

938-0419

Procedure No.: PS/00126/2019

## RESOLUTION OF PUNISHMENT PROCEDURE

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

### FACTS

FIRST: Don A.A.A. (hereinafter, the claimant) dated November 21,  
2018 filed a claim with the Spanish Agency for Data Protection,  
motivated by the processing of data carried out through cameras of a security system.  
video surveillance whose alleged owner is B.B.B. with NIF \*\*\*DNI.1 (hereinafter the  
claimed) installed at \*\*\*ADDRESS.1.

"Installation of a camera in the living room window focusing on the  
transit, without having any authorization in this regard" (folio nº 1).

Provide documentary evidence (photographs No. 1, 2 and 3) that prove the installation  
of a device, provided with a cable that could enter the interior of the residence of the  
denounced.

SECOND: On 11/30/18, the claim was TRANSFERRED to the party  
denounced, so that he would have knowledge of the facts and claim the right to  
respect, appearing as "Notified" in the computer system of this organization.

THIRD: On 12/26/18, a written statement was received from the party  
denounced, "denying the possession of any type of camera", pointing out that  
It is a false complaint by the complaining party.

FOURTH: On March 22, 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 of the RGPD, typified in Article 83.5 of the RGPD.

FIFTH: On 04/24/19, this body received a written document from the Attorney Mr.

C.C.C. (ICAM) alleging the following:

“The statement maintained in Fact II is not true, because my representative has NOT installed any cameras in his zone-facing window common.

The photographs that are provided otherwise in the previous procedures do not prove that they have been put by my sponsored, even more so, when it is him, Mr. B.B.B., the one who already denounced that there were cameras looking at his door and therefore, it is the complainant who has the burden of proof.

Given that the house in which my client resides is a ground floor, the height of the living room window is perfectly accessible to anyone standing, so

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that anyone could have put the camera there to take a picture and show that HE HAS PLACED IT.

The evidence contained in the Agreement to Start the procedure sanctioning and that are taken for certain in Basis IV, it is concluded out of context assuming that it has been my client who has installed the cameras, but the truth is that there is sufficient evidence to show that it has been the complainant who has handled such devices at will.

It is said in the same FJ IV that “from the photographs provided it is inferred that the connection cable has contact inside the home of the accused, without any logical explanation having been made about it”, but the truth is that in the photographs in the window is closed and the cable does not point into the house,

but out...

In view of everything stated and all the documentation provided, we understand that the immediate Archive of the present beginning of the sanctioning procedure proceeds.

As has been stated, the complaint filed is completely false and neither

There is no indication that suggests that this camera has been placed by my represented, nor that of course, it is still placed there”.

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

In this proceeding, the following are considered proven facts:

#### FACTS

FIRST: On 11/19/18, a claim from the mentioned claimant asserting that in the property of his ownership there has been "installed a video-surveillance camera" in the window of his living room facing the outside without permission.

SECOND: The resident of the town is identified as the main responsible Don B.B.B., who denies the facts imputed to him.

THIRD: The installation of a small video camera-surveillance outside the window of the defendant's property, although no can specify if the connection cable is introduced into the home of the accused.

FOURTH: There is no proof that the device obtained images of a person identified or identifiable physical

FIFTH: There is a bad relationship between the parties, which has caused various cross complaints, existing in the background of the same a real estate issue.

SIXTH: There is no evidence that there was an informative poster indicating that it was of a video-monitored area.

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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 LOPDPGDD, the Director of The Spanish Agency for Data Protection is competent to resolve this process.

II

In the present case, we proceed to examine the claim of date of entry into this Agency (11/19/18) through which essence was transferred that in the property of its ownership has been "installed by a neighbor a video camera-surveillance" in the window of his living room facing the outside, without having permission some.

The facts described may affect the content of the article

5c) GDPR. "Personal data will be:

c) adequate, pertinent and limited to what is necessary in relation to the purposes for which they are processed ("data minimization").

The party denounced in a pleadings brief (04/24/19) proceeds to deny the facts, stating that the device in question is not your property, that all is due to an alleged false complaint by the complaining party.

It should be noted that we are faced with two completely different versions of the facts, with a common result, no one has installed the camera object of complaint.

At this point, there are two options, the first a third party alien to the parties has placed the device in the window (for no reason) and, the second, a of both parties lies.

The accused party does not provide documentary evidence (photograph with date and time) that proves that the device in question does not exist as of the date, such as

would have been advisable and as on the other hand it was expressly indicated in the Home Agreement.

The fact of a previous procedure between the parties is not enough to distort the facts that are analyzed in this procedure, beyond proving the bad relationship between them, although now they take on the roles of whistleblower and denounced.

The evidence provided by the complainant a priori was sufficient to prove the commission of an alleged administrative infraction, since they prove the installation of a camera in the window of the accused, oriented in a disproportionate and without any authorization towards common areas.

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As indicated above, there were two logical options, considering this body, that both parties have acted with the consequent good faith that presupposes them, and therefore may have been an "unknown" the that for some strange reason that will not be analyzed he placed the camera in question, and then he simply withdrew it.

Article 89.1 d) Law 39/2015 (October 1) provides the following: "The body instructor will resolve the completion of the procedure, with filing of the proceedings, without the formulation of the resolution proposal being necessary, when in the instruction procedure it becomes clear that any of the following circumstances:

d) When it does not exist or it has not been possible to identify the person or persons responsible or appear exempt from responsibility (...)".

### III

The principle of presumption of innocence prevents imputing an administrative offense

the

when proof of charge accrediting the

facts that motivate the imputation or of the intervention in the same of the presumed

offender. Applying the principle "in dubio pro reo" in case of doubt regarding a

concrete and determined fact, which obliges in any case to resolve said doubt of 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).

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IV

In accordance with the foregoing, having analyzed the allegations and evidence provided, it is conclude that it is not possible to determine who is responsible for installing the camera in question, reason why it is appropriate to decree the FILE of this procedure.

Notwithstanding the foregoing, given that both parties have resorted to certain facts similar to this organism, they are warned about the consequences of instrumentalize this Agency for the issue that confronts them "the real estate issue" or any other "personal dispute", and they must be resolved in the instances timely courts.

The Judgment of the National Court of April 1, 2011, resource 2223/2010, in its Legal Foundation IV, last paragraph, includes the following: "The importance and significance of data protection regulations and the relevance of rights constitutional rights that are at stake, advise them not to put themselves at the service of particular quarrels that must be resolved in different areas that must have relevance only in the domestic sphere that is its own and not an area such as the jurisdictional. The seriousness involved in the exercise of sanctioning power advises that administrative and jurisdictional mechanisms be put in place corresponding only when it is assumed that a true violation of the fundamental right to data protection. Such circumstance does not concurs in the present case".

That said, any "new" claim for a security camera issue video-surveillance in the aforementioned property must be previously reported to the National Police (Málaga) so that once the appropriate investigations have been carried out

transfer, where appropriate, the facts to this Agency, assuming in its absence the timely legal consequences.

Finally, it is recommended that the accused party provide documentary evidence (with date and time) that proves the absence of any device in its window, that will proceed to incorporate this administrative file, thereby giving finished the same.

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: PROCEED to decree the FILE of this procedure.

SECOND: NOTIFY this resolution to Don B.B.B. and to the plaintiff Don A.A.A.

In accordance with the provisions of article 50 of the LOPDPGDD, this Resolution will be made public once it has been notified to the interested parties.

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Against this resolution, which puts an end to the administrative procedure in accordance with art. 48.6 of the LOPDPGDD, 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.

Sea Spain Marti

Director of the Spanish Data Protection Agency