

Procedure No.: PS/00256/2019

RESOLUTION: R/00503/2019

In procedure PS/00256/2019, instructed by the Spanish Agency for Data Protection to Don B.B.B., given the complaint filed by Don A.A.A. and in virtue of the following,

FACTS

FIRST: A.A.A. (*hereinafter, the claimant) on 08/07/18 filed claim before the Spanish Agency for Data Protection, motivated by the data processing 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 windows, without it being possible to determine if they are operational.

The reasons on which the claim is based are "installation of cameras by your neighbor" that could be affecting their personal and family privacy.

Together with the claim, it provides photographic material (Annex I) that proves the presence of the reported devices.

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 10/03/18, the claim is TRANSFERRED to the party denounce, without any response having been given in relation to the "facts" transferred, appearing as "notified" in the computer system of this body.

FOURTH: On July 23, 2019, the Director of the Spanish Agency for

Data Protection agreed to submit this

warning procedure PS/00256/2019. This agreement was notified to
denounced.

PROVEN FACTS

First. On 08/07/18, a claim was filed by the complainant for
means of which is transferred as fact:

“installation of cameras by your neighbor” that could be affecting your
personal and family intimacy.

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Second. It is identified as the main person in charge Mr. B.B.B., who is
identified by the complainant.

Third. The installation of some type of device that could
be misdirected, although the accused party has not made any allegation to the
regard.

Fourth. There is no evidence that it has the mandatory information poster indicating that it is
It is a video-monitored area, with indication of the person in charge of the system.

Fifth. The database of this Agency was consulted (10/01/19) and there are no
previous complaints in this regard.

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 this case, we proceed to examine the claim dated 07/0818/ through which translates as the main fact the following:

“Installation of a video-surveillance camera by the neighboring neighbor towards me parcel” (folio nº 1).

The facts described may imply an affectation of the content of art. 5.1 c) RGPD, having installed a video surveillance camera that can affect the privacy of the accused party.

Individuals can install video-surveillance cameras, although they are responsible that they comply with current legislation.

With this type of device, it is generally intended to protect property property, in the face of hypothetical attacks and/thefts with force on things, although may be used for different purposes, always within the current legal framework.

These types of devices cannot be used to obtain images of must be oriented

spaces of free transit and/or public space,

Preferably towards your private 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

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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).

Specifically, it must:

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

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.

2 Keep available to those affected the information referred to in the

cited Regulation (EU) 2016/679, of April 27, 2016.

IV

In accordance with the evidence available in this

sanctioning procedure, and given the lack of any allegation of the accused, it is

considers that the claimed party has installed a device that could affect the

privacy of the complainant, without just cause.

Cameras installed by individuals must be oriented

preferably towards their private space or it must be proven that they are not

they obtain images of space other than their own.

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Known facts could constitute a violation of art. 5.1 c) GDPR,

above-mentioned.

Article 83 section 5 of the RGPD provides the following:

“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.”

You must tell this body if you have video-surveillance cameras, the cause/reason for them, provide, if applicable, image(s) of what is obtained with the same, as well as prove that they comply with current legislation.

It is recalled that, in case of not meeting the requirements of this Agency, the opening of a new sanctioning procedure can be ordered, where will be able to assess the "passivity" shown when proving the legality of the system.

According to what was stated,

By the Director of the Spanish Data Protection Agency,

HE REMEMBERS:

1.- NOTICE (PS/00256/2019) to Mr. B.B.B. for the infringement of art. 5.1 c) RGPD, to

have a video-surveillance system with alleged poor orientation towards the house
contiguous, infraction typified in art. 83.5a) RGPD, being punishable by
in accordance with article 58.2 RGPD.

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2.- REQUEST D. B.B.B. so that, within ONE MONTH, from the notification of the
this administrative act, proceed:

-Prove the characteristics of the system, providing a screen print of what
which in your case is captured with it.

-Prove the availability of an informative poster in a visible area, informing that
It is a video-monitored area.

3.- NOTIFY this Agreement to B.B.B. and REPORT the result of the
actions to the complaining party 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 (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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Director of the Spanish Data Protection Agency

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