

□ Procedure No.: PS/00192/2020

## RESOLUTION OF PUNISHMENT PROCEDURE

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

### FACTS

FIRST: SOLANA CITY COUNCIL (\*hereinafter, the claimant) dated 12

June 2020 filed a claim with the Spanish Agency for the Protection of

Data. The claim is directed against A.A.A. (BAR \*\*\*BAR.1) with NIF \*\*\*NIF.1 (in

later, the claimed one). The reasons on which the claim is based are as reflected in the  
claim the following:

“existence of a camera in the Bar “\*\*\*BAR.1”, which we believe violates the regulations  
of data protection, when capturing the cameras public road ”

“And these cameras from a public establishment with a bar license and the images  
genes that captures the entire public road (both sidewalks and road)” (folio nº 1).

A photographic report is attached (Annex I) that proves the presence of the chambers.  
video-surveillance gangs in the denounced establishment.

SECOND: On 06/25/20, the admission to processing of the claim for  
this Agency considering that there are proven indications of the commission of a pre-  
alleged administrative infraction by the accused party.

THIRD: After consulting the database of this Agency, it is associated with the complaint  
File E/02084/2020 was filed, notified to it on 03/05/20.

FOURTH. On September 2, 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 the RGPD, typified in Article 83.5 of the  
GDPR.

FIFTH. On 10/19/20, allegations were received from the accused stating that

Next:

-That it has a camera system, but that it is equipped with the

informative sign in visible area.

-That you do not obtain any image of public space with the system in question,

always preserving the privacy of third parties.

## PROVEN FACTS

First. It is identified as the main responsible A.A.A. which recognizes you

have a camera installed for security reasons at the Bar he runs.

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Second. It is accredited that it has an informative poster indicating that it is

of a video-monitored area and the data controller.

Third. There is no objective evidence provided that proves the infringement, based on

taking the complaint in mere suspicions of the acting force.

Fourth. It does not cost to have an informative form(s) available to customers.

tes for the purposes of claiming them.

## FOUNDATIONS OF LAW

Yo

By virtue of the powers that article 58.2 of the RGPD recognizes to each authori-

control, and according to the provisions of articles 47 and 48 of the LOPDGDD, the Di-

rector of the Spanish Agency for Data Protection is competent to initiate and

to solve this procedure.

In the present case, the claim dated 06/12/20 is analyzed by me-

of which the following is transferred as the main fact to this Agency:

“existence of a camera in the Bar “\*\*\*BAR.1”, which we believe violates the regulations of data protection, when capturing the cameras on public roads” (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 should preferably be oriented towards the space particular, avoiding intimidating neighboring neighbors with this type of device, as well how to control their transit areas without just cause.

Neither with this type of device can image(s) of public space be obtained.

co, as this is the exclusive competence of the State Security Forces and Bodies ted.

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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 or transit area of third parties, outside the cases permitted in the regulations.

### III

The denounced party proceeds to answer this Agency in writing dated 10/19/20 that actually has a camera for security reasons of the establishment.

bar \*\*\*BAR.1, which at no time has captured beyond the door of the premises, preserving at all times the privacy of third parties who could walk around its vicinity.

Provides documentary evidence (doc. No. 1) that proves the availability of an internal cartel training indicating the data controller.

The complainant party did not provide documentary evidence (eg printing of screen with date and time) that will accredit the capture of public space on the date of the facts, being insufficient the mere "suspicions" to undermine the right to the presumption of innocence of the defendant.

Article 22.2 LOPDGDD (LO 3/2018, December 5) provides: "They may only capture images of public roads to the extent that it is essential to the purpose mentioned in the previous section.

However, it will be possible to capture the public road in an area greater than superior when necessary to guarantee the security of goods or facilities strategic or infrastructure linked to transport, without in any case being able to suppose the capturing of images of the interior of a private home".

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

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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).

#### IV

According to the foregoing, it has not been possible to determine the conduct of any factor within the framework of the matter at hand, which is why it proceeds order the File of this procedure.

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

FIRST: ORDER the FILE of this procedure as there is no evidence give any administrative infraction.

SECOND: NOTIFY this resolution to Ms. A.A.A. (BAR \*\*\*BAR.1) and INFORM of the result of the actions SOLANA CITY COUNCIL.

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

Director of the Spanish Data Protection Agency

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