

Procedure No.: PS/00152/2019

RESOLUTION: R/00442/2019

In procedure PS/00152/2019, instructed by the Spanish Agency for Data Protection to Mr. A.A.A., given the complaint filed by COMMUNITY OWNERS R.R.R. and by virtue of the following,

FACTS

FIRST: COMMUNITY OWNERS R.R.R. (*hereinafter, the claimant) with dated February 4, 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 identified owner is the neighbor of the A.A.A. property with NIF ***NIF.1 (hereinafter the claimed) installed in ***ADDRESS 1.

The reasons on which the claim is based are "existence of a video camera-surveillance in the garage area without having informed or having the authorization of the board of owners" –folio nº 1--

Together with the claim, it provides documentary evidence (Probative Doc. No. 1) that accredits the installation of a video-surveillance device.

SECOND: On the date, the claim was TRANSFERRED to the party denounced so that he could allege what he deemed appropriate in law, stating as "Notified" in the computer system of this body.

THIRD: On July 2, 2019, the Director of the Spanish Agency for Data Protection agreed to submit this warning procedure PS/00152/2019. This agreement was notified to denounced.

FOURTH: The database of this Agency was consulted (09/02/19) and there is no

any allegation in relation to the facts reported by this body.

PROVEN FACTS

First. On 02/04/19, this Agency received a claim from the entity

complainant mentioned, by means of which the main fact is transferred:

“existence of a video-surveillance camera in the garage area without having

informed or have the authorization of the owners' meeting" -folio nº 1--

Second. The resident of the property, Mr.

A.A.A.

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Third. There is no evidence that the defendant has informed the Board of Owners, nor has submitted the decision to its agreement.

Fourth. There are no arguments on the reasons for the installation of the security camera. video surveillance.

Fifth. It has not been possible to analyze what in his case is observed with the camera in question.

Sixth. There is no evidence that the defendant has an information poster in a visible area indicating that it is a video-monitored area.

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 02/04/19 by

means of which the installation of a video-surveillance camera is transferred without counting

with the authorization of the board of owners of the community.

Documentary evidence is attached (photograph No. 1) that proves the installation of the reported device.

The content of article 5.1 letter c) RGPD is considered affected, 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 in common areas (art. 396 CC)

must have the authorization of the Board of Owners, so that it must

to state that the request (authorization) for

be able to install the device in question, justifying the reasons for being able to place the same.

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:

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

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informative located in a sufficiently visible place, both in spaces

open as 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.

Keep available to those affected the information to which

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refers to the aforementioned Regulation (EU) 2016/679, of April 27, 2016.

IV

In accordance with the evidence available at the present time,

considers that the respondent has proceeded to install a video-surveillance camera, without

have the permission of the board of owners, affecting the right of third parties

neighbors of the property.

The installation of a video-surveillance camera in a common area of the

Community of owners requires the authorization of the same for the purposes

appropriate legal.

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With this type of device you can obtain images of common areas,

without just cause, so that the right to privacy of the user may be affected.

other residents of the property who are intimidated by this type of device.

The owner who wishes to carry out an installation must submit the request to the

Board of owners in assembly and this must approve the same, approval that

must be recorded in the minutes of the meeting.

The images captured by the cameras will be limited exclusively to the square

parking lot owned by the person in charge of the system and a minimum strip

of the common areas that it is not possible to avoid capturing for the surveillance of the square of garage, with the prior authorization of the Owners' Meeting, which must be recorded in the minutes corresponding.

This infringement affects the reporting principles of the RGPD, as it is considered a disproportionate measure (in the case of a camera), and may be considered very serious in accordance with the provisions of article 83.5 RGPD.

“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.”

It is recalled that the lack of collaboration with this body may be considered as a SERIOUS infringement of the content of art. 75.1 letter o) LOPDGDD.

“Not cooperating with the control authorities in the performance of their duties in cases not provided for in article 72 of this organic law”.

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According to what was stated,

By the Director of the Spanish Data Protection Agency,

HE REMEMBERS:

1.- NOTICE (PS/00152/2019) to D. A.A.A. for infringement of the content of the article 5.1 c) RGPD, having installed a video-surveillance camera in the area of garage, without the authorization of the rest of the neighbors legally summoned for this purpose, infraction typified in article 83.5ª) RGPD, being punishable in accordance with art. 58.2 GDPR.

2.- REQUIRE D.A.A.A. so that within a maximum period of ONE MONTH from the notification of this administrative act, proceed to:

-Report the cause/reason for the installation of the camera in the plaza de garage.

-Provide, where appropriate, reliable notification to the President of the Community of owners of the cause/reason for the installation.

-If applicable, prove by means of a photograph (date/time) that you have disassembled the camera from your current location.

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

actions to the complainant entity COMUNIDAD PROPIETARIOS R.R.R.

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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