

□ File No.: EXP202206810

RESOLUTION OF SANCTIONING PROCEDURE

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

BACKGROUND

FIRST: D.A.A.A. (hereinafter, the complaining party) dated June 14,
2022 filed a claim with the Spanish Data Protection Agency against
D.B.B.B. with NIF ***NIF.1 (hereinafter, the claimed party), for the installation of
a video surveillance system located at ***ADDRESS.1, ***LOCATION.1,
***PROVINCE.1, there being indications of a possible non-compliance with the provisions of
Article 5.1.c) of Regulation (EU) 2016/679 (General Protection Regulation
of Data, hereinafter, GDPR).

The claiming party states that the claimed party is responsible for a camera
installed on the façade of his home, which is clearly oriented towards a
access square to the houses and storage rooms in the area, said square being
owned by, among others, the complaining party, without the party having been authorized to
claimed to the capture of images of said land.

It provides images of the location of the camera and affected area, and plans of said
zone.

SECOND: In accordance with article 65.4 of Organic Law 3/2018, of 5
December, Protection of Personal Data and guarantee of digital rights (in
hereinafter, LOPDGDD), said claim was transferred to the claimed party,
to proceed with its analysis and inform this Agency within a month,
of the actions carried out to adapt to the requirements established in the
data protection regulations.

The transfer, which was carried out in accordance with the regulations established in Law 39/2015, of October 1, of the Common Administrative Procedure of the Administrations Public (hereinafter, LPACAP), was collected on June 28, 2022 as it appears in the acknowledgment of receipt that is in the file.

Despite having been collected, due to the lack of response, we proceeded to reiterate said transfer, being picked up again, on August 26, 2022, without nor is there evidence that any response has been received by this Agency.

THIRD: On September 14, 2022, in accordance with article 65 of the LOPDGDD, the claim presented by the complaining party was admitted for processing.

FOURTH: On October 31, 2022, the Director of the Spanish Agency for Data Protection agreed to initiate disciplinary proceedings against the claimed party, C / Jorge Juan, 6

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for the alleged infringement of article 5.1.c) of the GDPR, typified in article 83.5 of the GDPR.

FIFTH: Once the aforementioned initiation agreement was notified, the claimed party submitted a written in which, in summary, he stated that at his home he has two cameras installed props as a deterrent, "(...) that this prop camera is one of the Chinese that all it does is turn on a blinking red light and I bought the other one in a Facebook page and all it does is flash a red light and turn on the focus it has (...)"

He provided several photographs of the devices.

After analyzing these photographs, it was observed that, regarding one of them, there had been

provided its description and characteristics, indicating that it is a solar focus in the shape of a security camera.

Regarding the second camera, a photograph had been attached where it appears installed on the façade of the house, but there is no more information about the itself, so it is not possible to assess whether it is simulated or not.

SIXTH: On December 16, 2022, the procedure instructor agreed to the opening of a test practice period, being considered reproduced, for the purposes of evidence the claim filed by the claimant and its documentation, the documents obtained and generated by the Sub-directorate General of Inspection of Data and allegations presented by the defendant.

SEVENTH: On December 21, 2022, a resolution proposal was formulated in which, in accordance with the evidence available in the present disciplinary procedure, it was considered that one of the cameras was simulated, and of the other chamber, insufficient data had not been provided to assess their characteristics, and therefore, it was proposed

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regarding the simulated camera, that the claim filed be filed for a violation of article 5.1.c) of the GDPR, typified in article 83.5 of the GDPR, with respect to the other chamber, which is sanctioned with a fine of €300 (three hundred euros) for a violation of article 5.1.c) of the GDPR, typified in Article 83.5 of the GDPR.

In this proposal, a period of 10 days was granted for the claimed party to could allege whatever it considers in its defense as well as present the documents and information that it considers pertinent, in accordance with article 89.2 of the

LPACAP.

The complaining party reiterates that there is no security camera at his home, providing photographs of the second of the installed devices.

In view of all the proceedings, by the Spanish Agency for Data Protection

In this proceeding, the following are considered proven facts:

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PROVEN FACTS

FIRST: On June 14, 2022, he entered this Spanish Agency for

Data Protection a claim that shows that the claimed party

You have a video surveillance system installed on the façade of your home that is clearly oriented to a small access square to the houses and storage rooms of the area, said place being the property of, among others, the claiming party, without has authorized the claimed party to capture images of said land

Provide photo report.

SECOND: Existence of simulated cameras in ***ADDRESS.1, ***LOCATION.1, ***PROVINCE.1.

THIRD: The claimed party has provided various photographs of the devices, as well as as its characteristics.

FUNDAMENTALS OF LAW

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In accordance with the powers that article 58.2 of the GDPR grants to each authority of control and as established in articles 47 and 48.1 of the LOPDGDD, it is

competent to initiate and resolve this procedure the Director of the Agency

Spanish Data Protection.

Likewise, article 63.2 of the LOPDGDD determines that: "Procedures processed by the Spanish Data Protection Agency will be governed by the provisions in Regulation (EU) 2016/679, in this organic law, by the provisions regulations dictated in its development and, insofar as they do not contradict them, with character subsidiary, by the general rules on administrative procedures."

II

On June 14, 2022, he entered this Spanish Protection Agency

Data claim for the installation of a video surveillance system with cameras capable of capturing the public thoroughfare.

Article 5.1 c) of the GDPR provides that personal data shall be "adequate, pertinent 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 should be oriented towards the particular space, avoiding intimidating neighboring neighbors with this type of device, as well as control transit areas of the same without just cause.

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On the part of individuals, it is not possible to install imaging devices of public space, outside the cases allowed by the regulations, as this is

exclusive competence 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 qualified private security company

contemplated in article 5 of Law 5/2014 on Private Security, of April 4.

- The camcorders will not be able to capture images of the people who are

outside the private space where the video surveillance system is installed, since

Image processing in public places can only be performed, unless

there is government authorization, by the Security Forces and Bodies. Neither

spaces owned by third parties may be captured or recorded without the consent of

their owners, or, where appropriate, 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 the public road. That is, cameras and camcorders installed for the purpose of

security will not be able to obtain images of the public thoroughfare unless it is

essential for said purpose, or it is impossible to avoid it due to the location of the

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 GDPR and 22.4 of the LOPDGDD.

Specifically, in the video-surveilled areas, at least one badge must be placed

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 responsible and the possibility of exercising the rights provided for in said precepts. Likewise, the information must be kept available to those affected. to which the aforementioned GDPR refers.

- The controller must keep a record of processing activities carried out under his responsibility in which the information to which he makes reference article 30.1 of the GDPR.

- 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. It is not allowed, for therefore, the placement of cameras towards the private property of neighbors with the purpose of to intimidate them or affect their private sphere without just cause.

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- In no case will the use of surveillance practices be accepted beyond the environment object of the installation and in particular, not being able to affect public spaces surroundings, adjoining buildings and vehicles other than those that access the space guarded.

II

The claimed party, in its pleadings both to the start-up agreement and to the proposed resolution, has stated that what is installed are cameras simulated.

He has contributed several photographs of the devices, as well as their characteristics.

IV.

In the present case, it is necessary to analyze the presumed illegality of the installation of a video surveillance system in ***ADDRESS.1, ***LOCATION.1, ***PROVINCE.1.

There is insufficient evidence of the existence of a video surveillance system that, with the documentation provided by the defendant and the statements made on the falsity of the cameras, by virtue of the principle of presumption of innocence, The defendant cannot be penalized.

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 charge accrediting the facts that motivate the imputation or the intervention in the of the alleged offender and applying the principle "in dubio pro reo" in case of doubt regarding a specific and determined fact, which in any case obliges 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 the LPACAP, which establishes that:

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

[...]b) To the presumption of non-existence of administrative responsibility until proven otherwise."

In relation to this principle, the Constitutional Court in its Judgment 76/1990, of 26 April, considers that the right to the presumption of innocence entails: "that the sanction is based on acts or means proving the charge or incriminating the reproached conduct; that the burden of proof corresponds to the accuser, without

no one is obliged to prove their own innocence; and that any insufficiency in the

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result of the tests carried out, freely assessed by the sanctioning body,
must be translated into an acquittal.”

VII

Examining the file as a whole, the existence of

No video surveillance system.

Therefore, according to the above,

the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: TO ORDER the ARCHIVE of the present proceedings as there are no
accredited the commission of any administrative infraction.

SECOND: NOTIFY this resolution to D. B.B.B. with NIF ***NIF.1.

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 article 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 reversal before the

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

count 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 for in article 46.1 of the referred Law.

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

The firm resolution may be temporarily suspended 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 through

writing addressed to the Spanish Data Protection Agency, presenting it through

of the Electronic Registry of the Agency [[https://sedeagpd.gob.es/sede-electronica-](https://sedeagpd.gob.es/sede-electronica-web/)

web/], or 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 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 proceedings within a period of two months from the day following the

Notification of this resolution would terminate the precautionary suspension.

Mar Spain Marti

Director of the Spanish Data Protection Agency

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