

Procedure No.: PS/00047/2019

RESOLUTION: R/00382/2019

In procedure PS/00047/2019, instructed by the Spanish Agency for Data Protection to Don A.A.A., given the complaint filed by Doña B.B.B. and in virtue of the following,

FACTS

FIRST: Mrs. B.B.B. (*hereinafter, the claimant) dated November 2, 2018 filed a claim with the Spanish Agency for Data Protection, motivated by the alleged treatment of data carried out through cameras of a video surveillance system whose owner identifies as his neighbor A.A.A. (*onwards claimed) installed at ***ADDRESS.1.

The reasons on which the claim is based are "Installation of video camera-surveillance in a disproportionate manner" with alleged orientation towards the area of the adjoining house.

Together with the claim, it provides documentary evidence (Photographs Annex I) that certify the installation of the device, the photographs being taken from the window of your home.

SECOND: In view of the facts denounced, we proceeded to TRANSFER the claim to the accused party, appearing as "Notified" in the system computer of this organism, without any answer having been given for the purposes appropriate legal.

THIRD: On July 30, 2019, the Director of the Spanish Agency for Data Protection agreed to submit this warning procedure PS/00047/2019. This agreement was notified to denounced.

FOURTH: When the database of this body was consulted (08/22/2019), there is no evidence that any allegation has been made in this regard in relation to the facts subject to transfer.

PROVEN FACTS

First. On 11/02/18, a claim was received from the complainant through the which is transferred as the main "fact":

"Installation of video surveillance cameras in a disproportionate manner" with presumed orientation towards the area of the adjoining house.

Second. The defendant Mr. A.A.A. has been identified as the main person responsible.

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Third. There is no evidence of any allegation in relation to the facts that are the subject of the complaint, for the denounced party.

Fourth. The installation of a device is accredited, being unlikely that due to the distance between the properties, it can capture any image of the interior of the complainant's home, appearing to fulfill a dissuasive function, if either the accused does not respond to the requirements of this body.

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 Complaint sent to this body,

with entry date 11/02/18, through which it transfers as main fact:

“...installation of a video-surveillance camera that could be obtaining
privately owned images (...)”

The facts described above may affect the

content of art. 5.1 c) GDPR. “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");

It should be remembered that individuals can install video surveillance cameras

Although they are responsible for ensuring that they comply with current legislation (vgr.

respecting the principle of proportionality, having an informative device, etc).

The cameras should preferably be oriented towards private space,

taking the necessary measures so that they only obtain images from space

corresponding to your private property.

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

in accordance with current regulations:

- Respect the principle of proportionality.

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- 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:

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

2. Keep available to those affected the information referred to in the

cited Regulation (EU) 2016/679, of April 27, 2016.

IV

According to the evidence currently available

procedurally, it is considered that the person claimed has installed some type of

obtaining images, which could be poorly oriented, and may affect the right

to the privacy of the complainant and her family.

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

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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.”

The denounced party must provide this body with a screen print (s) in which you can analyze what in your case is observed with it, reason for the installation of the device, prove the legality of the system in question, as well as any other pertinent explanation in relation to the facts that are transferred.

You are reminded that failure to comply with the requirements of this Agency may assume that an administrative infraction is imputed to him in the terms of article 72.1 letter o) LOPDGDD (LO 3/2018, December 5), which is brought to the attention of the appropriate legal effects.

According to what was stated,

By the Director of the Spanish Data Protection Agency,

HE REMEMBERS:

1.- NOTICE (PS/00047/2019) to D. A.A.A. for the infringement of article 5.1 c) RGPD, by having a video-surveillance device that does not comply with the law in force, infringement typified in article 83.5ª) RGPD, being punishable by in accordance with article 58.2 RGPD.

2.- REQUIRE D.A.A.A. so that within ONE MONTH from the notification of the this act, certifies that the system complies with current legislation, providing all

the necessary tests for it.

3.- NOTIFY this Agreement to A.A.A. and REPORT the result of the actions to the complainant –Doña B.B.B..

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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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