

□ Procedure No.: PS/00096/2020

## RESOLUTION OF PUNISHMENT PROCEDURE

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

### FACTS

FIRST: On November 5, 2019, he entered this Agency

Spanish Data Protection, a document presented by A.A.A. (hereinafter the  
claimant), through which he makes a claim against B.B.B. with NIF \*\*\*NIF.1 (in  
hereinafter, the claimed), for the installation of a video surveillance system in a  
property located at \*\*\*ADDRESS.1 CORNER \*\*\*ADDRESS.2, with signs of  
a possible breach of the provisions of the data protection regulations  
personal.

The reasons underlying the claim are as follows:

“HE HAS INSTALLED A VIDEO SURVEILLANCE CAMERA, RECORDING THE ROAD  
PUBLIC AND PASSENGERS, AT \*\*\*ADDRESS.1 CORNER

\*\*\*ADDRESS.2. THE CAMERA HAS HID IT BEHIND A POSTER

ADVERTISING [...]. I ALREADY FILED A FIRST COMPLAINT ON JUNE 4 AND STILL NOT  
ACTION HAS BEEN [...].”

Attach photographic report of the camera in question.

SECOND: Prior to the acceptance of this claim for processing, it is

transferred the claimed, in accordance with the provisions of article 65.4 of the Law  
Organic 3/2018, of December 5, on the Protection of Personal Data and guarantee of  
digital rights (hereinafter, LOPDGDD). The aforementioned transfer was returned by  
“absent” “Surplus (Not picked up at the office)” on 12/5/2020.

On 12/12/2019, a reiteration of the transfer of the claim was made, being

returned again for "absent and "Surplus (Not picked up at the office)" on 12/28/2019.

THIRD: The claim was admitted for processing by resolution of March 13 of 2020.

FOURTH: In the information system of the Agency there is no record of the complaint prior to referred to by the claimant in his writing.

FIFTH: On June 16, 2020, 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 Regulation (EU) 2016/679 (Regulation General Data Protection, hereinafter RGPD), typified in article 83.5 of the GDPR.

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SIXTH: Since the notification of the initiation agreement was unsuccessful, proceeded to publish an announcement of notification in the Single Edictal Board of the Bulletin State Official on August 25, 2020, in accordance with the provisions of the Article 44 of Law 39/2015, of October 1, on Administrative Procedure Common Public Administrations (hereinafter, LPACAP).

SEVENTH: On October 20, 2020, the instructor of the procedure agreed and proceeded to notify the opening of a period of practical tests, requesting the Puente Genil Town Council so that, within 30 days and prior transfer of the Local Police to the establishment, issued the corresponding report where note:

☐ Effective address of the commercial establishment at the indicated address and state

current of it.

☐ Existence of a video surveillance device.

☐ Orientation of the installed cameras and their capture area. If he allows it

claimed, it is requested that they be observed and informed about the images displayed on the monitor.

☐ Any other aspect considered appropriate to review.

EIGHTH: On November 18, 2020, the respondent files a document at the Headquarters Electronic of the Spanish Agency for Data Protection in which you request a copy of the file and makes the following statements:

“REQUEST COMPLETE FILE OF PROCEDURE No. PS/00096/2020,  
SINCE I ONLY RECEIVED A CERTIFIED LETTER ON DATE 03-11-2020  
WHERE I AM INFORMED THAT A PERIOD OF 30 DAYS HAS BEEN OPENED FOR  
THE FORMULATION OF TEST PRACTICES, BUT I DO NOT HAVE  
NONE INFORMATION ABOUT WHAT IS REFERRED TO THE REALIZATION  
ABOUT THEM AND I DON'T KNOW ANYTHING ABOUT THIS FILE.  
THEREFORE I REQUEST AS SOON AS POSSIBLE THE MENTIONED  
FILE TO BE ABLE TO ATTEND YOUR REQUESTS.”

NINTH: On December 19, 2020, the respondent files a new document in which states the following:

“I INFORM YOU THAT I HAVE RECEIVED A CERTIFIED LETTER IN MY NAME ON  
DAY 11/03/2020, MENTIONING PROCEDURE PS/00096/2020, WHICH  
THE SPANISH DATA PROTECTION AGENCY HAS INITIATED AGAINST ME  
PERSON, B.B.B..

I HAVE NO RELATIONSHIP WITH THE ADDRESS TO WHICH THEY DO  
REFERENCE, IN YOUR WRITING DATED 10/21/2020 WITH THE ADDRESS OF THE  
\*\*\*ADDRESS.2, WHICH HAS BEEN ASSOCIATED WITH MY PERSON, B.B.B.. SO

THAT I UNDERSTAND THAT THIS PROCEDURE ALLEGEDLY HAS BEEN  
CARRIED OUT IN A WRONG OR INCORRECT WAY, THEREFORE

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FACTO IT IS UNDERSTOOD THAT IT CAN BE NULL IN FACT, SINCE I AM NOT THAT  
PERSON WHO IS LOOKING FOR THE SPANISH AGENCY OF  
DATA PROTECTION.

FOR THIS REASON, I ASK YOU TO PROCEED TO FILE THE MENTIONED  
SANCTION PROCEDURE, FOR NOT HAVING ANY RELATIONSHIP WITH  
WHAT THEY HAVE EXPRESSED IN SAID LETTER.”

TENTH: On November 23, 2020, a copy of the file is sent to  
reclaimed. Notice of this copy is returned by “Surplus (Not withdrawn in  
office”)

ELEVEN: On December 9, this Agency received the document of  
response from the Local Police Headquarters of the Puente Genil City Council in  
reference to the collaboration request agreed upon as evidence. this writing  
states the following:

“[...] On November 17, 2020, the patrol moved to the indicated place with  
indicative (...), composed of the signing Local Police Officials, being able to  
Verify the following in relation to the request:

1. That effectively, at \*\*\*ADDRESS.1 CORNER \*\*\*ADDRESS.2, it is observed  
the commercial establishment: “\*\*\* COMPANY.1.” with C.I.F. \*\*\*CIF.1, being  
completely closed, with the blind lowered and placed on it a sign in the

that you can read the legend "CLOSED".

2. That in relation to the existence of the video surveillance device object of the procedure, on the day of the date no installation of any device is observed in no point on the surface of the facade belonging to the aforementioned establishment.

That subsequently and after the appropriate steps, the claimed Mr. B.B.B. is located, with DNI \*\*\*NIF.1, [...] domiciled at \*\*\*ADDRESS.3 [...], who claims to be the Sole administrator of the company \*\*\* COMPANY.1. (and so it appears according to publication made in the Mercantile Registry Bulletin no. 121 of June 28, 2017 of announcement of appointments of the company \*\*\*EMPRESA.1., registered in the Registry Mercantil on \*\*\* DATE.1 with the registration data (...)), receiving the acting against the Establishment object of the procedure, informing them that effectively and voluntarily, installed a video surveillance camera with the sole purpose of controlling the adjacent entrance of the establishment, since it could not control access to it when moving between its own dependencies establishment during the performance of their professional activity.

That also Mr. B.B.B. reiterates on several occasions that said device does not did not have a recorder or any other image storage system, and that its sole purpose was the viewing of the static image of the aforementioned entry of the establishment, limiting the viewing area solely and exclusively to the threshold of the same, not capturing this, any image belonging to the field of public roads, therefore, it insists that it does not have an image or video to show the participants since they were not stored in any support or device.

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That due to the foregoing, Mr. B.B.B. tells the participants not to understand the purpose of this claim, since the claimant does not reside in the area or addressed him at any time or in any way to understand his violated rights. However, the respondent states that the aforementioned device It only remained installed for a few weeks and was withdrawn on its own initiative prior to the notification of this procedure.

That the respondent, showing his willingness to collaborate, invites the plaintiffs to access the establishment object of this procedure, so that check how effectively, to date it is not performing any activity, showing them both the video surveillance device disconnected object of this procedure, such as the area on the façade where installation took place.

That it is stated that Mr. B.B.B. Would you like to provide the following documents? attached to this report for the appropriate purposes:

- ☐ Brief of allegations 'To the attention of the Puente Genil Local Police'.
- ☐ Copy of DNI B.B.B.
- ☐ Registration Certificate.
- ☐ Letter received from the Spanish Agency for Data Protection, on the procedure PS/00096/2020.
- ☐ Postal certificate.
- ☐ A written copy of the allegations submitted to the Spanish Agency for the Protection of Data No. O00007128E2000011069.
- ☐ A written copy of the allegations submitted to the Spanish Agency for the Protection of Data No. O00007128E2000011250

[...]"

The report of the Local Police attaches a photographic report of:

- ☐ Establishment and its entrances.
- ☐ Place of the façade where the device was installed and of the video-monitored area according to statements made by the respondent.
- ☐ Video surveillance devices removed.

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

In this proceeding, the following are considered proven facts:

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## FACTS

FIRST: In the images attached to the claim filed on November 5, 2019, it is verified that in the commercial establishment located at \*\*\*ADDRESS.1 CORNER \*\*\*ADDRESS.2, there was a camera installed in the lighting support of an advertising sign.

SECOND: The commercial establishment corresponds to the mercantile \*\*\*COMPANY.1.

THIRD: According to the information in the Mercantile Registry, \*\*\*COMPANY.1. is a company whose corporate purpose is the purchase, storage, import, export, repair, installation and retail or wholesale of electrical appliances, butane or any type of energy. Their address corresponds to the address of the property of the commercial establishment and the claimed person appears as Sole Administrator.

FOURTH: According to the statements made by the defendant to the Police

Puente Genil premises, the installed device did not have the capacity to image storage, serving only to display the static image of one of your entries. He also states that he only captured the image corresponding to the threshold and which was previously withdrawn by its own decision.

FIFTH: The area that the respondent indicates as the place where the camera agrees with the one seen in the photographs attached by the claimant on your claim.

SIXTH: At the time of the action carried out by the police officers Local, the device is uninstalled.

## FOUNDATIONS OF LAW

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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

The defendant is charged with the commission of an infraction for violation of article 5.1.c) of the RGPD, which states 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”).”

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This infringement is typified in article 83.5 of the RGPD:



“The infractions of the following dispositions will be sanctioned, in accordance with the 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;
- b) the rights of the interested parties according to articles 12 to 22; [...].”

For the purposes of the limitation period of the infraction, it is considered very serious and prescribes after three years, in accordance with article 72.1 of the LOPDGDD, which establishes that:

“Based on the provisions of article 83.5 of Regulation (EU) 2016/679, considered very serious and will prescribe after three years the infractions that suppose a substantial violation of the articles mentioned therein 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. [...].”

### III

The present procedure has its origin in the installation of a camera of video surveillance in the commercial establishment located at the address indicated in the first antecedent that could be capturing disproportionately via public.

As regards the possibility of installing a video surveillance system for of security, article 22 of the LOPDGDD —related to processing for the purpose of video surveillance - provides that, in order to ensure the safety of people and goods, images of public thoroughfares may be captured "to the extent that it is

essential", in correspondence with the mentioned principle of minimization of data. It is reported that the power to capture images on public roads is attributed, in general, to the Security Forces and Bodies in accordance with the provided for in Organic Law 4/1997, which regulates the use of video cameras by the Security Forces and Bodies in public places and their development regulations. Taking into account the foregoing, in the event that to guarantee the security of a property in its access or perimeter, the area of public roads adjacent area that is captured should be minimized.

On the other hand, and even though this point was not part of the imputation, it is

It is necessary to point out that article 13 of the RGPD—in compliance with the duty of information contained in the preceding article 12 of the same legal text - regulates the information to be provided when personal data is obtained from the interested, a situation that occurs in the cases in which images are captured by

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a video surveillance system. In this sense, article 22.4 of the LOPDGDD establishes that "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 relation to the foregoing, the facts proven in this proceeding revealed that there was a device placed behind an advertising sign of one of the the facades of the building whose purpose was to monitor one of the entrances to the establishment and that due to its orientation, it was likely to be capturing disproportionate images of public roads and of pedestrians and vehicles that They will pass through it.

However, notwithstanding what is indicated in the previous paragraph, in this case the commercial establishment makes it up, as is also reflected in the facts proven, a legal person —\*\*\* COMPANY.1.— and it is this company that would hold ownership of the obligations regarding compliance with the provisions of the legal system that are related to the development of the activity of the Comercial establishment. Therefore, it should be considered as responsible for the data processing that could have been carried out through the device of video surveillance. This entails the need to file the proceedings of the present proceeding against the defendant, for the sake of the principle of responsibility applicable to the sanctioning power and that regulates article 28 of Law 40/2015, of 1 October, of the Legal Regime of the Public Sector.

On the other hand, it is pointed out that even if the sanctioning procedure had been addressed to the right person responsible, the defendant made a series of statements to the Local Police about the nature of the device and about the limitation of the area captured at the threshold of the access door, without reaching public road. In this sense, Since the device was removed on the day of the agents' visit, It has not been possible to verify said extremes and, where appropriate, distort what has been stated for the claimed. In conclusion, and in application of the principle of presumption of innocence, it would not be possible to impose an administrative sanction when there was no obtained and verified a supporting evidence of the facts that motivate the

imputation or intervention in the same of the alleged offender.

IV

In accordance with the foregoing, the respondent is not responsible for the treatment carried out carried out through the installed video surveillance camera and therefore cannot be considered responsible for the alleged violation committed.

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Therefore, in accordance with the applicable legislation, the Director of the Agency

Spanish Data Protection RESOLVES:

FIRST: ORDER the FILE of this procedure as there is no accredited administrative infraction.

SECOND: NOTIFY this resolution to B.B.B. and inform A.A.A.

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

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