

Procedure No.: PS/00177/2019

RESOLUTION: R/00386/2019

In procedure PS/00177/2019, instructed by the Spanish Agency for Data Protection before Mr. A.A.A., given the complaint filed by Mr. B.B.B. Y under the following,

FACTS

FIRST: Don B.B.B. (*hereinafter, the claimant) dated December 11, 2018 filed a claim with the Spanish Agency for Data Protection, motivated by the alleged treatment of data carried out through cameras of a video surveillance system whose owner is identified as A.A.A. with NIF ***NIF.1 (hereinafter the claimed) installed at ***ADDRESS.1.

The reasons on which the claim is based are "installation of a video camera-surveillance" without just cause in common area building owners, without authorization lawful for it.

Along with the claim, provide a copy of the Report-Complaint with a description of the facts presented.

SECOND: On 01/28/19, the complaint was TRANSFERRED to the party denounced so that he could allege in law what he deemed appropriate, stating as "notified" in the system of this body, without any response having been made about it.

THIRD: 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.

FOURTH: On June 7, 2019, the Director of the Spanish Agency for Data Protection agreed to submit this warning procedure PS/00177/2019. This agreement was notified to denounced.

FIFTH: The database of this Agency consulted on 10/02/19 does not contain any allegation in relation to the denounced device.

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PROVEN FACTS

First. On 12/11/19, a claim was received from the complainant through the which translates as the main fact the following:

"Installation of a video surveillance camera" without just cause in a common area building owners, without legal authorization to do so. (folio no. 1).

Second. The resident of the property, Mr.

A.A.A.

Third. The presence of a video-surveillance camera installed is accredited in a common area, without the authorization of the Board of Owners.

Fourth. The cause/reason for the installation has not been verified, as no any allegation of the defendant.

Fifth. There is no evidence that the defendant has the mandatory information poster reporting that it is a video-monitored area.

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 12/11/18 by means of which the installation of a video camera is transferred as the main fact "surveillance" without just cause in common area building owners.

The facts described above may imply an affectation of art. 5.1

c) GDPR, 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.

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The individual responsible for the installation must be able to accredit before this Control Authority that it complies with all legal requirements required, indicating where appropriate the reason for the installation.

Individuals cannot freely install video-surveillance cameras in common areas of a building, without respecting the legally required procedures, affecting thereby to the privacy of third parties without just cause.

Camcorders will not be able to capture images of people 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.

III

According to the data in the file, it is identified as the main responsible Mr. A.A.A., which has installed a video-surveillance device, without meet the requirements for this type of device.

The cause/reason for the installation has not been alleged, for Therefore, it is not possible to determine whether the measure is proportionate to the purpose of the system.

This infringement affects the reporting principles of the RGPD, as it is considered a disproportionate measure (in the case of a camera), and may be considered very serious in accordance with the provisions of article 83.5 RGPD.

“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;

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

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of measures ordered against the person responsible or in charge, adherence to codes of conduct and any other aggravating or mitigating circumstance.”

The accused must proceed to the immediate withdrawal of the camera from the area community, accrediting such extreme before this organism by means of photography (date and hour), assuming failing that the opening of a sanctioning procedure in the terms of the RGPD in case of a new complaint for the same facts described.

Remind the denouncing party that they have the possibility after the deadline for compliance with the requirement to communicate the facts to the Police Forces and Bodies Security of the town or file a new complaint with a new photograph (date/time) that proves the presence of the device.

According to what was stated,

By the Director of the Spanish Data Protection Agency,

HE REMEMBERS:

1.- NOTICE (PS/00177/2019) to D. A.A.A. for the infringement of art. 5.1 c) GDPR, by having a video-surveillance camera installed in the common area, without a sign informative, disproportionately oriented, typified in art. 83.5 a) GDPR, 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, proceed:

☐

Report on the installation of the device in question, providing a printout of screen (date/time) of what is captured with it, as well as all documentation that proves its legality.

☐ Proceed, where appropriate, to the removal/reorientation of the installed camera, accrediting it before this organism.

3.- NOTIFY this Agreement to A.A.A. and REPORT the result of the actions to the plaintiff Don B.B.B..

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

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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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