

938-0419

Procedure No.: PS/00117/2019

RESOLUTION OF PUNISHMENT PROCEDURE

In sanctioning procedure PS/00117/2019, instructed by the Spanish Agency for Data Protection, before the entity, BAR TARIQUEJO (D. A.A.A.), (hereinafter "the claimed"), by virtue of a complaint filed by D. B.B.B. (hereinafter "the claimant") and based on the following:

BACKGROUND

FIRST: On 11/14/18, you had entry into this Agency in writing submitted by the claimant, in which he stated, among others, that: "There is an installation of a video surveillance system in the bar called "Tariquejo", located at ***ADDRESS.1, cameras are installed both inside and outside the bar. video-surveillance directed towards the terrace of the same. As proof of the above Attached to this writing, I present photographs that demonstrate the installation of said cameras, specifically one that directly records the exterior of said bar, as well such as the street and external public areas. Inside the bar there is no sign where it is noted that it is a "VIDEO SURVEILLANCE ZONE". There is only one small faded sign, on the front of the bar. that is covered with the fence entry. where such a warning can hardly be read. As proof of the above photographs are provided.

SECOND: In view of the facts set forth in the claim and the documents provided, the General Subdirectorate for Data Inspection proceeded to carry out actions for its clarification, under the investigative powers granted to the control authorities in article 57.1 of the Regulation (EU) 2016/679 (General Data Protection Regulation, hereinafter RGPD). So with

date 12/30/18, an information request is addressed to the claimed so that
prove that the installation of the cameras is in accordance with current regulations.

THIRD: Dated 12/12/18, a written claim for information is reiterated to the
claimed indicating that, "by not having agreed to the initial notification dated
12/30/18 and, exceptionally, it is sent by postal mail".

FOURTH: According to the certificate issued by the State Post Office and
Telegraphs, the requirement indicated in the previous point was notified on 12/17/18 in
the address located at ***ADDRESS.1

FIFTH: Consulted on 04/12/19, the computer system of this Agency does not
It is clear that no response has been given for the appropriate legal purposes.

SIXTH: On 04/25/19, the Director of the Spanish Agency for the Protection of
Data agreed to initiate a sanctioning procedure against the person claimed, for alleged
infringement of article 5.1.c) in connection with article 6 of the RGPD and granting a
hearing period of ten business days to formulate the allegations and
Submit whatever evidence you deem appropriate.

SEVENTH: According to a certificate issued by the Electronic Notification Service and
Authorized Electronic Address, it is verified that the document initiating the file
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sanctioning party was made available to the defendant, dated 04/25/19, producing the
automatic rejection of the same dated 05/06/19.

EIGHTH: The respondent has not responded to the requirements of this Agency,
so the characteristics of the installation of the device in
question. There is also no accredited evidence that in his case there is a "cartel

informative" indicating that it is a video-monitored area and the person responsible before the to exercise, where appropriate, the rights within the framework of the regulations in force.

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 dated 11/14/18 by by means of which the denunciation of the existence of a camera of video surveillance, installed in the "TARIQUEJO" bar, which leads to the terrace of the bar recording outside. The non-existence of an informative poster of the installation and recording of images.

The party complained against has not offered this Agency any explanation about the cause or reason for the installation of the camera in question, lacking the same mandatory approved information poster required in these cases.

The installation of this type of device must obey some cause/reason plausible, which allows this Agency to assess the proportionality of the extent, especially if it comes into play with the rights/freedoms of third parties, in areas where it can move freely as is the land that surrounds the farm.

The art. 4 section 2 of Instruction 1/2006 (AEPD) provides the following: "Only shall consider the installation of cameras or video cameras admissible when the purpose monitoring cannot be obtained through other means that, without requiring efforts disproportionate, are less intrusive to people's privacy and to

your right to personal data protection.

III

The "facts" described above may imply a violation of art. 5.1.c)

RGPD, since the camera seems to exercise excessive control over a scope of free transit.

Given the lack of collaboration of the requested person with this Organism, considers the required subjective type accredited in these cases, by way of, at least, gross negligence.

Article 83 section 5 of the RGPD provides that: "The infringements of the following provisions will be sanctioned, in accordance with section 2, with fines 3/4

administrative fees of EUR 20,000,000 maximum or, in the case of a company, of an amount equivalent to a maximum of 4% of the total annual turnover of the previous financial year, opting for the highest amount: a) the basic principles for processing, including conditions for consent according to articles 5, 6, 7 and 9;

However, when motivating the sanction to be proposed, it is taken into account that it is an individual, as well as that it has not been possible to verify the operation of the system in question, which justifies that the proposal was a warning, expense of the instruction of the procedure, in application of what is stipulated in art. 58.2.b) and in recital 148 of the aforementioned RGPD.

The claimed party must respond to this Body, explaining if the device is dissuasive, as well as the cause/reason for the installation, providing all that precise documentation for it, remembering that not collaborating with this Agency may have legal consequences by way of opening a procedure of sanctioning nature.

In accordance with the above, By the Director of the Spanish Agency for the Protection of Data,

HE REMEMBERS:

WARN: to the entity BAR TARIQUEJO, (D. A.A.A.), for the infraction of art. 5.1.c)

RGPD, having installed a video-surveillance device oriented towards the terrace of the establishment affecting the privacy of passers-by. Infraction typified in the art. 85.3 letter a) RGPD, being punishable in accordance with art. 58.2 GDPR.

REQUEST: to the entity BAR TARIQUEJO (D. A.A.A.), so that, within a period of month from this act of notification, proceed in the following terms:

- Explain if you have a video-surveillance device, explaining the characteristics of the same, and must accompany, where appropriate, the documentation necessary or photographs that show compliance with the regulations in force.
- Provide a photograph with date and time that proves that you have a poster in your case approved video-surveillance.

NOTIFY: this Agreement to the entity BAR TARIQUEJO (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

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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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Director of the Spanish Data Protection Agency