

Procedure No.: PS/00065/2019

RESOLUTION: R/00355/2019

In procedure PS/00065/2019, instructed by the Spanish Agency for Data Protection to Don A.A.A., given the complaint filed by Don B.B.B. and in virtue of the following,

#### FACTS

FIRST: Don B.B.B. (hereinafter, the claimant) dated October 15, 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 is identified as A.A.A. (\*hereinafter the claimed) installed in Rosalía de Castro Street 39-Torrejón de la Calzada-Madrid.

The reasons on which the claim is based are, as stated, "the claimed has a camera in his home pointed at the public thoroughfare", which may be also capturing his private property (folio nº 1).

SECOND: On 11/06/18, the claim was TRANSFERRED to the denounced party, so that he could allege what he deems appropriate in law.

THIRD: On 12/14/18 the allegations of the accused party were received, if well, they are considered insufficient to decree the Archive of this procedure, when "irregularities" were observed in the system in question.

FOURTH: On June 7, 2019, the Director of the Spanish Agency for Data Protection agreed to submit this warning procedure PS/00065/2019. This agreement was notified to denounced.

FIFTH: When the database of this organization was consulted on 07/24/19, there is no any allegation by the accused party, in relation to the "irregularities" of the

reported system.

## PROVEN FACTS

First. On 10/15/18, this Agency received a claim from the epigrapher for means of which he transfers as main fact:

“it has a camera pointing towards the public thoroughfare” (folio nº 1).

Second. It is identified as the main person in charge Mr. A.A.A., who acknowledges having a video-surveillance system.

Third. The video-surveillance poster does not comply with current regulations, nor does it allow identify the person responsible for the treatment as it has been worn out by the passage of weather.

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Fourth. The camera installed in the front part of your home allows you to obtain images of a portion of public space, without just cause.

## 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 10/15/18

by means of which it is transferred as main fact:

"He has a camera in his home pointed at the public thoroughfare", which can also be capturing his private property (folio nº 1).

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")".

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.

The art. 4.3 of Instruction 1/2006 (AEPD) provides the following: "The cameras and video cameras installed in private spaces will not be able to obtain images of public spaces unless it is essential for the purpose of surveillance that it is intended, or it is impossible to avoid it due to their location. Throughout In this case, any unnecessary data processing for the purpose should be avoided. persecuted".

According to the photograph provided, the camera can be reoriented so that you do not obtain images of the public space, located in front of your home particular.

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### III

According to the data in the file, there has been evidence that the camera in question obtains partial images of the public road, so that it must be reoriented to the height of its private gate or reinstalled in such a way that it does not capture public space.

Article 83 section 5 of the RGPD provides the following:

“Infractions of the following provisions will be sanctioned, in accordance with paragraph 2, with administrative fines of a maximum of EUR 20,000,000 or, in the case of a company, an amount equivalent to a maximum of 4% of the global total annual turnover of the previous financial year, opting for the of greater amount:

a) the basic principles for the treatment, including the conditions for the consent under articles 5, 6, 7 and 9;

When motivating the sanction to be proposed, it is taken into account that it is a particular, that he has no record for these same facts and that in all time has collaborated with this body, which justifies remembering Warn him, requiring him to comply with measures to adjust the system to the current legality.

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.”

The camera in question must be reoriented, providing screen printing (with date and time) that proves what is required in such a way that the private space that be recorded is yours, without obtaining any image of the public road.

The informative poster must reflect the regulations in force, as well as it must be able to be identifiable person responsible for the system.

#### IV

Based on the foregoing, it can be concluded that the camera installed on your property individual obtains images (albeit minimal) of the public space located in front of his dwelling, having to reorient it so that the monitor only shows its private property.

Likewise, you must proceed to install an approved sign, adjusted to the regulations in force (\*the reference to the LOPD 15/99, December 13 is incorrect as there

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been repealed by LO 3/2018, December 5 by the LOPDGDD), so that it is legible the person responsible for the processing of personal data.

According to what was stated,

By the Director of the Spanish Data Protection Agency,

HE REMEMBERS:

1.- WARN (PS/00065/2019) Mr. A.A.A. for the infringement of art. 5.1 c) GDPR,

by having a video-surveillance device partially oriented towards space

disproportionately public, typified in art. 83.5 a) RGPD, being

punishable in accordance with art. 58.2 GDPR.

2.- REQUIRE D.A.A.A. so that within a month from this act of

notification, certify before this Agency the following points.

☐ Proceed to reorient the camera installed in your home, so that

do not capture the public road in front of your property.

☐ Proceed to install an approved information poster, in a visible area,

where the data controller is intelligible, in accordance

with the regulations in force.

3.- REPORT to the Spanish Agency for Data Protection of compliance with the

required, providing probative material, as well as all those documents in which

that the fulfillment of what is required in the previous section is evidenced.

4.- NOTIFY this Agreement to Don A.A.A.

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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