

968-150719

□ Procedure No.: PS/00435/2019

RESOLUTION R/00144/2020 TERMINATION OF THE PROCEDURE FOR PAYMENT

VOLUNTEER

In sanctioning procedure PS/00435/2019, instructed by the Agency

Spanish Data Protection Agency to B.B.B., given the claim filed by

A.A.A., 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 B.B.B. Notified on

initial agreement and after analyzing the arguments presented, on March 6,

2020, the proposed resolution was issued, which is transcribed below:

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Procedure no.: PS/00435/2019

926-240120

Of the procedure instructed by the Spanish Agency for Data Protection and

based on the following:

FACTS

FIRST: Don A.A.A. (*hereinafter, the claimant) dated September 19,

2019 filed a claim with the Spanish Data Protection Agency. The

claim is directed against Doña B.B.B. (hereinafter, the claimed).

The reasons on which the claim is based are "installation of three cameras without

informative poster" by the adjoining neighbors, oriented towards their

private land without just cause

Provides photographs (documentary evidence 1-2) that proves the installation of the

cameras on the roof, facing the transit area.

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

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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.

THIRD: On January 7, 2020, the Director of the Spanish Agency for Data Protection agreed to initiate a sanctioning procedure against the defendant, with glo to the provisions of articles 63 and 64 of Law 39/2015, of October 1, of the Pro-Common Administrative Procedure of Public Administrations (hereinafter, LPA-CAP), for the alleged infringement of Article 5.1.c) of the RGPD, typified in Article 83.5 of the GDPR.

FOURTH: Having been notified of the aforementioned initiation agreement, the respondent submitted a written pleadings in which, in summary, he alleges the following:

“In the Statement sent to the Agency for the purpose of providing the information

required to justify the installation of the cameras and their use, we must say that No the area of recorded land has been explained because at the time we alluded that the entire area marked in the photos was of easement because our knowledge and following the recommendations of the supplier company... possibility of recording images in transit areas was sufficient legal basis for Ours apply the same criteria.”

“In view of what happened, it is good to have these allegations, you go on to detail that there is a part of the land that is the private property of the accused and another of servitude.

We accompany samples of the cameras with the built-in masks as Annex 2, hoping that this action will comply with what the regulations of data protection obliges and the instructions indicated by the Agency for this case (...)."

FIFTH: Attached as an annex is a list of documents in the procedure, remembering full accessibility to it if deemed appropriate.

In view of everything that has been done, by the Spanish Data Protection Agency

In this proceeding, the following are considered proven facts:

FACTS

First. On 09/19/2019, this Agency received a claim from the epigraphed transferring as main fact:

“Installation of three cameras without an information poster” by the neighbors adjoining, oriented towards their private land without just cause.

Second. For the accused party—B.B.B.—it is acknowledged that it has a system of video-surveillance for security reasons of your property.

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In allegations dated 11/15/19, the following is stated by the defendant:

“The cameras are located on the east wall of the house whose vision reaches areas of my property, as well as a common passage area for the three owners of the houses, subject to the servitude mentioned above” (*bold belongs to this Agency).

With the cameras installed, the area of servitude was clearly captured, affecting the right to privacy of the complainant, who had not been informed to the respect, nor consented to the purpose of the treatment.

Third. There is evidence of the existence of an informative poster in a visible area indicating the data controller and its purpose.

Fourth. The cameras are provided with privacy masks, limited to the proportional capture of private area, as stated in the writ of allegations dated 02/20/20, proceeding to correct the initial situation.

FOUNDATIONS OF LAW

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

II

Before going into the substance of the matter, it should be noted that the accused party is Mrs. B.B.B., which has had knowledge of the facts imputed to it, as well as the repeated opportunity to express himself about them, being implicit that it was the

principally responsible for the installation of the cameras that are the object of the complaint, although in the Initiation Agreement a “material error” occurred when mixing the person of the complainant and denounced, it has not prevented the accused from exercising her right to defense (art. 24.2 CE), being aware of them in due time and manner.

III

In the present case, the claim dated 09/19/19 is examined by me-

of which the following claim is transferred to this body:

“Installation of three cameras without an information poster” by the neighbors adjoining, oriented towards their private land without just cause (folio nº 1).

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

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

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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.

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.

The party complained against accredits having an informative poster(s) indicating the

responsible, providing documentary evidence to this effect to this body on the date 11/15/19.

Based on the allegations and after examining the images provided, it was performs a control of the common transit areas (property indiviso) without having the consent of the other two neighbors, who are affected by the camera(s) in question.

With this type of device, the movements of the remaining ve- Children who have not given their consent for the surveillance of transit areas common.

The cameras installed must be oriented at all times towards the main strategic points of the private home, not affecting the transit of the remaining owners who had not been informed about it or were masked. caradas as reflected in the last frames provided.

In order to have installed the cameras oriented towards the transit areas the consent of the remaining owners should have been previously obtained— art. 6.1 a) RGPD--, which had to give their informed consent, which in in any way occurred, in such a way that the cameras recorded their data in the mere transit in the access/exit of their homes.

III

The Supreme Court (Sentences of April 16 and 22, 1991) considers that of the ele- element of culpability, it follows “that the action or omission, qualified as an infraction sanction administratively, must be, in any case, attributable to its author, by intent or recklessness, negligence or inexcusable ignorance.”

The National Court, in Judgment of June 29, 2001, in matters of protection of personal data, has declared that “simple negligence or in compliance is enough fulfillment of the duties that the Law imposes on the persons responsible for files or

of data processing to exercise extreme diligence...”.

The Supreme Court (Judgments of July 5, 1998 and March 2, 1999) comes

understanding that recklessness exists whenever a legal duty of care is disregarded.

given, that is, when the offending subject does not behave with the required diligence. Dili-

agency whose degree of demand will be determined in accordance with the circumstances

current in each case, such as the special value of the protected legal interest or the

professionalism required of the offender. In this sense, the aforementioned Judgment of June 5

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of 1998 requires professionals in the sector "a duty to know especially the

applicable rules”.

Applying the previous doctrine, the National High Court requires the entities that operate

special diligence in the data market when carrying out the use or processing

processing of such data or transfer to third parties. And this because being the one of the protection

of data a fundamental right (Sentence of the Constitutional Court 292/2000), the

repositories of these data must be especially diligent and careful when

operate with them and must always opt for the interpretation that is most favorable to the protection

tion of the legal rights protected by the norm. In this sense, among others, Sen-

rulings of the National High Court dated February 14 and September 20, 2002

and April 13 and May 18, 2005).

The mere commission of an administrative infraction—objective type—is not enough to

time to proceed to impose an administrative sanction.

Guilt as reproach to the active subject of the injury of the legal interest

protected, is evident when the subject voluntarily performs the typical behavior

intentionally directed to obtaining the unlawful result, which is sought and

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There must therefore be willful or negligent conduct, whether gross negligence

or mild or simple, depending on the degree of neglect. And there is no negligence, nor therefore

guilty and punishable infraction, "when the necessary diligence has been put into the

compliance with the obligations required in terms of LOPD" *reference to the current

LOPDGDD).

IV

In accordance with the evidence available at this time,

sanctioning procedure, it is considered that the defendant installed a series

of video-surveillance cameras, which affected common transit areas, without precautions.

It is justified and disproportionate.

Based on a "wrong" belief but acting in good faith, he proceeded to agree

control the traffic of the main accesses, in such a way that it affected not having the

informed consent of the neighbors adjoining their rights, which is

have been intimidated by the system in question.

The facts constitute an infraction, attributable to the defendant, for

violation of art. 5.1 c) GDPR.

The art. 83.5 RGPD 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;

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When motivating the sanction, it is taken into account that it is an individual, as well as the previous collaboration with this Agency in the request made, to the margin that has not been previously sanctioned by this body and that the degree of intentionality is of slight negligence based on the belief that what was done was permitted.

-Through it, images of passers-by are obtained by the easement area without just cause, who are intimidated by the provision subject in question, without stating that their consent has been granted (art. 83.2 a) GDPR).

-It should have been foreseen after the complaint filed, that the camera was wrongly oriented tada, so the conduct is considered negligent to a slight degree (art. 83.2 b) GDPR).

Therefore, it is appropriate to propose a sanction located on the lowest scale for this type of infraction for the reasons stated, calculating the same in the amount of €1,000 (Thousand Euros).

In view of the foregoing, the following is issued

MOTION FOR A RESOLUTION

That the Director of the Spanish Data Protection Agency sanctioned Doña B.B.B., with NIF ***NIF.1, for an infringement of article 5.1.c) of the RGPD, typified in article 83.5 of the RGPD, with a fine of €1,000 (One Thousand Euros).

Likewise, in accordance with the provisions of article 85.2 of the LPACAP,

You are informed that you may, at any time prior to the resolution of this procedure, carry out the voluntary payment of the proposed sanction, which will put a reduction of 20% of the amount of the same. With the application of this reduction, the sanction would be established at €800 (Eight Hundred Euros) and its payment will apply the termination of the procedure. The effectiveness of this reduction will be conditional to the withdrawal or waiver of any action or resource in administrative against the penalty.

In the event that you choose to proceed with the voluntary payment of the specified amount, each previously, in accordance with the provisions of article 85.2 cited, must be effective by entering the restricted account number ES00 0000 0000 0000 0000 0000 opened in the name of the Spanish Agency for Data Protection in the Banco CAIXABANK, S.A., indicating in the concept the reference number of the procedure transfer that appears in the heading of this document and the cause, for payment of the voluntary reduction of the amount of the penalty. Likewise, you must send the justification before entering the Subdirector General for Inspection to proceed to close the proceedings.

By virtue thereof, the foregoing is notified, and the procedure so that within a period of TEN DAYS you can allege whatever you consider

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in his defense and present the documents and information that he considers pertinent, in accordance with article 89.2 of the LPACAP).

C.C.C.

INSPECTOR/INSTRUCTOR

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: As of June 17, 2020, B.B.B. has proceeded to pay the penalty

SECOND

in the amount of 800 euros making use of the reduction foreseen in the proposal of resolution transcribed above.

THIRD: The payment made entails the waiver of any action or resource in via against the sanction, in relation to the facts referred to in the resolution proposal.

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 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 the Procedure

Common Administrative of Public Administrations (hereinafter LPACAP), under

the heading "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.

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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."

According to what was stated,

the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: TO DECLARE the termination of procedure PS/00435/2019, of

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

SECOND: NOTIFY this resolution to B.B.B.

In accordance with the provisions of article 50 of the LOPDGDD, the

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 process as

prescribed by art. 114.1.c) of Law 39/2015, of October 1, on Procedure

Common Administrative of Public Administrations, interested parties may

file a contentious-administrative appeal before the Contentious Chamber

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

in section 5 of the fourth additional provision of Law 29/1998, of July 13,

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

count from the day following the notification of this act, as provided in the

Article 46.1 of the aforementioned Law.

Sea Spain Marti

Director of the Spanish Data Protection Agency

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