

Procedure No.: PS/00199/2019

RESOLUTION: R/00390/2019

In procedure PS/00199/2019, instructed by the Spanish Agency for Data Protection to the entity GARDEN PIZZA SANT CUGAT, S.L., given the complaint filed by Don A.A.A. and by virtue of the following,

FACTS

FIRST: Don A.A.A. (hereinafter, the claimant) dated March 19, 2019 filed a claim with the Spanish Agency for Data Protection, motivated by the processing of data carried out through cameras of a video surveillance system whose owner is GARDEN PIZZA SANT CUGAT, S.L. with NIF B67037077 (hereinafter claimed) installed at CALLE LLACERES 12, SANT CUGAR DEL VALLÉS, BARCELONA.

The reasons on which the claim is based are "installation of video cameras- Surveillance by the Garden Pizza Restaurant presumably focused on the street" (folio no. 1).

Together with the claim, it provides documentary evidence (Photographs Annex I) that They certify the installation of the cameras.

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 03/29/19, the claim was TRANSFERRED to the entity denounced, appearing as notified in the computer system of this Agency, without

that any allegation has been made in this regard.

FOURTH: On July 11, 2019, the Director of the Spanish Agency for Data Protection agreed to submit this warning procedure PS/00199/2019. This agreement was notified to denounced.

FIFTH: On 07/25/19, this Agency received a written statement of allegations from the denounced party, stating succinctly the following:

“Lack of collation or verification of the reported facts.

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For this reason, we again consider the obligation to declare NULL the this administrative file, and we request the Archive of the same, without possibility to continue with any type of sanctioning procedure.

Denial of the reported FACTS.

...because the video-surveillance system used is for purposes merely exclusive and its location of the facilities of this part does not violate the right fundamental any third party, whether they are users of the facilities or passers-by who wander only on the existing public road and close to the facilities of this part.

The previous affirmation is accredited given that the technical means used to the capture of images in the property of this part consist of a total of six cameras of domestic or non-professional type, and permanently oriented indoors of the property (...), because its low resolution (...).

On the other hand, the rest of the cameras installed on the sides of the façade of the building are oriented at a descending angle or in a "pitched" controlling the limits of the facilities and area owned by this party (...).

This document is attached as Documents 5-9 installation plan cameras, satellite capture of Google Maps with real image of the location (...).

In accordance with what is stated in this document, this party understands that There is no infringement of any kind on the current legal and regulatory regulations of data protection, nor violation of any fundamental right because this party is entitled (by virtue of art. 6.1 d) and f) of the RGPD) to install the recording system (...).

-About the claimant/Complainant.

That the claimant has a clear and manifest animosity towards this part claimed—now recurring—because on several occasions he has tried to harm her by filing Complaints and reports before various official bodies, without any of them having prospered or achieved the result that also seems pursue with this claim (...).

For all the above (...) and in accordance with the same, please leave without effect the file initiated at the time and the File of these proceedings (...).

SIXTH: On 08/06/19, a resolution proposal was issued, in which it was agreed WARN the reported entity—Garden Pizza—by not proving that it complied with all the requirements established in the regulations in force.

SEVENTH: On 08/12/19 a letter is received from the defendant providing various photographs (Annex I) where you can see what is captured in your case with the video surveillance cameras.

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PROVEN FACTS

First. On 03/19/19, this AEPD received a claim from the affected party for

means of which transfers as main fact the following:

“Installation of video-surveillance cameras by the Garden Pizza Restaurant

presumably focused on the street” (folio nº 1).

Second: The Garden Pizza entity is identified as the main responsible entity,

Italian restaurant establishment.

Third: The installation of a video camera system has been accredited.

surveillance

Fourth: It is proven that the establishment has adapted the posters to the

regulations in force, stating the person in charge to whom you can contact in your case.

Fifth. Documentary evidence has been provided (Annex I) that allows analysis of the

images that are observed with the denounced cameras.

-Camera 1 obtains images of the parking area in the establishment

object of complaint.

-Chamber 2, which is the closest to the complainant's home, only obtains

images of the side next to the restaurant.

-Cameras 3 and 4 are oriented towards the interior of the establishment.

Sixth. The reported entity has an informative form(s) available to

any client that may require it for the exercise of their rights.

FOUNDATIONS OF LAW

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By virtue of the powers that article 58.2 of the RGD recognizes to each authority of control, and as established in art. 47 of the Organic Law 3/2018, of 5 December, of Protection of Personal Data and guarantee of digital rights (in 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 03/08/19 by means of which the "installation of video cameras- Surveillance by the Garden Pizza Restaurant presumably focused on the street" (folio no. 1).

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The content of article 5.1 letter c) RGD 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");

Cameras installed by individuals must meet the requirements required in the regulations in force, and the person responsible for the installation must be able to accredit such extreme before this organism.

Cameras must be permanently oriented towards your property individuals, not affecting the privacy of the adjoining neighbors and/or passers-by that pass through the area.

Cameras installed by individuals cannot obtain images of

public space, as it is an exclusive competence of the Police Forces and Corps

State security.

III

For informational purposes only, it is worth remembering some of the requirements that must be

comply with the processing of images through a video surveillance system to be

in accordance 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).

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Specifically, it must:

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

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informative located in a sufficiently visible place, both in spaces

open 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

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.

Keep available to those affected the information to which

two.

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

IV

It should be noted that the accused party does not deny the installation of the

video-surveillance cameras "for security reasons" of the establishment.

There is no accredited capture of public space in a

disproportionate, the installed cameras being oriented preferably towards

the establishment he runs.

Article 4 section 3 of Instruction 1/2006 (AEPD) provides the following:

"Cameras and video cameras installed in private spaces may not

obtain images of public spaces unless it is essential for the

surveillance purpose that is intended, or it is impossible to avoid it by reason of the

location of those. In any case, any data processing should be avoided.

unnecessary for the intended purpose.

On the occasion of the investigation of this procedure, the following have been adopted by the party denounced the “measures” necessary for the system to comply with legality in force, including the adaptation of the signage to the regulations in force.

In the images provided, private space of third parties is not captured either, considering that the system is proportionate to the purpose pursued with it.

It should be remembered that the mere observation of the cameras from areas close to the installation of the same, does not imply the capture of private space of third parties.

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In accordance with the allegations set forth, after examining the evidence provided, it is conclude that the denounced system conforms to current legislation, providing the mandatory informative posters, with the cameras oriented towards the area of the Italian restaurant for security reasons, not affecting the rights of third parties without just cause, reason why it is appropriate to order the Archive of this process.

The Judgment of the National Court of April 1, 2011, appeal 2223/2010, in its Legal Foundation IV, the last paragraph includes the following: "The importance and significance of data protection regulations and the relevance of rights constitutional rights that are at stake, advise them not to put themselves at the service

of particular quarrels that must be resolved in different areas that must have relevance only in the domestic sphere that is its own and not an area such as the jurisdictional. The seriousness involved in the exercise of sanctioning power advises that administrative and jurisdictional mechanisms be put in place corresponding only when it is assumed that a true violation of the fundamental right to data protection. Such circumstance does not concurs in the present case”.

According to what was stated,

By the Director of the Spanish Data Protection Agency,

HE REMEMBERS:

1.- PROCEED to decree the FILE of this procedure, having adjusted the video-surveillance system denounced to the regulations in force.

2.- NOTIFY this Agreement to the entity GARDEN PIZZA SANT CUGAT, S.L. and REPORT the result of the proceedings to the denouncing party Mr. A.A.A..

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.

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