

□ Procedure No.: PS/00198/2019

938-051119

- RESOLUTION OF PUNISHMENT PROCEDURE

Of the procedure instructed by the Spanish Agency for Data Protection and
based on the following

FACTS

FIRST: Mrs. A.A.A. (*hereinafter, the claimant) dated February 7, 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 holder is identified as B.B.B. (hereinafter the claimed) installed in
***ADDRESS 1.

The reasons on which the claim is based are "installation of video cameras-
surveillance with presumed orientation towards the complainant's home" (folio nº 1).
Together with the claim, it provides documentary evidence (Annex I Photographs) that
They prove the presence of several devices oriented towards the adjoining house.

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 02/26/19, the claim was TRANSFERRED to the party
denounced, appearing as notified in the computer system of this body,
without any allegation having been made for the appropriate legal purposes.

FOURTH: On July 11, 2019, the Director of the Spanish Agency for

Data Protection agreed to initiate a sanctioning procedure against the claimant, for the alleged infringement of Article 5.1.c) of the RGPD, typified in Article 83.5 of the GDPR.

FIFTH: On 08/12/2019, collaboration is requested from the Security Forces and Corps State Security, so that by going to the scene of the events they verify the authorship and other circumstances of the case.

SIXTH: On 11/04/19 the request for collaboration to the Armed Forces and Security bodies of the locality (National Police Corps), without no response has been given in this regard.

In view of everything that has been done, by the Spanish Data Protection Agency

In this proceeding, the following are considered proven facts:

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2/4

FACTS

First. On 02/07/2019, a claim was received from the affected party, through the which translates as fact the following:

““installation of video-surveillance cameras with presumed orientation towards the complainant's home” (folio No. 1).

Second. It identifies Mr. B.B.B. as the main person responsible, contributing photographic proof that proves the installation.

Third. The defendant on 08/09/19 denies the facts, stating that he has no any connection with them, and not be responsible for any installation.

Fourth. It has not been possible to verify the alleged author, nor the operation of the system

operative.

FOUNDATIONS OF LAW

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By virtue of the powers that article 58.2 of the RGD 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 of date of entry into this AEPD (02/07/19) by means of which it transfers as main fact: "Installation of video-surveillance cameras with presumed orientation towards the complainant's home" (folio No. 1).

The content of article 5.1 letter c) RGD is considered affected, which provides:

"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");

Individuals can install video-surveillance cameras, but they are responsible that they comply with the regulations in force, avoiding the capture of private space of third parties without just cause.

On 08/09/2019, this agency received a reply from the respondent, in relation to the facts subject to transfer, stating that "he does not have authorization expresses any manipulation, or knowledge of the video-surveillance system installed (...). That he does not have any ownership of said system either (...)"

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“That the claimant is exposed to being denounced through judicial procedure for FALSENESS and for using personal data of the person claimed before a state institution.

So the accused denies being responsible for the installation of any device, nor be responsible for the placement of the camera (s) object of complaint.

III

It should be noted that this body cannot determine the material author of the installation of the camera in question, not having received a report to date some clarification of the extremes object of denunciation.

Notwithstanding the foregoing, it should be noted that the investigations carried out opportune, the material competence at the time of investigating the facts, is attributed the National Police Corps (Córdoba), by the location of the dwelling of the complainant.

It is recalled that the affected party may file the mandatory complaint with the District Police Station closest to the scene of the events, which must carry out the opportune investigations, being able to present a claim before the itself (Complaints Book) or, where appropriate, demand the responsibility that corresponds to the Ministry of the Interior (General Police Directorate).

The National Police is a body of the State Administration that depends of the Ministry of the Interior and that must meet a series of quality standards in the attention to citizens that is reflected in a "Service Charter", regulated by the Royal Decree 951/2005.

The art. 89 Law 39/2015 (October 1) provides the following: "The investigating body will resolve the completion of the procedure, with filing of the proceedings, without it being formulation of the resolution proposal is necessary, when in the instruction procedure it becomes clear that any of the following concurs circumstances:

d) When it does not exist or it has not been possible to identify the person or persons responsible or appear exempt from responsibility (...)".

In case of receiving a Report (Act-Complaint) specifying the authorship and the events that are the subject of the complaint, this body will proceed ex officio to open a new procedure in order to clarify the facts, purging the responsibilities against the author of them.

Similarly, the provision of new reliable evidence that allows specify the author (a) of the facts, I could lead to the opening of a new procedure, in order to prosecute the legality of the video-surveillance devices installed.

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4/4

the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: ORDER the FILE of this procedure, as there is no accredited the presumed person responsible for them.

SECOND: NOTIFY this resolution to the denouncing party Ms. A.A.A..

In accordance with the provisions of article 50 of the LOPDGDD, the

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 in accordance with art.

48.6 of the LOPDGDD, and in accordance with the provisions of article 123 of the

LPACAP, the interested parties may optionally file an appeal for reconsideration

before the Director of the Spanish Agency for Data Protection within a period of

month from the day following the notification of this resolution or directly

contentious-administrative appeal before the Contentious-Administrative Chamber of the

National Court, in accordance with the provisions of article 25 and section 5 of

the fourth additional provision of Law 29/1998, of July 13, regulating the

Contentious-administrative jurisdiction, within a period of two months from the

day following the notification of this act, as provided in article 46.1 of the

aforementioned Law.

Finally, it is pointed out that in accordance with the provisions of art. 90.3 a) of the

LPACAP, the firm resolution may be provisionally suspended in administrative proceedings

if the interested party expresses his intention to file a contentious appeal-

administrative. If this is the case, the interested party must formally communicate this

made by writing to the Spanish Agency for Data Protection,

introducing him to

the agency

[<https://sedeagpd.gob.es/sede-electronica-web/>], or through any of the other

records provided for in art. 16.4 of the aforementioned Law 39/2015, of October 1. Also

must transfer to the Agency the documentation that proves the effective filing

of the contentious-administrative appeal. If the Agency were not aware of the

filing of the contentious-administrative appeal within two months from the

day following the notification of this resolution, it would end the

precautionary suspension.

Electronic Registration of

through the

Sea Spain Marti

Director of the Spanish Data Protection Agency

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