

□ Procedure No.: PS/00217/2020

## RESOLUTION OF PUNISHMENT PROCEDURE

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

### FACTS

FIRST: CIVIL GUARD - POST OF CARBONERO EL MAYOR (\*hereinafter,  
the claimant) dated July 1, 2020 notified the Spanish Agency of  
Data Protection Act (Complaint) dated 10/19/19. The claim is directed  
against the neighbor of the locality A.A.A. with NIF \*\*\*NIF.1 (hereinafter, the claimed one).

The reasons on which the claim is based are installation of video cameras-  
Surveillance towards public space, without just cause.

“I also invite the Agents to go inside the house where they could  
view the monitor, allowing photography of said monitor” (folio nº 1).

“In addition, he told the acting agents that he would only change the orientation to  
instance of the competent judicial authority. As of 07/19/20 the cameras are still on the  
same position as at the time of the first Complaint (...), so it is

I manifest that the accused has not adopted any corrective measure (...)” (folio no.  
1).

Together with the claim, it provides documentary evidence that proves the presence of  
the cameras, as well as the verification of the orientation and recording of public roads by  
the same.

SECOND: On December 3, 2020, the Director of the Spanish Agency  
of Data Protection agreed to initiate a sanctioning procedure against the claimed, for the  
alleged infringement of Article 5.1.c) of the RGPD, typified in Article 83.5 of the  
GDPR.

THIRD: On 04/01/1 a written statement of allegations is received from the party complained against stated the following:

“It is evident a clear lack of professionalism and a flagrant ignorance

by the Agents of the video-surveillance systems (...)

Immediately received your request, I proceed to contact

the installation company of the aforementioned video-surveillance system to adopt the measures

You give correctors that infer me. These measures consist of masking the cameras

CCTV cameras at the request of the AEPD as can be seen in the part of

intervention dated 12/20/19.

The foregoing shows that I comply with your requirement as soon as I am

ordered to do so, so the corrective measures have been applied since 12/20/19.

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The agents appear at my address on 12/23/20 and after being invited to

enter and check the monitor take note I understand to issue Report on it and

be elevated to the AEPD.

That the photo of the monitor that the Agents take is the one that I attach as Documentation.

Evidence document No. 4, it states that since 12/20/19 the treatment of

The images are in accordance with the regulations in force.

For all of which, it requests that having presented this document (...)

the definitive FILE is agreed by means of the declaration of non-existence of infringement

tion or responsibility.

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

In this proceeding, the following are considered proven facts:

FOURTH: On 01/08/21, this Agency received a Civil Guard Report (Command-dance Segovia) noting the following.

“At 12:00 p.m. on Tuesday, 12/22/20, the person denounced Mr. A.A.A., Presents a letter at the same Civil Guard post, in which a copy is attached, requesting that they go to his home to verify compliance with the requirements wishes that had been made and the date of their fulfillment.

The claimant submits an official letter from the AEPD, of which is attached copia, reference E/11651/2019 dated 12/11/19, in which he was warned that if he did not adopted the necessary measures to comply with the legally established requirements. two, it would incur an infraction”

“For all these reasons, the acting Civil Guard Agents consider that, in terms of regarding the treatment of the captured images, it would not be committing an infraction tion of the current legislation”.

## FACTS

First. On 07/01/20, this Agency received a new Complaint from the Guard Civil (Segovia Command) through which the installation of cameras is transferred of video-surveillance towards public space, without just cause.

Second. It is identified as the main responsible Mr. A.A.A., who denies the facts imputed to him.

Third. It is accredited that this Agency, within the framework of E/11651/2019, was informed that the installed cameras had to adapt to the regulations in force, informed warning him of the consequences of not taking any action.

Fourth. It is proven that the respondent privately adopted corrective measures in relation to the exterior cameras, proceeding to mask them on the date 12/20/19.

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Fifth. The Civil Guard General Directorate (Comandancia Segovia) in Report of

date 12/23/20 plasma the following:

“For all these reasons, the acting Civil Guard Agents consider that, in terms of

regarding the treatment of the captured images, it would not be committing an infraction

tion of the current legislation”.

## FOUNDATIONS OF LAW

Yo

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

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

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

solve this procedure.

II

In the present case, the claim dated 07/01/20 is examined by me-

from which the complainant transfers the presence of a video-surveillance system

lance that does not conform to the regulations in force, installed by the accused with guidance

lightening towards the public transit zone (folio nº 1).

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 installed

felled 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 informative sign.

tive, indicating the purposes and 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 of the same without just cause.

With this type of device it is not possible to obtain image(s) of public space either. co, as this is the exclusive competence of the State Security Forces and Bodies ted.

It should be remembered that even in the case of 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, that they are intimated by it in the belief of being the subject 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, outside the cases allowed in the regulations.

III

In the present case, the respondent proceeded at the request of this Agency dated 12/11/19 to adopt the necessary corrective measures to avoid the capture of es-public space, specifically adapted the system by masking the necessities

Cesarias, the measures adopted being dated 12/20/19.

Subsequently, on 07/01/20, this Agency receives a new Complaint of the Security Forces and Bodies stating that the installed system “is oriented in the same way as on the date the first complaint was made, considering that no corrective action has been taken by the defendant (...)”.

Article 62 of Law 39/215 (October 1) provides the following:

“Denunciation is understood as the act by which any person, in compliance with compliance or not of a legal obligation, informs an administrative body of the existence of a certain fact that could justify the initiation of ex officio of an administrative procedure

To the above, add that no minimum verification activity is carried out.

recording monitor, so the work of the acting force was limited to re-

Note that the external cameras with the naked eye continued in the same position.

It should be noted that the respondent did not legally notify this Agency either.

compliance with the corrective measures, nor did he inform the acting force.

of the locality, limiting itself to privately adopting the corrective measures through

See your installation company.

In such a way that the computer system of this organization was checked,

found that no corrective measure had been communicated, proceeding to give the

legal course to the new Complaint of the facts object of transfer of the Forces and

State Security Corps.

As a result of the notification of the Initiation Agreement of this sanctioning procedure,

tioner, the claimed now requires if the acting force so that it appears in

your home and check the monitor where you get image(s) from the cameras

exteriors.

On 01/08/21, a Report was received from the Civil Guard General Directorate (Co-

mandate Segovia) where what is stated by the defendant is corroborated,  
taking the displacement of Agents of the Civil Guard to the domicile of the same, to  
Check the monitor you own on the spot.

In the Report, the following is expressed in the last paragraph: "For all these reasons, the  
Agents of the Civil Guard acting consider that, in relation to the treatment

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of the captured images, there would be no infringement of the current Legislation.  
people".

IV

The principle of presumption of innocence prevents imputing an administrative offense  
when proof of charge accrediting the criminals has not been obtained and verified.  
facts that motivate the imputation or the intervention in them of the presumed infraction  
thor. 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 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 sanctioning system 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 test game and to a procedure contradictory environment 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).

Article 53 section 2 of Law 39/2015 (October 1) provides: "In addition to the rights provided for in the previous section, in the case of administrative procedures sanctions of a punitive nature, the alleged perpetrators will have the following

Rights:

b) To the presumption of non-existence of administrative responsibility while the contrary is not proven".

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In accordance with the allegations set forth and the evidence provided, it is found that The defendant had the system denounced in legal form at the time of the events. chos, reason why it is appropriate to order the Archive of these proceedings, to the

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no infraction is proven and the same have been clarified, more beyond any other consideration.

Therefore, in accordance with the applicable legislation, the Director of the Spanish Agency that of Data Protection RESOLVES:

FIRST: ORDER the FILE of this procedure as there is no evidence gives the commission of the administrative offense subject to transfer.

SECOND: NOTIFY this resolution to A.A.A. and REPORT the result of the proceedings to the claimant CIVIL GUARD - POSITION OF CARBONERO THE GREATEST.

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 resents may optionally file an appeal for reconsideration before the Director of the Spanish Agency for Data Protection within a month from the date of the day following the notification of this resolution or directly contentious appeal before the Contentious-Administrative Chamber of the National High Court, in accordance with the provisions of article 25 and section 5 of the additional provision Final fourth of Law 29/1998, of July 13, regulating the Contentious Jurisdiction-administrative, within a period of two months from the day following the notification of this act, as provided for in article 46.1 of the aforementioned Law.

Sea Spain Marti

Director of the Spanish Data Protection Agency

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