

Procedure No.: PS/00010/2019

RESOLUTION OF PUNISHMENT PROCEDURE

Of the procedure instructed by the Spanish Agency for Data Protection before A.A.A., pursuant to a claim filed by B.B.B. (hereinafter, the claimant) based on the following:

BACKGROUND

FIRST: B.B.B. (hereinafter, the claimant) dated September 7, 2018 filed a claim with the Spanish Data Protection Agency. the claim is directed against A.A.A. with NIF ***DNI.1 (hereinafter, the claimed one). The reason in which The claim is based on the existence of a video surveillance camera installed in the exterior of the house owned by A.A.A., which is directed towards the outside focusing on the terraces of the apartments adjoining said property, in addition to the public road.

Together with the claim, it provides a photograph that does not allow the area recorded to be determined. Poster is not appreciated.

SECOND: In view of the facts denounced, in accordance with the evidence of available, the Data Inspection of this Spanish Data Protection Agency considers that the treatment of personal data that is carried out by the person reported to through the chambers to which the complaint refers, does not meet the conditions imposes the regulations on data protection, so the opening of the present sanctioning procedure.

THIRD: On February 7, 2019, the Director of the Spanish Agency for Data Protection agreed to initiate a sanctioning procedure against the claimant, for the alleged infringement of article 5.1 Letter c) in connection with article 6 of the RGPD punishable in accordance with the provisions of art. 58.2 of the aforementioned RGPD.

FOURTH: In accordance with articles 64.2.f) and 85 of Law 39/2015, of 1

October, of the Common Administrative Procedure of the Public Administrations

(LPACAP), since no objections were made to said initiation agreement, it has become considered motion for a resolution.

PROVEN FACTS

FIRST: The existence of a video surveillance camera installed outside the house owned by A.A.A., which is directed towards the outside focusing on the terraces of the apartments adjacent to said property, in addition to the public road.

Along with the claim, a photograph is provided that does not allow the area to be determined. record. Poster is not appreciated.

SECOND: There has been no response to the request for information from this Agency, nor Allegations have been submitted after the agreement to initiate this proceeding.

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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 according to what is established in art. 47 of the Organic Law 3/2018, of 5 December, of Protection of Personal Data and guarantee of digital rights (in what hereinafter LOPDGDD), the Director of the Spanish Data Protection Agency is competent to resolve this procedure.

II

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, it can only be

installed by a private security company that meets the requirements set forth in

Article 5 of Law 5/2014 on Private Security, of April 4.

- The video cameras will not be able to capture images of people who are

outside the private space since the treatment of images in public places only

it can be carried out, where appropriate, by the Security Forces and Bodies. Either

spaces owned by third parties may be captured or recorded without the consent of their

holders, or, where appropriate, of the people who are in them.

- The duty to inform those affected provided for in article 12 must be complied with

of the RGPD 2016/679, of April 27, 2016, in the terms referred to both in the aforementioned

article, as in articles 13 and 14 of said norm, resulting from application -by not

contradict the provisions of the aforementioned Regulation-, the manner provided for in article 3 of

Instruction 1/2006, of November 8, of the Spanish Data Protection Agency,

on the Processing of Personal Data for Surveillance Purposes through Information Systems

Cameras or Video Cameras (Instruction 1/2006, of November 8, of the Spanish Agency

Data Protection).

Specifically, it must:

1 Place in the video-monitored areas, at least one informative badge located

in a sufficiently visible place, both in open and closed spaces.

In accordance with the provisions of articles 13 and 14 of the Regulation (EU)

2016/679, of April 27, 2016, in the aforementioned informative badge, you must

identify, at least, the existence of a treatment, the identity of the person in charge and the

possibility of exercising the rights provided for in said precepts.

1 Keep available to those affected the information referred to in the

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

Article 5 section 1 letter c) RGPD "Principles related to treatment" provides

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that personal data will be processed:

c) adequate, pertinent and limited to what is necessary in relation to the purposes for those who are treated. (data minimization).

For its part, article 6.1 of the RGPD (Legality of the treatment) establishes the

Specific assumptions under which the processing of data is considered lawful interested parties.

In this case, from the documentation contained in the procedure, the

existence of a video surveillance system composed of a security camera, which is installed without just cause, and may be capturing images disproportionate from the public road.

The treatment of images in public places can only be carried out -in your case and prior compliance with the legally enforceable requirements-, by the Forces and Security Forces, unless the exception established in article 4.3 of the Instruction 1/2006, of November 8, of this Agency, which establishes: "the cameras and camcorders installed in private spaces will not be able to obtain images of spaces public unless it is essential for the intended surveillance purpose, or it is impossible to avoid it due to their location. In any case, you must

Avoid any unnecessary data processing for the purpose pursued.

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

For this exception to apply, there must not be a possibility of alternative installation. Bearing in mind that:

- The person responsible for processing the data carried out through cameras and/or video cameras will adapt the use of the installation, so that the impact on human rights of pedestrians is the minimum possible.
- In no case will the use of surveillance practices beyond the environment be admitted. object of the installation and in particular, not being able to affect public spaces surrounding buildings, adjoining buildings and vehicles other than those accessing the space guarded.

Article 83.5 a) of the RGPD, considers that the infringement of “the basic principles for processing, including the conditions for consent under the articles 5, 6, 7 and 9” is punishable, in accordance with section 5 of the aforementioned article 83 of the aforementioned Regulation, with administrative fines of €20,000,000 maximum or, in the case of a company, an amount equivalent to a maximum of 4% of the volume of total annual global business of the previous financial year, opting for the one with the highest amount.

IV

By virtue of the provisions of article 58.2 RGPD, the Spanish Agency for Data Protection, as a control authority, has a set of powers

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corrective measures, among which is the power to impose fines, in the event that there is an infringement of the provisions of the RGPD.

Article 58 section 2 GDPR provides the following:

“Each supervisory authority shall have all of the following corrective powers listed below:

b) sanction any person responsible or in charge of the treatment with a warning when the treatment operations have violated the provisions of this Regulation;

i) impose an administrative fine under article 83, in addition to or instead of the measures mentioned in this section, according to the circumstances of each case particular;

In the present case, it is taken into account that the installation of the camera has been carried out by an individual with little knowledge in the matter, as well as not It is associated with denouncing a previous procedure processed against it.

The accused party is reminded that the installed cameras cannot obtain images of public space by affecting without just cause the right to privacy of third parties without your consent and not be any of the cases allowed by the regulations in force, being able in case of non-collaboration with this body, to be considered a hindering attitude, as an element to assess in order to a sanction of an economic nature, which is communicated for the appropriate legal purposes.

According to what was stated,

SAW

By the Director of the Spanish Data Protection Agency,

HE REMEMBERS:

1.- WARN A.A.A., with NIF *** DNI.1 for an infraction of article 5.1 c) in connection with article 6 of the RGPD, typified in art. 83.5 a) of the RGPD, a sanction of warning.

2.- REQUEST A.A.A., with NIF *** DNI.1 so that within a month from this act of notification proves to this body compliance with the following measures:

- ☐ Withdrawal of any video-surveillance device towards the public space, providing documentary evidence (photograph date and time) that proves such end.
- ☐ Provision, if applicable, of supporting documentation on the characteristics of the cameras if it is a simulated (fake) device.

3.- NOTIFY this Agreement to A.A.A., with NIF ***DNI.1

In accordance with the provisions of article 50 of the LOPDGDD, this Resolution will be made public once it has been notified to the interested parties.

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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 Law 39/2015, of October 1, of the Common Administrative Procedure of the Administrations Public, the interested parties may optionally file an appeal for reconsideration before the Director of the Spanish Agency for Data Protection within a period of one month from the day following the notification of this resolution, or, directly appeal

contentious-administrative before the Contentious-administrative Chamber of the High Court

National, in accordance with the provisions of article 25 and section 5 of the provision

additional fourth of Law 29/1998, of July 13, regulating the Jurisdiction

Contentious-Administrative, within a period of two months from the day following the

notification of this act, as provided in article 46.1 of the aforementioned legal text.

Sea Spain Marti

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