

Procedure No.: PS/00232/2019

RESOLUTION: R/00489/2019

In procedure PS/00232/2019, instructed by the Spanish Agency for Data Protection to Doña B.B.B. (C.C.C.), having regard to the complaint filed by Doña A.A.A. and by virtue of the following,

#### FACTS

FIRST: Mrs. 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 holder identifies as B.B.B. with NIF \*\*\*NIF.1 (hereinafter the claimed) installed in the house next to yours at \*\*\*ADDRESS.1 (Granada).

The reasons on which the claim is based are "installation of two cameras hidden" with presumed orientation towards the private area of third parties without just cause. Along with the claim, provide documentary evidence (photographs No. 1 and 2) that prove such an extreme, observing at least two cameras, without an informative poster in viewable area.

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 party denounced without any allegation having been made to date in relation to transferred "facts".

FOURTH: On September 3, 2019, the Director of the Spanish Agency for Data Protection agreed to submit this warning procedure PS/00232/2019. This agreement was notified to denounced.

FIFTH: The database of this organization was consulted (10/01/19) and there is no any allegation in relation to the facts that are the subject of the complaint.

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#### PROVEN FACTS

First. On 03/19/19, this AEPD received a claim from the Complainant by means of which he transferred as main fact the following:

"installation of two hidden cameras" with alleged orientation towards the privacy of third parties without just cause.

Second. It is identified as the main person in charge Doña B.B.B.

Third. The evidence provided (Appendix Doc. No. 1) confirms the presence of the cameras in a nearby house, without being able to determine if they obtain images or the extent of them.

Fourth. The availability of an informative poster in the visible area is not accredited indicating where appropriate the person responsible for them.

Fifth. No other complaints have been received in relation to the security camera system. video-surveillance object of complaint.

#### FOUNDATIONS OF LAW

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By virtue of the powers that article 58.2 of the RGPD 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 03/19/19 by means of which the following is transferred as the main fact:

“installation of two hidden cameras in pots, oriented towards your home without just cause”—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) 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 even if assume the responsibilities that they comply with the provisions in force in the matter.

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This type of device cannot be used to disturb the privacy of third parties alien to your particular property, and should preferably be oriented towards your

private area.

In no case will the use of surveillance practices be admitted beyond the environment object of the installation and in particular, not being able to affect the spaces surrounding public, adjoining buildings and vehicles other than those accessing the guarded space.

### 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 at the present time of the

sanctioning procedure, it is considered that the defendant has installed a system

of video-surveillance without it adjusting to the required legal requirements.

The known facts constitute an infraction, attributable to the defendant, for

violation of the content of art. 5.1 c) RGPD, previously transcribed.

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:

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 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 denounced party must certify before this Agency that the cameras installed comply with current legislation or prove the removal of the current place location (eg by photograph with date and time), all without prejudice to make the allegations that it deems pertinent.

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According to what was stated,

By the Director of the Spanish Data Protection Agency,

HE REMEMBERS:

1.- WARN (PS/00232/2019) Mrs. B.B.B. for the installation of a video-surveillance cameras, which could be poorly oriented, without the mandatory information, infringement that affects article 5.1 c) RGPD, being typified in the article 83.5ª) RGPD, being punishable in accordance with article 58.2 RGPD.

2.- REQUEST Doña B.B.B. so that within ONE MONTH from the notification of this administrative act, proceed to comply with the following:

- ☐ You must inform about the installed system, providing screen printing (date/time) of what, in your case, is captured with it.
- ☐ You must prove the availability of an approved information poster adapted to the new GDPR.

3.- NOTIFY this Agreement to the reported 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, 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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