

Procedure No.: PS/00151/2019

RESOLUTION: R/00401/2019

In procedure PS/00151/2019, instructed by the Spanish Agency for Data Protection to Don A.A.A., given the complaint filed by B.B.B. and by virtue of the following,

FACTS

FIRST: Mrs. B.B.B. (*hereinafter, the claimant) dated March 5, 2019 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 the neighbor of the A.A.A. with NIF ***NIF.1 (hereinafter the claimed) installed in ***ADDRESS.1.

The reasons on which the claim is based are "installation of a security camera video-surveillance on the facade of the house" next to mine, with alleged orientation towards the entrance of my home and the garage door" (folio nº 1). Together with the claim, it provides documentary evidence that allows verifying the installation of a device that corresponds to a video-surveillance camera. (Doc no. 4).

SECOND: There is a precedent in the computer system of this body associated with the same denounced with reference A/00493/2016, where they proceeded to NOTICE the same in the following terms:

"WARNING A.A.A., in accordance with the provisions of article 45.6 of the Law Organic 15/1999, of December 13, Protection of Personal Data, in relation to the complaint for violation of article 6 of the LOPD, typified as serious in article 44.3.b) of the aforementioned Organic Law"

2.1.- COMPLY with the provisions of article 6 of the LOPD.

Specifically, the defendant is urged to either remove the camera installed in the exterior of the farm, or reorient it, in such a way that no images are captured disproportionate distances from public thoroughfares or homes in the area.

THIRD: It is published in the BOE dated 12/17/17 the sanction imposed, by not have collected the notifications of this body as verified by the Official Service of mails.

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FOURTH. On June 13, 2019, the Director of the Spanish Agency for Data Protection agreed to submit this warning procedure PS/00151/2019. This agreement was notified to denounced.

FIFTH: The database of this Agency was consulted on 08/14/19.

no allegation in this regard, nor has any measure been accredited in relation to the camera in question.

PROVEN FACTS

First. On 03/05/19, this agency received a claim from the complainant by means of which it transfers as the main fact the following:

“Installation of a video-surveillance camera on the facade of the house”

next to mine, with presumed orientation towards the entrance of my home and the door of garage” (folio nº 1).

Second. It is identified as the main responsible A.A.A., which is indicated by the complainant in her written complaint before this body.

Third. There is a previous procedure associated with the accused, with a number of reference A/00493/2016, where they proceeded to warn him by the same stated facts.

Fourth. The installation of a video-surveillance camera that affects to the privacy of the complainant without just cause.

Fifth. It is not accredited that there is an information poster in a visible area indicating the person in charge before whom to exercise the rights within the framework of the regulations in force.

Sixth. The Start Agreement of PS/00151/2019 has been notified in the BOE (07/02/19) where you are informed of the possibility of collecting a copy of it for the purposes appropriate legal.

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 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.

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II

In the present case, we proceed to examine the claim of date of entry into this Agency 03/05/19 through which the main "fact" is transferred

Next:

“Installation of a video-surveillance camera on the facade of the house”

next to mine, with presumed orientation towards the entrance of my home and the door of garage” (folio n° 1).

The facts therefore are specified in the installation of some type of device that is affecting, according to the complainant, her personal privacy and/or family 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 although they assume the responsibilities that they comply with the provisions in force on the matter.

These types of devices cannot be used to disturb the privacy of third parties unrelated to your particular property, and should preferably be oriented to your particular area.

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, it 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 people who are outside the private space since the treatment of images in public places only

it can be carried out, where appropriate, by the Security Forces and Bodies. Either spaces owned by third parties may 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

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RGPD 2016/679, of April 27, 2016, in the terms referred to both in the aforementioned article, as in articles 13 and 14 of said norm, resulting from application -by not contradict the provisions of the aforementioned Regulation-, the manner provided in article 3 of Instruction 1/2006, of November 8, of the Spanish Protection Agency of Data, on the Processing of Personal Data for Surveillance Purposes through Camera or Video Camera Systems (Instruction 1/2006, of November 8, of the Spanish Data Protection Agency).

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 Regulation (EU) 2016/679, of April 27, 2016, in the aforementioned informative badge, you must identify, at least, the existence of a treatment, the identity of the person in charge and the possibility of exercising the rights provided for 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

In accordance with the evidence available at the present time of agreement to initiate the sanctioning procedure, it is considered that the defendant has installed some type of image recording device that could be disproportionately oriented affecting the right to privacy of third parties.

Anyone who installs a video-surveillance system must assume the responsibility over the system in question, and must be able to prove to the Control authorities the legality of the same.

The video-surveillance system must be oriented towards your private area exclusively, preventing third parties from being intimidated by it, even in the belief of being observed by it.

The responsible person cannot ignore it, so that must have an effective form of contact, either reflected in the information poster or ensuring that the notifications are received in the place where you are installed the camera(s) 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

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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;

When motivating the sanction, the following are taken into account:

-This is a continuous infraction, since the accused has continued
keeping the camera in place, despite the
recommendations of this body and the affected neighbors (art.83.2 a)
GDPR).

-the intention or negligence in the infringement (art. 83.2 b) RGPD).

So it is considered correct to impose a sanction encrypted in the amount of
€1,500 (One thousand five hundred Euros), having installed a video-surveillance device, which
affects third parties without just cause, and ignore the recommendations
established.

All this without prejudice to the fact that the defendant immediately regularizes the
situation described, adopting all necessary measures to avoid the capture of
space of third parties, having to reliably prove it before this Agency (vgr,
contribution of photography with date and time that accredits the withdrawal of the same).

According to what was stated,

By the Director of the Spanish Data Protection Agency,

HE REMEMBERS:

FIRST: PROCEED to sanction Don A.A.A., for the infraction of the content of the
art. 5.1 c) RGPD, by having a video-surveillance device that does not comply with the

regulations in force with a penalty of €1,500 (one thousand five hundred euros), infraction typified in art. 83.5 a) RGPD, being punishable in accordance with article 58.2 GDPR.

SECOND: ORDER that proceed to regularize the situation of the device installed, reliably accrediting before this Agency the measures adopted to such effect.

THIRD: NOTIFY this Agreement to A.A.A. and REPORT the result of the actions to the denouncing party Doña B.B.B..

FOURTH: Warn the sanctioned party that he must make the imposed sanction effective once

Once this resolution is enforceable, in accordance with the provisions of the art. 98.1.b) of Law 39/2015, of October 1, on Administrative Procedure

Common Public Administrations (hereinafter LPACAP), within the payment term voluntary established in art. 68 of the General Collection Regulations, approved by Royal Decree 939/2005, of July 29, in relation to art. 62 of Law 58/2003,

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of December 17, through its entry, indicating the NIF of the sanctioned and the number of procedure that appears in the heading of this document, in the account restricted number ES00 0000 0000 0000 0000 0000, opened on behalf of the Agency Spanish Data Protection at Banco CAIXABANK, S.A. Otherwise, it will be collected during the executive period.

Received the notification and once executed, if the date of execution is

between the 1st and 15th of each month, both inclusive, the term to make the payment

voluntary will be until the 20th day of the following month or immediately after, and if

between the 16th and last day of each month, both inclusive, the payment term

It will be until the 5th of the second following month or immediately after.

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.

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.

Finally, it is pointed out that in accordance with the provisions of art. 90.3 a) of the LPACAP,

may provisionally suspend the firm resolution in administrative proceedings if the

The interested party expresses his intention to file a contentious-administrative appeal.

If this is the case, the interested party must formally communicate this fact by

writing addressed to the Spanish Agency for Data Protection, presenting it through

Electronic Register of the Agency [<https://sedeagpd.gob.es/sede-electronica->

web/], or through any of the other registers provided for in art. 16.4 of the

aforementioned Law 39/2015, of October 1. You must also transfer to the Agency the

documentation proving the effective filing of the contentious appeal-

administrative. If the Agency was not aware of the filing of the appeal

contentious-administrative within a period of two months from the day following the notification of this resolution would end the precautionary suspension.

Sea Spain Marti

Director of the Spanish Data Protection Agency

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