

□ File No.: EXP202201475

RESOLUTION OF SANCTIONING PROCEDURE

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

BACKGROUND

FIRST: A.A.A. (*hereinafter, the claiming party) dated January 31, 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 reasons on which the claim is based are the following:

“has installed on a farm of which the defendant is co-owner, two cameras

video surveillance cameras that, due to their location and orientation, are likely to capture

images of the claimant's home, as well as of the public thoroughfare, without having

authorization to do so” (folion 1).

It provides images of the location of the cameras and a map of the affected areas.

from Annex I).

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

hereafter LOPDGDD), said claim was transferred to the party claimed on fe-

date 02/07/22 and 04/28/22, to proceed with its analysis and inform this Agency

within a month, of the actions carried out to adapt to the requirements

provided for in the data protection regulations.

THIRD: After consulting the database of this Agency on 03/15/22, the

first response to the transfer carried out in a timely manner in accordance with the

terms of the LPAC (Law 39/2015, October 1), where it confirms the presence of the

cameras on the property you own.

It exposes the bad relationship with the claimant, considering that the claim obeys a spurious purpose, there being various Complaints among them, due to acts of vandalism and of a diverse nature.

Request the File of the Procedure and that in turn a new one be opened against the complaining party for facts similar to those under analysis.

FOURTH: On April 30, 2022, in accordance with article 65 of the LO-PDGGD, the claim presented by the claimant party was admitted for processing.

FIFTH: On 05/16/22, a new letter was received from the defendant providing various These photographs (Annex I) in relation to the facts that are the subject of the claim.

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SIXTH: On August 16, 2022, the Director of the Spanish Agency for Pro-Data Protection agreed to initiate a sanctioning procedure against the claimed party, with in accordance with the provisions of articles 63 and 64 of Law 39/2015, of October 1, of Common Administrative Procedure of Public Administrations (hereinafter, LPACAP), for the alleged infringement of Article 13 of the GDPR, typified in Article 83.5 of the GDPR.

SEVENTH: Notification of the aforementioned initiation agreement in accordance with the established regulations in Law 39/2015, of October 1, of the Common Administrative Procedure of the Public Administrations (hereinafter, LPACAP), the claimed party submitted a written of allegations in which, in summary, he stated the following:

- That the only thing that this camera registers is my property (as already sent to your request), and the part of your patio that you could reach, is protected by a

concealment mesh, as can clearly be seen in the photo itself (...).

- Simply enough that they will review the documentation provided by the

May 16 issued by patrimony to see that everything it affirms is a lie (...)

- That she also informed this agency that on September 29, both she and

your partner are summoned to go to court in court no. 2 of Cartagena,

to answer for a crime for which I have been denounced, theft of

the informative signs of the presence of security cameras. and other damage to me

property (...)".

EIGHTH: On 09/15/22, the collaboration of the Security Forces and Corps is requested.

Security who, displaced to the scene of the events, meet with the

claimed, who agrees to freely show them the monitors, arguing that the

informative posters are continuously torn down by the complaining party,

showing a copy of the Complaint to the corresponding Investigating Court.

It is additionally verified that there are several times that they have had to

moved to the scene, due to continuous neighborhood problems between the parties.

Documentary evidence is added (Annex I), attaching a photograph of the only poster

that currently exists informing that it is a video-surveilled area.

NINTH: On 12/14/22, the "Proposal for Resolution" is issued considering

the file of the procedure was correct since it was not proven that the facts

exposed constitute an administrative offense within the framework of data protection,

being notified by electronic means stating as "Delivered".

Of the actions carried out in this procedure and of the documentation

in the file, the following have been accredited:

PROVEN FACTS

First. On 01/31/22, a claim is received through which the

as main fact the following:

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“has installed on a farm of which the defendant is co-owner, two cameras video surveillance cameras that, due to their location and orientation, are likely to capture images of the claimant's home, as well as of the public thoroughfare, without having authorization to do so” (folion 1).

Provide images of the location of the cameras and a map of the affected areas Annex I).

Second. It is identified as the main responsible B.B.B., who does not deny the installation of the camera, although it considers that the claim is due to a situation conflict over issues related to land ownership.

Third. The Security Forces and Bodies accredit the presence of at least one informative poster, noting that they are stolen by the neighbor next, having denounced the facts to the nearest Investigating Court.

Room. There is no accredited record of obtaining images of the property of the claimant, nor has "data processing" been carried out outside the cases permitted by the law.

FUNDAMENTALS OF LAW

Yo

In accordance with the powers that article 58.2 of Regulation (EU) 2016/679 (Re-General Data Protection Regulation, hereinafter GDPR), grants each authority quality of control and as established in articles 47, 48.1, 64.2 and 68.1 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: "The procedures processed

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

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

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

sidario, by the general rules on administrative procedures."

II

In the present case, the claim dated 01/31/22 is examined by means of

gave from which the presence of a badly oriented camera is transferred without just cause

that may affect the processing of data by third parties.

The art. 5.1 c) GDPR provides the following: Personal data will be:

"adequate, relevant and limited to what is necessary in relation to the purposes

for those who are processed ("data minimization").

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It should be remembered that individuals are responsible for ensuring that the systems installed

fulfilled comply with current legislation, certifying 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 poster

ive, indicating the purposes and person 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 thereof without just cause.

Neither with this type of device can you obtain an image(s) of public space.

since this is the exclusive competence of the Security Forces and Bodies of the State

tado.

It should be remembered that even if it is 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, who are intimate

measured by it in the belief of being the object of permanent recording.

On the part of individuals, it is not possible to install devices for obtaining

images of public space and/or traffic 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

its inhabitants, avoiding the affectation of the rights of third parties who are intimidated

two with the same

II

On 09/13/22, this Agency received a written statement of allegations from the claimant.

declaring ownership of the road, as well as a bad relationship for various

reasons with the claimant, some of which have been prosecuted to date.

The defendant does not deny being responsible for the installation of the cameras, if

well these are provided with a privacy mask which prevents the affectation of the

area owned by the claimant, limiting its capture to space owned by the claimant.

larity.

It also states that the claimant has been denounced for "the abduction of

reiterated of the informative posters "reason for which they are located in judicial headquarters

in Court No. 2 (Cartagena).

Focusing the matter on the area of competence of this body, which is not other than the presence of the cameras and, where appropriate, the hypothetical affectation of the area exclusive to third parties, the allegations made allow us to point out the absence of affectation transfer to the claimant's area, whose data will only be processed in the event of entering in the private area of the defendant.

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The various conflicts described, providing a partial copy of a judgment in where a conviction for theft against the claimant is embodied, justifies the presence of the device(s) in question, otherwise a defenseless situation would result. pressure on the claimed party who would be at the mercy of sneak attacks or acts of vandalism. repeatedly, the device fulfilling a deterrent function against the behaviors described.

Any other question about the “ownership” of the land exceeds the general framework. potential of this Agency, and must be resolved in the appropriate judicial seat, not basing the mere hypotheses of the claimant to undermine the presumption of innocence of the respondent, whose device(s) is oriented to land on his or her private property, as long as the contrary is not proven.

In relation to the absence of billboards, the factual account is corroborated by the Security Forces and Corps (Civil Guard-Murcia Command) by Official Letter dated 10/10/22 displaced to the scene of the events that provide photographic evidence of at least one poster, indicating that the defendant has denounced the facts and is in process of a new placement of informative posters.

This body has pronounced widely on the condemnation of acts vandalic of any nature, allowing the presence of recording devices that even allow a modulation in the bad neighborhood relations, having to the images obtained may be transferred to the Security Forces and Bodies or Court of Investigation closest to the place of the facts.

IV.

The principle of presumption of innocence prevents imputing an administrative offense when a proof of accreditation of the facts has not been obtained and verified. crimes that motivate the imputation or the intervention in them of the presumed infractor. 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 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 sanctioning Law 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 set of evidence and a procedure contradictory in which one's own 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, which in the appreciation of the authorities or bodies called to resolve, destroy this presumption (TCo Auto 3-12-81).

IV.

Based on the allegations put forward and the evidence provided, it should be noted that there has been no verified an orientation of the camera(s) object of claim towards the property private of the claimant, nor has any "data processing" been verified, as well as the presence of informative poster(s) is verified, reason that justifies the proposal of Archive of this procedure.

Both parties are reminded of the importance of the rights at stake, should avoid the instrumentalization of this body in matters of neighborhood disputes, which must be settled in the courts timely.

Therefore, in accordance with the applicable legislation and assessed the criteria of graduation of sanctions whose existence has been accredited, the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: ORDER the FILE of this procedure as there is no accredited the commission of any administrative infraction in the matter that we

occupies.

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 the interested parties have been notified.

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.

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