

Procedure No.: PS/00170/2019

RESOLUTION: R/00395/2019

In procedure PS/00170/2019, instructed by the Spanish Agency for Data Protection to Don A.A.A., given the complaint filed by Doña B.B.B. Y Mrs. C.C.C. and by virtue of the following,

#### FACTS

FIRST: Doña C.C.C. (\*hereinafter, claimant 1) and Mrs. B.B.B. (\*the claimant 2) on November 26, 2018 they filed a claim with the Agency

Spanish Data Protection, motivated by the treatment of data carried out to through cameras of a video surveillance system whose alleged owner is identified like A.A.A. with (hereinafter the claimed) installed in \*\*\*CALLE.1 Cangas-Pontevedra.

The grounds on which the claim(s) are based are "a device has been placed of video-surveillance that is obtaining images without just cause on a road of public transit" (folio nº 1).

Along with the claim, provide documentary evidence (photographs No. 1 and 2) that allow you to observe some type of device installed on a wall.

SECOND: On 01/09/19, the claim(s) was TRANSFERRED to the denounced party so that he could plead in Law on the device in question, appearing as "notified" in the computer system of this body.

THIRD: On June 6, 2019, the Director of the Spanish Agency for Data Protection agreed to submit this warning procedure PS/00170/2019. This agreement was notified to denounced.

FOURTH: On 06/01/2019, it is verified that no

any allegation in this regard.

FIFTH: On 10/02/19, the database of this

agency, without any allegation recorded in this regard.

## PROVEN FACTS

First. On 11/26/18 a claim was filed through which it transfers

The main fact is the following:

“A video-surveillance device has been placed that is obtaining images without just cause on a public transit road” (folio nº 1).

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Second. It is identified as the main responsible Mr. A.A.A., being identified in the written complaint by the other party.

Third. Based on the evidence provided (photographs Annex I), the installation of some type of device that could be disproportionately placed.

Fourth: There is no evidence of any allegation in relation to the facts that are the subject of the complaint, since made by the accused party.

Fifth. There is no evidence that the mandatory information poster is available in a visible area, indicating that it is a video-monitored area.

## 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 of date of entry into this Agency 11/26/18 through which the main fact is transferred:

“A video-surveillance device has been placed that is obtaining images without just cause on a public transit road” (folio nº 1).

The facts described above may affect the content of art. 5 letter c) RGPD, which provides: “The 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”)”.

Cameras installed by individuals must be oriented preferably towards their private space, with the distinctive mandatory informative for the appropriate legal purposes.

The individual responsible for the installation must be able to accredit before this Control Authority that it complies with all legal requirements required, indicating where appropriate the reason for the installation.

In the case of a video-surveillance camera, you must have the mandatory informative badge, placed in a visible area indicating that it is a

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video-monitored space.

## 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.

Keep available to those affected the information to which

two.

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

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According to the evidence in the file, it is proven that the

denounced has installed some type of devices, without having answered this

Agency on its characteristics.

The accused is warned that he must proceed to answer this body or

either in the case of a video-surveillance camera proceed to remove it or

redirect it towards its private space exclusively.

Article 83 section 5 of the RGPD provides the following:

“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;

When motivating the sanction to be proposed, it is taken into account that it is a particular, who has no record for these same facts, which justifies that the sanction to be imposed is a Warning.

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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.”

The accused party must explain what kind of device has been installed providing proof of it (eg copy of the instructions, photographs, etc.), indicating the cause/reason for its installation and any other aspect that it deems relevant to the case at hand.

Remind the denouncing party that they have the possibility after the deadline for compliance with the requirement to communicate the facts to the Police Forces and Bodies Security of the town or file a new complaint with a new photograph (date/time) that proves the presence of the device.

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According to what was stated,

By the Director of the Spanish Data Protection Agency,

HE REMEMBERS:

1.- WARN (PS/00170/2019) Mr. A.A.A. for the infringement of the content of art.

5.1 c) RGPD, by having a video-surveillance device oriented towards the area

public, infringement typified in article 83. 5 a) RGPD, being punishable by

in accordance with art. 58.2 GDPR.

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

notification:

☐ Accredited the technical characteristics of the installed device, as well as that the

It conforms to current legislation.

☐ Failing that, you must prove the withdrawal of the same or, where appropriate, the

reorientation towards their private space exclusively.

3.- NOTIFY this Agreement to Don A.A.A. and REPORT the result of the

actions to the complaining party (s) Doña B.B.B. and Doña C.C.C.

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.

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Director of the Spanish Data Protection Agency

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