

936-031219

□ Procedure No.: PS/00188/2020

RESOLUTION R/00367/2020 TERMINATION OF THE PROCEDURE FOR PAYMENT

VOLUNTEER

In sanctioning procedure PS/00188/2020, instructed by the Agency

Spanish Data Protection Association of Security Guards

OF THE BARCELONA AIRPORT, in view of the complaint filed by A.A.A., and in

based on the following,

BACKGROUND

FIRST: On July 10, 2020, the Director of the Spanish Agency for

Data Protection agreed to initiate a sanctioning procedure against the ASSOCIATION OF

BARCELONA AIRPORT SECURITY GUARDIANS (hereinafter,

the claimed), through the Agreement that is transcribed:

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Procedure No.: PS/00188/2020

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: Ms. A.A.A. (hereinafter the claimant) on 11/18/2019 filed

claim before the Spanish Data Protection Agency. The claim is

directs against AIRPORT SECURITY GUARDIANS ASSOCIATION

DE BARCELONA with NIF G65350316 (hereinafter the claimed). The reasons in

on which the claim is based are: that a member of the Ilunion Center Committee

Security of the Barcelona Airport, has distributed through WhatsApp, the census

workers to private non-corporate telephones. Provide screenshots

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2/12

of the application in which it is stated that the claimed party sent the lists so that the members of his union section verified that his data in the census were correct.

SECOND: Upon receipt of the claim, the Subdirector General for

Data Inspection proceeded to carry out the following actions:

On 01/20/2020, the claim submitted was transferred to the defendant for analysis

and communication to the complainant of the decision adopted in this regard. Likewise, it

required him to send to the determined Agency within a period of one month

information:

- Copy of the communications, of the adopted decision that has been sent to the claimant regarding the transfer of this claim, and proof that the claimant has received communication of that decision.

- Report on the causes that have motivated the incidence that has originated the claim.

- Report on the measures adopted to prevent incidents from occurring

Similar.

- Any other that you consider relevant.

On 02/11/2020, the respondent sent a letter in which he stated that the dissemination to the

through the WhatsApp group only to workers of the company Ilunion

Security S.A. of the Barcelona Airport work center affected by the

process of union elections of the electoral census for the same, does not violate the

regulations on data protection, especially when such data was accessible public and the purpose of sending was to facilitate the verification of data to those workers with mobility difficulties; that on this subject has already been pronounced by the Supreme Court in its sentence of 09/27/2007; that the publication or dissemination of the electoral census to workers affected by the electoral process union, does not transgress the legislation on protection of personal data; that the use of the electoral census carried out by the accused, as ***CARGO.1, in the exercise of his right to union activity, was appropriate for the purposes of the process electoral, since the sole purpose of sending the electoral census, as indicated in the own "mobile screenshots" that accompanies the complainant was "Check that it is your name and that your details are correct. If you see any anomaly, let us know. communicate"; that the use of the electoral census carried out by the accused, as ***POSITION.1, in the exercise of his right to union activity, was totally adequate for the purposes of the electoral process, since it was only intended to facilitate verification

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3/12

the workers of the work center of their data for the exercise of their rights of representation.

On 06/08/2020, in accordance with article 65 of the LOPDGDD, the Director of the Spanish Agency for Data Protection agreed to admit the claim for processing filed by the claimant against the respondent.

FOUNDATIONS OF LAW

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By virtue of the powers that article 58.2 of the RGPD recognizes to each control authority, 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

The facts claimed are specified in the distribution through a group of WhatsApp by a member of the Ilunion Airport Security Center Committee of Barcelona, of the electoral census of the workers, which could suppose the violation of the principle of confidentiality.

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4/12

Article 5, Principles related to the treatment, of the RGPD that establishes that:

"1. The personal data will be:

(...)

f) treated in such a way as to ensure adequate security of the personal data, including protection against unauthorized or unlawful processing and against its loss, destruction or accidental damage, through the application of measures appropriate technical or organizational ("integrity and confidentiality").

(...)"

And article 6, Legality of the treatment, of the aforementioned RGPD indicates in its point 1 that:

"1. The treatment will only be lawful if at least one of the following is met conditions:

a) the interested party gave their consent for the processing of their data

personal for one or more specific purposes;

b) the treatment is necessary for the execution of a contract in which the

interested party is a party or for the application at the request of the latter of measures

pre-contractual;

c) the treatment is necessary for the fulfillment of a legal obligation

applicable to the data controller;

d) the processing is necessary to protect the vital interests of the data subject or

of another natural person;

e) the treatment is necessary for the fulfillment of a mission carried out in

public interest or in the exercise of public powers vested in the person responsible for the

treatment;

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5/12

f) the treatment is necessary for the satisfaction of legitimate interests

pursued by the controller or by a third party, provided that on

such interests do not override the interests or rights and freedoms

fundamental data of the interested party that require the protection of personal data, in

particularly when the interested party is a child.

The provisions of letter f) of the first paragraph shall not apply to

treatment carried out by public authorities in the exercise of their functions”.

(...)”

Also article 5, Duty of confidentiality, of the new Organic Law

3/2018, of December 5, on the Protection of Personal Data and guarantee of the

digital rights (hereinafter LOPDGDD), states that:

"1. Those responsible and in charge of data processing as well as all people who intervene in any phase of this will be subject to the duty of confidentiality referred to in article 5.1.f) of Regulation (EU) 2016/679.

2. The general obligation indicated in the previous section will be complementary of the duties of professional secrecy in accordance with its applicable regulations.

3. The obligations established in the previous sections will remain even when the relationship of the obligor with the person in charge or person in charge had ended of the treatment".

On the other hand, article 83.5 a) of the RGPD, considers that the infringement of "the basic principles for processing, including conditions for consent in accordance with articles 5, 6, 7 and 9" is punishable, in accordance with section 5 of the mentioned article 83 of the aforementioned GDPR, "with administrative fines of €20,000,000 maximum or, in the case of a company, an amount equivalent to 4% as maximum of the overall annual total turnover of the previous financial year, opting for the highest amount.

And the LOPDGDD in its article 72 indicates for prescription purposes: "Infringements considered very serious:

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6/12

1. Based on the provisions of article 83.5 of the Regulation (EU)

2016/679 are considered very serious and the infractions that

suppose a substantial violation of the articles mentioned in that and, in

particularly the following:

a) The processing of personal data violating the principles and guarantees

established in article 5 of Regulation (EU) 2016/679.

(...)

III

From the documentation in the file, there are clear indications of

that the defendant violated article 5 of the RGPD, principles related to treatment, in

in relation to article 5 of the LOPGDD, duty of confidentiality, in relation to the

incidence produced: sending to a whatsapp group of the list of the electoral census.

This duty of confidentiality, previously the duty of secrecy, must

understood that its purpose is to prevent leaks of data not

consented to by their owners.

Therefore, this duty of confidentiality is an obligation that falls not

only to the person in charge and in charge of the treatment but to everyone who intervenes in

any phase of the treatment and complementary to the duty of professional secrecy.

IV

In order to establish the administrative fine to be imposed,

observe the provisions contained in articles 83.1 and 83.2 of the RGPD, which

point out:

"1. Each control authority will guarantee that the imposition of fines

administrative actions under this article for violations of this

Regulation indicated in sections 4, 5 and 6 are in each individual case

effective, proportionate and dissuasive.

2. Administrative fines will be imposed, depending on the circumstances

of each individual case, in addition to or as a substitute for the measures contemplated

in article 58, paragraph 2, letters a) to h) and j). When deciding to impose a fine administration and its amount in each individual case will be duly taken into account:

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7/12

a) the nature, seriousness and duration of the offence, taking into account the nature, scope or purpose of the processing operation in question

as well as the number of stakeholders affected and the level of damage and damages they have suffered;

b) intentionality or negligence in the infringement;

c) any measure taken by the controller or processor

to alleviate the damages suffered by the interested parties;

d) the degree of responsibility of the person in charge or of the person in charge of the treatment, taking into account the technical or organizational measures that have applied under articles 25 and 32;

e) any previous infraction committed by the person in charge or the person in charge of the treatment;

f) the degree of cooperation with the supervisory authority in order to put remedying the breach and mitigating the possible adverse effects of the breach;

g) the categories of personal data affected by the infringement;

h) the way in which the supervisory authority became aware of the infringement, in particular if the person in charge or the person in charge notified the infringement and, in such case, what extent;

i) when the measures indicated in article 58, paragraph 2, have been

previously ordered against the person in charge or the person in charge in question

in relation to the same matter, compliance with said measures;

j) adherence to codes of conduct under article 40 or mechanisms

certificates approved in accordance with article 42, and k) any other factor

aggravating or mitigating circumstance applicable to the circumstances of the case, such as

financial benefits obtained or losses avoided, directly or

indirectly, through infringement.

In relation to letter k) of article 83.2 of the RGPD, the LOPDGDD, in its

Article 76, "Sanctions and corrective measures", establishes that:

"two. In accordance with the provisions of article 83.2.k) of the Regulation (EU)

2016/679 may also be taken into account:

a) The continuing nature of the offence.

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8/12

b) The link between the activity of the offender and the performance of treatments of personal data.

c) The profits obtained as a result of committing the offence.

d) The possibility that the conduct of the affected party could have induced the commission of the offence.

e) The existence of a merger by absorption process after the commission of the infringement, which cannot be attributed to the absorbing entity.

f) Affectation of the rights of minors.

g) Have, when it is not mandatory, a delegate for the protection of

h) The submission by the person in charge or person in charge, with voluntary, to alternative conflict resolution mechanisms, in those assumptions in which there are controversies between those and any interested."

data.

In accordance with the transcribed precepts, and without prejudice to what results from the instruction of the procedure, in order to set the amount of the sanction of fine to impose in the present case for the infringement typified in article 83.5.a) of the RGPD for which the defendant is held responsible, in an initial assessment, it is estimated concurrent the following factors:

The merely local scope of the treatment carried out by the entity claimed.

The number of people affected by the offending conduct, members of the electoral census of the Ilunion company.

There is no evidence that the respondent entity has adopted measures to prevent the produce similar incidents, in light of the response sent to this body.

There is no evidence that the defendant had acted maliciously, although the performance reveals a lack of diligence.

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9/12

The link between the activity of the offender and the performance of treatment of Personal data.

The claimed entity is an unrepresentative union.

Therefore, as stated,

By the Director of the Spanish Data Protection Agency,

HE REMEMBERS:

1. START A SANCTIONING PROCEDURE for the ASSOCIATION OF

BARCELONA AIRPORT SECURITY GUARDIANS with NIF

G65350316, for the alleged infringement of article 5.1.f) of the RGPD, sanctioned

in accordance with the provisions of article 83.5.a) of the aforementioned RGPD.

2. APPOINT R.R.R. Instructor and Secretary to S.S.S., indicating that

any of them may be challenged, where appropriate, in accordance with the provisions of the

Articles 23 and 24 of Law 40/2015, of October 1, on the Legal Regime of the Sector

Public (LRJSP).

3. INCORPORATE to the disciplinary file, for evidentiary purposes, the complaint

filed by the complainant and her documentation, the documents obtained and

generated by the Inspection Services during the preliminary investigation phase, as well as

such as the report of previous inspection actions; documents all of them

make up the file.

4. THAT for the purposes provided in art. 64.2 b) of Law 39/2015, of 1

October, of the Common Administrative Procedure of the Public Administrations

(LPACAP), and article 127 letter b) of the RLOPD, the penalty that may apply for

the offense described would be 3,000 euros (three thousand euros), without prejudice to what

result of the instruction.

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5. NOTIFY this Agreement to ASSOCIATION OF WATCHMEN OF

BARCELONA AIRPORT SECURITY with NIF G65350316,

expressly indicating their right to a hearing in the procedure and

granting him a period of TEN WORKING DAYS to formulate the allegations and

Propose the tests you consider appropriate. In his pleadings

You must provide your NIF and the procedure number that appears in the heading

of this document.

Likewise, in accordance with articles 64.2.f) and 85 of the LPACAP,

informs that, if it does not make allegations within the term of this initial agreement, the

The same may be considered a resolution proposal.

You are also informed that, in accordance with the provisions of article

85.1 LPACAP, may acknowledge its responsibility within the term granted for the

formulation of allegations to this initial agreement which will entail a

reduction of 20% of the sanction to be imposed in the present

procedure, equivalent in this case to 600 euros. With the application of this

reduction, the sanction would be established at 2,400 euros, resolving the

procedure with the imposition of this sanction.

Similarly, you may, at any time prior to the resolution of the

present procedure, carry out the voluntary payment of the proposed sanction,

in accordance with the provisions of article 85.2 LPACAP, which will mean a

reduction of 20% of the amount of the same, equivalent in this case to 600 euros.

With the application of this reduction, the penalty would be established at 2,400

euros and its payment will imply the termination of the procedure.

The reduction for the voluntary payment of the sanction is cumulative to the one

It is appropriate 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 pay
volunteer of the amount referred to in the preceding paragraph may be made at any
time prior to resolution. In this case, if it were appropriate to apply both
reductions, the amount of the penalty would be established at 1,800 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 the event that you choose to proceed with the voluntary payment of any of the
amounts indicated above (2,400 euros or 1,800 euros), in accordance with the
provided for in article 85.2 referred to, we indicate that you must make it effective by
your deposit in the restricted account number ES00 0000 0000 0000 0000 0000 open to
name of the Spanish Data Protection Agency at CAIXABANK Bank,
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
welcomes

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11/12

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

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.

Once this period has elapsed, it will expire and, consequently, the

file of proceedings; 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.

Director of the Spanish Data Protection Agency

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: On July 31, 2020, the claimant has proceeded to pay the

SECOND

sanction in the amount of 1800 euros making use of the two reductions provided

in the Startup 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

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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.

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12/12

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.

According to what was stated,

the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: TO DECLARE the termination of procedure PS/00188/2020, of

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

SECOND: NOTIFY this resolution to the ASSOCIATION OF WATCHMEN OF BARCELONA AIRPORT SECURITY.

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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Director of the Spanish Data Protection Agency

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