

□ File No.: EXP202102398

## RESOLUTION OF PUNISHMENT PROCEDURE

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

### BACKGROUND

FIRST: COMMUNITY OF NEIGHBORS \*\*\* COMMUNITY.1 (\*hereinafter, the part claimant) on September 1, 2021 filed a claim with the Agency

Spanish Data Protection. The claim is directed against A.A.A. with NIF

\*\*\*NIF.1 (hereinafter, the claimed party). The grounds on which the claim is based are the following

“The requested person maintains installed in a house of his property located in the

\*\*\*ADDRESS.1, of the parish of \*\*\*PARISH.1, C.P. \*\*\*C.P.1, Vigo (Ponteve-

dra), a camera that focuses directly on the public road, as well as on the green hills.

cinal property of the requesting party” (folio nº1).

A single documentary evidence is provided that proves the presence of a device

site at a considerable distance from the claimant's area, as there is a highway

between both properties (Annex I photograph 1).

SECOND: In accordance with article 65.4 of Organic Law 3/2018, of 5

December, of Protection of Personal Data and guarantee of digital rights (in

hereinafter LOPDGDD), said claim was transferred to the claimed party in fe-

cha 09/24/21 and 11/03/21, to proceed to 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.

No response has been received to this letter, nor has any clarification been made.

in relation to the facts subject to transfer.

THIRD: On November 23, 2021, the Director of the Spanish Agency of Data Protection agreed to admit for processing the claim presented by the party claimant.

FOURTH: On January 17, 2022, the Director of the Spanish Agency for Data Protection agreed to initiate a sanctioning procedure against the claimed party, for the alleged infringement of Article 5.1.c) of the RGD, typified in Article 83.5 of the GDPR.

C/ Jorge Juan, 6

28001 – Madrid

[www.aepd.es](http://www.aepd.es)

[sedeagpd.gob.es](http://sedeagpd.gob.es)

2/6

FIFTH: On 03/07/22 collaboration is requested from the Security Forces and Bodies security of the locality so that those displaced to the place of the events carry out the precise specifications, informing this Agency for this purpose.

SIXTH: On 03/29/22, a Local Police Report (Vigo) was received, which was transferred to the gar of the facts confirms the following:

☐

☐

-Two cameras are located on the exterior walls of the house, but not on the

\*\*\*ADDRESS.1, but rather \*\*\*ADDRESS.2, which is actually the same living place.

-That in the two access doors to the house, both in that of \*\*\*DIRECT-TION.2 (...) there are two posters informing that you are in a Video-vigilada, mentioning the LOPD 15/1999, December 13.

☐ That after contacting the owner B.B.B., it is her husband who has authorized

the placement of the same by the Association of Neighbors and Business-

rivers of the \*\*\*PARISH.1.

□

□

-That the first one, the one on the main façade, was placed to protect the

integrity of two banners placed by the Association on a wall owned

by Don C.C.C. (photo of the banners is attached)”

-That the other camera was placed at the request of Doña B.B.B., to protect the vi-

sale of it.

In view of everything that has been done, by the Spanish Data Protection Agency

In this proceeding, the following are considered proven facts:

#### PROVEN FACTS

First. The facts bring cause of the claim dated 09/01/21 through the

which translates as the main fact the following:

“The requested person maintains installed in a house of his property located in the

\*\*\*ADDRESS.1, of the parish of \*\*\*PARISH.1, C.P. \*\*\*C.P.1, Vigo (Ponteve-

dra), a camera that focuses directly on the public road, as well as on the green hills.

cinal property of the requesting party” (folio nº1).

A single documentary evidence is provided that proves the presence of a device

site at a considerable distance from the claimant's area, as there is a highway

between both properties (Annex I photograph 1).

C/ Jorge Juan, 6

28001 – Madrid

[www.aepd.es](http://www.aepd.es)

[sedeagpd.gob.es](http://sedeagpd.gob.es)

Second. It is accredited as the main person in charge of the installation, after the police searches carried out, Association of Neighbors and Entrepreneurs of the \*\*\*PARRO-QUIA.1.

Third. It is accredited that they have an informative poster informing that it is of a video-monitored area, although with reference to the repealed LOPD (LO 15/99,13 december).

Fourth. In relation to the devices examined, it is accredited that the orientation of at least one of them is on a private area; while the other according to demonstration of those responsible is limited to the minimum protection of two banners felled, to avoid vandal attacks, having authorization from the owner of the wall for placing them.

## FOUNDATIONS OF LAW

Yo

By virtue of the powers that article 58.2 of the RGPD recognizes to each authority of control, and according to the provisions of articles 47 and 48 of the LOPDGDD, the Director of the Spanish Agency for Data Protection is competent to initiate and to resolve this procedure.

II

In the present case, the claim dated 09/01/21 is examined by medio from which the “presence of a device oriented towards public space without having any signage in this regard” (folio nº 1).

A single documentary evidence is attached (photograph Annex I) that allows con-address the presence of a camera, which the claimant states is oriented towards adjoining public space.

The facts denounced could imply an affectation to the content of art. 5.1 c)

RGPD (regulation currently in force) that provides: “personal data will be:

c) adequate, pertinent and limited to what is necessary in relation to the purposes

for which they are processed ("data minimization") (...)"

Individuals are responsible for the installed video-surveillance systems to be

comply with current legislation, and must be able to prove such extremes.

We report to the competent authority.

Cameras installed by individuals must be oriented towards their private space.

avoiding the capture of private area of third parties without just cause.

The capture and/or recording of images of identified or identifiable persons

for surveillance purposes through cameras, video cameras, or any other technical means.

[www.aepd.es](http://www.aepd.es)

C/ Jorge Juan, 6

28001 – Madrid

[sedeagpd.gob.es](http://sedeagpd.gob.es)

4/6

analogous only, constitutes a processing of personal data that must adjust

abide by the principles and obligations established in the Regulations on the Protection of

Data (General Data Protection Regulation 679/2016 and Organic Law 3/2018

Protection of Personal Data and guarantee of digital rights), unless di-

that treatment of images is carried out within an exclusively personal use

nal or domestic.

In no case will the use of surveillance practices be admitted beyond the objective environment.

of the installation and in particular, not being able to affect the surrounding public spaces.

contiguous buildings and vehicles other than those accessing the guarded space.

Likewise, in the case of false cameras, they must be oriented

to a private area, avoiding intimidation of neighboring neighbors who are unaware

know whether or not they process personal data.

Any data collection through the use of cameras must be reported to through the placement of an information poster that is sufficiently visible in the accesses to the monitored areas, which will clearly indicate a series of data regarding the existence of the treatment (video surveillance), if it constitutes a file, the identity of the data controller or video surveillance system and the address of the same, of the possibility of exercising the rights recognized in the regulations on Data Protection.

### III

In the investigation phase, the collaboration of the Municipal Police (Vigo) is required, which provides Report dated 03/29/22 by means of which it confirms the authorship of the installation, as well as the absence of affectation of public and/or private areas of third parties.

“That when asked about the reason for the placement of the cameras, his husband do D.D.D. He replied that the cameras were on his property, but that he had bought them.

located Association of Neighbors and Entrepreneurs of \*\*\*PARISH.1”

“That the first of them has been placed to protect the integrity of two pan-letters placed by the Association on a wall owned by Don C.C.C. (Attached photo of the banners)”

“That the other camera was placed at the request of Doña B.B.B., to protect the vi-sale of the same”

This body has expressed itself in various resolutions on the condemnation of acts of vandalism of any nature, covered by the stealth of the attacks carried out, allowing the presence of cameras whose purpose in a way provided is none other than to prove the presumed authorship of the facts, for the sake of making it available to the competent authorities.

C/ Jorge Juan, 6

28001 – Madrid

“Whoever causes damage to property belonging to others not included in other titles of this Code, will be punished with a fine of six to twenty-four months, attending the economic condition of the victim and the amount of the damage” (article 263 CP).

The investigations carried out have made it possible to determine that the cameras installed they do not affect the private area of the claimant, nor is surveillance of public space without just cause.

One of the chambers is limited to the protection of private property against external aggressions without any affectation to the right of third parties has been verified. ted, stating with the proper information of "Video-surveillance Zone".

The other camera has in principle an angle limited to the banners object of protection against vandal attacks (e.g. graffiti, destruction, etc.) without affecting space of the complaining party, limiting itself to obtaining images in a limited angle, excluded from the "privacy" of third parties.

The orientation of one of the cameras towards the banners mentioned, without more considerations, it can be considered covered in the protection of the same against the aforementioned attacks, so that the images obtained can be made available to the competent authorities, affecting only those who approach them with malicious intentions.

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

Based on the foregoing, after analyzing the evidence provided, it can be concluded that the commission of any administrative infraction in the matter that we occupies, which justifies the Archive of this procedure.

Lastly, the transcendence of the rights at stake is recalled, avoid instrumentalizing this body for matters unrelated to it or that may where appropriate, be resolved by the local security forces and bodies.

Therefore, in accordance with the applicable legislation and after assessing the graduation criteria tion of the sanctions whose existence has been proven,

C/ Jorge Juan, 6

28001 – Madrid

[www.aepd.es](http://www.aepd.es)

[sedeagpd.gob.es](http://sedeagpd.gob.es)

6/6

the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: ORDER the FILE of this procedure as there is no evidence gives the commission of any administrative infraction in the matter that concerns us.

SECOND: NOTIFY this resolution to the complaining party A.A.A. and INFO-SEA of this resolution to the LOCAL POLICE (COUNCIL OF VIGO).

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

938-100322

C/ Jorge Juan, 6

28001 – Madrid

[www.aepd.es](http://www.aepd.es)

[sedeagpd.gob.es](http://sedeagpd.gob.es)