

- Procedure No.: PS/00409/2018

RESOLUTION: R/00469/2019

In procedure PS/00409/2018, instructed by the Spanish Agency for Data Protection to Doña B.B.B. and Mr. C.C.C., in view of the complaint filed by Don A.A.A. and by virtue of the following,

FACTS

FIRST: Dated 08/07/2018, there is an entry in this Agency written by Mr. A.A.A. (hereinafter the claimant), in which he communicates a possible violation of the RGPD, motivated by the processing of data carried out through a system of video surveillance on the farm located at *** ADDRESS.1, whose alleged perpetrators are identified as B.B.B. and C.C.C. with NIF ***NIF.1 hereinafter the one claimed).

The complaint reveals the following facts that "has been proceeded to the installation of several video-surveillance cameras by the owners of the adjoining dwelling" that could be obtaining images in a way disproportionate use of their home, affecting their right to privacy.

The following documents are attached: Copy of Notarial Act of the Illustrious Association Notarial of Aragon.

-Documentary evidence (Annex I): photographs that prove the presence of several cameras with presumed orientation towards the adjoining dwelling(s).

SECOND: On 10/04/2018, the claim is transferred presented to the denounced party, identified as such by the denouncer, without no response has been made in a timely manner.

THIRD: On 11/05/18 the claim is reiterated to the accused party, without no response has been made in this regard.

FOURTH: On July 30, 2019, the Director of the Spanish Agency for

Data Protection agreed to submit this

warning procedure PS/00409/2018. This agreement was notified to
denounced.

FIFTH: The database of this organization was consulted (09/15/19) and there is no
any allegation in relation to the facts that are the subject of the complaint.

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PROVEN FACTS

First. On 08/07/18, a claim from the
complainant through which transfers as main fact the following:

“Several video-surveillance cameras have been installed by
part of the owners of the adjoining dwelling” who could be obtaining images
disproportionately from their home, affecting their right to privacy.

Second. The complaining party identifies the residents of the
Property: C.C.C. and B.B.B.

Third. The denounced system lacks an information poster indicating that it is
a video-monitored area.

Fourth. There is no evidence that the parties denounced have made any demonstration
in this regard in relation to the facts transferred by this Agency.

Fifth. It is provided as documentary evidence (Doc. No. 1) Notarial act that
certifies the installation of four video surveillance cameras, which could be
Obtaining images of public space and adjoining property without just cause.

The images provided only allow verifying the installation of the cameras,

but not that they affect the public and/or private space of the complainant, to what would be needed to view what is obtained with them.

FOUNDATIONS OF LAW

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By virtue of the powers that article 58.2 of the RGPD recognizes to each control authority, and as established in art. 47 of the Organic Law 3/2018, of December 5, Protection of Personal Data and guarantee of rights (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 08/07/18 in the that the following facts are revealed that "the installation of several video-surveillance cameras by the holders of the adjoining house" that they could be obtaining images in a way disproportionate use of their home, affecting their right to privacy.

The following documents are attached: Copy of Notarial Act of the Illustrious Association Notarial of Aragon.

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The above "facts" may affect the content of art.

5.1 c) RGPD, which provides: "Personal data will be:

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

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

It should be noted that the person responsible for the installation must be able to certify this Agency that it conforms to current legislation, without affecting the privacy of third parties.

III

Secondly, and for informational purposes only, it is worth recalling some of the requirements that must be met by the treatment of images through a system of video surveillance to be in accordance with current regulations:

- Respect the principle of data minimization.
 - The video cameras will not be able to capture images of the people who are outside the private space where the security system is installed.
- video surveillance, since the processing of images in public places only can be carried out, unless there is government authorization, by the Security Forces and Bodies. Nor can spaces owned of third parties without the consent of their owners.
- The duty to inform those affected must be fulfilled in the manner provided in article 12 of the RGPD in relation to articles 13 and 14 of the Regulation, and Article 3 of Instruction 1/2006, of November 8, of the Spanish Agency Data Protection, on the processing of personal data for the purpose of surveillance through camera systems or video cameras (Instruction 1/2006) by not contradicting the provisions of the aforementioned regulation.

Specifically, it will be necessary to:

- ☐ Place in the video-monitored areas, at least one informative badge located in a sufficiently visible place, both in open spaces and closed.

In accordance with the provisions of articles 13 and 14 of the RGPD, in this

distinctive must specify, at least, the existence of a treatment,
the identity of the person in charge and the possibility of exercising the rights
recognized in the GDPR.

□ Keep at the disposal of those affected, forms detailing
the information referred to in the previous paragraph.

- The person in charge must keep a Record of Treatment Activities
carried out under their responsibility, including the information to which
refers to article 30.1 of the RGPD.

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An infraction can be derived from the examination of the facts collected in the file.

of article 5.1.c) of the RGPD regarding the principles of treatment, which provides the

Next:

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

This article establishes the principle of data minimization in the treatment of
personal data that supposes that the treatment of the data is adjusted and
proportional to the purpose to which it is directed, and the
treatment of excessive data or proceed to the deletion of the same.

The relevance in the treatment of the data must occur both in the
of the collection of the data as well as in the subsequent treatment that is carried out of the data.
themselves. In addition, it must be taken into account that the purpose of the treatment must

presiding over it, in such a way that it is not acceptable that excessive data be processed in relationship with it.

For this reason, the processing of personal data carried out through the visualization on the monitor of the images captured by the system's cameras reported, must be limited to the purpose of controlling the security of the establishment where it is installed. In this specific case, the treatment of the images described above may involve excessive data processing since the images should only be viewed by persons authorized to do so and legitimated to do so. carry out your treatment.

In terms of video-surveillance, the provisions of the Instruction 1/2006, since it does not oppose what is established in the RGPD, in its article 4 it makes mention the principle of data minimization in the following terms:

1.- The images will only be treated when they are adequate, pertinent and not excessive in relation to the scope and the determined, legitimate and explicit, which have justified the installation of cameras or video cameras.

.- Only the installation of cameras or video cameras will be considered admissible when the purpose of surveillance cannot be obtained by other means than, without demanding disproportionate efforts, are less intrusive for the privacy of individuals and for their right to the protection of personal data staff.

.- Cameras and video cameras installed in private spaces may not obtain images of public spaces unless it is essential for the surveillance purpose that is intended, or it is impossible to avoid it for reasons of their location. In any case, any treatment of unnecessary data for the purpose pursued.”

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SAW

Article 58.2 of the RGPD establishes the corrective powers of the Authority of Control, in the event of an infraction of its precepts. This article provides the following:

"two. Each supervisory authority will have all of the following powers corrections listed below:

b) sanction any person responsible or in charge of the treatment with a warning when the treatment operations have infringed the provisions of the this Regulation;

i) impose an administrative fine under article 83, in addition to or instead of of the measures mentioned in this section, depending on the circumstances of each particular case;

Taking into account the foregoing, the infringement of article 5.1.c) of the RGPD, may sanctioned with the imposition of an administrative offense as established in the Article 83.5 of the Regulation itself, which provides the following:

"Infractions of the following provisions will be sanctioned, in accordance with section 2, with administrative fines of a maximum of €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 for the largest amount: a) the basic principles for the treatment, including the conditions for consent under articles 5, 6, and 7 9..."

In the present case, it is taken into account that the installation of the cameras is limited to

a specific field of little scope, as well as the fact of not knowing if the same are operational, not obtaining any "profit" for the installation of the same, way that it is considered correct to warn those denounced.

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In accordance with the foregoing, given the lack of collaboration of those denounced before the requirements of this body, it is considered correct to WARN them, in such a way that they must prove the legality of the system or, failing that, assume the legal consequences of their actions, in case of receiving a "new" Complaint.

In any case, the accused party is reminded of the duty to place a poster informative indicating the person responsible for them or guide them in such a way that do not intimidate the neighbors, and should preferably be oriented towards their private space, not being allowed to obtain images of public space or reserved for the privacy of third parties.

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In the case of "false" cameras, documentary proof of such must be provided. character (vgr. contribution Notarial Act, purchase invoice, photographs of the interior of the themselves, etc.).

Once the established period has elapsed, the denouncing party may transfer the "facts" to the State Security Forces and Bodies, so that they prepare the corresponding Act (complaint) carrying out the appropriate inquiries on site, sending it if necessary to this Agency.

According to what was stated,

By the Director of the Spanish Data Protection Agency,

HE REMEMBERS:

1.- WARN (PS/00409/2018) Mrs. B.B.B. and Don C.C.C. for the infringement of content of art. 5.1 c) RGPD, by having a system of cameras without informing, that could affect the public/private space of a third party without just cause, infraction typified in art. 83.5 a) RGPD, being punishable in accordance with the art. 58.2 GDPR.

2.- REQUEST the defendants Doña B.B.B. and Mr. C.C.C. so that within one month from this act of notification:

-Prove the availability of an informative poster in a visible area, indicating that It is a video-monitored area.

-Provide screen printing (date/time) that proves that the space to be captures with the cameras is limited to his personal or private sphere.

3.- NOTIFY this Agreement to Doña B.B.B. and Don C.C.C. and INFORM the denouncing party Mr. A.A.A.

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.

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