



File No.: EXP202201054

RESOLUTION OF PUNISHMENT PROCEDURE

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

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BACKGROUND

FIRST: A.A.A. (*hereinafter, the complaining party) dated January 19, 2022

filed a claim with the Spanish Data Protection Agency. claims her-

tion is directed against B.B.B. with NIF ***NIF.1 (hereinafter, the claimed party). The

The grounds on which the claim is based are as follows:

"It has a portable video surveillance camera that it has been locating in dis-

different points of the facade of your home, being oriented to the public thoroughfare and to the

claimant's property, without having authorization to do so" (folio No. 1).

SECOND: In accordance with article 65.4 of Organic Law 3/2018, of 5

December, of Protection of Personal Data and guarantee of digital rights (in

hereinafter LOPDGDD), said claim was transferred to the claimed party in fe-

dated 01/28/22, to proceed with its analysis and inform this Agency on the

period of one month, of the actions carried out to adapt to the foreseen requirements

cough in the data protection regulations.

On 03/05/22, this Agency received a response from the main respon-

after notification made, under the terms of the current procedural law ad-

common administrative, providing a photograph of a camera without further explanation to the res-

aspect, attaching as documentary evidence a photograph of the same (Camera image

Doc no. 1).

THIRD: On April 19, 2022, in accordance with article 65 of the LO-

PDGDD, the claim filed by the claimant was admitted for processing.

FOURTH: On June 8, 2022, the Director of the Spanish Agency for Pro-

Data Protection agreed to initiate sanctioning proceedings against the claimed party, with

in accordance with the provisions of articles 63 and 64 of Law 39/2015, of October 1, of the

Common Administrative Procedure of Public Administrations (hereinafter,

LPACAP), for the alleged infringement of Article 5.1.c) of the RGPD, typified in the

Article 83.5 of the RGPD.

FIFTH: On 06/27/22, allegations were received from the respondent party stating-

do in relation to the facts object of transfer the following:

“For a few days I placed a claim camera (without connecting) in different

positions of the house to find what would be the best position of a camera that

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pointed at my garage door, inside the house. In a few days I removed it

and place a camera in one of the corners of the garage, inside the house,

pointing at the garage door, with the sole intention of checking to see if the door is closed.

rrada since I have had electronic problems and the door due to circumstances that des-

I know it opens by itself.

There is no mobile camera anywhere in the house, neither now nor before.

before the claim arrived. I provide current photographs of the facade.

SIXTH: On 06/30/22, <Proposal Resolution> is issued in which the

File of procedure as no treatment will be accredited with the

device (s) object of claim, since the same has not been operational.

Of the actions carried out in this procedure and the documentation

in the file, the following have been accredited:

PROVEN FACTS

First. On 01/19/2022, this AEPD received a claim through the

which translates as the main fact the following:

"It has a portable video surveillance camera that it has been locating in dis-

different points of the facade of your home, being oriented to the public thoroughfare and to the

claimant's property, without having authorization to do so" (folio No. 1).

Second. B.B.B. is identified as responsible, who does not deny the facts.

Third. The installed camera has been removed from the place of installation manifesting

do be a simulated camera, which has never obtained any personal data.

Fourth. There is no data processing of third parties, nor capture of public space

and/or proprietary to third parties.

FOUNDATIONS OF LAW

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In accordance with the powers that article 58.2 of Regulation (EU) 2016/679 (Re-

General Data Protection Regulation, hereinafter RGPD), grants each authori-

control and as established in articles 47, 48.1, 64.2 and 68.1 of the Law

Organic 3/2018, of December 5, on the Protection of Personal Data and guarantee of

digital rights (hereinafter, LOPDGDD), is competent to initiate and resolve

this procedure the Director of the Spanish Data Protection Agency.

Likewise, article 63.2 of the LOPDGDD determines that: "The formal procedures

ted by the Spanish Agency for Data Protection will be governed by the provisions of

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

dictated in its development and, as long as they do not contradict them, with a sub-

sidiario, by the general rules on administrative procedures."

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II

In the present case, the claim dated 01/19/22 is examined by me-

gave from which the following is transferred:

"Installation of a video-surveillance camera in a window badly oriented towards the area private (...)"—folio nº 1--.

The art. 5.1 c) RGD 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 intimidated by it in the belief of being the subject of permanent recording.

On the part of individuals, it is not possible to install devices for obtaining images of public space and/or transit of third parties, outside the cases allowed in the normative.

The purpose of this type of device must be the security of the property and of its inhabitants, avoiding the affectation of the rights of third parties who are intimidated two with the same

III

On 06/27/22, this Agency received a written statement of allegations from the claimant. manifesting the "non-operationality" of the camera, as well as its withdrawal. ma from its current location.

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This body accepts as good the explanations of the requested party on the simulated character of the placed camera, as well as the "explanations" of the reason for the transitory presence.

Article 28 "in fine" of Law 39/2015 (October 1) provides: "Those interested

They will be responsible for the veracity of the documents they present.

It is recalled, however, that even in the case of fake cameras, the same device should be oriented towards their private area avoiding situations of discomfort with

the presence of the same (s) to the neighbors who in the belief of the operability of es-
can report the facts to the competent authorities with the usual logic
injuries to the person in charge of the installation that may be affected by a claim
about.

With the entry into force of the current RGPD it is not necessary to register al-
in this body, having to follow the recommendations set forth in the Guide
of Video-surveillance www.aepd.es "Area of action"-Video surveillance", sufficing with
that it is oriented towards its private area avoiding any "inconvenience" to third parties.
zeros that may be affected by it in the belief of being observed without
any justified cause.

Finally, it is recalled that in the case of "operational" cameras, the images
obtained with the same can be provided as a means of proof of alleged
criminal acts to the competent authorities, these being the ones responsible for
prosecute the facts that are captured with these devices (vgr. Crime of property damage)
nials art. 263 CP).

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

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(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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According to the above, it is considered correct to order the Archive of this

procedure as the commission of any administrative infraction was not accredited

in the matter at hand.

Lastly, the transcendence of the rights at stake is recalled, and it is necessary to avoid the

instrumentalization of this body in matters of poor neighborhood relations,
having to transfer this type of issues to the police and/or judicial authorities
competent.

Therefore, in accordance with the applicable legislation,
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 within the framework of the regulations in force
in terms of data protection.

SECOND: NOTIFY this resolution to B.B.B..

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
tion of this act, as provided for in article 46.1 of the aforementioned Law.

Sea Spain Marti

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