

Procedure No.: PS/00176/2019

RESOLUTION: R/00457/2019

In procedure PS/00176/2019, instructed by the Spanish Agency for Data Protection to Doña A.A.A., given the complaint filed by Doña B.B.B. Y under the following,

FACTS

FIRST: Mrs. B.B.B. (*hereinafter, the claimant) dated October 18, 2018 filed a claim with the Spanish Agency for Data Protection, motivated by the alleged treatment of data carried out through cameras of a video surveillance system whose owner identifies as A.A.A. (hereinafter the claimed) installed in Plot 18 of Polígono 4 de Amurrio-Álava.

The reasons on which the claim is based are as reflected in your claim "installation of at least two video-surveillance cameras that have oriented directly to the land of my client". (folio nº 1).

Together with the claim, it provides documentary evidence (Photograph No. 1) that proves the installation of two devices.

SECOND: On 01/21/19, the claim was TRANSFERRED to the party denounced so that it could allege what in Law it deems appropriate on the legality of the system, appearing as "Notified" in the computer system of this body.

THIRD: On 02/26/19, a written statement was received from the defendant providing a PROSEGUR contract for the installation of the system in question, considering the requirement of this body fulfilled.

Provides documentary evidence (photograph No. 1) without being able to determine that it is what it records, not being able to determine if it is the private space of the accused.

FOURTH: On July 12, 2019, the Director of the Spanish Agency for

Data Protection agreed to submit this

warning procedure PS/00176/2019. This agreement was notified to
denounced.

PROVEN FACTS

First. On 10/18/18 a claim is filed with this Agency through the
which translates as the main fact the following:

“installation of at least two video-surveillance cameras that have oriented
directly to the land of my client”. (folio nº 1).

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

2/5

Second. Ms. A.A.A. is identified as the main person in charge, who affirms
have a camera system installed by the company PROSEGUR.

Third. It is accredited that the system has an informative poster(s) indicating
that it is a video-monitored area, adapted to the regulations in force.

Fourth. The defendant provides images (CD Annex I) that allow to determine that the
cameras have a privacy mask, being oriented towards the
perimeter area of your private home, without the private space of third parties being seen
affected.

FIFTH. The accused party states that the reason for the installation is the
entrances in his private area by a local resident, having installed the
same for reasons of security of the property, residents and belongings.

FOUNDATIONS OF LAW

Yo

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 10/18/18 by means of which is transferred as main fact:

“installation of at least two video-surveillance cameras that have oriented directly to the land of my represented”

“My client has not given any authorization for the installation of the cameras, nor for the recording of his person (...)--(folio nº 1)--.

Since the characteristics of the installed system are unknown, we proceed to consider that the installed cameras can be installed in a way disproportionate, presumably obtaining images of adjoining spaces.

The facts described above may imply an affectation of art. 5 c)

RGPD, which provides:

“Personal data will be: c) adequate, pertinent and limited to the necessary in relation to the purposes for which they are processed (“minimization of data”).”.

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

3/5

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 available to certify before this Control Authority that it meets all the requirements legal requirements, indicating where appropriate the reason for the installation.

On 06/27/19, a written statement was received from the accused party, confirming the installation of the system, by the security company PROSEGUR, although it considers that except for errors attributable to it, the system has been installed in compliance with current regulations, offering any correction in if this body considers it appropriate.

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

www.aepd.es

sedeagpd.gob.es

C/ Jorge Juan, 6

28001 – Madrid

4/5

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.

IV

The principle of presumption of innocence prevents imputing an administrative offense

when proof of charge accrediting the

facts that motivate the imputation or of the intervention in the same of the presumed offender. Applying the principle "in dubio pro reo" in case of doubt regarding a concrete and determined fact, which obliges in any case to resolve said doubt of the most favorable to the interested party.

The presumption of innocence must govern without exceptions in the legal system sanctioning and must be respected in the imposition of any sanctions, since the exercise of the ius puniendi in its diverse manifestations is conditioned to the game of evidence and a contradictory procedure in which they can defend themselves own positions. In this sense, the Constitutional Court in its Judgment 76/1990, of 04/26, considers that the right to the presumption of innocence entails:

"that the sanction is based on acts or means of proof of charge or incriminating of the reproached conduct; that the burden of proof corresponds to the one who accuses, without that no one is obliged to prove his own innocence; and that any insufficiency in the result of the tests carried out, freely assessed by the sanctioning, must be translated into an acquittal pronouncement.

The presumption of innocence governs without exceptions in the punisher and must be respected in the imposition of any sanction, whether criminal or administrative (TCO 13/1981), since the exercise of the sanctioning right in any of its manifestations, is conditioned to the test game and to a contradictory procedure in which their own positions can be defended.

Pursuant to this principle, no penalty may be imposed on the basis of the guilt of the accused if there is no activity to prove the charge, which in the appreciation of the authorities or bodies called to resolve, destroy this presumption (TCO Auto 3-12-81).

In accordance with the evidence provided and the arguments of the parties analyzed,
concludes that the system complies with current legislation, not appreciating infringement
some in the matter at hand.

It should be remembered that the images obtained with this type of device in
case of capturing any vandalism and / or criminal act can be transferred to the Court
of Instruction closest to the scene of the events or be made available to
the State Security Forces and Bodies, for the appropriate legal purposes.

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

5/5

Likewise, it is admissible in case of stealthy damage, the installation of a
hidden camera that allows to prove the alleged perpetrator of acts against property,
sometimes given the difficulty of proving the authorship of events that occur
surreptitiously or taking advantage of the situation.

Finally, it should be remembered that with the entry into force of the RGPD (05/25/18) no
registration of the files is necessary, so the claim must be dismissed
of the complainant in the terms set forth.

Therefore, according to the above, the Archive of this document is ordered
procedure, for the reasons stated.

According to what was stated,

By the Director of the Spanish Data Protection Agency,

HE REMEMBERS:

1.- PROCEED to decree the FILE of this procedure when not verifying
any administrative violation.

2.- NOTIFY this Agreement to Ms. A.A.A. and INFORM the party

plaintiff Doña B.B.B..

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

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es