

Procedure No.: PS/00206/2019

RESOLUTION: R/00394/2019

In procedure PS/00206/2019, instructed by the Spanish Agency for Data Protection to Don A.A.A., given the complaint filed by Don B.B.B. and in virtue of the following,

#### FACTS

FIRST: Don B.B.B. (\*hereinafter, the claimant) dated February 18, 2019 filed a claim with the Spanish Agency for Data Protection, motivated by the processing of data carried out through cameras of a video surveillance system whose owner identifies as the neighbor A.A.A. (hereinafter the claimed) installed in

\*\*\*ADDRESS 1

The reasons on which the claim is based are "that for a few months the denounced has a video-surveillance camera, which records 24 hours everything what happens in my house, controlling who enters and who leaves, registering when I have the open windows what I do inside my house..." (folio nº 1).

Along with the claim, it provides photos of the window behind which the camera and a CD of recordings as evidence (Annex I).

SECOND: 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 through the chambers to which the complaint refers, does not meet the conditions imposed by the regulations on data protection, for which reason the opening of this sanctioning procedure.

THIRD: On 03/12/19, the claim is TRANSFERRED to the party denounce, without any response having been given in relation to the "facts"

transferred, appearing as "notified" in the computer system of this body.

FOURTH: On July 22, 2019, the Director of the Spanish Agency for

Data Protection agreed to submit this

warning procedure PS/00206/2019. This agreement was notified to

denounced.

FIFTH: The database of this organization was consulted (10/08/19) and has not been received

any allegation in relation to the facts that have been transferred.

#### PROVEN FACTS

First. On 02/18/19 a claim is received at this Agency based on the

following reasons:

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"That for a few months the defendant has had a video camera-

surveillance, which records 24 hours everything that happens in my house, controlling who

enters and who leaves, recording when I have the windows open what I do inside

of my house..." (folio nº 1).

Second. It is identified as the main person in charge of the facility Mr. A.A.A.,

which is pointed out by the complainant as the main person responsible.

Third. It has not been possible to determine in his case what is observed with the cameras in

question, that is, whether or not they are operational.

Fourth. It has not been possible to verify the installation of an informative poster in the visible area,

as the accused party did not make any allegation.

Fifth. The database of this body was consulted on 08/10/19, there is no record

any allegation in relation to the facts described.

## 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 this case, the claim dated 02/18/19 is examined through which translates as the main fact the following:

“Installation of a video-surveillance camera by the neighboring neighbor towards me parcel” (folio nº 1).

The facts described may imply an affectation of the content of art. 5.1 c) RGPD, having installed a video surveillance camera that can affect the privacy of the accused party.

Individuals can install video-surveillance cameras, although they are responsible that they comply with current legislation.

With this type of device, it is generally intended to protect property property, in the face of hypothetical attacks and/thefts with force on things, although may be used for different purposes, always within the current legal framework.

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These types of devices cannot be used to obtain images of spaces of free transit and/or public space, and must be oriented Preferably towards your private area.

An informative poster must be available in a visible area indicating that it is of a video-surveillance zone, indicating the main person in charge of the "treatment of the images".

### 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

1.

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 above

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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IV

In accordance with the evidence available in this

sanctioning procedure, it is considered that the defendant has installed a camera

of video-surveillance that the complainant manifests "captures his private property" and

sections of public road.

Known facts could constitute an infringement of the content

of art. 5.1 c) RGPD, transcribed above

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;

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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.”

In the present case, it is taken into account that it is an individual, that the images provided by the complainant have been obtained from judicial headquarters, as well as the fact of not having made any statement about the system in question and

the reasons for the recording, which justifies a sanction of Warning.

You must explain to this Agency if you have a camera, if the images

obtained with the same have been provided in court (explaining the reason),

providing, where appropriate, the court ruling, as well as proving that it has a cartel

information in a visible area indicating the person responsible for the file.

Finally, it should be noted that this Agency is not going to assess images that

where appropriate, they have been provided in court as evidence, as the Judge

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competent the only one with authority to rule on the validity or illegality of

the same and the circumstances in which they could have been obtained.

According to what was stated,

By the Director of the Spanish Data Protection Agency,

HE REMEMBERS:

1.- NOTICE (PS/00206/2019) to D. A.A.A. for violation of art. 5.1 c) RGPD, to

have a disproportionate imaging device,

typified in art. 83.5a) RGPD, being punishable in accordance with art. 58.2

b) GDPR

2.- REQUIRE the defendant D. A.A.A. so that within a month from this

act of notification:

-Inform this Agency about the device installed, indicating the

technical characteristics of the camera(s) (even if it is a camera

simulated, etc.)

-Prove the availability of an informative poster, indicating the person in charge of the treatment in your case of the images.

-Contribute screen impression of what, in your case, is observed with the camera in question (indicating the parts that are private property on a site plan).

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

In accordance with the provisions of article 50 of the LOPDPGDD, the

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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