

938-0419

Procedure No.: PS/00116/2019

RESOLUTION OF PUNISHMENT PROCEDURE

In sanctioning procedure PS/00116/2019, instructed by the Spanish Agency for Data Protection, before D. A.A.A. with NIF ***NIF.1 (hereinafter "the claimed"), in by virtue of a complaint filed by D^a. BBB (hereinafter "the claimant") and having based on the following:

BACKGROUND

FIRST: On 12/03/18, you had entry into this Agency in writing submitted by the claimant, in which she stated, among others, that: "We are owners of a farm which is encumbered with a foot right of way. The neighbor and his mother, whom we must let pass, they have installed a video surveillance camera that directs towards the servitude and towards our farm, recording us when we are in the farm and our minor children when they pass by. has a poster old newscast that was even before the security camera. We send CD with today's images of both the servants and the camera and the sign"

SECOND: In view of the facts set forth in the claim and the documents provided by the claimant, the General Subdirectorate for Data Inspection proceeded to carry out actions for its clarification, under the powers of investigation granted to the control authorities in article 57.1 of the Regulation (EU) 2016/679 (General Data Protection Regulation, hereinafter RGPD). A) Yes, dated 12/18/18, an information request is addressed to the respondent so that prove that the installation of the cameras is in accordance with current regulations.

THIRD: As stated in the certificate issued by the State Post Office

and Telegraphs, the requirement indicated in the previous point was notified to the respondent, on 12/27/18, at the address located at ***ADDRESS.1.

FOURTH: Consulted, on 04/10/19, the computer system of this Agency,

There is no evidence that any response has been given for the appropriate legal purposes.

FIFTH: On 04/11/19, the Director of the Spanish Agency for the Protection of

Data agreed to initiate a sanctioning procedure against the person claimed, for alleged

infringement of article 5.1.c) in connection with article 6 of the RGPD and granting a

hearing period of ten business days to formulate the allegations and

Submit whatever evidence you deem appropriate.

SIXTH: According to a certificate issued by the Post Office, it is verified that the

letter of initiation of disciplinary proceedings was notified to the person claimed on

06/05/19.

SEVENTH: The respondent has not responded to the requirements of this Agency,

so the characteristics of the installation of the device in

question. There is also no evidence that there is an "information poster" where

indicate that it is a video-monitored area and the person in charge before whom to exercise,

where appropriate, the rights within the framework of the regulations in force.

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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.

II

In the present case, we proceed to examine the claim, dated 12/03/18, by

by means of which the denunciation of the existence of a camera of

video surveillance that directs towards the easement and towards the neighboring farm, recording the

people who are in it. There is an old informative poster placed with

prior to camera installation.

The regulations indicate that individuals can install video surveillance cameras

although they are responsible for ensuring that they comply with current legislation. With

This type of device is intended in general to protect real estate,

against hypothetical attacks and/thefts with force on things, although they can be

use for different purposes, always within the current legal framework.

The party complained against has not offered this Agency any explanation about the

cause or reason for the installation of the camera in question, lacking the same

mandatory approved information poster required in these cases.

The installation of this type of device must obey some cause/reason

plausible, which allows this Agency to assess the proportionality of the

extent, especially if it comes into play with the rights/freedoms of third parties, in areas

where it can move freely as is the land that surrounds the farm.

The art. 4 section 2 of Instruction 1/2006 (AEPD) provides the following: "Only

shall consider the installation of cameras or video cameras admissible when the purpose

monitoring cannot be obtained through other means that, without requiring efforts

disproportionate, are less intrusive to people's privacy and to

your right to personal data protection.

III

The "facts" described above may imply a violation of art. 5.1.c)

RGPD, since the camera seems to exercise excessive control over a scope of free transit.

Given the lack of collaboration of the requested person with this Organism, considers the required subjective type accredited in these cases, by way of, at least, gross negligence.

Article 83 section 5 of the RGPD provides that: "The infringements of the following provisions will be sanctioned, in accordance with section 2, with fines administrative fees of EUR 20,000,000 maximum or, in the case of a company, of an amount equivalent to a maximum of 4% of the total annual turnover of the previous financial year, opting for the highest amount: a) the 3/4

basic principles for processing, including conditions for consent according to articles 5, 6, 7 and 9;

However, when motivating the sanction to be proposed, it is taken into account that it is an individual, as well as that it has not been possible to verify the operation of the system in question, which justifies that the proposal was a warning, expense of the instruction of the procedure, in application of what is stipulated in art. 58.2.b) and in recital 148 of the aforementioned RGPD.

The claimed party must respond to this Body, explaining if the device is dissuasive, as well as the cause/reason for the installation, providing all that precise documentation for it, remembering that not collaborating with this Agency may have legal consequences by way of opening a procedure of sanctioning nature.

In accordance with the above, the Director of the Spanish Agency for the Protection of Data,

HE REMEMBERS:

NOTICE: to D. A.A.A. with NIF ***NIF.1 for violation of art. 5.1.c) RGPD, to

have installed a video-surveillance device oriented towards the entrance of the property,

without just cause affecting the privacy of the claimant, infraction typifies in the

art. 85.3.a) RGPD, being punishable in accordance with art. 58.2 GDPR.

REQUEST: D. AAA, so that, within a month from this act of

notification, proceed in the following terms:

- Explain if you have a video-surveillance device, explaining the

characteristics of the same, and must accompany, where appropriate, the documentation

necessary or photographs that show compliance with the

regulations in force.

- Provide a photograph with date and time that proves that you have a poster in your case

approved video-surveillance.

NOTIFY: this Agreement to D.A.A.A..

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.

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Sea Spain Marti

Director of the Spanish Data Protection Agency