

□ Procedure No.: PS/00063/2020

## RESOLUTION OF PUNISHMENT PROCEDURE

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

### BACKGROUND

FIRST: On November 8, 2019, it entered this Spanish Agency  
of 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 the  
property located on street \*\*\*ADDRESS.1 -Valencia, with respect to which there are indications of  
a possible breach of the personal data protection regulations.

The reasons that support the claim provided by the claimant are the  
following:

“THE INSTALLATION OF THE INSTALLATION OF  
A VIDEO CAMERA FOCUSED ON THE PUBLIC ROAD, AT HOME  
WHERE THE CLAIMED D. B.B.B. RESIDES. IT IS UNKNOWN THAT THE CAMERA  
SURVEILLANCE OR RECORDING IS IN OPERATION [...]”

Camera photo attached.

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 delivered on  
12/27/2019.

There is no associated response to the file that the respondent sent on the 27th of  
December 2019, due to technical issues.

THIRD: The claim was admitted for processing by means of a resolution of 24 February 2020.

FOURTH: On June 8, 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 same legal text.

FIFTH: On July 1, 2020, it entered the Spanish Protection Agency of Data a document from the respondent in which he formulates allegations to the initial agreement.

In them he states the following:

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“[...] On December 27, 2019, I sent the documentation to the electronic office

[...] and I reiterate that I do not have video surveillance cameras that record anything in the outside the only ones I have are inside my home and which do record for my privacy and my safety [...] yes it is true that there is a toy in the window that appears to be a camera but from there to record and invade anyone's privacy of course not, back in the day I already told you that the police could come or whoever you they would like to send to verify it [...]”

Attach a copy of the documents that prove that on December 27, 2019 made a reply to the transfer made and in which it refers to the fact that the cameras you have installed are inside your home.

SIXTH: The instructor of the procedure agreed, on August 8, 2020, to open

of a period of practice of tests, considering incorporated the claim presented by the claimant and his documentation, the documents obtained by the Subdirector General for Data Inspection and the allegations presented by the reclaimed.

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: According to the photograph provided by the claimant in his letter of 8 November 2019, in the window of the property located at the address indicated in the antecedent first figures an outward-facing device with the appearance Of camera.

SECOND: The respondent states in his pleadings brief that it is a toy that looks like a camera but does not record.

## 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 facts object of the claim filed with the Spanish Protection Agency of Data motivated the beginning of the present sanctioning procedure for assuming a possible violation of article 5.1.c) of the RGPD that indicates that personal data shall be "adequate, relevant and limited to what is necessary in relation to the purposes for those that are processed ("data minimization")".

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These infractions are typified in Article 83.5 of the RGD, which considers as such:

“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; [...]”

### III

The present procedure brings its cause in the presumed illegality of the installation of a device with the appearance of a camera in a window of the building located in the address indicated in the first antecedent of this resolution, which could capture images of public space.

As regards the possibility of installing a video surveillance system with the purpose of guaranteeing the security of the dwelling and of the private space of the claimed and with respect to the collection of public roads, article 22 of the LOPDGDD, relative to processing for video surveillance purposes, provides that, in order to guarantee the security of persons and goods, images of public thoroughfares may be captured "in the to the extent that it is essential", in accordance with the principle mentioned data minimization. It is reported that, regarding the recruitment and images on the road 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

with the provisions of Organic Law 4/1997, which regulates the use of video cameras by the Security Forces and Bodies in public places and their development regulations.

However, taking into account the allegations presented by the respondent in the written response to the agreement to initiate this sanctioning procedure, the installed device would be dummy in nature.

It is worth remembering, in relation to this type of device, the recent Judgment of the Supreme Court, Civil Chamber (STS 3505/2019, 11/07/19) which states that "That fake security cameras also represent an illegitimate intrusion into intimacy since those affected do not have to endure "uncertainty permanent" on whether or not the device is operational."

The plaintiff's right to the tranquility of his private life also includes that of not having to endure permanent uncertainty as to whether the camera oriented towards his farm is operational or not, since his external appearance prevents him from verify it and, on the other hand, the defendant would always have the possibility of substituting the non-operative chamber for another operative.

For the same reasons, the installation of the camera facing the garden of the plaintiff cannot be considered an exercise of a ius usus inocui in the field

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of neighborhood relations, because far from being innocuous, it objectively disturbed, and without necessity, the life of the plaintiff."

This type of conduct may have repercussions in other spheres of law,

affect the privacy of third parties, so it is recommended that they be exclusively oriented towards your particular property. The deterrent function of this type of device is limited, therefore, by the proportionality of the measure, which is fulfilled by avoiding intimidating third parties and being oriented towards the main strategic points of the house (eg orientation towards street, adjoining windows, etc.).

#### IV

The principle of the right to the presumption of innocence, recognized as a right fundamental subjective in article 24 of the Spanish Constitution, prevents imposing an administrative sanction when proof of accrediting charge of the facts that motivate the imputation or of the intervention in the themselves of the alleged offender and 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 in the most favorable way for the interested party.

The aforementioned right to the presumption of innocence is also included in a expressed in article 53.2.b) of Law 39/2015, of October 1, on the Procedure Common Administrative of Public Administrations (hereinafter, LPACAP), which establishes that:

"two. In addition to the rights provided for in the previous section, in the case of administrative procedures of a punitive nature, the alleged responsible will have the following rights:

[...]b) To the presumption of non-existence of administrative responsibility while the contrary is proven."

In relation to this principle, the Constitutional Court in its Judgment 76/1990, of 26 of April, 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 the

reproached conduct; that the burden of proof corresponds to the person who accuses, without no one is obliged to prove their own innocence; and that any insufficiency in the result of the tests carried out, freely valued by the sanctioning body, must be translated into an acquittal pronouncement.”

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In accordance with the foregoing and based on what was revealed in the allegations, It is not accredited that the device in question is equipped with the capacity to obtain or record any image, so that by not being able to determine the existence of an effective treatment of data it is not possible to speak of infringing conduct in the field of the regulatory framework of data protection, which is why it is proceeds to file this proceeding.

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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-](https://sedeagpd.gob.es/sede-electronica-web/)

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

Director of the Spanish Data Protection Agency

938-131120

C/ Jorge Juan, 6

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