

□ Procedure No.: PS/00211/2020

RESOLUTION R/00543/2020 TERMINATION OF THE PROCEDURE FOR PAYMENT VOLUNTEER

In the sanctioning procedure PS/00211/2020, instructed by the Spanish Agency for Data Protection to A.A.A., in view of the complaint filed by B.B.B., and based on the following,

BACKGROUND

FIRST: On October 16, 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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935-200320

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

UNIQUE: Mrs. B.B.B. (*hereinafter, the claimant) dated January 10, 2020 filed a claim with the Spanish Data Protection Agency. The claim is directed against the neighbor of the property identified as A.A.A. with NIF ***NIF.1 (hereinafter, the claimed one).

The grounds on which the claim is based are installation of a security camera(s) video-surveillance oriented towards common areas without the consent of the Owner board.

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Along with the claim, provide documentary evidence (Doc. No. 1) that proves the installation of the camera(s) on a wall facing common areas.

One of the cameras is installed above the access door to the house the lower left and the other in the attic.

A greater abundance is provided Report dated 12/26/19 (Doc. No. 2) in where the defendant acknowledges having installed two cameras, without informing the Board of owners, for reasons of security of their properties, although it states that it is I comment to the rest of the neighbors, not informing the complainant for keeping "disagreements" with it.

FOUNDATIONS OF LAW

Yo

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

In the present case, the claim dated 01/10/20 is examined by me- from which the installation of a security camera system is transferred to this body. video-surveillance, without the consent of the Board of Owners.

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 installed

fulfilled comply with current legislation, proving that it complies with all

the requirements demanded by the regulations in force.

The installation of this type of device must have the mandatory informative sign.

ive, indicating the purposes and responsible for the treatment, where appropriate, of the data of each personal character.

In any case, the cameras must be oriented towards the particular space, avoiding

intimidate neighboring neighbors with this type of device, as well as control areas

transit of the same without just cause.

With this type of device it is not possible to obtain image(s) of public space either.

co, as this is the exclusive competence of the State Security Forces and Bodies ted.

It should be remembered that even in the case of a "simulated" camera, the same

should preferably be oriented towards private space, since it is considered

that this type of device can affect the privacy of third parties, that they are inti-

measured by it in the belief of being the subject of permanent recording.

On the part of individuals, it is not possible to install devices for obtaining

images of public space, outside the cases allowed in the regulations.

The camera can fulfill a dissuasive function for housing protection,

while making sure not to obtain images from public/private third-party space

without justified cause.

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III

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 proceeded to install a chamber

camera (s) of video-surveillance without the consent of the Board of Owners-

members, being able to obtain images of common spaces and therefore, being able to "treat

third-party data".

To install security cameras in a community it is necessary that the co-

community of neighbors has the favorable vote of 3/5 of the totality of

the owners. Article 17.3 of the Horizontal Property Law, which literally

He says:

"The establishment or suppression of porter services, concierge, security

services or other common services of general interest, whether or not they involve modification

of the constitutive title (horizontal division) or of the statutes, will require the favorable vote

of three-fifths of the total owners who, in turn, represent

three-fifths of the participation fees.

The known facts could constitute an infraction, attributable to the

respondent, for violation of the content of article 5.1 c) RGPD, previously

mentioned.

IV

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

will be sanctioned, in accordance with section 2, with administrative fines of 20

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

to a maximum of 4% of the total global annual turnover of the financial year

above, opting for the highest amount:

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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:

-the nature of the offense, when installing a video-surveillance camera(s)

oriented towards common areas without having the duly informed consent

from the rest of the neighbors of the property, affecting their data with them

personal, when controlling common areas of the property, without just cause (art. 83.2 a)

GDPR).

-the intentionality or negligence of the infraction, lacking the authorization

informed of the rest of the neighbors in the terms of the LPH (art. 83.2 b) RGPD).

In accordance with the foregoing, in view of the seriousness of the facts, which originated

intervene by the competent authority by installing various cameras in the building

where their properties are located, but assessing the absence of infractions

previous, it is considered correct to propose an initial sanction encrypted in the amount of

€1,000, an infraction located on the lowest scale for this type of administrative infraction.

when considering negligent conduct from the perspective of the protection of

cough of a personal nature.

The foregoing without prejudice to proving the uninstallation of the installed camera(s).

day, providing documentary evidence (eg photograph date and time) that proves that the cameras are not in their current location or claiming what they consider correct.

in relation to the exposed facts.

Therefore, based on the foregoing,

By the Director of the Spanish Data Protection Agency,

HE REMEMBERS:

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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 the article 83.5 a) RGPD, being punishable in accordance with article 58.2 RGPD.

SECOND: APPOINT R.R.R. as instructor. and, as secretary, to S.S.S., indicate-

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

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 €1,000 (one thousand Euros), without prejudice to what

result of the instruction.

FIFTH: NOTIFY this agreement to Don A.A.A., with NIF ***NIF.1, granting-

grants a hearing period of ten business days to formulate the allegations and present

Submit whatever evidence you deem appropriate. In your statement of arguments, you must

Provide your NIF and the procedure number that appears in the heading of this

document.

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

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established at €800, resolving the procedure with the imposition of this sanction.

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 800 euros and its payment will imply the termination of the

process.

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 €600 (Six Hundred Euros).

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 case you chose to proceed to the voluntary payment of any of the amounts indicated above €800 or €600, you must make it effective by paying into account number ES00 0000 0000 0000 0000 0000 opened in the name of the Spanish Agency that of Data Protection in the banking entity CAIXABANK, S.A., indicating in the concept the reference number of the procedure that appears in the heading of this document and the reason for the reduction of the amount to which it avails itself.

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.

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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.

Sea Spain Marti

Director of the Spanish Data Protection Agency

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: On October 28, 2020, the claimant has proceeded to pay the

SECOND

sanction in the amount of 600 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. Started a sanctioning procedure, if the offender acknowledges his responsibility, the procedure may be resolved with the imposition of the appropriate sanction.

2. When the sanction is solely pecuniary in nature or it is possible to impose a pecuniary sanction and another of a non-pecuniary nature, but the

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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 with each other.

The aforementioned reductions must be determined in the notification of initiation of the procedure and its effectiveness will be conditioned to the withdrawal or resignation of

any administrative action or recourse against the sanction.

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

In accordance with the above, the Director of the Spanish Agency for the Protection of

Data RESOLVES:

FIRST: TO DECLARE the termination of procedure PS/00211/2020,

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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