

Procedure No.: PS/00034/2019

RESOLUTION: R/00473/2019

In procedure PS/00034/2019, instructed by the Spanish Agency for Data Protection to Don A.A.A. And B.B.B., given the complaint filed by Don C.C.C. and by virtue of the following,

#### FACTS

FIRST: C.C.C. (\*hereinafter, the claimant) dated October 10, 2018 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 neighbors of the property A.A.A. and B.B.B. (hereinafter the claimed) installed at \*\*\*ADDRESS.1.

The reasons on which the claim is based are "the denounced neighbors of the undersigned have installed a video-surveillance camera on the landing between their homes" (folio nº 1).

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 11/06/18, the claim was TRANSFERRED to the party denounced (s) so that he could allege in Law what he deems appropriate, stating as "notified" in the computer system of this body.

FOURTH: On July 30, 2019, the Director of the Spanish Agency for Data Protection agreed to submit this

warning procedure PS/00034/2019. This agreement was notified to denounced.

## PROVEN FACTS

First. On 10/10/18 a claim is filed by the complainant for means of which states the following:

“The denounced neighbors of the undersigned have installed a video camera-surveillance on the landing between their homes” (folio nº 1).

Second. The complainant identifies the main culprits as the neighbors next A.A.A. and B.B.B., although it does not provide more information about them.

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2/4

Collaboration requested from the Tax Agency, it is not possible to identify them as they are not have their ID.

Third. On 11/06/18 and 11/30/18 an attempt was made to contact the accused, resulting in unsuccessful communications made.

Fourth. It is not possible to determine if the device does not comply with current legislation in based on the evidence provided by the complainant.

## 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 analyze the claim dated 10/10/18 by

means of which he transfers as the main "fact":

"The denounced neighbors of the undersigned have installed a video camera-surveillance on the landing between their homes" (folio nº 1).

The cameras installed by individuals cannot be oriented towards the area private third parties, obtaining images/sound of third party conversations, by affect their privacy, regardless of the fact that there are less invasive measures of privacy mentioned, if necessary.

The facts described could imply an affectation to article 5 RGPD "The 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").

## 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.

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3/4

- 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

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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 previously 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

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

#### IV

In accordance with the available evidence, it should be noted that it has not been possible to contact the defendants, nor is the mandatory DNI available (Document National Identity Document) of the same in order to be able to continue with the processing of the procedure

Article 89 of Law 39/2015 (October 1) provides the following:

“The investigating body will resolve the completion of the procedure, with a file of the actions, without it being necessary to formulate the resolution proposal, when in the procedure instruction it becomes clear that there is any of the following circumstances:

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4/4

b) When the facts are not proven (...).

It should be noted that the mere visualization of the cameras does not imply affectation to the privacy of third parties (including the complainant himself).

The cameras can be placed by individuals for the purpose of protection of your home or even be "simulated" cameras that fulfill a function dissuasive, without any personal data processing being carried out.

The fact of visualizing them, given the proximity of the dwellings, does not imply the capture of common and/or private space of a third party without just cause, beyond the mere observance of them.

The complainant may deem it appropriate to report the facts to the Security Forces of the locality, which must carry out the investigations information about the facts or go to the Investigating Court closest to the appropriate legal effects.

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 since there are no facts that are reported.

2.- NOTIFY this Agreement to the denouncing party Mr. C.C.C..

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.

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