

Procedure No.: PS/00077/2019

938-0319

RESOLUTION OF PUNISHMENT PROCEDURE

Of the procedure instructed by the Spanish Agency for Data Protection before Mr.

A.A.A. (claimed), pursuant to a claim filed by Don B.B.B. (onwards,

the claimant) and based on the following:

FACTS

FIRST: On 11/22/2018, this body received a claim sent by

Benamocarra City Council (Málaga) following a complaint filed by the

neighbor of the locality (claimant), motivated by the treatment of data carried out to

through cameras of a video surveillance system whose alleged owner is the

denounced referenced with NIF ***NIF.1 (hereinafter the claimed) installed in

***ADDRESS 1.

The reasons on which the claim is based are "the existence of three chambers with orientation towards the public road" (folio nº 1).

Along with the claim, provide documentary evidence (photographs Annex I) that accredit the visualization of the public space located in front of their home, without just cause.

SECOND: On 12/18/2018, the claim is TRANSFERRED to the

denounced party, in order to claim in law that the system conforms to the

current legislation, providing probative material to prove such end, stating

as notified in the computer system of this body.

THIRD: On February 25, 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 of the RGPD, infringement typified in Article 83.5 of the

RGPD and classified as Very Serious in article 72.1 a) of the LOPDPGDD.

FOURTH: On 03/20/19, this body receives written allegations of

the accused party, stating the following:

“On this particular, it should be noted that the home of the undersigned where

the cameras are located at the entrance, in a visible place, of the due plate

informative, which complies with the legal requirements.

It is accompanied as Doc. No. 1, a photograph that proves, effectively, the

existence of this plate.

Regarding the recording of public roads. As far as this extreme is concerned, there is

to say that this is not true or, at least, it is not true at the moment in which it has been

Received the Agreement to Start the Sanctioning Procedure.

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

Around the beginning of November 2018, he appeared at the house (...)

local police officers from Benamocarra, who explained the reason for their

visit and who were allowed access to housing so that they could carry

out, if the pertinent verifications so desired (...) the undersigned has collaborated

at all times with the acting force displaced to the scene of the events.

As a result of these checks, one of the cameras (placed in

the facade) seemed to be recording a part—in any case minimal—of the road

public, so immediately proceeded to carry out the steps leading to

modify the situation—reorientation—in order to avoid that state of affairs.

Subsequently, at the time indicated, the Local Police has not returned to

go through the house with this object.

In any case, the purpose of installing these cameras must be find it in a cause as justified as the fact of the terrible relationship of neighborhood between the undersigned and the complainant (...). Consequently, we consider that the principle of proportionality, and in any case, that the impact that, eventually, could have be caused in pedestrians, in addition to being involuntary, it has been minimal” For all of the above, I request that this document be considered presented and the documents that accompany it, for having made the allegations and for providing the evidence (...) and consequently the procedure is archived”.

FACTS

FIRST: On 11/22/18, a claim is received by this body from the complainant, by means of which he transfers as the main fact the following “existence of three cameras facing the public road” (folio nº 1).

SECOND: It is accredited as the main person in charge Mr. A.A.A. with NIF ***NIF.1, which acknowledges that it is the owner of the cameras, installed for reasons of security.

THIRD: It is accredited that the installed system has an information poster, at the entrance door, indicating the person responsible for the treatment.

FOURTH: It is proven that the system has three cameras, one of which which partially obtained images of public roads, although in a portion minimal.

This fact is verified (photographic evidence No. 1) provided by the Local Police of Benamocarra (Malaga).

FIFTH: The accused party does not provide a screen print of what in its case it is observed with the camera that you have reoriented, nor with the others installed in your private property.

FOUNDATIONS OF LAW

Yo

By virtue of the powers that article 58.2 of the RGPD recognizes to each authority of control, and as established in arts. 47 and 48.1 of the LOPDPGDD, the Director of The Spanish Agency for Data Protection is competent to resolve this process.

II

In the present case, we proceed to examine the claim dated 11/22/18 by through which the complainant moves the "installation of cameras" with alleged facing the public road.

The defendant is imputed the commission of an infraction for violation of article 5 of the RGPD, which states that: "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") (...)"

The known facts could constitute an infraction, attributable to the claimed, for violation of article 83 section 5 letter a) 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 largest amount:

a) the basic principles for the treatment, including the conditions for the consent under articles 5, 6, 7 and 9;

On 03/20/19, a written statement was received from the accused party, stating that the house "has the mandatory information poster" on the door

of entry, indicating the person in charge before whom to exercise the rights.

Regarding the recording of public thoroughfares, he states that it is uncertain, at least in the moment of notification of the Start Agreement of this procedure.

Although it subsequently states that a reorientation has been made, and that "in

In any case, the impact that may have been caused has been minimal" (folio No. 1 written by allegations).

This body must base its decision on the objective evidence provided by the State Security Forces and Bodies (Act 10/10/18) where in the screen print provided from the defendant's computer, it is observed as

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

obtains images of public space, specifically of the part located in front of his living place.

Therefore, the reported administrative infraction is verified, although after the intervention of the State Security Forces and Bodies, states that "reorients" them, although it does not provide any screen impression to this body that confirms what has been stated.

The defendant's claim that the system was adjusted to the principle of proportionality, since the "bad relationship" with the neighbor argued, does not justifies the control of a part of public space, which affects third parties outside the neighborhood conflicts between the parties.

To the above add that it does not provide any documentary evidence (vgr. Complaints, Judgments, etc) that allows entering to assess the proportionality put forward.

It should be remembered that individuals can install video surveillance cameras,

but that they are responsible for ensuring that it complies with current legislation, and must be oriented preferably towards their private space.

With this type of device it is not possible, outside the assumptions permitted exceptions, obtain images of public space, by affecting the right to the privacy of passers-by.

In no case will the use of surveillance practices beyond the environment be allowed.

object of the installation and in particular, not being able to affect public spaces surrounding buildings, adjoining buildings and vehicles other than those accessing the space guarded.

Article 22 of the new Organic Law 3/2018, of December 5, of

Protection of Personal Data and guarantee of digital rights, provides:

1. Individuals or legal entities, public or private, may carry out the processing of images through camera systems or video cameras with the purpose of preserving the safety of persons and goods, as well as their installations.

2. Images of public roads may only be captured to the extent that is essential for the purpose mentioned in the previous section.

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.

In any case, the person in charge of the treatment must keep available to the affected the information referred to in the aforementioned regulation (...)"

III

Without prejudice to the provisions of article 83.5, sections a) and b), of the RGPD, in its art. 58.2 b) establishes the possibility of sanctioning with a warning, in relation to what stated in Recital 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.”

In the case at hand, we take into account the cooperation that has been maintained with this body, lending itself to any type of verification of the system, the minimum space of public space that has been video-monitored, as well as where appropriate having “reoriented” the camera after the indication of the Local Police of Benamocarra (Málaga) to your exclusive private space.

IV

In accordance with the foregoing, based on the evidence obtained, it can be concluded that the denounced installed a video-surveillance system, with which he obtained images of the public road, which is why it is considered pertinent to warn him, having violated the regulations in force.

The accused party is reminded that a new complaint confirming a new "irregularity" of the system, can lead to the opening of proceedings

punisher with the imposition of a fine of an economic nature.

The rest of the issues should be brought to the attention of the

State Security Forces and Bodies or be transferred to the

court closest to the scene of the incident.

Therefore, in accordance with the applicable legislation and having assessed the criteria for

graduation of sanctions whose existence has been proven,

the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: PROCEED to WARN the accused Mr. A.A.A. for the infringement of

article 5 RGPD, having installed a camera oriented towards public space, without

just cause.

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

SECOND: NOTIFY this resolution to Don A.A.A. and report the result

of this proceeding to the complaining party—CITY COUNCIL OF

BENAMOCARRA (MÁLAGA)--.

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 in accordance with art. 48.6 of the

LOPDPGDD, 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 month from

counting 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.

Sea Spain Marti

Director of the Spanish Data Protection Agency