

Procedure No.: PS/00178/2019

RESOLUTION: R/00345/2019

In procedure PS/00178/2019, instructed by the Spanish Agency for Data Protection to Mrs. A.A.A., given the complaint filed by Mr. B.B.B. and in virtue of the following,

FACTS

FIRST: B.B.B. (*hereinafter, the claimant) dated February 1, 2019 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 identified as A.A.A. (hereinafter the claimed) installed in ***ADDRESS 1.

The grounds on which the claim is based are as follows:

“After separating from the lady mentioned in the lawsuit, the

The judge has awarded me the lower house plus the patio and adjoining land inherited of my parents and Doña A.A.A. the upper house. Said lady has installed in the balcony of the house, second floor, a surveillance camera focusing on the patio and exit of my garage and entrance to my house.

To which I have refused and I have made it known through my daughters in several occasions. In addition, it also focuses on the private track of the land, where the house, where my other brothers go. And before the refusal of the same remove the camera I am forced to file a complaint for it.

Photographs of the installed camera are provided, and the divorce decree where It is specified how the house is assigned to each one.

Together with the claim, it provides documentary evidence (photographs 1 and 2) that proves the presence of the camera in question.

SECOND: On 02/14/19, the claim is TRANSFERRED to the party denounced, appearing as "notified" in the computer system of this body, without any response having been given in this regard, justifying the installation of the device in question or allows this Agency to analyze the measure.

THIRD: On June 13, 2019, the Director of the Spanish Agency for Data Protection agreed to submit this warning procedure PS/00178/2019. This agreement was notified to denounced.

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FOURTH: Consulting the database of this Agency on 07/18/19, it is verified that no allegation has been made by the accused party, stating the Home Agreement as "notified" for the appropriate legal purposes.

FIFTH: Consulting the database of this Agency on 08/05/19, it is verified that no allegation has been made by the accused party, stating the Home Agreement as "notified" for the appropriate legal purposes.

SIXTH: The database of this organization was consulted (10/02/199 does not contain any allegation in this regard in relation to the camera installed.

PROVEN FACTS

First. On 02/01/19, this Agency received a claim from the epigrapher for means of which transfers in essence the following facts:

“After separating from the lady mentioned in the lawsuit, the

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of my parents and Doña A.A.A. the upper house. Said lady has installed in the balcony of the house, second floor, a surveillance camera focusing on the patio and exit of my garage and entrance to my house.

To which I have refused and I have made it known through my daughters in several occasions. In addition, it also focuses on the private track of the land, where the house, where my other brothers travel. And before the refusal of the same remove the camera I am forced to file a complaint for it.

Photographs of the installed camera are provided, and the divorce decree where it is specified how the house is assigned to each one”.

Together with the claim, it provides documentary evidence (photographs 1 and 2) that proves the presence of the camera in question.

Second. Ms. A.A.A. is identified as the main person in charge.

Third. Consta proves the installation of a video-surveillance device in the balcony of the house oriented towards the main entrance of the property, being able to control the entrances/exits of the same, as well as the area located in front of the door, where the complainant carries out daily activities.

Fourth. The accused party has not responded to the requirements of this Agency, so the reasons for the installation of the device in question are unknown.

Fifth. There is no accredited evidence that an "informative poster" is available in your case indicating that it is a video-monitored area, indicating the person in charge before the to exercise, where appropriate, the rights within the framework of the regulations in force.

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 02/01/19 by means of which the installation of a device facing the door is transferred of the family home, without just cause.

The facts described above may imply an affectation of art. 5.1 c)

RGPD, which provides:

“Personal data will be: c) adequate, pertinent and limited to the necessary in relation to the purposes for which they are processed (“minimization of data”).”.

Individuals can install video-surveillance cameras, although they are responsible for ensuring 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.

It should be noted that in the case indicated, the property where the video-surveillance camera, it is a shared dwelling, having been assigned by judicial decision to both parties (complainant-defendant) living each of them on one floor of the building.

The accused party has not offered this Agency any explanation about

of the cause/reason for the installation of the camera, lacking the same of the mandatory approved information poster required in these cases.

With this type of "device" an unnecessary control of the entrances/exits of the property, which affect the privacy of the complainant, who is seen intimidated by it, without the orientation of the camera being the most suitable for the home security.

The installation of this type of device must obey some plausible cause/motive, which allows this Agency to assess the proportionality of the measure, especially if it comes into play with the rights/freedoms of third parties, in areas where it can move freely, such as the land surrounding the living place.

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

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“Only the installation of cameras or video cameras will be considered admissible.

when the purpose of surveillance cannot be obtained by other means that, without require disproportionate efforts, are less intrusive to the privacy of the persons and for their right to the protection of personal data” (*the underlined belongs to this AEPD).

It is recommended that the camera does not affect the area/space where it can roam freely the complainant or proceed to the relocation of the same, of so that the rights of both parties coexist; On the one hand, the security denounced and on the other the intimacy of the denouncer.

III

It is identified as the main responsible for the installation of the device, the ex-partner of the complainant Doña A.A.A., who has installed a video camera surveillance, without giving any explanation to this Agency.

The "facts" described above imply an infringement of the content of the art. 5.1 c) RGPD, given that the chamber exercises excessive control over a scope of free transit between the parties.

With this device, the privacy of the complainant is affected, who is observed at all times in their entrances / exits of the property that they share by court decision with his former sentimental partner.

Given the lack of collaboration of the accused with this body, considers the required subjective type accredited in these cases, at least as a gross negligence,

Article 83 section 5 of the RGPD provides the following:

“The infractions of the following dispositions will be sanctioned, in accordance with the 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, as well as that it has not been possible to verify the operability of the system in issue, which justifies a sanction of Warning, being warned the denounced of the requirements demanded for the device in question.

IV

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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 respond to this body, explaining if the device is dissuasive, as well as the cause/reason for the installation (eg complaints of gender violence, threats, etc), as well as providing all the documentation precise to explain the situation to this organization, reminding it that not collaborating with this Agency may have legal consequences by way of opening again sanctioning procedure.

According to what was stated,

By the Director of the Spanish Data Protection Agency,

HE REMEMBERS:

1.- WARN (PS/00178/2019) Mrs. A.A.A. for the infringement of art. 5.1 c) GDPR, having installed a video-surveillance device oriented towards the entrance of the housing without just cause affecting the privacy of the complainant, infraction typifies in art. 83.5 letter a) RGPD, being punishable in accordance with art. 58.2 GDPR.

2.- REQUEST Mrs. A.A.A. 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, photographs) of what is watch with himself.

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

-In case of removal/relocation of the camera, you must provide documentary evidence (photograph with date/time) proving both aspects.

3.- NOTIFY this Agreement to Ms. A.A.A. and REPORT the result of the performances to Don B.B.B..

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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.

Sea Spain Marti

Director of the Spanish Data Protection Agency

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