

Procedure No.: PS/00123/2019

RESOLUTION: R/00325/2019

In procedure PS/00123/2019, instructed by the Spanish Agency for

Data Protection to the entity ELECTROMECHANICA REYES, S.L, given the complaint

Presented by Don A.A.A. and by virtue of the following,

FACTS

FIRST: On November 12, 2018, the claimant filed a claim

before the Spanish Agency for Data Protection, motivated by the treatment of

data made through cameras of a video surveillance system whose owner is

ELECTROMECHANICA REYES, S.L with NIF B76750454 (*hereinafter the claimed one)

installed at Calle Francisco Feo Rodríguez 35-PTL 19-Las Chafiras-Santa Cruz de

Tenerife.

The reasons on which the claim is based are "existence of a device of

recording expressly oriented towards his job in the workshop" (folio nº 1).

Along with the claim, provide a photograph (Doc. No. 1) that proves the installation

of a device, plugged into the outlet, which could be a

video-surveillance camera, according to its technical description.

SECOND: On 11/23/18, the claim was TRANSFERRED to the entity

denounced, so that it could express what it deems appropriate in relation to it,

such as system characteristics, information measures taken or information to

the employees of the center.

THIRD: On 02/18/19, this body received written allegations of

the entity Electromecánica Reyes S.L denying the "facts" indicating that they

they do not have any video-surveillance cameras, but only an alarm system,

with availability to obtain photographs in case of illegal intrusion into the

establishment.

Attach a copy of the contract with the Securitas Direct Company, on the system installed, as well as in your case what would be obtained with the devices in question (Doc no. 1).

FOURTH: On May 17, 2019, the Director of the Spanish Agency for Data Protection agreed to submit this warning procedure PS/00123/2019. This agreement was notified to denounced.

FIFTH: On 05/27/19, a “Resolution Proposal” was issued for the alleged infringement of the content of art. 5.1 c) RGPD, by not making any reference to the specific device reported, appearing as Notified in the system computer of this organization.

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PROVEN FACTS

First. On 11/12/18, a claim was received from the complainant through the which transfers as main fact:

“existence of a recording device expressly oriented towards your workstation work in the workshop” (folio nº 1).

Along with the claim, it provides a photograph (Doc. No. 1) that proves the installation of a device, plugged into the outlet, which could be a camera video-surveillance, according to its technical description.

Second. The company is identified as the main responsible party—

Electromechanical Reyes S.L--.

Third. After analyzing the technical characteristics of the installed device, it is a video-surveillance camera that was oriented towards the work area of the complainant without just cause.

Fourth. The reasons for the installation of the device are not stated, since the entity denounced has not made any allegation.

Fifth. There is no evidence that the entity reported has the mandatory poster informative indicating that it is a "video-surveillance area", nor that it has been informed the workers of the company of the purpose, if any, of the video-surveillance.

FOUNDATIONS OF LAW

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By virtue of the powers that article 58.2 of the RGPD recognizes to each control authority, and as established in art. 47 of the Organic Law 3/2018, of December 5, Protection of Personal Data and guarantee of rights (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 11/12/18 by means of which the complainant transfers to this body the following "facts":

"existence of a recording device expressly oriented towards its workplace in the workshop" (folio nº 1).

Article 5 GDPR provides that. "The data will be:

"c) adequate, pertinent and limited to what is necessary in relation to the purposes for which they are processed ("data minimization").

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It should be remembered that video surveillance cameras cannot be pointed permanently to the workplace of any employee of the company, that is, video surveillance of the interior of the establishment is allowed, but not in a way that affects the privacy of the same.

Any video-surveillance system fulfills the same purpose (for example control of the activity directed to the space where the activity takes place), without the need to be preferably oriented towards a specific worker; this allows a Control of entries/exits or, where appropriate, compliance with the working day.

In addition, it is necessary to inform the worker of the purpose of the treatment, that is, that in your case the images can be used for control purposes labor or other legal purpose in any case.

The duty of information, therefore, is twofold and is not understood to be satisfied if the company is limited to placing a generic information poster next to the circuit, but, in addition, you must warn the staff that the recording can lead to actions disciplinary.

The art. 22 section 4 of the LOPDGDD (LO 3/2018, December 5) provides the

Next:

“The duty of information provided for in article 12 of the Regulation (EU) 2016/679 will be understood to be fulfilled by placing an informative device in a sufficiently visible place identifying, at least, the existence of the treatment, the identity of the person in charge and the possibility of exercising the rights provided for in the Articles 15 to 22 of Regulation (EU) 2016/679. It may also be included in the

informative device a connection code or internet address to this information".

III

The entity --Electromécanica Reyes

S.L--, which has not made any explanation in this regard, despite the various requirements of this Agency.

The "facts" set forth in the complaint are corroborated by the evidence documents (photographs nº 1, 2 and 3) that allow to determine that the device is a video-surveillance camera, the same having been oriented towards the area of work of the complainant without just cause.

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 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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If the reason for the installation of a video-surveillance system is the security of the

workshop, there are ways to position the camera(s) that are less invasive of the privacy of the employee.

Apart from this type of system, it must be duly signposted in a visible area, informing employees of their rights in this regard.

IV

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.”

In the present case, it is taken into account that it is a small company dedicated to the repair of automobiles and the absence of previous infractions in the matter at hand.

V

In accordance with the foregoing, it can be concluded that the administrative infraction denounced by the entity—Electromécanica Reyes S.L—, having installed a wi-fi camera with availability of images on mobile devices associated with it, thus being able to "process personal data".

The device was installed unreasonably oriented towards the post

of work of the complainant, with the purpose of controlling it in the development of its functions.

All this without prejudice to the fact that this type of action may be subject to complaint in the Labor and Social Security Inspection (ITSS), for the infraction of regulatory provisions in the social order, by assuming a measure that can affect the content of art. 20.3 ET (Workers' Statute).

According to what was stated,

By the Director of the Spanish Data Protection Agency,

HE REMEMBERS:

1.- NOTICE (PS/00123/2019) to the reported entity ELECTROMECHANICA REYES, S.L for the infringement of art. 5.1 c) RGPD, having installed a camera with the purpose of labor control outside the cases permitted by the regulations in force, being punishable in accordance with art. 58.2 b) GDPR.

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2.- REQUEST the entity ELECTROMECHANICA REYES, S.L in accordance with the art. 58.2 to proceed within a maximum period of ONE MONTH from the day following the notification of this administrative act to:

-Certify that there is no type of video-surveillance device in the company, providing documentary evidence (photograph with date and time) in this regard, failing to assume the consequences of an inspection of the facilities by this body.

3.- NOTIFY this Agreement to the entity ELECTROMECHANICA REYES, S.L.

and REPORT the result of the actions to the complainant Mr. A.A.A..

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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