

Procedure No.: PS/00166/2019

RESOLUTION: R/00414/2019

In procedure PS/00166/2019, instructed by the Spanish Agency for Data Protection to Mrs. A.A.A., given the complaint filed by B.B.B. and in virtue of the following,

FACTS

FIRST: B.B.B. (*hereinafter, the claimant) dated November 14, 2018 filed a claim with the Spanish Agency for Data Protection, motivated by the alleged treatment of data carried out through cameras of a security system video surveillance whose alleged owner identifies as A.A.A. (hereinafter the claimed) installed at ***ADDRESS.1.

The reasons on which the claim is based are installation of video cameras-surveillance in community of owners with presumed affectation to the right to privacy of the neighbors of the property (folio nº 1).

Along with the claim, provide documentary evidence (photographs) that prove system installation.

SECOND: In view of the facts denounced, we proceeded to TRANSFER the facts on 12/04/18 to the accused party so that he could allege what in Law deemed appropriate, appearing as "Notified" in the computer system of this organism.

THIRD: On 03/04/19, this Agency received a reply from the party reported stating the following:

“... in which it can be seen that it only records the vehicle that I own at which is uniquely and directly focused”

“One of the posters of the Prosegur company that has been provided to me....”

FOURTH: On May 28, 2019, the Director of the Spanish Agency for

Data Protection agreed to submit this

warning procedure PS/00166/2019. This agreement was notified to

denounced

FIFTH: The database of this organization was consulted (08/22/19) and there is no

any allegation to the Home Agreement duly notified to the denounced party.

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

2/5

PROVEN FACTS

First. On 11/14/18, a claim was filed by the complainant transferring

The main fact is the following:

“An owner has installed three video-surveillance cameras on the walls

without having the authorization of the Board of Owners” (folio nº 1).

Second. It is identified as the main responsible A.A.A., which only

recognizes the installation of a single camera in the parking area, oriented towards its private vehicle.

Third. There is no accredited evidence that it has the authorization of the Board of owners under the terms of the Horizontal Property Law (LPH).

Fourth. The reasons for the installation of the camera, nor the adoption of measures less harmful to the rights of third parties.

Fifth. There is a sign installed that is NOT approved by the company PROSEGUR, without that the main data controller is identified.

FOUNDATIONS OF LAW

Yo

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 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 11/14/18 by means of which the following is transferred as the main fact:

“Four video surveillance cameras have been installed. The wall cameras are mounted in a community space, which can be used by all the residents (...)”—folio nº 1--.

The facts therefore materialize in the installation of some type of device that is affecting, according to the complainant, her personal and/or family privacy without just cause.

Article 5 c) RGPD provides the following: “: “Personal data will be:

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

3/5

c) adequate, pertinent and limited to what is necessary in relation to the purposes for those that 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.

In the present case, cameras installed in common areas must be

adjust to the provisions of the Horizontal Property Law (LPH).

Only the community of owners, once the consequent

agreement in the Homeowners Meeting, by a simple majority of those present, may

agree on the installation of a video surveillance system with security cameras in

the common areas of a building (garages, parking, storage rooms, portals...).

In any case, the authorized camera could only be oriented towards the area

of your parking space, complying with the rest of the requirements demanded

legally as the provision of approved information poster in visible area:

indicating the person in charge of the system in question.

III

It should be noted that between what was denounced by the claimant and what was answered by the

denounced, there are "inconsistencies" because in the denouncement document mentions the

installation of four cameras, although it only answers in relation to the one installed in the

parking place.

The poster provided does not correspond to the one required in terms of video-

surveillance, but it is a poster of a private security company, nor

nor does it provide a screen impression of what, in its case, is captured with it, so

as the cause/reason for the installation of the device in question.

The accused party does not specify the cause/reason for the installation of the camera

(eg that it has suffered some theft or damage to it).

Nor does it prove that it has communicated to the President of the Community of

owners the installation of the same and, where appropriate, have submitted the matter to the

knowledge of the rest of the neighbors of the property in question.

This infringement affects the reporting principles of the RGPD, as it is considered a

disproportionate measure (in the case of a camera), and may be

considered 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, 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:

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

4/5

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

For its part, art.74.1 a) LOPDGDD (LO 3/2018, December 5) provides the following:

“They are considered minor and the remaining infractions of merely formal character of the articles mentioned in sections 4 and 5 of the Article 83 of Regulation (EU) 2016/679 and, in particular, the following:

a) Failure to comply with the principle of transparency of information or the right to information of the affected party for not providing all the information required by the Articles 13 and 14 of Regulation (EU) 2016/679”.

IV

Without prejudice to the provisions of article 83 of the RGPD, 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.”

The accused party must explain to this body the characteristics of the cameras, the reason for the installation (vgr. Complaints, damage to the vehicle, etc.), if you have proceeded to withdraw the remaining denounced cameras, proceed to place, where appropriate, an approved poster, as well as providing a screen print of what, if any, is observed with it, proving that the system complies with current legislation, in the terms set forth.

According to what was stated,

By the Director of the Spanish Data Protection Agency,

HE REMEMBERS:

1.- WARN (PS/00166/2019) Mrs. A.A.A. for the infringement of art. 5.1 c) GDPR, having installed a video-surveillance device that does not comply with the law in force, infringement typified in article 83.5 a) RGPD, being punishable by in accordance with article 58.2 RGPD.

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

5/5

2.- REQUEST Mrs. A.A.A. so that within ONE MONTH from the notification

of this administrative act proceed to comply with the following:

- Prove the cause/reason for the installation of the camera in the parking area.

- Prove the uninstallation of the other cameras that in your case had

installed (eg contribution of photograph with date/time).

- Prove authorization in legal form from the Board of Owners or if applicable

removal of the camera in the parking area.

3.- NOTIFY this Agreement to the accused party A.A.A. and REPORT the

result of the actions to Doña B.B.B.

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

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es