

Procedure No.: PS/00389/2018

RESOLUTION: R/00418/2019

In procedure PS/00389/2018, instructed by the Spanish Agency for Data Protection to the BAR JUNIORS entity, given the complaint filed by A.A.A. and by virtue of the following,

#### FACTS

FIRST: On 07/11/2018, a claim is received by this body from the complainant by means of which he transfers as main fact:

“installation of a camera on the exterior facade of the establishment without have the authorization of the Community of owners. (sheet number).

Attached to the claim is documentary evidence that proves the presence of the camera in question (Proof No. 1).

SECOND: On 07/17/18 the claim is transferred to the establishment denounced, without any response having been given in this regard to date.

THIRD: 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 (a) through the installed camera does not comply a priori with the conditions imposed by the regulations on data protection, so the opening of the present sanctioning procedure.

FOURTH: On July 30, 2019, the Director of the Spanish Agency for Data Protection agreed to submit this warning procedure PS/00389/2018. This agreement was notified to denounced.

FIFTH: The database of this organization was consulted (08/28/19) and there is no

any allegation made in relation to the facts reported by this Agency.

## PROVEN FACTS

First. On 07/11/18, a claim is received at this Agency through the

which translates as the main fact the following:

“Installation of a camera on the exterior facade of the establishment without

have the authorization of the Community of owners. (sheet number).

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Second. The establishment “Bar

Juniors”.

Third. It was not possible to verify what is recorded in your case with the system

installed.

Fourth. There is no record that the establishment has the mandatory information poster

located in visible area.

Fifth. The Administrator of the farm identifies the person in charge as B.B.B., indicating

who has left the premises in question.

## FOUNDATIONS OF LAW

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In accordance with the powers that article 58.2 of the RGPD recognizes to each authority

of control, it is competent to initiate this procedure the Director of the Agency

Spanish Data Protection Agency, in accordance with article 12.2, sections i) and j)

of Royal Decree 428/1993, of March 26, approving the Statute of the

Data Protection Agency (hereinafter, RD 428/1993).

## II

In the present case, we proceed to examine the claim of the denouncing party

by means of which the following is transferred as the main "fact":

"installation of a camera on the exterior facade of the establishment without

have the authorization of the Community of owners. (sheet number).

The facts described may imply an affectation of the content of art. 6

RGPD, by being able to "process personal data" outside the cases contemplated

normatively, affecting the right of third parties without just cause.

The person responsible for the installation must be able to certify that the system conforms to

regulations in force, adjusting the same to the prescriptions in force in the matter.

Remember that with this type of device you cannot capture public roads,

should preferably be oriented towards their private area (eg door of the

establishment).

## 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 comply 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:

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 Regulation (EU) 2016/679, of April 27, 2016, in the aforementioned informative badge, you must identify, at least, the existence of a treatment, the identity of the person in charge and the possibility of exercising the rights provided for in said precepts.

1 Keep available to those affected the information referred to in the cited Regulation (EU) 2016/679, of April 27, 2016.

IV

The "facts" are specified in the installation of a camera on the exterior facade of the

establishment without the authorization of the Community of owners. (Invoice  
\*\*\*NUMBER).

Article 6.1 of the RGPD establishes the assumptions that allow considering  
lawful processing of personal data.

Obtaining images of third parties without their consent through a camera

It supposes a "processing of personal data" not authorized by the regulations in force.

The installation of cameras by private individuals is not prohibited in  
our legal system, although the person responsible for the installation must  
ensure that it complies with current legislation.

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In the case of installation in community areas (exterior wall, etc.), it must be  
notify the Board of Owners or it must be installed in accordance  
so that it is oriented towards the access door to the establishment.

The fact of not having the consent of the Board of Owners, is not  
determining factor when authorizing/prohibiting the installation of a video-  
surveillance, provided that the reasons for the installation are proven, as well as its  
Preferential orientation towards the establishment area.

The establishment must have the mandatory informative device in  
visible area, reporting that it is a video-monitored area.

Article 83.5 a) of the RGPD, considers that the infringement of “the basic principles  
for processing, including the conditions for consent under the  
articles 5, 6, 7 and 9” is punishable, in accordance with section 5 of the aforementioned

Article 83 of the aforementioned Regulation, with administrative fines of €20,000,000 as maximum or, in the case of a company, an amount equivalent to 4% as maximum of the overall annual total turnover of the previous financial year, opting for the highest amount.

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By virtue of the provisions of article 58.2 RGPD, the Spanish Agency for Data Protection, as a control authority, has a set of corrective powers, among which is the power to impose fines, in the in the event of an infringement of the provisions of the RGPD.

Article 58 section 2 GDPR provides the following:

“Each supervisory authority shall have all of the following corrective powers listed below:

b) sanction any person responsible or in charge of the treatment with

warning when the processing operations have violated the provisions of this Regulation;

i) impose an administrative fine under article 83, in addition to or in

instead of the measures mentioned in this paragraph, depending on the circumstances of each particular case;

In accordance with the foregoing, the accused party has not accredited before this

Agency that the installed system complies with current legislation, specifically that it is

what is captured with the installed cameras, which is why it is appropriate to declare the violation of article 6 RGPD, as they can be misoriented, affecting

third party data.

The accused party is warned that the persistence of a hindering attitude

of the work of this body, will be taken into account when assessing the imposition

of a possible sanction of a pecuniary nature, which is communicated to the

appropriate legal.

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According to what was stated,

By the Director of the Spanish Data Protection Agency,

HE REMEMBERS:

1.- WARN (PS/00389/2018) the entity BAR JUNIORS for the infraction of the article 6 RGPD, by having a video-surveillance system that does not comply with the current legislation, obtaining images from third parties, offense typified in article 83.5ª) RGPD, being punishable in accordance with article 58.2 RGPD.

2.- REQUEST the entity --BAR JUNIORS-- so that within ONE MONTH from notification of this act, proves compliance with the following measures:

-Brief explanation of the cause/reason for the installation of the video system-surveillance.

-Proof of having an approved information poster, adapted to the regulations in force.

-Proof of availability of informative form(s) inside the establishment available to any customer who may require it.

-Copy of certified letter informing the Community of owners of the system installation.

3.- NOTIFY this Agreement to BAR JUNIORS and INFORM the party

AAA whistleblower

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.

Sea Spain Marti

Director of the Spanish Data Protection Agency

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