

Procedure No.: PS/00179/2019

RESOLUTION: R/00462/2019

In procedure PS/00179/2019, 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 January 20, 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 owner identifies as the neighbor A.A.A. with NIF ***NIF.1 (hereinafter the claimed) installed at ***ADDRESS.1.

The reasons on which the claim is based are "that a security camera has been installed video-surveillance at the back of your home which focuses on a swimming pool community that is used by several apartment tenants. Nonexistent informative poster" (folio nº 1).

Along with the claim, provide documentary evidence (Annex I photographs 1,2,3,4) that prove the presence of the device in question.

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 02/15/19, the claim was TRANSFERRED to the party denounced so that he could allege what he deemed appropriate in relation to it, without

any allegation has occurred to date.

FOURTH: On July 12, 2019, the Director of the Spanish Agency for Data Protection agreed to submit this warning procedure PS/00179/2019. This agreement was notified to denounced.

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PROVEN FACTS

First. On 01/20/19, this Agency received a claim from the complainant

by means of which it is transferred as main fact:

“Installation of a camera by a neighbor, with presumed orientation towards pool area, without being duly informed” (Folio nº 1).

Second. Identifies the neighbor A.A.A. as the main person responsible, providing the number of the ID of the same.

Third. According to the complaining party, the device is misoriented, lacking the mandatory informative poster in a visible area indicating that it is a video-monitored area.

Fourth. The images provided (Annex I) allow verifying the presence of the device in height, being able to be obtaining images of space from third parties in just cause.

Fifth. The database of this organization was consulted (09/15/19) and there is no any allegation in this regard by the denouncer.

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 01/20/19 by means of which is transferred as main fact:

“That a video-surveillance camera has been installed in the back of his housing which focuses on a community pool that is used by several tenants of apartments” (folio nº 1).

The content of article 5.1 letter c) RGPD 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");

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Cameras installed by individuals must meet the requirements required in the regulations in force, and the person responsible for the installation must be able to accredit such extreme before this organism.

Cameras must be permanently oriented towards your property individuals, not affecting the privacy of the adjoining neighbors and/or passers-by

passing through the area, who cannot be "intimidated" by this type of devices.

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.
 - 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 previously 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.

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Keep available to those affected the information to which two.

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

- The person responsible for processing the data carried out through cameras and/or video cameras will adapt the use of the installation, so that the impact on the rights of pedestrians is the minimum possible.

- In no case will the use of surveillance practices be admitted beyond the environment object of the installation and in particular, not being able to affect the spaces surrounding public, adjoining buildings and vehicles other than those accessing the guarded space.

IV

In accordance with the available evidence, it is considered that the claimed has installed a video-surveillance device that could be obtaining

images disproportionately, violating the regulations in force.

It is worth remembering the responsibility of everyone who installs this type of devices to comply with current legislation, and must avoid affecting with the same the rights of third parties who are intimidated by this type of system.

The known facts could constitute an infraction, attributable to the claimed, for violation of the content of art. 51. C) GDPR.

This infringement affects the reporting principles of the RGD, 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 RGD.

“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 RGD, 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

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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.”

For the denounced party, the characteristics of the camera must be accredited in issue (eg if it is a fake camera), providing all the documentation necessary in this regard (eg instruction manual, purchase invoice, etc.); as well as provide screen printing (with date and time of the monitor); owing last demonstrate that it complies with current legislation (e.g. that it has a poster informative or that has the authorization of the Board of Owners, etc).

If after the deadline set for compliance with the "measures" required persists in non-compliance, the receipt of a new complaint may give rise to the opening of a sanctioning procedure of a pecuniary nature, assuming the legal consequences of their actions.

According to what was stated,

By the Director of the Spanish Data Protection Agency,

HE REMEMBERS:

1.- NOTICE (PS/00179/2019) to D. A.A.A. for the infringement of article 5.1 c)

RGPD, by having a wrongly oriented video-surveillance device, infringement typified in article 83.5ª) RGPD, being punishable in accordance with the article 58.2 GDPR.

2.- REQUIRE D.A.A.A. so that within a month from this act of

notification:

-Prove the characteristics of the installed camera, providing an impression of screen with date/time that allows you to analyze what, in your case, is observed with the itself or failing that, you must prove that you have removed the camera from the current place of Location.

-Prove, where appropriate, the availability of an approved information poster adapted to the regulations in force on the matter.

3.- NOTIFY this Agreement to the defendant A.A.A. and REPORT the result of the proceedings to the denouncing party Doña B.B.B..

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.

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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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