

Procedure No.: PS/00359/2018

RESOLUTION: R/00224/2019

In procedure PS/00359/2018, instructed by the Spanish Agency for Protection of Data to the entity CITY COUNCIL OF CORIA DEL RIO, given the complaint filed by Don A.A.A. (*claimant) and by virtue of the following,

FACTS

FIRST: On June 4, 2018, the claimant filed a COMPLAINT with the Spanish Agency for Data Protection, motivated by the alleged treatment of data made through cameras of a video surveillance system whose alleged holder is the CITY COUNCIL OF CORIA DEL RIO with NIF P4103400J (hereinafter the claimed) installed on top of a lamppost.

The reasons on which the claim is based are "placement by workers from a video camera on top of a lamppost located at ***ADDRESS.1 very close of the Police Headquarters (...) that directly focuses on the entrance of the police station itself Leadership"

"The aforementioned video-camera does not have any distinctive elements and is powered by an electric cable

"The agents have NOT been informed of the placement of the aforementioned camera by the Local Corporation, nor about its purpose" (folio nº 1).

Along with the documentation, it provides documentary evidence (photographs) of scant clarity, which allow us to intuit what was stated in the written complaint formulated, when perceive some type of device on top of a lamppost.

SECOND: On 06/22/2018, the claim was TRANSFERRED to the entity denounced--CORIA DEL RIO CITY COUNCIL---no response any has manifested in relation to the transferred facts, stating as

notified in the computer system of this body.

THIRD: On March 5, 2019, the Director of the Spanish Agency for

Data Protection proceeded to issue the Start Agreement within the framework of the

PS/00359/2018, for alleged violation of the content of art. 6 GDPR. Saying

agreement was notified to the defendant.

FOURTH: Consulting the computer system of this Agency, there is no allegation

any of the entity denounced in relation to the "facts" that have been

transferred.

FIFTH: On 05/27/19, the "Proposed Resolution" is issued

considering that the current regulations had been violated, not proceeding to carry out

any allegation to this body about the facts in question.

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2/5

PROVEN FACTS

First. On 06/04/18, this Agency received a claim from the Complainant

transferring as main fact the following:

“placement by operators of a video camera in the upper part of a

lamp located in ***ADDRESS.1 very close to the Police Headquarters (...) that focuses

directly the entrance of the Jefatura itself”

Second. It is identified as a denounced party—Coria del Rio City Council—

(Sevilla), which is accused of placing a video-surveillance device without informing

duly to the citizenry.

Third. The installation of a device is accredited (documentary evidence attached

I) according to evidence provided by the denouncing party.

Fourth. It has not been possible to verify that the device has an informative poster in

Visible zone indicating the person in charge of the system.

Fifth. The Commencement Agreement to the public entity has been notified in due time and form

denounced, although it has not made any allegation in this regard.

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 06/04/18 through which the main fact is transferred:

“placement by operators of a video camera in the upper part of a

lamp located in ***ADDRESS.1 very close to the Police Headquarters (...) that focuses

directly the entrance of the Jefatura itself”

"The aforementioned video-camera does not have any distinctive elements and is

powered by an electric cable

“The agents have NOT been informed of the placement of the aforementioned camera

by the Local Corporation, nor about its purpose” (folio nº 1).

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Therefore, the facts are specified in the installation of some type of device presumably by workers of the City Council of Coria del Rio at the "top of a lamppost" without an informative poster in this regard.

Article 6.1 of the RGPD (Legality of the treatment) establishes the assumptions specific conditions under which the processing of personal data is considered lawful. the interested.

In this case, from the documentation contained in the procedure, the existence of some type of device that could be obtaining images of disproportionate to the purpose of the system.

The cameras installed by public entities may have the purpose of protection of publicly owned real estate and its surroundings, whenever it is according to the purpose pursued with the installation of this type of device.

However, on some occasions the protection of private spaces is only it is possible if the cameras are located in spaces such as facades. Sometimes also it is necessary to capture the accesses, doors or entrances, so that although the camera is inside the building, it is impossible not to record minimum and essential of the public road, which is inevitably captured.

Article 22 section 2 LOPDGDD (LO 3/2018, December 5) provides the

Next:

"Images of public roads may only be captured to the extent that it is essential for the purpose mentioned in the previous section. However, it will be possible the capture of the public road in a greater extension when it was necessary to guarantee the security of strategic goods or installations or of infrastructures linked to transport, without in any case implying the capturing images of the interior of a private home".

From the exposed facts it is also inferred that the device in question lacks informative poster placed in a visible area, so that anyone affected can know the identity of the person responsible for it, as well as the way to exercise the rights recognized in articles 15 to 22 of the RGPD.

The exposed facts could suppose the commission, on the part of the defendant of a infringement of article 12 of the RGPD, in the terms referred to both in the aforementioned article, as in articles 13 and 14 of said rule, and the respondent must give due compliance with the provisions of article 3 of Instruction 1/2006, of 8 November, from the Spanish Data Protection Agency. Consequently, the claimed must:

1. Place at least one informative badge in the video-monitored areas located in a sufficiently visible place, both in open spaces and closed.

In accordance with the provisions of articles 13 and 14 RGPD, in the informative badge mentioned above must identify, at least, the existence of a treatment, the

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4/5

identity of the person in charge and the possibility of exercising the rights foreseen in said precepts.

2. Keep available to those affected the information referred to in the quoted GDPR;

III

The reported events may affect personal data

(images) of third parties without just cause, and not counting on the mandatory poster informative indicating the person in charge of the file to whom, if applicable, you can contact. This represents a very serious infringement of the rights and principles inspiring the regulations in force (art. 83. 5 RGPD) to be able to be "processing data" of third parties outside the permitted assumptions and without adopting the legal measures timely.

Article 58 section 2 of the RGPD "Each control authority will have all of the following corrective powers indicated below:

b) sanction any person responsible or in charge of the treatment with warning when the processing operations have violated the provisions of this Regulation (...)"

In the present case, it is worth noting the total lack of collaboration with this Agency, not informing about the device in question, nor about the characteristics of the same.

Article 73 letter o) LOPDGDD (LO 3/2018, December 5) provides: "In According to the provisions of article 83.4 of Regulation (EU) 2016/679, considered serious and will prescribe after two years the infractions that suppose a substantial violation of the articles mentioned therein and, in particular, the following:

"Not cooperating with the control authorities in the performance of their duties in cases not provided for in article 72 of this organic law"

IV

Based on the foregoing, it can be concluded that there are proven indications of the installation of a video-surveillance device, with presumed orientation disproportionate, without duly informing the person responsible for it for the purposes appropriate legal.

The denounced entity must immediately accredit before this

Agency that the device in question complies with current legislation or assume in its defect the appropriate legal consequences.

According to what was stated,

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5/5

By the Director of the Spanish Data Protection Agency,

HE REMEMBERS:

1.- NOTICE (PS/00359/2018) to the public entity CORIA CITY COUNCIL

DEL RIO for the infringement of article 6 RGPD, typified in art. 83.5 letter a) GDPR,

having installed a video-surveillance device affecting the right of

third parties without just cause, being the same sanctioned under the provisions of article 58.2 GDPR.

2.- REQUEST the entity CITY COUNCIL OF CORIA DEL RIO to comply with the following measures:

☐ Contribution of screen printing (date and time) of what, in your case, captures with the device in question.

☐ Contribution of photographic proof of the informative poster, indicating expressly the person in charge before whom the rights can be exercised recognized in the current legislation.

☐ Motivated explanation of the cause/reason for the installation of the camera in question.

3- NOTIFY this Agreement to the entity CITY COUNCIL OF CORIA DEL

RIO and inform the OMBUDSMAN.

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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