

Procedure No.: PS/00234/2019

938-0419

RESOLUTION OF PUNISHMENT PROCEDURE

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

FACTS

FIRST: Mrs. A.A.A. (*hereinafter, the claimant) dated February 28,
2019 filed a claim with the Spanish Agency for Data Protection,
motivated by the processing of data carried out through cameras of a security system.
video surveillance whose owner identifies as the neighbor of the property B.B.B. with NIF
***NIF.1 (hereinafter the claimed) installed in ***CALLE.1, ENT. FLOOR, DOOR D,
ELCHE, ALICANTE.

The reasons on which the claim is based are "installation of a video peephole
surveillance at the door of the house" without having the authorization of the Board of
Owners, being able to affect the right to privacy of the challenge of neighbors.

SECOND: In view of the reported facts, in accordance with the evidence
that is available, the Data Inspection of this Spanish Agency for the Protection of
Data considers that the treatment of personal data that is carried out by the
denounced through the chambers to which the complaint refers, does not meet the
conditions imposed by the regulations on data protection, for which reason the
opening of this sanctioning procedure.

THIRD: On 01/04/19, the claim was TRANSFERRED to
denounced so that he could allege in law what he deemed appropriate, proving the
legality of the installed system.

FOURTH: On September 12, 2019, the Director of the Spanish Agency

of Data Protection agreed to initiate a sanctioning procedure against the claimed, for the alleged infringement of Article 5.1.c) of the RGD, typified in Article 83.5 of the GDPR.

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

In this proceeding, the following are considered proven facts:

First. On 02/28/19, this Agency received a claim from the

Complainant by means of which he states the following:

"installation of a video-surveillance peephole at the door of the house" without counting with the authorization of the Board of Owners, which may affect the right to intimacy of neighbors challenge.

Second. It is identified as the main responsible Mr. B.B.B., neighbor of the property that is identified by the complainant.

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Third. According to the complainant, the neighbor (reported) has a peephole with the possibility of permanent recording of common spaces, without the Community neighborhood has given permission to do so.

Fourth. The accused party has not made any allegation of what is recorded in your case with the device in question, nor about the cause / reason for the installation of it.

FOUNDATIONS OF LAW

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By virtue of the powers that article 58.2 of the RGD recognizes to each

control authority, and as established in art. 47 of the Organic Law 3/2018, of December 5, Protection of Personal Data and guarantee of rights (hereinafter LOPDGDD), the Director of the Spanish Agency for Data Protection is competent to initiate and resolve this procedure.

II

In the present case, we proceed to examine the claim dated 02/28/19

by means of which the following is transferred as the main fact:

“That the neighbor claimed has a peephole in the door of his house with recording and receiving images on your mobile device, thus breaching the data protection regulations (...).”

The facts described above may affect the

content of art.5.1 c) RGPD. “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").

It should be remembered that individuals can install video surveillance cameras although they assume the responsibilities that they comply with the provisions in force on the matter.

Article 1 of Instruction 1/2006 (AEPD) provides the following: "The references contained in this Instruction to video cameras and cameras will be understood also made to any analogous technical means and, in general, to any system that allows the treatments provided for in it.

In relation to the installed device (electronic peephole) it is necessary to remember that the same attending to the technical characteristics of this, you can record with permanent nature of common areas, and care must be taken when installing the itself, by being able to affect the right to privacy of third parties without just cause.

The purpose of an electronic peephole is not to permanently record

common areas, but to be a technical instrument that helps people with some

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degree of disability or functional mobility deficit to perform their tasks

daily or serve as a security measure of the home, in case of abandonment

of the same (vgr. during the vacation period).

In general, this type of device is only activated when you press

the call bell to the address in question, remaining the rest of the time in

“pause” mode in relation to the acquisition of images, so that there is no

equates to a video camera that permanently records the common areas.

III

For information purposes only, it is worth remembering some of the requirements that

must comply with the processing of images through a video surveillance system

to comply with current regulations:

- Respect the principle of proportionality.

- When the system is connected to an alarm center, you can only

be installed by a private security company that meets the requirements

contemplated in article 5 of Law 5/2014 on Private Security, of April 4.

- The video cameras will not be able to capture images of the people who

are outside the private space since the treatment of images in places

public can only be carried out, where appropriate, by the Forces and Bodies of

Security. Nor can spaces owned by third parties be captured or recorded without

the consent of their owners, or, as the case may be, of the persons who are

find.

- The duty to inform those affected provided for in article

12 of the RGPD 2016/679, of April 27, 2016, in the terms referred to both in the

cited article, as in articles 13 and 14 of said rule, resulting from the application

-by not contradicting the provisions of the aforementioned Regulation-, the manner provided in the

Article 3 of Instruction 1/2006, of November 8, of the Spanish Agency for

Data Protection, on the Processing of Personal Data for the Purpose of

Surveillance through Camera Systems or Video Cameras (Instruction 1/2006, of 8

of November, of the Spanish Data Protection Agency).

Specifically, it must:

1. Place at least one informative badge in the video-monitored areas

located in a sufficiently visible place, both in open spaces and

closed.

In accordance with the provisions of articles 13 and 14 of the Regulation (EU)

2016/679, of April 27, 2016, in the informative sign above

mentioned must identify, at least, the existence of a treatment, the

identity of the person in charge and the possibility of exercising the rights provided in

these precepts.

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2. Keep the information to which it refers available to those affected

the aforementioned Regulation (EU) 2016/679, of April 27, 2016.

IV

In accordance with the evidence available in this

sanctioning procedure, given the lack of collaboration of the accused, it is considered

that the defendant has a peephole capable of obtaining images of

common areas of the property, which has not been authorized by the Board of Owners.

The known facts could constitute an infraction, attributable to the

claimed, for violation of the content of art. 5.1 c) GDPR, cited above.

Article 83.5 letter a) RGD provides the following:

“Infractions of the following provisions will be sanctioned, in accordance

with paragraph 2, with administrative fines of a maximum of EUR 20,000,000 or,

in the case of a company, an amount equivalent to a maximum of 4% of the

global total annual turnover of the previous financial year, opting for the

of greater amount:

a) the basic principles for the treatment, including the conditions for the

consent under articles 5, 6, 7 and 9;

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Without prejudice to the provisions of article 83 of the RGD, the aforementioned Regulation

has in its art. 58.2 b) the possibility of sanctioning with a warning, in relation

with what is stated in Considering 148:

“In the event of a minor offence, or if the fine likely to be imposed

would constitute a disproportionate burden for a natural person, rather than

sanction by means of a fine, a warning may be imposed. must however

Special attention should be paid to the nature, seriousness and duration of the infringement, its

intentional nature, to the measures taken to alleviate the damages suffered,

the degree of liability or any relevant prior violation, the manner in which

that the control authority has been aware of the infraction, compliance

of measures ordered against the person responsible or in charge, adherence to codes of

conduct and any other aggravating or mitigating circumstance.”

In the present case, it is taken into account that it is an individual without previous infraction accredited in this Agency, as well as that it has not been carried out allegation about the device in question, considering it correct to impose a sanction of Warning, for the reasons stated.

It should be remembered that a non-collaborative attitude towards this body can give rise to the initiation of a sanctioning procedure of a pecuniary nature (art. 58.2 i) RGPD), for the infringement of article 73 letter o) LOPDGDD.

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The denounced party must certify the characteristics of the device, providing, where appropriate, the instructions of the electronic peephole, arguing the cause/reason for the installation or, failing that, prove its withdrawal, if excessively controls common areas of the property.

All this without prejudice to arguing what it deems appropriate about the device in question.

The denouncing party (given its status as President of the Community) can let you know the content of this administrative resolution, in such a way that so that it is recorded in the corresponding minutes of the Meeting or by the sending of a certified letter, with the accused (neighbor) being able to present to the group of neighbors the cause/reason for the installation of the peephole.

In situations such as those described, the parties are reminded that they must adjust their relationships to the minimum rules of neighborhood coexistence, so that

reach a satisfactory agreement for both, in such a way that the holder of the peephole can defend the safety of their home and the community see their right to Privacy.

Therefore, in accordance with the applicable legislation and having assessed the criteria for graduation of sanctions whose existence has been proven,

the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: IMPOSE Don B.B.B., with NIF ***NIF.1, for a violation of Article 5.1.c) of the RGPD, typified in article 83.5 of the RGPD, a sanction of WARNING, in accordance with the provisions of article 58.2 RGPD.

SECOND: ORDER the accused so that within ONE MONTH from the notification of this administrative act, which proceeds in the following terms:

- Explain the cause/reason for the installation of the electronic peephole on the door of your home.
- Contribution of the technical characteristics of the same, as well as in its case screen impression of what in your case is observed with it.
- Explanation that in your case you have given to the neighborhood community (eg contribution of the last minutes of the Meeting convened for this purpose or, failing that, that no any explanation).

THIRD: NOTIFY this resolution to Don B.B.B. and REPORT the result of the actions to the denouncing party Ms. A.A.A.

In accordance with the provisions of article 50 of the LOPDPGDD, this Resolution will be made public once it has been notified to the interested parties.

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Against this resolution, which puts an end to the administrative procedure in accordance with art. 48.6 of the LOPDPGDD, 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 month from counting 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

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