

□ Procedure No.: PS/00202/2019

RESOLUTION: R/00471/2019

In procedure PS/00202/2019, instructed by the Spanish Agency for

Protection of Data to the entity CONJUNTO RESIDENCIAL R.R.R., given the complaint

Presented by Mrs. A.A.A. and by virtue of the following,

FACTS

FIRST: Mrs. A.A.A. (*hereinafter, the claimant) dated February 12,

2019 filed a claim with the Spanish Data Protection Agency, motivating

given by the processing of data carried out through cameras of a video surveillance system.

gilancia whose owner is CONJUNTO RESIDENCIAL R.R.R. (hereinafter the claimed)

installed at ***ADDRESS.1.

The reasons on which the claim is based are ""installation of a heating system

video-surveillance gangs with alleged capture of images without just cause"

(folio no. 1).

Together with the claim, it provides documentary evidence (Annex I) that accredits the

felling of some kind of device.

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 de-

announced through the chambers to which the complaint refers, does not comply a priori

the conditions imposed by the regulations on data protection, for which reason

of the opening of this sanctioning procedure.

THIRD: On 02/26/19, this claim was TRANSFERRED to

the denounced party, so that he could allege what he deemed appropriate in relation to the camera.

was denounced, without any manifestation having occurred to date.

FOURTH: On July 11, 2019, the Director of the Spanish Agency for Pro-

Data Protection agreed to submit this procedure to a prior hearing.

PS/00202/2019 warning notice. Said agreement was notified to the defendant.

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PROVEN FACTS

First. On 02/12/19 a claim is received at this Agency through the

which translates as done as follows:

“Installation of a video-surveillance camera system with presumed capturing
tion of images without just cause” (folio nº 1).

Second. The entity CONJUNTO RE-

SIDENCIAL R.R.R.

Third. The notification of the Start Agreement is recorded, without any response being received.

has given in this regard on the facts that are the subject of the complaint.

Fourth. From the evidence provided (Doc. nº 1-3) the presence of some type of
device without being able to prove what it records.

FOUNDATIONS OF LAW

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

control, and as established in art. 47 of Organic Law 3/2018, of December 5,

bre, Protection of Personal Data and guarantee of digital rights (in the su-

cessive LOPDGDD), the Director of the Spanish Data Protection Agency is

competent to initiate and resolve this procedure.

II

In the present case, we proceed to examine the claim of date of entry into

this AEPD -02/12/19—through which it transfers as main fact:

“Installation of a video-surveillance camera system with presumed capturing
tion of images without just cause” (folio nº 1).

The complainant considers that the installed device can obtain images
passersby thereby affecting their right to privacy (art. 18 CE).

Individuals or companies can install video surveillance cameras if

They are well responsible that they comply with current legislation.

The content of article 5.1 letter c) RGPD is considered affected, which provides: "The
personal data will be:

c) adequate, relevant and limited to what is necessary in relation to the purposes
for which they are processed ("data minimization");

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Remember that the cameras installed must be oriented preferably

towards the private space to be protected, not being able to obtain images of public space.

co and/or adjoining areas.

III

For informational purposes only, it is worth recalling some of the requirements that must be met.

ple the treatment of images through a video surveillance system to be con-
form with the 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

established 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

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

can only be carried out, where appropriate, by the Security Forces and Bodies.

Nor can spaces owned by third parties be captured or recorded without the consent

of their owners, or, where appropriate, of the people who are in them.

- 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 ci-

stated 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 Pro-

tection of Data, on the Processing of Personal Data for Surveillance Purposes

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

of the Spanish Data Protection Agency).

Specifically, it must:

Place in the video-monitored areas, at least one computerized badge

1.

located in a sufficiently visible place, both in open spaces

as 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 previously cited-

do must identify, at least, the existence of a treatment, the identity

of the person in charge and the possibility of exercising the rights foreseen in said

precepts.

Keep available to those affected the information to which

two.

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

IV

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In accordance with the available evidence, it is considered that the claim made has been able to install some kind of recording device, which does not fit the regulations in force.

The known facts could constitute an infraction, attributable to the claimed, for violation of art. 5.1 c) GDPR, cited above.

This infringement affects the reporting principles of the RGPD, as it is considered a disproportionate measure (in the case of a camera), which may be contradictory considered as very serious in accordance with the provisions of article 83.5 RGPD.

“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, alternatively, being from a company, of an amount equivalent to a maximum of 4% of the volume overall annual total turnover of the previous financial year, opting for the greater amount:

a) the basic principles for the treatment, including the conditions for the consent under articles 5, 6, 7 and 9;

v

Based on the foregoing, it can be concluded that the defendant has a system

of video-surveillance, without proving its legality, which is why

proceeds to Apercibir to it.

The denounced party must certify the characteristics of the installed device.

do (e.g. if it is a simulated camera, etc), as well as providing image(s) of what

which, if applicable, is captured with the camera in question or prove that it has been

do to redirect it towards a private area exclusively.

The denouncing party may deem it appropriate to transfer the "facts" to the

Security Forces and Bodies of the locality, so that they verify the continuity of

the infraction, carrying out the appropriate inquiries to verify if the same

record or not public space.

According to what was stated,

By the Director of the Spanish Data Protection Agency,

HE REMEMBERS:

1.- NOTICE (PS/00202/2019) to RESIDENTIAL COMPLEX R.R.R. by

infringement of art. 5.1 c) RGPD, by having a video-surveillance system that is not

adapts to current legislation, infringement typified in art. 83.5^a) RGPD, being

punishable in accordance with art. 58.2 GDPR.

2.- REQUEST the entity CONJUNTO RESIDENCIAL R.R.R., so that within the term

One MONTH from the notification of this act, proceed:

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-Prove the legality of the system before this body, providing all the

tests necessary for it.

-Prove that you have a video-surveillance sign in a visible area, adapted to the regulations in force.

3.- NOTIFY this Agreement to CONJUNTO RESIDENCIAL R.R.R. and

INFORM the denouncing party Mrs. A.A.A.

In accordance with the provisions of article 50 of the LOPDPGDD, 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 (article 48.2 of the

LOPD), and in accordance with the provisions of articles 112 and 123 of the Law

39/2015, of October 1, of the Common Administrative Procedure of the

Public Administrations, the interested parties may optionally file

appeal for reconsideration before the Director of the Spanish Data Protection Agency

within one month from the day following the notification of this

resolution, or, directly contentious-administrative appeal before the Chamber of the

Contentious-administrative of the National Court, in accordance with the provisions of the

Article 25 and in section 5 of the fourth additional provision of Law 29/1998, of

July 13, regulating the Contentious-Administrative Jurisdiction, within the period of

two months from the day following the notification of this act, as

provided for in article 46.1 of the aforementioned legal text.

Sea Spain Marti

Director of the Spanish Data Protection Agency

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