

938-0419

Procedure No.: PS/00138/2019

RESOLUTION OF PUNISHMENT PROCEDURE

In sanctioning procedure PS/00138/2019, instructed by the Spanish Agency for Data Protection, before D. A.A.A., (hereinafter, "the person claimed"), by alleged violation of Regulation (EU) 2016/679, of the European Parliament and of the Council, of 04/27/2016, regarding the Protection of Natural Persons in what regarding the Processing of Personal Data and the Free Circulation of these Data (RGPD), and based on the following, and based on the following:

BACKGROUND

FIRST: On 01/09/19, the complaint filed was received by this Agency by the Civil Guard of Briviesca (Burgos), in which he stated:

"For an undetermined time, agents have been observing in principle outlined several chambers located in the upper part of a construction, which are oriented towards the public road. The aforementioned construction located in the town of ***LOCALIDAD.1, consists of housing, warehouse and parking. From the public road (roads of domain and public use, with cadastral number ***REFERENCE.CATASTRAL.1 and ***REFERENCE.CATASTRAL.2) are observed three cameras in the southwest corner, at least two of which clearly focus on the public road. In the southeast corner there appears to be a "dome" type directional camera. There is no sign of any kind regarding the existence of cameras, responsible or authorization; if cables are seen from them towards the interior of the house.

Once the steps have been taken, the construction and installation of the cameras turns out to be responsibility and/or property of A.A.A. (***NIF.1). Photographs of the aforementioned are attached. cameras.

SECOND: In view of the facts set forth in the claim and the documents provided by the claimant, the General Subdirectorate for Data Inspection proceeded to carry out actions for its clarification, under the powers of investigation granted to the control authorities in article 57.1 of the Regulation (EU) 2016/679 (General Data Protection Regulation, hereinafter RGPD). A) Yes, dated 01/29/19, an informative letter is addressed to the respondent, informing him that, Agents of the Security FFCC have informed this Agency of the installation, in the referenced construction, of video surveillance cameras that would violate the data protection regulations, regarding the treatment of images.

You are also informed that you can consult the requirements to carry out carry out personal data processing through this type of device in the website <https://www.aepd.es/areas/videovigilancia/index.html>.

Finally, it is indicated that, in the event of not adopting the necessary measures to comply with the legally established requirements, would incur in an infringement of the provided in the data protection regulations, which could lead to the start of the corresponding investigative and sanctioning actions.

Said brief was notified to the interested party on 02/06/19. According to a certificate from the Service of Correos, was collected from the "LISTA" service by the interested party.

THIRD: On 03/15/19, the Civil Guard of the Briviesca Post (Burgos), send this Agency the following information:

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"It is verified in a different time slot between the 24th and 28th of February of the

current year by the undersigned Civil Guards, that the defendant does not complies with the requirements demanded by the data protection regulations; making the person in charge disregards the adoption of corrective measures in order not to violate current regulations, with the cameras in the same situation and orientation”.

FOURTH: On 04/09/19, the Director of the Spanish Agency for the Protection of Data agreed to initiate sanctioning proceedings against the claimed entity, by virtue of the powers established in article 58.2 of the RGPD and in articles 47, 64.2 and 68.1 of Organic Law 3/2018, of December 5, on Data Protection Personal and Guarantee of Digital Rights (LOPDGDD), for the infringement of the article 5 and 6 of the RGPD typified in article 83.5.2) of the RGPD and considered very serious in 72.1.a and b) of the LOPDGDD, arguing it, essentially in that: "The agents of the Civil Guard, have verified that, between February 24 and 28, 2019, the situation and orientation of the cameras installed in the person's home claimed have not been modified, not complying with the requirements demanded by the data protection regulations and making the person responsible, ignoring the adoption of corrective measures indicated by this Agency, in order not to violate the regulations valid".

FIFTH: Once the initiation agreement has been notified, the person claimed, by means of a written dated 05/06/19, made, in summary, the following allegations:

"I am not the owner of the real estate that is detailed, nor of the cameras. these properties are in the name of my family, my father and my mother, Mr. B.B.B. Y C.C.C.. The cameras you refer to are not video recording cameras. they are video gatekeepers that my family placed so that my mother can see my father when he approaches with the tillage tractor to open the gate, since the land mostly to be come are owned by my family.

Yes, there are two stickers that indicate that there is a camera, but over time they

they have deteriorated and yes it is reasonable to place them again, and it will be done. I offer the possibility of entering the house to check the installation, see what they are video intercoms that turn on and are seen on television monitors, with technology old and there is no recorder installed.

They are on when agricultural work is being done for aid, given that from the house, the living room is oriented in the opposite direction. It has been understood that no one is disturbed, no one can say that images have been used, we must add to all this, that they are in contact with the Burgos company "Pablo Pérez", to place, in the future and all under the corresponding regulations, cameras of vigilance, given that since I am a councilor of the municipality of the Bureba neighbourhoods, I have had many threats, an attempt to run over them, they also tried to attack my parents run over in this area, and no videos could be provided because it is not recorded."

SIXTH: On 05/13/19, the testing period began, agreeing:

a).- consider reproduced for evidentiary purposes the filed complaint and its documentation, the documents obtained and generated that are part of the file E/3106/2019 and b).- consider reproduced for evidentiary purposes, the arguments to the initial agreement of PS/138/2019, presented.

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SEVENTH: On 06/10/19, the Briviesca Property Registry is requested to (Burgos), information on the ownership of the construction with cadastral reference ***REFERENCE.CATASTRAL.3, of ***LOCATION.1", when indicating, the claimed in his allegations, that he was not the owner of the real estate detailed in the complaint

of the Civil Guard.

EIGHTH: On 06/20/19, the requested person sends a written document to this Agency new writing, indicating in it that: "I request that it be verified that the cameras they are only recording my properties and a minimum of sidewalk. that I am willing to pick them up or cut whatever is needed, but I need the Civil Guard to come to me home to check. That I make available whatever is needed, that the reason is that I have threats of running over attempts and I need this protection to avoid damage to my person after my condition as councilor of the District of the Districts of Bureba".

NINTH: On 06/26/19, the Property Registry of Briviesca notifies this Agency that the reference farm is not registered in favor of any person.

TENTH: On 08/27/19, the sanctioning resolution proposal is notified consisting in that by the Director of the Spanish Agency for the Protection of Data proceeds to warn the claimed, for the violation of art. 5.1.c) RGPD, to have installed some video-surveillance devices oriented towards the entrance of the estate, affecting public roads and without an information sign indicating it, in addition to the fact that, within a month from this act of notification of the resolution, proceed to modify the orientation of the cameras by ceasing to record public roads, adjusting thus to the current regulations and provide a photograph with date and time that proves to have in its case, an approved video-surveillance poster.

: Once the resolution proposal has been notified, the entity does not present any

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of allegations to the same, in the period granted for this purpose.

In view of everything that has been done, by the Spanish Data Protection Agency

In this proceeding, the following are considered proven facts:

PROVEN FACTS

1º According to the report of the complaint from the Briviesca Civil Guard Post

(Burgos) dated 01/09/19, there are several video surveillance cameras, located in the upper part of the house located in the town of ***LOCALIDAD.1, without any type of sign regarding the existence of video surveillance cameras. In the complaint record It also indicates that the construction where the cameras are located is owned by D. A.A.A. (***NIF.1).

2º In the photographic report carried out by the Civil Guard, three cameras in the southwest corner of the building, at least two of which focus on public roads. In the southeast corner there is a “dome” type directional camera.

3º On 01/29/19, an informative letter is sent to the respondent, informing him of the content of the complaint. You are informed how you can adapt the installation to the current regulations on video surveillance cameras and you are warned that, in the course of not adopting the necessary measures to comply with the requirements legally established, would incur in an infringement of the provisions of the regulations of

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Data Protection. Said brief was notified to the interested party on 02/06/19. According to Post Office certificate.

4º On 03/15/19, the Civil Guard sends this Agency a letter, indicating that has verified, on February 24 and 28, 2019, that the installation of the video surveillance cameras still does not meet the requirements of the regulations of Data Protection. That the requested person continues to ignore the adoption of corrective measures in order not to violate the current regulations, being the cameras in the same situation and orientation.

5º In the briefs of allegations presented by the requested person, on 05/06/19 and on 06/20/19, recognizes that there is a sticker informing of the existence of camcorders but that it is damaged and that the cameras are pointed at his property and a small part on public roads.

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 LOPDGDD, the Director of the Agency Spanish Data Protection is competent to resolve this procedure.

II

Sections 1) and 2), of article 58 of the RGPD, list, respectively, the investigative and corrective powers that the supervisory authority may provide to the effect, mentioning in point 1.d), that of: "notifying the person in charge or in charge of the treatment of alleged infringements of these Regulations" and in 2.i), that of: "impose an administrative fine under article 83, in addition to or instead of the measures mentioned in this section, according to the circumstances of each case".

The joint assessment of the documentary evidence in the procedure brings to knowledge of the AEPD a vision of the performance of the claimed entity, which has reflected in the facts declared proven.

In this case, we proceed to examine the complaint filed by the Guard Civil de Briviesca (Burgos), dated 01/09/19, through which it is transferred to this Agency, the existence of several video surveillance cameras that direct towards the road public, recording the people who are in it. Furthermore, it is stated that there is an informative poster of the existence of said cameras

The regulations indicate that individuals can install video surveillance cameras if

They are also responsible for ensuring that they comply with current legislation. With this type of devices is generally intended to protect real estate, against to hypothetical aggressions and/thefts with force on things, although they can be used for different purposes, always within the current legal framework.

The party complained against has offered this Agency an explanation about the cause or reason of the installation of the cameras in question, but acknowledges that it lacks the mandatory approved information poster required in these cases. It also acknowledges that cameras direct to a minimum part of the public thoroughfare

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The "facts" described above imply a violation of art. 5.1.c) GDPR, given that the chambers in question exercise excessive control over an area of free transit, punishable in accordance with the provisions of article 83.5 of the aforementioned Regulation.

III

However, it must be taken into account that the installation is owned by an individual, which justifies that the sanction to be imposed is a Warning, in application of the stipulated in art. 58.2.b) and in recital 148 of the RGPD.

In view of the aforementioned precepts and others of general application, the Director of the Agency Spanish Data Protection RESOLVES:

NOTICE: to D. A.A.A., for the violation of art. 5.1.c) RGPD, having installed a video-surveillance device oriented towards the entrance of the farm, affecting the road public and without an information sign indicating it. Infraction typified in art. 85.3.a) RGPD, being punishable in accordance with art. 58.2 GDPR.

REQUEST: D. AAA, so that, within a month from this act of

notification, proceed in the following terms:

a) Proceed to modify the orientation of the cameras, stopping recording the road

public, thus adjusting to current regulations.

b) Provide a photograph with the date and time that proves that, if applicable, you have a poster

approved video-surveillance.

NOTIFY: this Agreement to D.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 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.

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