

936-031219

Procedure No.: PS/00432/2019

RESOLUTION R/00033/2020 TERMINATION OF THE PROCEDURE FOR PAYMENT

VOLUNTEER

In sanctioning procedure PS/00432/2019, instructed by the Agency

Spanish Data Protection Agency to A.A.A., given the complaint filed by B.B.B., and

based on the following,

BACKGROUND

FIRST: On January 7, 2020, the Director of the Spanish Agency for

Data Protection agreed to initiate a sanctioning procedure against A.A.A. (onwards,

the claimed), through the Agreement that is transcribed:

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Procedure No.: PS/00432/2019

935-240719

AGREEMENT TO START A SANCTION PROCEDURE

Of the actions carried out by the Spanish Agency for the Protection of

Data and based on the following

FACTS

FIRST: B.B.B. (\*hereinafter, the claimant) dated October 28, 2019

filed a claim with the Spanish Data Protection Agency. The

claim is directed against A.A.A. with NIF \*\*\*NIF.1 (hereinafter, the claimed one). The

reasons on which the claim is based are "installation of four security cameras

placed on his porch, with allegedly obtaining images of the fence and land

particular (folio nº1).

Along with the claim, provide documentary evidence (photographs No. 1-2) that

proves the installation of cameras on the porch of the defendant's home.

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SECOND: In view of the facts denounced in the claim and the documents data provided by the claimant, the Subdirector General for Data Inspection pro-yielded to carry out preliminary investigation actions for the clarification of the facts in question, by virtue of the powers of investigation granted to the control authorities in article 57.1 of Regulation (EU) 2016/679 (Regulation General Data Protection, hereinafter RGPD), and in accordance with the provisions ed in Title VII, Chapter I, Second Section, of Organic Law 3/2018, of 5 December, of Protection of Personal Data and guarantee of digital rights (in hereinafter LOPDGDD).

As a result of the research actions carried out, it is confirmed that the data controller is the claimed party.

## FOUNDATIONS OF LAW

Yo

By virtue of the powers that article 58.2 of the RGPD recognizes to each authori-control, and according to the provisions of articles 47 and 48 of the LOPDGDD, the Di-rector of the Spanish Agency for Data Protection is competent to initiate and to solve this procedure.

II

In the present case, the claim dated 10/28/19 is examined by me-gave from which the following is transferred as the main fact:

“installation of four security cameras placed on his porch, with  
alleged obtaining of images of the fence and private land (folio nº1).

The art. 5.1 c) RGPD provides the following: The personal data will be:

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

It should be remembered that individuals are responsible for ensuring that the systems  
most installed comply with current legislation.

The installation of this type of device must have the mandatory sign  
informative, indicating the purposes and responsible for the treatment in your case of the data  
of a personal nature.

Article 22 section 4 of LO 3/2018, December 5, provides the following:

“The duty of information provided for in article 12 of the Regulation (EU)  
2016/679 will be understood to be fulfilled by placing an informative device  
in a sufficiently visible place identifying, at least, the existence of the treatment,  
the identity of the person in charge and the possibility of exercising the rights provided for in the  
Articles 15 to 22 of Regulation (EU) 2016/679. It may also be included in the  
informative site a connection code or internet address to this information.

In any case, the data controller must keep available to  
those affected the information referred to in the aforementioned regulation”.

In any case, the cameras should preferably be oriented towards the  
private space, avoiding intimidating neighboring neighbors with this type of device,

as well as control their transit areas without just cause.

It is not allowed, even in the case of simulated cameras, that

they are oriented towards the property of third parties, since they are affected

two in their intimacy in the belief of being permanently observed.

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III

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In accordance with the evidence available at this time,

agreement to initiate the sanctioning procedure, and without prejudice to what is

As a result of the investigation, it is considered that the respondent has a camera (s) of

video-surveillance oriented towards the private property of the adjoining neighbor without cause justified.

The known facts could constitute an infraction, attributable to the

claimed, for violation of the content of art. 5.1 c) GDPR.

The art. 83.5 RGD provides the following: "Infringements of the provisions

following will be sanctioned, in accordance with section 2, with administrative fines

EUR 20,000,000 maximum or, in the case of a company, an equivalent amount.

equivalent to a maximum of 4% of the total global annual turnover of the fiscal year previous financial statement, opting for the highest 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, the following is taken into account:

-Through it, images of the neighbors who are intimidated are obtained.

given by the device in question, without stating that they have given their consent.

fear and without just cause as they are disproportionately oriented (art.

83.2 a) GDPR).

-There is a prior warning of the same accused associated with the

PS/00003/2019, so the conduct is considered negligent to a slight degree (art.

83.2 e) GDPR).

Therefore, it is appropriate to propose a sanction located on the lowest scale for this type

of infractions for the reasons stated, calculating the same in the initial amount of

€1,500 (One thousand five hundred Euros).

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All this without prejudice to proceeding to reorient the camera in question

that it is oriented preferentially towards his particular property or is relocated

than to fulfill its purpose, but respecting the affected rights.

A photograph with date and time must be provided that proves, in your case, what

is recorded with the camera(s) in question, as well as reliably proving that the

device complies with current legislation, explaining in detail all the aspects

cough related to the denounced system.

IV

Among the corrective powers contemplated in article 58 of the RGPD, in its

section 2 d) establishes that each control authority may “order the person in charge

responsible or in charge of the treatment that the treatment operations comply with the

provisions of this Regulation, where appropriate, in a certain way

and within a specified period...”. The imposition of this measure is compatible with the sanction consisting of an administrative fine, as provided in art. 83.2 of the GDPR.

Therefore, based on the foregoing,

By the Director of the Spanish Data Protection Agency,

HE REMEMBERS:

FIRST: START SANCTIONING PROCEDURE against Mr. A.A.A., with NIF

\*\*\*NIF.1, for the alleged violation of art. 5.1 c) RGPD, infringement typified in art.

83.5 a) RGPD, being punishable in accordance with art. 58.2 GDPR.

SECOND: APPOINT B.B.B. and, as secretary, to C.C.C., indi-

stating that any of them may be challenged, where appropriate, in accordance with the provisions ed in articles 23 and 24 of Law 40/2015, of October 1, on the Legal Regime of the Public Sector (LRJSP).

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THIRD: INCORPORATE to the disciplinary file, for evidentiary purposes, the claim information filed by the claimant and his documentation, the documents obtained and generated by the Subdirector General for Data Inspection during the investigation phase. investigations, all of them part of the administrative file.

FOURTH: THAT for the purposes provided in art. 64.2 b) of Law 39/2015, of October 1-tubre, of the Common Administrative Procedure of the Public Administrations, the sanction that could correspond would be €1,500 (One thousand five hundred Euros), notwithstanding whatever results from the instruction.

FIFTH: NOTIFY this agreement to A.A.A., with NIF \*\*\*NIF.1, granting it a hearing period of ten business days to formulate the allegations and present tests you deem appropriate. In your statement of arguments, you must provide your NIF and the procedure number that appears at the top of this document. ment.

If within the stipulated period it does not make allegations to this initial agreement, the same may be considered a resolution proposal, as established in article Article 64.2.f) of Law 39/2015, of October 1, on Administrative Procedure Co- of the Public Administrations (hereinafter, LPACAP).

In accordance with the provisions of article 85 of the LPACAP, in the event of that the sanction to be imposed was a fine, it may recognize its responsibility within of the term granted for the formulation of allegations to this initial agreement; it which will entail a reduction of 20% of the sanction to be imposed in the present procedure. With the application of this reduction, the sanction would be established at €1,200, resolving the procedure with the imposition of this penalty. tion.

Similarly, you may, at any time prior to the resolution of the claim, present procedure, carry out the voluntary payment of the proposed sanction, which will mean a reduction of 20% of its amount. With the application of this reduction, the sanction would be established at 1200 euros and its payment will imply the termination of the process.

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The reduction for the voluntary payment of the sanction is cumulative to the one that corresponds to apply for the acknowledgment of responsibility, provided that this acknowledgment of responsibility is revealed within the period granted to formulate arguments at the opening of the procedure. The voluntary payment of amount referred to in the preceding paragraph may be made at any time prior to the resolution. In this case, if it were appropriate to apply both reductions, the amount of the sanction would be established at 900 euros ( $\text{€}1,500 - \text{€}300 + \text{€}300$ ).

In any case, the effectiveness of any of the two reductions mentioned will be conditioned to the withdrawal or renunciation of any action or resource in via administrative against the sanction.

In the event that you choose to proceed with the voluntary payment of any of the amounts indicated above €1200 or €900, you must make it effective by your deposit in account number ES00 0000 0000 0000 0000 0000 opened in the name of the Spanish Data Protection Agency at Banco CAIXABANK, S.A., indicating in the concept the reference number of the procedure that appears in the heading processing of this document and the reason for the reduction of the amount to which it is accepted.

Likewise, you must send proof of payment to the General Subdirectorate of Inspection to continue with the procedure in accordance with the quantity entered. sada.

The procedure will have a maximum duration of nine months from the the date of the start-up agreement or, where applicable, of the draft start-up agreement. Trans- After this period, it will expire and, consequently, the update file will tions; in accordance with the provisions of article 64 of the LOPDGDD.

Finally, it is pointed out that in accordance with the provisions of article 112.1 of the LPACAP, there is no administrative appeal against this act.

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: On January 24, 2020, the claimant has proceeded to pay the

SECOND

penalty in the amount of 900 euros making use of the two reductions provided for in the Start Agreement transcribed above, which implies the recognition of the responsibility.

THIRD: The payment made, within the period granted to formulate allegations to the opening of the procedure, entails the waiver of any action or resource in via administrative action against the sanction and acknowledgment of responsibility in relation to the facts referred to in the Initiation Agreement.

FOUNDATIONS OF LAW

Yo

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 sanction the infractions that are committed against said

Regulation; infractions of article 48 of Law 9/2014, of May 9, General

Telecommunications (hereinafter LGT), in accordance with the provisions of the

article 84.3 of the LGT, and the infractions typified in articles 38.3 c), d) and i) and

38.4 d), g) and h) of Law 34/2002, of July 11, on services of the society of the information and electronic commerce (hereinafter LSSI), as provided in article 43.1 of said Law.

II

Article 85 of Law 39/2015, of October 1, on Administrative Procedure

Common to Public Administrations (hereinafter, LPACAP), under the rubric

"Termination in sanctioning procedures" provides the following:

"1. A sanctioning procedure has been initiated, if the offender acknowledges his responsibility, the procedure may be resolved with the imposition of the sanction to proceed.

2. When the sanction is solely pecuniary in nature or fits

impose a pecuniary sanction and another of a non-pecuniary nature but it has been justified the inadmissibility of the second, the voluntary payment by the alleged perpetrator, in any time prior to the resolution, will imply the termination of the procedure, except in relation to the replacement of the altered situation or the determination of the compensation for damages caused by the commission of the infringement.

3. In both cases, when the sanction is solely pecuniary in nature,

the competent body to resolve the procedure will apply reductions of, at least 20% of the amount of the proposed sanction, these being cumulative each. The aforementioned reductions must be determined in the notification of initiation of the procedure and its effectiveness will be conditioned to the withdrawal or Waiver of any administrative action or recourse against the sanction.

The reduction percentage provided for in this section may be increased regulations.

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According to what was stated,

the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: TO DECLARE the termination of procedure PS/00432/2019, of

in accordance with the provisions of article 85 of the LPACAP.

SECOND: NOTIFY this resolution to A.A.A.

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.

Against this resolution, which puts an end to the administrative procedure as prescribed by

the art. 114.1.c) of Law 39/2015, of October 1, on Administrative Procedure

Common of the Public Administrations, the interested parties may file an appeal

contentious-administrative before the Contentious-administrative Chamber of the

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

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

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

day following the notification of this act, as provided in article 46.1 of the

aforementioned Law.

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