

Procedure No.: PS/00003/2019

RESOLUTION OF PUNISHMENT PROCEDURE

Of the procedure instructed by the Spanish Agency for Data Protection before A.A.A.,

(hereinafter the claimed) by virtue of a claim filed by B.B.B. (hereinafter the

claimant) on its own initiative and based on the following:

BACKGROUND

FIRST: On October 31, 2018, you have entered this Agency in writing from the

claimant communicating a possible violation of the RGPD, motivated by the treatment of

data carried out through a four-camera video surveillance system, whose owner

he is the one claimed for capturing one of his cameras part of the porch owned by the claimant

and another of them the public highway.

SECOND: In view of the facts denounced, in accordance with the evidence of

available, the Data Inspection of this Spanish Data Protection Agency

considers that the treatment of personal data that is carried out by the person reported to

through the chambers to which the complaint refers, does not meet the conditions

imposes the regulations on data protection, so the opening of the

present sanctioning procedure.

THIRD: On January 18, 2019, the Director of the Spanish Agency for

Data Protection agreed to initiate a sanctioning procedure against the claimant, for the

alleged infringement of article 6 of the RGPD, infringement typified in Article 83.5 of the

RGPD and qualified as very serious in article 72.1 b) of the LOPDPGDD.

FOURTH: Having been notified of the aforementioned initiation agreement, the respondent submitted a written

allegations on 02/13/2019, stating that the sole purpose of the system of

video surveillance object of this claim are home installation cameras,

adjustable, which capture images of your private environment, has a poster announcing

"video surveillance area", although its purpose is merely deterrent.

FIFTH: On 03/05/2019, the instructor of the procedure agreed to open a evidence practice period, taking into account the previous actions of investigation, E/09008/2018, as well as the documents provided by the respondent.

SIXTH: On March 13, 2019, a resolution proposal was formulated, proposing that the Director of the Spanish Data Protection Agency imposes on the claimed, for an infringement of article 6, typified in article 83.5 section a), and for infringement of its article 12, in relation to the provisions of articles 13 and 14, typified in article 83.5 section b) RGPD, a penalty of warning.

The accused party is REQUIRED to certify before this body the compliance with the following measures:

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1 Documentation that proves that the chambers that are the object of this case have been installed in accordance with current regulations and by the company authorized for the purpose of so that in no case do they focus on public places.

2 Provision of supporting documentation on the characteristics of the cameras in case of simulated or fake devices.

3 Withdrawal of any video-surveillance device oriented or focused towards the public space, providing documentary evidence (photograph date and time) that proves such extreme.

In view of everything that has been done, by the Spanish Agency for the Protection of Data in this procedure are considered the following,

PROVEN FACTS

FIRST: A video surveillance system with four cameras, whose owner is the claimed captures images of part of the porch owned by the claimant as well as the public road.

SECOND: In view of the reported facts, the respondent filed a written allegations on 02/13/2019, stating that the sole purpose of the system of video surveillance object of this claim are home installation cameras, adjustable, which capture images of your private environment, has a poster announcing "video surveillance area", although its purpose is merely deterrent.

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 according to what is established in art. 47 of the Organic Law 3/2018, of 5 December, of Protection of Personal Data and guarantee of digital rights (in what hereinafter LOPDGDD), the Director of the Spanish Data Protection Agency is competent to initiate and resolve this procedure.

II

The requirements that image processing must meet through a system of video surveillance to be in accordance with current regulations are the following:

- Respect the principle of proportionality.
- When the system is connected to an alarm center, it can only be installed by a private security company that meets the requirements set forth in Article 5 of Law 5/2014 on Private Security, of April 4.
- The video cameras will not be able to capture images of people who are outside the private space since the treatment of images in public places only it can be carried out, where appropriate, by the Security Forces and Bodies. Either spaces owned by third parties may be captured or recorded without the consent of their

holders, or, where appropriate, of the people who are in them.

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- The duty to inform those affected provided for in article 12 must be complied with of the RGPD 2016/679, of April 27, 2016, in the terms referred to both in the aforementioned article, as in articles 13 and 14 of said norm, resulting from application -by not contradict the provisions of the aforementioned Regulation-, the manner provided for in article 3 of Instruction 1/2006, of November 8, of the Spanish Data Protection Agency, on the Processing of Personal Data for Surveillance Purposes through Information Systems Cameras or Video Cameras (Instruction 1/2006, of November 8, of the Spanish Agency Data Protection).

Specifically, it must:

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

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.

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

III

Article 5 section 1 letter c) RGPD “Principles related to treatment” provides that personal data will be processed:

c) adequate, pertinent and limited to what is necessary in relation to the purposes for those who are treated. (data minimization).

For its part, article 6.1 of the RGPD (Legality of the treatment) establishes the Specific assumptions under which the processing of data is considered lawful interested parties.

In this case, from the documentation contained in the procedure, the existence of a video surveillance system made up of several security cameras, that are installed without just cause, and may be capturing images disproportionate from the public road.

The treatment of images in public places can only be carried out -in your case and prior compliance with the legally enforceable requirements-, by the Forces and Security Forces, unless the exception established in article 4.3 of the Instruction 1/2006, of November 8, of this Agency, which establishes: "the cameras and camcorders installed in private spaces will not be able to obtain images of spaces public unless it is essential for the intended surveillance purpose, or it is impossible to avoid it due to their location. In any case, you must Avoid any unnecessary data processing for the purpose pursued.

However, on some occasions the protection of private spaces is only possible if the cameras are located in spaces such as facades. Sometimes it also turns out necessary to capture the accesses, doors or entrances, so that although the camera is inside the building, it is impossible not to record the minimum and essential

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of the public thoroughfare, which is inevitably captured.

For this exception to apply, there must not be a possibility of

alternative installation. Bearing in mind that:

- 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 human rights of pedestrians is the minimum possible.

- In no case will the use of surveillance practices beyond the environment be admitted.

object of the installation and in particular, not being able to affect public spaces

surrounding buildings, adjoining buildings and vehicles other than those accessing the space guarded.

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 maximum or,

in the case of a company, an amount equivalent to a maximum of 4% of the volume

of total annual global business of the previous financial year, opting for the one with the highest amount.

IV

In the present case, the investigated party is accused of committing an infraction for the

alleged infringement of article 6, typified in article 83.5 section a), and for infringement

of its article 12, in relation to the provisions of articles 13 and 14, typified in the

article 83.5 section b) RGPD.

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This infraction can be sanctioned with a maximum fine of €20,000,000 or,

in the case of a company, an amount equivalent to a maximum of 4% of the volume

of total annual global business of the previous financial year, opting for the one with the highest

amount, in accordance with article 83.5 of the RGPD.

However, the provisions of article 83.5, sections a) and b), of the RGPD, its art.

58.2 b) establishes the possibility of sanctioning with a warning, in relation to what is indicated in Recital 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 a sanction

A warning may be imposed by means of a fine. However, special attention must be paid

attention to the nature, seriousness and duration of the infraction, to its intentional nature, to

the measures taken to alleviate the damages suffered, to the degree of

liability or any relevant prior violation, to the manner in which the authority

of control has been aware of the infraction, to the fulfillment of measures

ordered against the person in charge or person in charge, adherence to codes of conduct and

any other aggravating or mitigating circumstance.”

According to what was stated,

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By the Director of the Spanish Data Protection Agency,

HE REMEMBERS:

1.- WARN the defendant for an infraction of article 5.1 c) in connection with the article 6 of the RGPD, typified in art. 83.5 a) of the RGPD, a sanction of warning.

2.- REQUIRE the person claimed so that within a month from this act of notification proves to this body the fulfillment of the following measures:

☐ Documentation that proves that the chambers that are the object of this case have been installed in accordance with current regulations and by the company authorized for this purpose so that in no case do they focus on public places.

☐ Provision of supporting documentation on the characteristics of the cameras in case of simulated or fake devices.

☐ Withdrawal of any video-surveillance device oriented or focused towards the public space, providing documentary evidence (photograph date and time) that prove such extreme.

3.- NOTIFY this Agreement to the claimed party

In accordance with the provisions of article 50 of the LOPDGDD, 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 Law 39/2015,

of October 1, of the Common Administrative Procedure of the Administrations

Public, the interested parties may optionally file an appeal for reconsideration before

the Director of the Spanish Agency for Data Protection within a period of one month from

from the day following the notification of this resolution, or, directly appeal

contentious-administrative before the Contentious-administrative Chamber of the High Court

National, in accordance with the provisions of article 25 and section 5 of the provision

additional fourth of Law 29/1998, of July 13, regulating the Jurisdiction

Contentious-Administrative, within a period of two months from the day following the

notification of this act, as provided in article 46.1 of the aforementioned legal text.

Sea Spain Marti

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