary for the intended security purpose.

- The duty to inform those affected provided for in articles 12 and 13 of the RGPD and 22.4 of the LOPDGDD.

Specifically, at least one badge must be placed in video-monitored areas. informative located in a sufficiently visible place, both in open spaces and closed, which will identify, at least, the existence of a treatment, the identity of the person in charge and the possibility of exercising the rights foreseen in said precepts. Likewise, the information must be kept available to those affected. to which the aforementioned RGPD refers.

- The person in charge must keep a record of treatment activities carried out under its responsibility, including the information to which it makes

reference article 30.1 of the RGPD.

- Installed cameras cannot get images from third-party proprietary space

and/or public space without duly accredited justified cause, nor can they affect

the privacy of passers-by who move freely through the area. not allowed, for

Therefore, the placement of cameras towards the private property of neighbors with the purpose

to intimidate them or affect their privacy without just cause.

- In no case will the use of surveillance practices beyond the environment be admitted.

object of the installation and in particular, not being able to affect public spaces

surrounding buildings, adjoining buildings and vehicles other than those accessing the space

guarded.

III

The defendant, in his pleadings brief, has indicated that he is not responsible for

the cameras, and that the cameras only record images if the inside of their

property and not continuously to pedestrians.

To prove this circumstance, he has provided a copy of the contract with the company

installer in which, in one of the clauses, it is indicated that:

“f) If applicable, the activation of the services linked to the system or elements of

video surveillance will occur through any detection element installed at the

CLIENT, SECURITAS DIRECT will process the technical alarm signal and will record the

images and/or sounds received in local mode, as established in the regulations

Private Security and Data Protection applicable.

Therefore, everything related to data protection and regulations in relation to

Private security, is correspondence to the security company SECURITAS

DIRECT ESPAÑA SAU.”

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6/7

IV

In the present case, it is appropriate to analyze the alleged illegality of the installation of a video surveillance system at ***ADDRESS.1.

The proven facts show the existence of a system of video surveillance composed of several cameras whose responsibility is the company installer.

Likewise, it is necessary to take into account the statements of the respondent indicating that the cameras only record if the interior of the property is accessed, not continuously.

v

The principle of the right to the presumption of innocence, recognized as a right fundamental subjective in article 24 of the Spanish Constitution, prevents imposing an administrative sanction when proof of accrediting charge of the facts that motivate the imputation or of the intervention in the themselves of the alleged offender and 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 in the most favorable way for the interested party.

The aforementioned right to the presumption of innocence is also included in a expressed in article 53.2.b) of Law 39/2015, of October 1, on the Procedure Common Administrative of Public Administrations (LPACAP, hereinafter), which establishes that:

"two. In addition to the rights provided for in the previous section, in the case of administrative procedures of a punitive nature, the alleged responsible will have the following rights:

[...]b) To the presumption of non-existence of administrative responsibility while the contrary is proven.”

In relation to this principle, the Constitutional Court in its Judgment 76/1990, of 26 of April, 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 the reproached conduct; that the burden of proof corresponds to the person who accuses, without no one is obliged to prove their own innocence; and that any insufficiency in the result of the tests carried out, freely valued by the sanctioning body, must be translated into an acquittal pronouncement.”

7th

After examining the file as a whole, it has been proven that the person responsible of the video surveillance system that is the object of this sanctioning procedure is not the claimed, but the installation company.

Therefore, according to the above,

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7/7

the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: ORDER the ARCHIVE of these proceedings as there is no accredited the commission of any administrative infraction.

SECOND: NOTIFY this resolution to B.B.B..

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.

Finally, it is pointed out 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 The interested party expresses his intention to file a contentious-administrative appeal.

If this is the case, the interested party must formally communicate this fact by writing addressed to the Spanish Agency for Data Protection, presenting it through Electronic Register of the Agency [<https://sedeagpd.gob.es/sede-electronica-web/>], or through any of the other registers provided for in art. 16.4 of the aforementioned Law 39/2015, of October 1. You must also transfer to the Agency the documentation proving the effective filing of the contentious appeal-administrative. If the Agency was not aware of the filing of the appeal contentious-administrative within a period of two months from the day following the notification of this resolution would end the precautionary suspension.

Sea Spain Marti

Director of the Spanish Data Protection Agency

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