

RESOLUTION: R/00415/2019

Procedure No.: PS/00031/2019

In procedure PS/00031/2019, instructed by the Spanish Agency for Data Protection to Doña B.B.B., given the complaint filed by Doña A.A.A. Y under the following,

#### FACTS

FIRST: A.A.A. (\*hereinafter, the claimant) dated October 16, 2018 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 owner is B.B.B. with \*\*\*NIF.1 (hereinafter the claimed) installed in Calle Las Campas nº 32-Fuejo-Grado-Asturias.

The reasons on which the claim is based are that a camera has been installed video-surveillance by his neighbor, "without the information sign identifying the responsible" (folio nº 1).

Along with the claim, provide documentary evidence (photographs) that prove the existence of a camera, but the poster does not indicate who is responsible for treatment.

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 11/05/18, the claim was TRANSFERRED to the party denounced so that he could allege what he deems appropriate in law, without

any response is made for the appropriate legal purposes.

: On July 30, 2019, the Director of the Spanish Agency for

#### FOURTH

Data Protection agreed to submit this

warning procedure PS/00031/2019. This agreement was notified to

denounced.

FIFTH: The database of this Agency was consulted (09/01/19) and there is no allegation

any in relation to the facts that are the subject of the complaint.

#### PROVEN FACTS

First. On 10/16/18, this AEPD received a claim from the epigraphed by

means of which he transfers as main fact:

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2/5

“existence of a video-surveillance system without an informative poster

(...)”—folio nº 1--.

Second. The relative of the complainant is identified as the main person responsible.

—B.B.B.--.

Third. The installation of video-surveillance cameras is accredited without

can specify what is displayed with them.

Fourth. It is proven that the informative poster does not reflect the person responsible before the

to be able to exercise the rights recognized within the framework of the regulations in force.

Fifth. When the database of this Agency was consulted, there is no prior sanction against

the denounced

## 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 10/16/18 by means of which the existence of a device of recording "without information poster duly completed" (folio nº 1).

The facts described above may affect the content of art. 13 RGPD, since the installed system does not inform the person responsible to which you can address the "processing of personal data".

Anyone who installs a video-surveillance system is responsible that it conforms to the regulations in force, so that it must be capable of certify before this Agency that it complies with current legislation.

The informative poster must be placed in a visible area, and must include the responsible before which to exercise the legally recognized rights.

. Consequently, the respondent must:

Place in the video-monitored areas, at least one informative badge located in a sufficiently visible place, both in open spaces and closed.

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In accordance with the provisions of articles 13 and 14 RGD, in the informative badge mentioned above must identify, at least, the existence of a treatment, the identity of the person in charge and the possibility of exercising the rights foreseen in said precepts.

1. Keep available to those affected the information referred to in the quoted GDPR;

### 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, 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 RGD 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).

Article 22 LOPDGDD (LO 3/2018, December 5) provides the following:

"4. The duty of information provided for in article 12 of the Regulation (EU) 2016/679 will be understood to be fulfilled by placing an informative device in a sufficiently visible place identifying, at least, the existence of the treatment, the identity of the person in charge and the possibility of exercising the rights provided for in the Articles 15 to 22 of Regulation (EU) 2016/679. It may also be included in the informative device a connection code or internet address to this information".

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4/5

IV

In accordance with the evidence available at the present time of agreement to initiate the sanctioning procedure, and without prejudice to what results from the instruction, it is considered that the claimed "has installed a video system Surveillance" but the information poster does not comply with the regulations in force.

Article 83.5 a) of the RGPD, considers that the infringement of "the principles basic for the treatment, including the conditions for the consent in accordance with of articles 5, 6, 7 and 9" is punishable, in accordance with section 5 of the mentioned article 83 of the aforementioned Regulation, with administrative fines of

€20,000,000 maximum or, in the case of a company, an equivalent amount at a maximum of 4% of the total global annual turnover of the financial year above, opting for the highest amount.

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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 proceed to provide a photograph (date and time) that certifies that the informative poster conforms to current legislation, alleging everything necessary in relation to the camera installed or failing that has proceeded to the camera withdrawal.

According to what was stated,

By the Director of the Spanish Data Protection Agency,

HE REMEMBERS:

1.- WARN (PS/00031/2019) Mrs. B.B.B. for violation of article 13

RGPD, having installed a video surveillance camera that lacks a sign informative, typified in article 83.5 b) RGPD, being punishable in accordance

with art. 58.2 GDPR.

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5/5

2.- REQUEST the accused B.B.B. so that within ONE MONTH from the

notification of this administrative act proves:

-That it has the mandatory informative poster in a visible area informing of the

responsible before which to exercise, where appropriate, the rights legally recognized in

the regulations that concern us.

3.- NOTIFY this Agreement to Doña B.B.B. and REPORT the result of the

performances to Doña A.A.A.

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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