

□ File No.: EXP202103746

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 September 15,
2021 filed a claim with the Spanish Data Protection Agency. The re-
outcry is directed against B.B.B. with NIF ***NIF.1 (hereinafter, the claimed party).

The reasons on which the claim is based are briefly the following:

“...they have video surveillance cameras facing public roads and spaces.
private businesses of others, without authorization to do so” (folio no. 1).

Together with the notification, documentary evidence is provided that proves the presence of six
video surveillance devices (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 10/26/21, to proceed with its analysis and inform this Agency on the plan
within one month, of the actions carried out to adapt to the foreseen requirements.
cough in the data protection regulations.

The claimed party on 12/13/21 replied to this Agency confirming the
presence and operability of the cameras (printing four monitors), arguing
civil issues and as other residents of the property have the same type of camera
maras oriented towards public area.

THIRD: On December 15, 2021, in accordance with article 65 of
the LOPDGDD, the claim presented by the complaining party was admitted for processing.

FOURTH: On March 3, 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 5.1.c) of the GDPR, typified in the Article 83.5 of the GDPR.

FIFTH: After consulting the database of this Agency, the Agreement was notified of Start on 03/04/22, without any response being made by the party claimed.

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SIXTH: On 05/20/22, the "Proposed Resolution" is issued, proposing the Archiving of this procedure as it is not proven that with the cameras object of claim capture public and/or private space of third parties, limiting the capture to the private space of the claimed (a), being the same notified in a timely manner.

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

PROVEN FACTS

First. The facts bring cause of the claim dated 09/15/21 through the which transfers to this body the following facts:

“...they have video surveillance cameras facing public roads and spaces.

private businesses of others, without authorization to do so” (folio no. 1).

Second. It is identified as the main person responsible for B.B.B., with ***NIF.1.

Third. The availability of an operating system for video cameras is accredited.

deo-surveillance although it is limited to your private property.

Room. There is evidence of the presence of an informative poster in the access area to the

home of the defendant informing that it is a video-surveilled area.

Fifth. No affectation to the rights of third parties or the capture of space has been verified.

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FUNDAMENTALS 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 GDPR), grants each authori-

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-

sisidario, by the general rules on administrative procedures."

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II

In the present case, we proceed to examine the claim presented in this body.

nism, transferring the presence of a "video-surveillance system" that affects according to manifests to private areas without the proper authorization, and may affect public area without just cause.

Article 5.1.c) of the GDPR provides that personal data shall be "adequate, pertinent, 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, 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 tive, indicating the purposes and person responsible for the treatment, where appropriate, of the data of each personal character.

Article 22.4 of the LOPDGDD provides that:

"The duty of information provided for in article 12 of Regulation (EU) 2016/679 will be understood to have been complied with by placing an informative device in a sufficiently visible place identifying, at least, the existence of the treatment, the identity of the person responsible and the possibility of exercising the rights provided for in the Articles 15 to 22 of Regulation (EU) 2016/679. It may also be included in the informative site a connection code or internet address to this information".

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.

It is not possible to obtain images of public space with this type of device either, as this is the exclusive competence of the State Security Forces and Corps.

It should be remembered that even in the case of being 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 imaging devices of public space, outside the cases allowed in the regulations.

II

In accordance with the evidence available in this proceeding, disciplinary action, it is considered that the claimed party has a system of

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chambers that exclusively affect your private property, regardless of other problems that may exist of a civil nature.

The evidence provided by the claimed party confirms the presence of the cameras, although they are duly signposted and are oriented exclusively to your private property (Annex I frames), not appreciating affectation of space public without just cause.

The rest of the "problems" between the parties do not fall within the framework competence of this body, and must be resolved in the judicial instances opportune, and should avoid instrumentalizing this Agency for more characteristic of civil law than of the matter at hand.

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).

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All of this without prejudice to the possibility of proceeding if deemed necessary to

inspect the installed camera system in case of alteration of the current ones

exposed factual circumstances.

Therefore, in accordance with the applicable legislation, the Director of the Spanish Agency

Data Protection has RESOLVED:

FIRST: TO ORDER the ARCHIVE of the present proceedings as there are no remaining

accredited the commission of any administrative infraction in the matter that we

occupies.

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

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

Respondents may optionally file an appeal for reinstatement before the Director

of the Spanish Agency for Data Protection within a period of one month from the

the day following the notification of this resolution or directly contentious appeal

before the Contentious-Administrative Chamber of the National Court,

in accordance with the provisions of article 25 and section 5 of the additional provision

fourth clause of Law 29/1998, of July 13, regulating the Contentious Jurisdiction-

administration, 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.

Mar Spain Marti

Director of the Spanish Data Protection Agency

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