

Procedure No.: PS/00220/2019

RESOLUTION: R/00496/2019

In procedure PS/00220/2019, instructed by the Spanish Agency for Data Protection to the entity CDAD. PROP. R.R.R., in view of the complaint filed by LUDIOCIO ESPECTACULOS S.L., and by virtue of the following,

#### FACTS

FIRST: LUDIOCIO ESPECTACULOS S.L. (\*hereinafter, the claimant) dated March 26, 2019 filed a claim with the Spanish Protection Agency of Data, motivated by the treatment of data carried out through cameras of a video surveillance system whose owner is CDAD. PROP. RRR with NIF \*\*\*NIF.1 (in forward the one claimed) installed in \*\*\*ADDRESS.1.

The grounds on which the claim is based are "installation of a video-surveillance cameras" that presumably records the entrance area of the premises of the complainant.

"Therefore, the defendant is capturing and recording identifiable people in a place that, regardless of its ownership, is freely accessible to the public.

Although this party maintains that the inner plaza is an area of public access, in the case in which the ownership of the square was private, the Installation of cameras in common areas requires according to art. 17.3 LPH (...)”—folio nº 1--.

“... the accused is carrying out a disproportionate treatment and doubtful lawful compliance (...).”

Along with the claim, provide documentary evidence that proves the installation of video-surveillance cameras warning that it is an area of "use and ownership private".

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 09/04/19, the claim filed was TRANSFERRED to the reported entity for the appropriate legal purposes, appearing as "notified" in the computer system of this organization.

C/ Jorge Juan, 6

28001 – Madrid

[www.aepd.es](http://www.aepd.es)

[sedeagpd.gob.es](http://sedeagpd.gob.es)

2/6

FOURTH: On September 3, 2019, the Director of the Spanish Agency for Data Protection agreed to submit this warning procedure PS/00220/2019. This agreement was notified to denounced.

FIFTH: On 09/25/19, this Agency received a written statement of allegations from the Respondent states the following:

“What CDAD. PROP. RRR has proceeded to uninstall the cameras video surveillance attaching a photographic report of said uninstallation, as Documents: Document No. 2 Cameras on billboard and ceiling Document No. 3 Cameras uninstalled from the poster Document nº 4 Camera uninstalled from the ceiling and interiors”

“That therefore, the processing of personal data that was carried out by the community through video surveillance cameras, to date it has been

TOTALLY CORRECTED, for which we request that in this case the figure of the WARNING, as stated by the AEPD in the "It is agreed Fourth" of the document of the Agreement to initiate the Sanctioning Procedure, for the purposes provided for in article 64.2 of Law 39/2015, of October 1, on the Procedure Common Administrative of Public Administrations".

#### PROVEN FACTS

First. On 03/26/19, this Agency received a claim from the party complainant through which transfers as main fact the following:

“installation of a video-surveillance camera system” that allegedly records the entrance area of the complainant's premises.

Second. It is identified as the main responsible CDAD. PROP. R.R.R.

Third. The facts initially denounced are specified in the "installation of various cameras" where various areas are captured and specifically, they may be affecting the entrance to the Premises of the accused.

The evidence provided makes it possible to verify the installation of the cameras, although the accused party does not deny their installation.

On the occasion of the opening of this sanctioning procedure, the entity denounced has proceeded to withdraw the cameras object of complaint, so that day of the date no right is affected for this reason.

Fourth. The destination of the images obtained has not been explained and in its case the storage system of the same.

C/ Jorge Juan, 6

28001 – Madrid

[www.aepd.es](http://www.aepd.es)

[sedeagpd.gob.es](http://sedeagpd.gob.es)

## FOUNDATIONS OF LAW

Yo

By virtue of the powers that article 58.2 of the RGPD recognizes to each control authority, and as established in art. 47 of the Organic Law 3/2018, of December 5, Protection of Personal Data and guarantee of rights (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 03/26/19 by means of which the complainant transfers the following as the main fact. “installation of a video-surveillance camera system” that allegedly records the entrance area of the complainant's premises, without a justified house. The facts therefore are specified in the installation of some type of device that is affecting, according to the complainant, her personal privacy and/or family without just cause.

Article 5 c) RGPD provides the following: “: “Personal data will be:

c) adequate, pertinent and limited to what is necessary in relation to the purposes for which they are processed (“data minimization”).

It should be remembered that individuals can install video surveillance cameras although they assume the responsibilities that they comply with the provisions in force on the matter.

These types of devices cannot be used to disturb the privacy of third parties unrelated to your particular property, and should preferably be oriented to your particular area.

III

For information purposes only, it is worth remembering some of the requirements that

must comply with the processing of images through a video surveillance system

to comply 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

[www.aepd.es](http://www.aepd.es)

C/ Jorge Juan, 6

28001 – Madrid

[sedeagpd.gob.es](http://sedeagpd.gob.es)

4/6

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:

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 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.

2. Keep the information to which it refers available to those affected

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

IV

For the accused party, the installation of the video camera system is acknowledged.

surveillance, manifesting the "uninstallation of the installed system", correcting with

reason for the processing of this procedure any "irregular" that would have

could commit for this purpose.

In support of his claim, he provides documentary evidence (Annex I-Doc.1 to 4) that

They allow verifying the uninstallation of the cameras from their current location.

In such a way that the infraction object of imputation of this

organism, without any explanation having been given on the reasons for the presence

of the same (eg security, theft, etc).

Article 58.2 RGPD "Each Control Authority of all 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".

C/ Jorge Juan, 6

As has been indicated throughout this resolution, with this type of devices cannot be recorded on public roads affecting the rights of third parties, remembering that in case of “doubt” you can raise the matter with this body, explaining in detail all the aspects that it deems necessary, for a better understanding of it.

Although the will to collaborate with this Agency should be highlighted, the installation of the cameras was done negligently, affecting the rights of third parties, which have been affected by the installed devices.

v

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.”

Given that in the case at hand, the accused party acknowledges

implicitly its responsibility in the facts, but has proceeded to correct the situation described, it is appropriate to agree to impose a sanction of Warning without imposition of any measure, in the terms of article 58.2 b) RGPD, and must take into account that a new infraction in this regard could be taken into account for the opening of a sanctioning procedure of a pecuniary nature.

According to what was stated,

By the Director of the Spanish Data Protection Agency,

HE REMEMBERS:

1.- WARN the entity CDAD. PROP. R.R.R., for the infringement of article 5.1 c)

RGPD, having installed a video-surveillance camera system in breach of the regulations in force, infringement typified in article 83.2<sup>a</sup>) RGPD, being punishable under the terms of article 58.2 b) RGPD.

2.- NOTIFY this Agreement to CDAD. PROP. RRR and REPORT the result of the actions to the complainant entity-- LUDIOCIO ESPECTACULOS S.L.--.

C/ Jorge Juan, 6

28001 – Madrid

[www.aepd.es](http://www.aepd.es)

[sedeagpd.gob.es](http://sedeagpd.gob.es)

6/6

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.

Sea Spain Marti

Director of the Spanish Data Protection Agency

C/ Jorge Juan, 6

28001 – Madrid

[www.aepd.es](http://www.aepd.es)

[sedeagpd.gob.es](http://sedeagpd.gob.es)