

□ Procedure No.: PS/00321/2019

938-051119

RESOLUTION OF PUNISHMENT PROCEDURE

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

FACTS

FIRST: D.A.A.A. (*hereinafter, the claimant) dated July 3, 2019

filed a claim with the Spanish Data Protection Agency. The

claim is directed against the neighboring B.B.B. with NIF ***NIF.1 and C.C.C. ***NIF.2 (in
later, those claimed).

The reasons on which the claim is based are "installation of cameras" that can
affect the public/private space of third parties without just cause.

"Furthermore, the affected party has requested on many occasions the presumed
those responsible for the events described, so that they remove the cameras or the inmates
laugh in such a way that disproportionate images of the public thoroughfare are not captured, nor
of the home of the affected party, having ignored the requirements
effected"

Together with the claim, it provides documentary evidence (Annex I) that proves the
installation of the device that is the subject of the complaint.

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 December 4, 2019, 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.

FOURTH: On 01/10/20, this Agency receives a written response from the denounced party stating succinctly the following:

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“All the cameras are not only installed on the property exclusive to this part, but are also oriented to capture only and exclusively the spaces of this (...)

In any case, the installation of the cameras is more than justified by security reasons, since:

The undersigned property has very easy access as it is not fenced or have a gate that closes the main entrance of it.

In addition, in recent years, there have been various robberies and thefts in the zone, as well as in the adjacent towns (...)

The complainant has never required this party to remove the camera or

let us redirect it, because no burofax, letter or similar from him has been received, not even verbally (...).

As stated above, no image is captured from the public road, nor of the claimant's home, much less in a disproportionate as it tries to be seen by this, so at no time the right to privacy of third parties has been affected or is being affected (...)"

FIFTH: On 01/20/20, a Resolution Proposal was issued proposing a pecuniary penalty of €2,000 (Two Thousand Euros), for an infraction of article 5.1.c) of the RGPD, typified in article 83.5 of the RGPD.

SIXTH: On 03/03/20, a request for collaboration was requested from the Local Police of Abanilla, so that those displaced to the place of the events could issue a report on the legality of the chamber and its possible affectation to the private space of third parties.

SEVENTH: On 03/26/20 a response is received from the Local Police (Abanilla) providing the following report after traveling to the scene of the events:

"That the acting agents verify that said access to that dwelling does not

It is not included in the urban plan, nor in the cadastral plan, which according to the technician of the Abanilla City Council that access to housing is not recorded as public in the Urban plan, which is very particular without cadastral reference.

It is verified that said surveillance camera is oriented to the private street and not to the home of the complainant Mr. A.A.A.

It is observed that it has an approved sign at the entrance of the house. Y that in the opinion of these Agents it is observed that the cameras are correctly oriented".

Cadastral document and photos of the area are attached.

In view of everything that has been done, by the Spanish Protection Agency of Data in this procedure the following are considered proven facts,

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PROVEN FACTS

First. On 07/03/19, this Agency received a claim from the complainant

transferring as main fact the following:

“installation of cameras” that can affect public/private space of the

Zeros without just cause.

Second. It is identified as the main person in charge of the installation Doña B.-

B.B., which acknowledges having installed the video surveillance camera system.

Third. There is a sign posted by a private security company, where no

appreciates given the distance of the photograph the person in charge of the treatment and the character

homologated of the same, although the local Police verifies it in situ, considering it as

right.

Fourth. Access to housing is not included in the Urban Plan, nor is it cadastral,

that according to the technician of the City Council of Abanilla that access to the houses does not

appears as public in the Urban Plan, which is quite private without reference

cadastral.

Fifth. There is no evidence that the camera affects the privacy of the domicile of the

complaining party.

FOUNDATIONS OF LAW

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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 merits of the matter, we proceed to examine the request for testimonial evidence requested by the accused party to take statements from neighbors adjoining to manifest about "thefts in the area", pointing out that the opinion per-personnel or statements by third parties about robberies in adjoining areas, do not justify per se the installation of video-surveillance cameras, which must be rejected as unnecessary, given that the important thing is to determine what is being captured with the system. theme installed by the defendant.

Regarding the evidence requested in section b) by the defendants, it proceeds to reject it, given that he is given a full copy of the administrative file vo, sufficing in this case the evidence provided by the complainant, which allows verify the presence of a camera oriented towards a transit area to initiate procedure, as this body considers the initial explanations insufficient granted by the defendant.

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III

In the present case, the claim dated 07/03/19 is examined by medio from which he transfers "installation of cameras" that can affect private space of their patrons.

Provides documentary evidence that proves the installation of a device, which may

could control the transit area without just cause, not observing the presence of the mandatory informative poster.

The facts described above may affect the content of the

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").

It should be noted that individuals can install video-surveillance cameras, although

They are responsible for ensuring 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 art. 22 section 4 of the LOPDGDD (LO 3/2018, December 5) provides the following:

following: "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.

A connection code or

Internet address to this information.

IV

In accordance with the Local Police Report (Abanilla) dated 03/05/20,

the acting force confirms that the installed camera system does not affect the space

exclusive of the denouncing party, not stating the public nature of the space that

ñala, by qualifying as a "private property" without cadastral reference.

It also notes the presence of an informative poster in a visible area indicating

the data controller, considering it as "approved" for legal purposes.

opportune them.

Finally, after making the necessary inquiries, it is not found that the camera
ra (s) is oriented towards the denouncer's private space, but exclusively to the
housing and adjacent private area of the accused, for security reasons.

The presumption of innocence must govern without exceptions in the legal system
sanctioning and must be respected in the imposition of any sanctions, since

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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).

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In accordance with the foregoing, there is no evidence of the commission of an administrative infraction alguna, which is why it is appropriate to order the File of this procedure.

The rest of the issues exceed the competence framework of this Agency, motivated by for which no pronouncement is going to be made to that effect.

Therefore, based on the foregoing,

By the Director of the Spanish Data Protection Agency,

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 any administrative infraction.

SECOND: NOTIFY this resolution to the accused B.B.B. and C.C.C. and

REPORT the result of the proceedings to the denouncing party 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

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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 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

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