

Procedure No.: PS/00347/2018

## RESOLUTION OF PUNISHMENT PROCEDURE

From the procedure instructed by the Spanish Data Protection Agency before Mr.

A.A.A., by virtue of a claim filed by D. B.B.B. (hereinafter, the claimant) and based on the following:

### BACKGROUND

FIRST: On 05/21/2018, the Spanish Agency for the Protection of Data written by D. B.B.B. (hereinafter the complainant), in which he denounces Mr. A.A.A. (hereinafter the defendant), by means of which he states the existence of installation of a video surveillance camera in the defendant's home focusing on towards the complainant's home, violating the right to privacy.

Along with your written complaint, provide a photograph of the location of the camera.

SECOND: The defendant was required by this Agency to certify in the reference file E/03260/2018, the documentation proving that the installation of the camera was in accordance with data protection regulations and that was properly signposted.

The defendant in writing of allegations of 08/10/2018 replied to this body pointing out that the requirement produced a great defenselessness to the not knowing who denounced him; that it was his wife who filed a complaint with the Civil Guard against the complainant for alleged criminal activities and were the numbers of the aforementioned body which advised the installation of the video surveillance focusing exclusively on your own property and not affecting the neighbor's

On 08/30/2018, a new letter was received from the complainant in which

states that the defendant has proceeded through the company Prosegur to the placement of video surveillance system focusing on your home violating the right to personal and family privacy and to one's own image, attaching photographic documentation of the alleged installation.

The denounced at the request of the Agency and in writing of 10/24/2018 has declared that there is no camera installed inside your home focusing outwards, so there is no image registration.

THIRD: On 12/03/2018, the Director of the Spanish Protection Agency of Data agreed to initiate a sanctioning procedure for the presumed infraction of the article 5.1 c) of the RGPD, in accordance with the provisions of article 58 section 2 of the same norm, considering that the sanction that could correspond would be WARNING, without prejudice to what may result from the investigation.

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FOURTH: Diligence of the instructor of the procedure is recorded in which it is stated that the person claimed by phone call in January states that in the answer to the request for information from the Agency dated 10/24/2018, it stated that it did not there was a camera installed in his house focusing towards the outside, which did not there was a record of images, having provided all the supporting documentation.

Of the actions carried out in this proceeding, there have been accredited the following proven facts:

#### PROVEN FACTS

FIRST: On 05/21/2018 it has entry in the Spanish Agency for the Protection of

Written data of the claimant declaring the existence of a security camera installation video surveillance in the defendant's home focusing on his own, violating the Right to privacy.

SECOND: The respondent in writing on 10/24/2018 has set aside a statement in which points out that he currently does not have a camera installed in his home focusing outwards, so you cannot provide photography as there is no record of pictures.

Provides a photographic report on a flash drive with a photograph of the rear facade of his house where there was previously a camera (which according to the respondent did not have operation and whose intention was to persuade his neighbor); it is also observed installed camera oriented to your property and the signaling sign.

## FOUNDATIONS OF LAW

Yo

By virtue of the powers that article 58.2 of the RGPD recognizes to each control authority, and as established in art. 47 of the Organic Law 3/2018, of December 5, Protection of Personal Data and guarantee of rights (hereinafter LOPDGDD), the Director of the Spanish Agency for Data Protection is competent to resolve this procedure.

The third transitory provision of the new LOPDGDD establishes: "Regime transitory procedures:

II

1. The procedures already initiated at the entry into force of this organic law shall be shall be governed by the above regulations, unless this organic law contains provisions more favorable for the interested party.

Article 63.2 of the LOPDGDD indicates: "The procedures processed by the Spanish Agency for Data Protection will be governed by the provisions of the

Regulation (EU) 2016/679, in this organic law, by the provisions

regulations issued in its development and, as long as they do not contradict them, with a subsidiary, by the general rules on administrative procedures.”

Article 64.2 of the LOPDGDD provides: "The procedure will have a

maximum duration of nine months from the date of the initial agreement or, in

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your case, of the project of initiation agreement. After this period, your expiration and, consequently, the filing of proceedings.”

It is necessary to point out some of the requirements that the treatment of images through a video surveillance system to be in accordance with the regulations in force:

III

- Respect the principle of proportionality.

- When the system is connected to an alarm center, you 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 4

april.

- The video cameras will not be able to capture images of the people who

are outside the private space since the treatment of images in

public places can only be carried out, where appropriate, by the Forces and

Security forces. Spaces cannot be captured or recorded either.

property of third parties without the consent of their owners, or, where appropriate, of

the people who are in them.

- The duty to inform those affected provided for in article

12 of the RGPD 2016/679, of April 27, 2016, in the terms referred to both

in the aforementioned article, as well as in articles 13 and 14 of said regulation, resulting

of application -by not contradicting the provisions of the aforementioned Regulation-, the

manner provided for in article 3 of Instruction 1/2006, of November 8, of

the Spanish Agency for Data Protection, on Data Processing

Personal for Surveillance Purposes through Camera Systems or

Video cameras (Instruction 1/2006, of November 8, of the Spanish Agency

Data Protection).

Specifically, it must:

1. Place at least one informative badge in the video-monitored areas

located in a sufficiently visible place, both in open and closed spaces.

In accordance with the provisions of articles 13 and 14 of the RGPD, in the distinctive

aforementioned information must identify, at least, the existence of a

treatment, the identity of the person in charge and the possibility of exercising the rights

provided for in these provisions.

2. Keep available to those affected the information referred to in the

quoted GDPR.

The defendant is charged with the violation of article 5 RGPD, Principles relating to

to treatment, which provides the following:

IV

"1. The personal data will be:

c) adequate, relevant and limited to what is necessary in relation to the purposes

for which they are processed ("data minimization");

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Also Organic Law 3/2018, of December 5, on Data Protection

Personal and Guarantee of Digital Rights (LOPDGDD), in its article 22,

Treatment for video surveillance purposes, in its sections 1, 2, 4 and 5 establishes that:

"1. Natural or legal persons, public or private, may carry out the

processing of images through camera systems or video cameras with the

purpose of preserving the safety of persons and goods, as well as their

installations.

2. Images of public roads may only be captured to the extent that

is essential for the purpose mentioned in the previous section.

However, it will be possible to capture the public road in an extension

superior when necessary to guarantee the security of goods or

strategic installations or infrastructures linked to transport, without

In no case may it involve capturing images of the interior of a home

private.

(...)

4. The duty of information provided for in article 12 of the Regulation (EU)

2016/679 will be understood to be fulfilled by placing an informative device

in a sufficiently visible place identifying, at least, the existence of the treatment,

the identity of the person in charge and the possibility of exercising the rights provided for in the

Articles 15 to 22 of Regulation (EU) 2016/679. It may also be included in the

informative device a connection code or internet address to this

information.

In any case, the data controller must keep available to those affected the information referred to in the aforementioned regulation.

5. Under article 2.2.c) of Regulation (EU) 2016/679, it is considered excluded from its scope of application the treatment by a natural person of images that they only capture the interior of their own home.

This exclusion does not cover processing carried out by a security entity private that had been contracted for the surveillance of a home and had access to the images.

(...)

The denounced facts take the form of the installation of a security camera video surveillance in the home of the accused for the possible capture of images of the surrounding house, violating the regulations on the protection of data.

However, after the request made to the claimed party, it has been accredited the modification of the installed system in such a way that the camera installed focusing towards the outside of the house, which according to the claimed

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did not work and whose purpose was to persuade not to record, so it did not

There is a registry of images.

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Article 83 of the RGPD, General conditions for the imposition of fines administrative, in its section 5, letter a) states that:

v

"5. Violations of the following provisions will be sanctioned, in accordance with paragraph 2, with administrative fines of a maximum of EUR 20,000,000 or, in the case of a company, an amount equivalent to a maximum of 4% of the global total annual turnover of the previous financial year, opting for the largest amount:

a)

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

And article 72 of the LOPDGDD, Infractions considered very serious, establishes:

1. Based on the provisions of article 83.5 of the Regulation (EU)

2016/679 are considered very serious and the infractions that

suppose a substantial violation of the articles mentioned in that and, in particular the following:

a) The processing of personal data violating the principles and guarantees established in article 5 of Regulation (EU) 2016/679.

(...)"

However, article 58.2 of the RGPD provides the following: "Each authority of control will have all the following corrective powers indicated below:

continuation:

(...)

b) sanction any person responsible or in charge of the treatment with warning when the processing operations have violated the provisions of this Regulation;

(...)

Therefore, the RGPD, without prejudice to the provisions of its article 83, contemplates



in its article 58.2 b) the possibility of going to the warning to correct the processing of personal data that do not meet your expectations. About when it is appropriate to opt for one or the other route, the application of article 83 of the RGPD or the corrective measure of warning of article 58.2.b), the rule itself in its Recital 148 establishes the following:

“In the event of a minor offence, or if the fine likely to be imposed would constitute a disproportionate burden for a natural person, rather than sanction by means of a fine, a warning may be imposed. must however

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Special attention should be paid to the nature, seriousness and duration of the infringement, its intentional nature, to the measures taken to alleviate the damages suffered, the degree of liability or any relevant prior violation, the manner in which that the control authority has been aware of the infraction, compliance of measures ordered against the person responsible or in charge, adherence to codes of conduct and any other aggravating or mitigating circumstance.”

It should be noted that after the request made to the accused party, has proven that the installed camera and that it focused towards the outside has been eliminated, providing documentary evidence of what was stated.

SAW

In the same way, the adoption of any specific measure is not urged to take, since the adoption of adequate measures for the correct installation of the video surveillance system and its adaptation to the new principles that

has brought about the RGPD.

To conclude, taking into account the absence of intentionality, the absence of damages, the behavior of the claimed collaborating with the Agency in the solution of the incidence produced and the measures adopted by the person in charge of the treatment further attenuate his culpability in the present case, for which reason a warning is due.

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: IMPOSE D. A.A.A., with NIF 31835152R, for an infraction of the article 5.1 c) of the RGPD, in accordance with the provisions of article 83.5 of the aforementioned RGPD, and qualified as very serious in article 72.1 a) of the LOPDGDD, a sanction of WARNING in accordance with the provisions of article 58.2.b) of the RGPD.

SECOND: NOTIFY this resolution to the D.A.A.A. and, according to art. 77.2 of the RGPD, INFORM the claimant D. B.B.B. about the result of the claim.

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.

114.1 c) of the LPACAP, 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

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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, the firm resolution may be provisionally suspended in administrative proceedings if  
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/](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

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