

□ File No.: EXP202201837

## RESOLUTION OF SANCTIONING PROCEDURE

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

### BACKGROUND

FIRST: Ms. A.A.A. (hereinafter, the complaining party), dated February 9  
of 2022, filed a claim with the Spanish Agency for Data Protection. The  
claim is directed against D. B.B.B. with NIF \*\*\*NIF.1 (hereinafter, the part  
claimed), for the installation of a video surveillance system located in CALLE  
\*\*\* ADDRESS.1, SAX, ALICANTE, there are indications of possible non-compliance  
of the provisions of Article 5.1.c) of the General Data Protection Regulation  
(hereinafter, GDPR).

The reasons for the claim are the following:

The SAX CITY COUNCIL sends a Report, made by the POLICE  
PREMISES OF SAX, dated January 27, 2022, which shows that  
the claimant denounced, before Agents of said body, the existence of a  
video surveillance camera installed on the facade of the house on the  
claimed, which is oriented to the public thoroughfare, without authorization  
administration for this, verifying the acting Agents the presence of said  
camera.

The documents provided are:

- Reports made by the FFCCSE.
- Photo report.

SECOND: In accordance with article 65.4 of Organic Law 3/2018, of 5  
December, Protection of Personal Data and guarantee of digital rights (in

forward LOPDGDD), said claim was transferred to the claimed party, for to proceed with its analysis and inform this Agency within a month of the actions carried out to adapt to the requirements established in the regulations of Data Protection.

The transfer, which was carried out in accordance with the regulations established in Law 39/2015, of October 1, of the Common Administrative Procedure of the Administrations Public (hereinafter, LPACAP), was collected on February 28, 2022, as It appears in the acknowledgment of receipt that is in the file.

No response has been received to this letter of transfer.

THIRD: On April 12, 2022, in accordance with article 65 of the LOPDGDD, the claim presented by the claimant party was admitted for processing.

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FOURTH: On June 30, 2022, the Director of the Spanish Agency for Data Protection agreed to initiate disciplinary proceedings against the claimed party, pursuant to the provisions of articles 63 and 64 of the LPACAP, for the alleged infringement of Article 5.1.c) of the GDPR, typified in Article 83.5 of the GDPR.

FIFTH: Notified of the aforementioned start-up agreement in accordance with the rules established in the LPACAP, the claimed party submitted a pleading in which, in summary, stated that:

That the cameras referred to in the aforementioned file are completely fictitious, they have simply been placed as a deterrent due to the continuous graffiti and attacks suffered by the property owned by my client by

of young people who meet in the park next to the house, and who due to consumption of alcohol and other substances because it seems to be not finding greater fun than the tarnishing of real estate, and that have given rise to lawsuits that are not at all pleasant for its inhabitants. Sax Local Police are informed from the fact that they are dummy cameras. However, they sent photographs that there were some cameras on the facade, but they forgot to include the detail that they are fictitious. I attach email where the Local Police responds to my principal when he requests to be able to obtain report to be forwarded to you as the cameras are not real.

If you require proof that certifies the fiction of said cameras, we are willing to contribute. Either through a notarial deed, or by any other procedure that they consider of sufficient validity. Since the Sax Local Police, not certifies it.

SIXTH: On September 30, 2022, a resolution proposal was formulated, proposing to the Director of the Spanish Data Protection Agency the file of the claim filed against D. B.B.B., with NIF \*\*\*NIF.1, for the infringement of the Article 5.1.c) of the GDPR, typified in Article 83.5 of the GDPR.

The proposed resolution was notified on November 28, 2022, and After the period granted to make claims has elapsed, no claims have been made to said proposal.

Of the actions carried out in this procedure and of the documentation in the file, the following have been accredited:

#### PROVEN FACTS

FIRST: Report, made by the SAX LOCAL POLICE, dated January 27 of 2022, in which it is revealed that the complaining party denounced, before Agents of said body, the existence of a video surveillance camera installed in the facade of the house of the claimed part, which is oriented to the road

without administrative authorization to do so, verifying the Agents

acting the presence of said camera.

SECOND: The lawyer for the defendant affirms that the chambers to which alludes to in the aforementioned file are totally fictitious, they have simply been

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placed as a deterrent measure due to the continuous graffiti and attacks that the property owned by his principal has suffered from young people who gather in the park next to the house.

The Sax Local Police are informed of the fact that they are dummy cameras.

## FUNDAMENTALS OF LAW

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### Competence

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

(General Data Protection Regulation, hereinafter GDPR), grants each

control authority and as established in articles 47 and 48.1 of the Law

Organic 3/2018, of December 5, 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: "Procedures

processed by the Spanish Data Protection Agency will be governed by the provisions

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

regulations dictated in its development and, insofar as they do not contradict them, with character

subsidiary, by the general rules on administrative procedures.”

II

## Response Allegations

In response to the allegations presented by the claimed party, it should be noted that following:

Once the allegations of the claimed party have been examined, the allegations and the Statements by the lawyer for the defendant stating that the cameras are fictitious

It can be concluded that we are dealing with a non-operative system and that it has not been produced data processing, so the file proceeds.

It should be remembered that "the data that is processed through the video surveillance will be processed for the purpose that motivated the installation of the itself and which is linked to guaranteeing the safety of people, goods and facilities".

II

## Presumption of innocence

The principle of presumption of innocence prevents imputing an administrative offense when proof of charge accrediting the charges has not been obtained and verified. facts that motivate the imputation or of the intervention in them of the presumed offender. Applying the principle "in dubio pro reo" in case of doubt regarding a

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

way more 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 ius puniendi, in its various manifestations, is conditioned to the

game of evidence and an adversarial 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 charges or incriminating

of the reproached conduct; that the burden of proof corresponds to the accuser, without

that no one is obliged to prove their own innocence; and that any insufficiency in

the result of the tests carried out, freely assessed by the body

sanctioning, must be translated into an acquittal.

The presumption of innocence governs without exceptions in the penal system, and has

to be respected in the imposition of any sanction, whether criminal or administrative

(TC 13/1981), since the exercise of the sanctioning right, in any of its

manifestations, is conditioned to the set of evidence and a procedure

contradictory in which one's positions can be defended.

Pursuant to this principle, no sanction may be imposed based on the

guilt of the accused, if there is no probative activity that, in the

appreciation of the authorities or bodies called to resolve, destroy this

presumption (TC Auto 3-12-81).

IV.

Conclusion

In accordance with the foregoing, it has not been proven that the device in question

was producing data processing, which is why it is appropriate to agree on the

Archive of this procedure.

The parties are reminded that this Agency should not be instrumentalized in issues outside its jurisdictional framework, owing the rest of the issues, in its case, be transferred to the pertinent judicial instances, where they may present the questions they deem necessary.

Therefore, in accordance with the applicable legislation, the Director of the Spanish Agency for Data Protection RESOLVES:

FIRST: ORDER the FILE of this procedure, since there is no accredited the commission of any administrative infraction within the framework of the regulations in force regarding data protection.

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

In accordance with the provisions of article 50 of the LOPDGDD, this Resolution will be made public once the interested parties have been notified.

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Against this resolution, which puts an end to the administrative process 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 reversal before the Director of the Spanish Agency for Data Protection within a period of one month from count 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 for in article 46.1 of the

referred Law.

938-181022

Mar Spain Marti

Director of the Spanish Data Protection Agency

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