

859-240719

Procedure No.: PS/00284/2019

RESOLUTION R/00487/2019 TERMINATION OF THE PROCEDURE BY

VOLUNTARY PAYMENT

In sanctioning procedure PS/00284/2019, instructed by the Agency

Spanish Data Protection Authority to the entity LA SALA 2015 S.L.U. (ROOM FIFTEEN),

having regard to the complaint filed by the following complainant(s): Ms. A.A.A. (BBB;

C.C.C.; D.D.D.), and based on the following,

BACKGROUND

FIRST: On September 2, 2019, the Director of the Spanish Agency

of Data Protection agreed to initiate a sanctioning procedure against the LA entity

ROOM 2015 S.L.U. (ROOM FIFTEEN), through the Agreement that is transcribed:

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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: Mrs. A.A.A. (B.B.B.; C.C.C.; D.D.D.) (hereinafter, the claimants) with

On March 18, 2019, they filed a claim with the Spanish Agency for

Data Protection, motivated by the processing of data carried out through

cameras of a video surveillance system whose owner identifies as LA SALA 2015

S.L.U. (ROOM FIFTEEN) with NIF B09566266 (*hereinafter the claimed) installed in

***ADDRESS 1

The reasons on which the claim is based are the following "the establishment denounced has cameras in various locations, without there being a poster informative clearly indicating the identity of the person responsible for the installation (...)"-folio nº 1--.

"Display of images obtained by the video-surveillance cameras at the responsible for the company where we work, covers on a mobile device, with the We believe we have the sole intention of extorting ourselves in some way" (folio nº 1).

Together with the claim, it provides documentary evidence (photograph No. 1) of the installation of the cameras in the reviewed place.

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Sworn statement from the person in charge of the company where we work (Doc. nº two).

SECOND: 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.

THIRD: On 03/29/19, the facts are TRANSFERRED to the entity denounced, so that it may express in law what it deems appropriate, stating as "notified" in the computer system of this Agency.

FOURTH: On 05/27/19, a reply is received from the accused party regarding the

facts reported by this body.

“Photographs of the informative poster Annex I are attached.

For this, the documentation provided by the security company that

I install the cameras: Grupo Sistemas de Seguridad 8x8, in which it is detailed in the

Annex II where the cameras are installed, the type of camera and the invoice.

For this we attach the images of the scope of the cameras and the monitor in

Annex III.

The monitor is in a locked basement storage room and locked in a

Rack. It is password protected and only the legal representative of

the company: E.E.E.”

FOUNDATIONS OF LAW

Yo

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

control authority, and as established in art. 47 of the Organic Law 3/2018, of

December 5, Protection of Personal Data and guarantee of rights

(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 03/18/19 by

means of which the installation of a system of

video-surveillance cameras, without having the obligatory informative poster to the

appropriate legal effects.

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The cameras installed by individuals must comply with the requirements demanded in the regulations in force, and the person responsible for the installation must be able to prove such extreme before this organism.

Cameras must be permanently oriented towards your property individuals, not affecting the privacy of the adjoining neighbors and/or passers-by that pass through the area.

Likewise, they must have an informative poster in a visible area informing that it is a video-monitored area and have form(s) inside the establishment available to customers who may require it.

In no case will the use of surveillance practices be admitted beyond the environment object of the installation and in particular, not being able to affect the spaces surrounding public, adjoining buildings and vehicles other than those accessing the guarded space.

Security cameras installed in private spaces will not be able to obtain images of public spaces, the security function of public spaces corresponds exclusively to the State Security Forces and Bodies, not to Private Security Companies.

The Spanish Agency for Data Protection in its Resolution R/00818/2012 of 18 May indicates:

"The treatment of images in public places can only be carried out, unless government authorization concurs, by the Forces and Corps of Security".

III

For information purposes only, it is worth remembering some of the requirements that must comply with the processing of images through a video surveillance system

to comply with current regulations:

- Respect the principle of proportionality.

- When the system is connected to an alarm center, you can only

be installed by a private security company that meets the requirements

contemplated in article 5 of Law 5/2014 on Private Security, of April 4.

- The video cameras will not be able to capture images of the people who

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.

- The duty to inform those affected provided for in article

12 of the RGPD 2016/679, of April 27, 2016, in the terms referred to both in the

cited article, as in articles 13 and 14 of said rule, resulting from the application

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-by not contradicting the provisions of the aforementioned Regulation-, the manner provided in the

Article 3 of Instruction 1/2006, of November 8, of the Spanish Agency for

Data Protection, on the Processing of Personal Data for the Purpose of

Surveillance through Camera Systems or Video Cameras (Instruction 1/2006, of 8

of November, of the Spanish Data Protection Agency).

Specifically, it must:

1. Place at least one informative badge in the video-monitored areas

located in a sufficiently visible place, both in open spaces and closed.

In accordance with the provisions of articles 13 and 14 of the Regulation (EU) 2016/679, of April 27, 2016, in the informative sign previously mentioned must identify, at least, the existence of a treatment, the identity of the person in charge and the possibility of exercising the rights provided in these precepts.

2. Keep the information to which it refers available to those affected the aforementioned Regulation (EU) 2016/679, of April 27, 2016.

IV

In accordance with the evidence available at the present time of agreement to initiate the sanctioning procedure, and without prejudice to what results from the instruction, it is considered that the person claimed has a video-surveillance system, that obtains images disproportionately of the public sidewalk, without authorization for it.

The images provided by the defendant on 05/27/19 prove the uptake of the public sidewalk located in front of your establishment, lacking the competence necessary to carry it out, given that it is only reserved for the Forces and State Security Corps.

The art. 5.1 c) RGPD provides: "Personal data will be:

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

Article 83 section 5 of the RGPD provides the following:

"The infractions of the following dispositions will be sanctioned, in accordance with the 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;

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Likewise, it is considered appropriate to graduate the sanction to be imposed in accordance with the
following criteria established by article 83.2 of the RGPD:

- The impact of the recordings on pedestrians, who are
controlled by the establishment without just cause (art. 83.2 a) RGPD).
- The infraction is considered to have been committed by way of negligence, in the belief that
the possibility of having outside tables, allows you to record public space,
matter that is not allowed (art. 83.2 b) RGPD).

However, it is taken into account that it is a small establishment,
that the impact on the rights of third parties is reduced, as well as the collaboration
with this body, to propose a sanction located on the lowest scale
for this type of infraction, which is estimated at the amount of €1,500 (one thousand five hundred
Euros), without prejudice to what happens during the investigation.

Regardless of the foregoing, the voluntary payment and acknowledgment
voluntary liability, which would further reduce the proposed sanction, not
exempts from accrediting the reorientation of the outer chamber (only towards the closing area or
entrance door of the establishment) providing a photograph (date and time) of such
extreme.

Therefore, as stated,

By the Director of the Spanish Data Protection Agency, IT IS AGREED:

FIRST: START A SANCTIONING PROCEDURE against LA SALA 2015 S.L.U.

(ROOM FIFTEEN), with NIF B09566266, for the alleged infringement art. 5.1 b) GDPR, typified as an infringement in art. 83.5 a) RGPD, being punishable in accordance with art. 58.2 GDPR.

SECOND: APPOINT F.F.F. as Instructor, and Secretary, if applicable, G.G.G.

indicating that any of them may be challenged, as the case may be, in accordance with established in articles 23 and 24 of Law 40/2015, of October 1, on the Regime Legal Department of the Public Sector (LRJSP).

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

FIFTH: 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, the sanction that could correspond would be €1,500 (One thousand five hundred Euros) without prejudice of what results from the instruction.

SIXTH: NOTIFY this agreement to the denounced entity-- LA SALA 2015 S.L.U. (ROOM FIFTEEN)--, with NIF B09566266, granting a hearing period of ten working days to formulate the allegations and present the evidence that

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deem convenient. In your statement of allegations you must provide your NIF and the procedure number at the top of this document.

If within the stipulated period it does not make allegations to this initial agreement, the

The same may be considered a resolution proposal, as established in the

Article 64.2.f) of Law 39/2015, of October 1, on Administrative Procedure

Common to 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

set at €1,200 (One Thousand Two Hundred 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, which

which will mean a reduction of 20% of its amount. With the application of this

reduction, the sanction would be established at €1,200 (one thousand two hundred 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 €900 (Nine 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 the event that you choose to proceed with the voluntary payment of any of the amounts indicated above €1,200 or €900 must be made effective by your deposit in the account number ES00 0000 0000 0000 0000 opened in the name of the Agency Spanish Data Protection Agency at Banco 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 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 performances; 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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SECOND: On date ***DATE.1 the entity LA SALA 2015 S.L.U. (ROOM FIFTEEN)

has proceeded to pay the fine in the amount of €900 (Nine hundred euros)

making use of the reduction(s) provided for in the Start Agreement, which entails the

waiver of any administrative action or recourse against the sanction and

acknowledgment of responsibility.

FOUNDATIONS OF LAW

Yo

The Director of the Spanish Data Protection Agency is competent

to sanction the infractions of the Organic Law 15/1999, of December 13, of

Protection of Personal Data (hereinafter LOPD), in accordance with the

established in article 37.g), in relation to article 36, both of the aforementioned

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

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"

The foregoing without prejudice to reminding the accused party that they must prove the modification of the angle of the external camera (eg sending the documentation with reference to the assigned procedure number), so that no space is captured public, being able to incur a new administrative responsibility in case of ignore the recommendations of this body.

According to what was stated,

the Director of the Spanish Data Protection Agency RESOLVES

FIRST: DECLARE

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

the termination of procedure PS/00284/2019, of

SECOND: NOTIFY this resolution to LA SALA 2015 S.L.U. (LIVING ROOM FIFTEEN).

In accordance with the provisions of section 2 of article 37 of the LOPD,

This Agreement will be made public, once it has been notified to the interested parties. The publication will be carried out in accordance with the provisions of Instruction 1/2004, of 22 December, of the Spanish Agency for Data Protection on the publication of their Resolutions and in accordance with the provisions of article 116 of the regulations of development of the LOPD approved by Royal Decree 1720/2007, of December 21.

They may file a 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, regulatory of the Contentious-administrative Jurisdiction, in the term of two months from the day following the notification of this resolution, as provided for in article 46.1 of the aforementioned legal text.

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