

□ Procedure No.: PS/00005/2020

938-051119

## RESOLUTION OF PUNISHMENT PROCEDURE

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

### FACTS

FIRST: A.A.A. (hereinafter, the claimant) dated October 24, 2019

filed a claim with the Spanish Data Protection Agency. The

claim is directed against SOUND SOUL, S.L. with CIF B02262327 (hereinafter, the

reclaimed). The reasons on which the claim is based are "installation on the facade of the  
PUB of a video surveillance camera capturing part of the public space".

Along with the claim, provide documentary evidence (Doc. No. 1) that proves the  
installation of the device in question on the facade of the establishment oriented  
towards public road.

SECOND: In view of the facts denounced in the claim and the documents  
information provided by the claimant, the Subdirector General for Data Inspection  
yielded to carry out preliminary investigation actions for the clarification  
of the facts in question, by virtue of the powers of investigation granted to the  
control authorities in article 57.1 of Regulation (EU) 2016/679 (Regulation  
General Data Protection, hereinafter RGPD), and in accordance with the provisions  
ed in Title VII, Chapter I, Second Section, of Organic Law 3/2018, of 5  
December, of Protection of Personal Data and guarantee of digital rights (in  
hereinafter LOPDGDD).

As a result of the research actions carried out, it is confirmed

that the person responsible for the treatment is the claimed PUB PUERTO PRINCIPE (in what

successively, The Pub)

Due to the following facts according to statements by the complainant: installation in the fa-  
PUB girl a video surveillance camera capturing part of the public space.

That according to the complainant took place on the date of: at the time of the complaint.

And attach the following documentation:

☐ Photographic report of the installation of the camera.

The background information is the following:

On November 29, 2018, within file E/09423/2018, it was  
transfers the claim to the claimed one through the postal services that

C/ Jorge Juan, 6

28001 – Madrid

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

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

2/5

after two delivery attempts, the notification is returned with the result “Returned to Origin”.

gen by Leftover (Not withdrawn in office) on 12/18/2018 at 08:55”.

On December 28, 2018, within file E/09423/2018, it was

reiterates the transfer of the claim to the claimed one through the postal services

that after two delivery attempts, the notification is returned with the result “Returned to

Origin by Surplus (Not picked up at the office) on 01/24/2019 at 08:18”.

With the signing date of January 30, 2019, it is agreed to admit the claim for processing.

tion filed by the claimant against PUB PUERTO PRINCIPE.

During these proceedings, investigations have been carried out on the following

entities:

PUB PUERTO PRINCIPE with NIF with address at \*\*\*ADDRESS.1

SOUND SOUL S.L. with CIF B-02262327 with address at \*\*\*ADDRESS.2

Requested to the Hon. Albacete City Council on the claimed pub property,  
dated November 24, 2018 is received at this Agency, with registration number  
050773/2019, letter sent by this city council informing of the following da-  
cough:

o Owner: SOUND SOUL S.L.

or CIF: B02262327

o Activity: Disco

After conducting a search in the Central Mercantile Registry (hereinafter, RMC), it is found  
that its registered office is \*\*\*ADDRESS.2

THIRD: On January 22, 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.

FOURTH: On 02/06/20, this Agency receives a written statement of allegations from the  
reported stating the following:

"That said camera is focused solely on the door of the PUB, as  
shown in the attached report and photo".

"That for the demonstration of these allegations, is attached to this document  
the following documents: Report of the Company Alexma S.A and image of the approach  
of the camera".

In view of everything that has been done, by the Spanish Protection Agency  
of Data in this procedure the following are considered proven facts,

FACTS

C/ Jorge Juan, 6

28001 – Madrid

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

First. On 10/24/19, this Agency receives a claim from the epigraphed

stating the following:

“installation on the facade of the PUB of a video surveillance camera capturing part of the public space”.

Second. He is accredited as the main person responsible for the installation of the system the commercial entity Sound Soul S.L.

Third. It is accredited that the capture of public space is the minimum necessary for the protection of the facade of the establishment. (Proof No. 1), not appreciating in the evidence provided disproportionate or unnecessary capture of public and/or private space of third parties.

Fourth. No photograph of the informative poster has been provided indicating the person in charge of the processing of personal data.

## FOUNDATIONS OF LAW

Yo

By virtue of the powers that article 58.2 of the RGPD recognizes to each authority 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 solve this procedure.

II

In the present case, we proceed to examine the claim dated 11/12/2019 by means of which the following is transferred as the main fact:

“installation on the facade of the PUB of a video surveillance camera capturing part of the public space” (folio nº 1).

The art. 5.1 c) RGPD 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").

The facts, therefore, are specified in the existence of a camera that could

be poorly oriented, according to the complainant's criteria, and may affect the right to terminate

zeros without just cause.

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

most installed comply with current legislation.

C/ Jorge Juan, 6

28001 – Madrid

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

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

4/5

The installation of this type of device must have the mandatory sign

informative, indicating the purposes and responsible for the treatment in your case of the data

of a personal nature.

In any case, the cameras should preferably be oriented towards the

private space, avoiding intimidating neighboring neighbors with this type of device,

as well as control their transit areas without just cause.

With this type of device it is also not possible to obtain image(s) of

public service, as this is the exclusive competence of the Security Forces and Corps

of the State.

On 02/06/20, this Agency received a written allegation from the complainant.

by means of which it states the following:

“that the disproportionate uptake of public space is not true”, contributing

documentary evidence of what, in your case, is captured with the camera in question.

In the investigation phase, the image (Doc. number 1) is examined, con-

Considering that capturing public space is the minimum necessary to protect the establishment.

The art. 4 section 3 of instruction 1/2006 (AEPD) provides the following:

“Cameras and video cameras installed in private spaces will not be able to obtain have images of public spaces unless it is essential for the purpose of surveillance that is intended, or it is impossible to avoid it due to the location of those. In any case, any unnecessary data processing should be avoided. for the intended purpose”.

Therefore, the mere observation of the camera on the facade of the establishment does not presuppose a violation of the right to the image of third parties, being able to capture a minimum public space, necessary to avoid acts of vandalism in the establishment. to (vgr. graffiti, destruction, etc).

III

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 the result of the tests carried out, freely assessed by the sanctioning, must be translated into an acquittal pronouncement.

C/ Jorge Juan, 6

28001 – Madrid

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 arguments presented and once the evidence has been analyzed, has provided, it can be concluded that the installed camera complies with current legislation capturing a space proportionate to the intended purpose.

So it is appropriate to order the file of this procedure by the stated reasons.

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.

SECOND: NOTIFY this resolution to SOUND SOUL, S.L. and INFORM the complainant Mr. A.A.A.

In accordance with the provisions of article 50 of the LOPDGDD, the

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 interested parties may optionally file an appeal for reconsideration before the Director of the Spanish Agency for Data Protection within a period of month 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 in article 46.1 of the aforementioned Law.

Sea Spain Marti

Director of the Spanish Data Protection Agency

C/ Jorge Juan, 6

28001 – Madrid

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

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