

Procedure No.: PS/00053/2019

RESOLUTION: R/00399/2019

In procedure PS/00053/2019, instructed by the Spanish Agency for Data Protection to Mr. A.A.A., given the complaint filed by the POLICE MUNICIPAL OF MADRID and by virtue of the following,

FACTS

FIRST: MADRID MUNICIPAL POLICE (hereinafter, the claimant) dated On January 2, 2019, he filed a claim with the Spanish Agency for the Protection of Data. The claim is directed against A.A.A. with NIF ***NIF.1 (*hereinafter, the reclaimed).

The reasons on which the claim is based are "installation of a video camera-Surveillance" with orientation towards the public road (folio nº 1).

Documentary evidence is provided (Doc. No. 1) Complaint Act where the installation of an exterior camera, with presumed orientation towards public space.

SECOND: In view of the facts denounced in the claim and the documents provided by the claimant there are evidentiary "indications" that confirm the installation of some type of image capturing device outside the local "Bubba" may be affecting the privacy of passers-by without cause justified.

THIRD: On June 7, 2019, the Director of the Spanish Agency for Data Protection agreed to submit this warning procedure PS/00053/2019. This agreement was notified to denounced.

FOURTH: When the database of this Agency was consulted (08/13/19), there is no any allegation in this regard in relation to the facts reported by this body,

PROVEN FACTS

First. On 01/02/19 a claim was received from the Municipal Police (Madrid) for

means of which the following is transferred as the main fact:

“Installation of a video-surveillance camera” with orientation towards the public road”

(folio no. 1).

Second. It is identified as the main responsible Mr. A.A.A..

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

2/4

Third. The location of the installation of the camera(s) is identified as Bar Bubba

as certified by the Police Report (Annex I).

Fourth. The installation of a video-surveillance device is accredited, without

informative poster, which, according to the manifestation of the acting force, obtains images

of public space, which is later displayed on the mobile device.

Fifth. The establishment lacks information form(s) available to the

client (a) that could require it.

FOUNDATIONS OF LAW

Yo

By virtue of the powers that article 58.2 of the RGPD recognizes to each authority of

control, and according to the provisions of articles 47 and 48 of the LOPDGDD, the Director

of the Spanish Agency for Data Protection is competent to initiate and to

resolve this procedure.

II

In the present case, we proceed to examine the claim dated 01/02/19 by

through which the main fact is transferred as ""installation of video camera-

Surveillance" with orientation towards the public road (folio nº 1).

The facts described above may affect the content of the

art. 5 letter c) RGPD, which provides: "The personal data will be:

c) adequate, relevant and limited to what is necessary in relation to the purposes

for which they are processed ("data minimization").

Cameras installed by individuals must be oriented

preferably towards their private space, with the distinctive mandatory

informative for the appropriate legal purposes.

The individual responsible for the installation must be able to accredit before

this Control Authority that it complies with all legal requirements

required, indicating where appropriate the reason for the installation.

In the case of a video-surveillance camera, you must have the

mandatory informative badge, placed in a visible area indicating that it is a

video-monitored space.

If the purpose of the camera is to control the main entrance of the establishment,

it must be oriented towards the door, not being able to capture public space, not

control the same.

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

3/4

III

In accordance with the evidence available in this

sanctioning procedure, it is considered that the defendant maintains installed some

type of video-surveillance camera with presumed orientation towards public space.

The known facts could constitute an infraction, attributable to the claimed, for violation of art. 5 c) GDPR transcribed above.

This Agency must be able to analyze what exactly is recorded with the camera (s) in question, so that you must provide screen printing and indicate where the cameras are located on a site plan, specifying the private space of the defendant.

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;

When motivating the sanction to be proposed, it is taken into account that it is a particular, who has no record for these same facts, which justifies that the proposal is warning.

IV

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.”

It is recalled that not collaborating with this body may involve the commission of a SERIOUS infraction (art. 73.1 letter o) LOPDGDD), assuming in its case the

www.aepd.es

C/ Jorge Juan, 6

28001 – Madrid

sedeagpd.gob.es

4/4

timely legal consequences, so that the presentation of a "new" complaint for the same facts will lead to the opening of a procedure penalty of a pecuniary nature.

Therefore, based on the foregoing,

By the Director of the Spanish Data Protection Agency,

HE REMEMBERS:

1.- NOTICE (PS/00053/2019) to D. A.A.A. for the infringement of article 5.1 c)

RGPD, by having a video-surveillance device with orientation towards space public without just cause, offense typified in art. 83.5 a) RGPD, being punishable in accordance with art. 58.2 GDPR.

2.- REQUIRE D.A.A.A. so that within a month from this act of notification:

-Proceed to the withdrawal/reorientation of the camera, providing evidence document (date and time) that reliably proves such end.

-Proceed in case of camera maintenance, to place in a visible place

informative poster indicating that it is a video-monitored area, adapted to the regulations in force.

-Proceed to have information form (s) inside the premises

adapted to the regulations in force.

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

actions to the denouncing party MUNICIPAL POLICE (MADRID).

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

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es