

936-031219

□ Procedure No.: PS/00271/2019

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RESOLUTION R/00630/2019 TERMINATION OF THE PROCEDURE

BY VOLUNTARY PAYMENT

In sanctioning procedure PS/00271/2019, 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 October 28, 2019, 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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948-230919

Procedure no.: PS/00271/2019

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: On April 3, 2019, it had entry in this Spanish Agency of

Data Protection a brief presented by Don B.B.B. (*hereinafter the

claimant), through which he makes a claim against A.A.A. with NIF ***NIF.1 (in

hereinafter, the claimed), for the installation of a video surveillance system installed

at ***ADDRESS.1, with indications of a possible breach of the provisions

in article 5.1 c) RGPD.

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The reasons that support the claim are "installation of a video-surveillance cameras" that allegedly controls employees and clients of the establishment, without complying with the regulations in force.

"That the company has a system of video-surveillance cameras and allegedly hidden microphones for the control of all staff (both customers as workers. That on more than one occasion we received calls about things from the I work through what is seen with the cameras"—folio nº 1--.

Provide documentary evidence (Annex I-Photographs) that prove the installation of the cameras, without observing the mandatory information poster.

The cameras are located inside the hotel establishment, so that they are located at the reception, in the laundry area, upstairs corridors and of transit to the rooms of the hostel, without an informative sign, or

It is stated that they have the mandatory informative form available to the clients of the same.

SECOND: Prior to the acceptance of this claim for processing, it is transferred the claimed, in accordance with the provisions of article 65.4 of the Law Organic 3/2018, of December 5, on the Protection of Personal Data and guarantee of digital rights (hereinafter, LOPDGDD). The result of this action is describes below.

THIRD: The claim was admitted for processing by resolution of July 12 of 2019.

FOURTH: It is recorded in the information system of this Agency that it proceeded to TRANSFER the initial claim to the one reported on 05/08/19, without no answer has been given to that effect.

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FOUNDATIONS OF LAW

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By virtue of the powers that article 58.2 of Regulation (EU) 2016/679

(General Data Protection Regulation, hereinafter RGPD), recognizes each

Control Authority, and according to the provisions of articles 47, 48.1, 64.2 and 68.1 of the

LOPDGDD, the Director of the Spanish Data Protection Agency is

competent to initiate and resolve this procedure.

II

In the present case, we proceed to analyze the claim dated 04/03/19 where

The following is transferred by the complainant:

“installation of a video-surveillance camera system” that allegedly

controls employees and clients of the establishment, without adjusting to the regulations in vigor.

Anyone who installs a camera system is responsible for ensuring that it is

adjustment to current legislation, having to prove its legality.

The facts described suppose an affectation to article 5.1 b) RGPD "The data personal will be:

b) collected for specific, explicit and legitimate purposes, and will not be processed

subsequently in a manner incompatible with those purposes; according to article 89, paragraph 1, the further processing of personal data for archiving purposes in public interest, scientific and historical research purposes or statistical purposes are not deemed incompatible with the original purposes ("purpose limitation");

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As in other issues that have to do with data protection, for the

Obtaining images of clients, workers or anyone who is in the facilities of our company, it is necessary to have a legitimate basis for the obtaining them.

Regarding the installation of security cameras in companies for the control of work, the labor regulations establish, in article 20 of the Statute of Workers, that "the employer may adopt the measures he deems most appropriate surveillance and control measures to verify compliance by the worker with their labor obligations and duties, keeping in its adoption and application the consideration due to their human dignity and taking into account the real capacity of disabled workers, if any".

This power of surveillance and control that the Spanish labor legislation grants to the employer, is partially limited by the obligation to issue a report by the Company Committee in advance with regard to the "implementation or review of work organization and control systems".

In any case, workers must be informed of the purpose of the treatment, not having to obtain images of reserved spaces or be oriented

directly to their workstation or screen where they work.

Likewise, the installation of video cameras at work must respond

to the principle of proportionality. That is, the end pursued must justify the measures taken.

III

In accordance with the foregoing, the processing of images through a

video surveillance system, to be in accordance with current regulations, must comply with the following requirements:

- Respect the principle of proportionality.

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- 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 people who are

outside the private space where the video surveillance system is installed, since

the treatment of images in public places can only be carried out, unless

Government authorization concurs, by the Security Forces and Bodies. Either

spaces owned by third parties may be captured or recorded without the consent of

their owners, or, where appropriate, of the people who are in them.

This rule admits some exceptions since, on some occasions, for the

protection of private spaces, where cameras have been installed on facades or in

inside, it may be necessary to ensure the purpose of security recording

of a portion of the public highway. That is, cameras and camcorders installed with security purposes may not obtain images of public roads unless it is essential for said purpose, or it is impossible to avoid it due to the location of those and, extraordinarily, the minimum space for said purpose. Therefore, the cameras could exceptionally capture the portion minimally necessary for the intended security purpose.

- The duty to inform those affected provided for in the articles 12 and 13 of the RGPD, resulting from application -by not contradicting the provisions of the aforementioned Regulation-, the manner provided for in article 3 of the Instruction 1/2006, of November 8, of the Spanish Agency for the Protection of Data, on the Processing of Personal Data for Surveillance Purposes through Camera or Video Camera Systems.

Specifically, it must be placed in the video-monitored areas, at least one informative badge located in a sufficiently visible place, both in spaces open and closed, in which at least the existence of a treatment, the identity of the person in charge and the possibility of exercising the rights provided for in these regulations. Likewise, it must be kept available to the affected the information referred to in the aforementioned RGPD.

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- The person in charge must keep a record of treatment activities carried out under its responsibility, including the information to which it makes reference article 30.1 of the RGPD.

- The installed cameras cannot obtain images from private space of third party and/or public space without duly accredited justified cause, nor can affect the privacy of passers-by who move freely through the area. No this allowed, therefore, the placement of cameras towards the private property of neighbors with the purpose of intimidating them or affecting their private sphere without just cause.
- 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.

In relation to the foregoing, to facilitate the consultation of interested parties, the Spanish Agency for Data Protection offers through its website

[<https://www.aepd.es>] access to data protection legislation

including the RGPD and the LOPDGDD (section “Reports and resolutions” / “normative”), as well as the Guide on the use of video cameras for security and other purposes, as well as the Guide for compliance with the duty to inform (both available in the “Guides and tools” section).

It is also of interest, in case of carrying out data processing of low risk, the free tool Facilita (in the “Guides and tools” section), which through specific questions, it allows to assess the situation of the person in charge regarding the processing of personal data that it carries out, and where appropriate, generate various documents, informative and contractual clauses, as well as an annex with indicative security measures considered minimal.

IV

The corrective powers of the Spanish Protection Agency

of Data, as a control authority, are established in article 58.2 of the RGPD.

Among them are the power to sanction with a warning -article 58.2

b)-, the power to impose an administrative fine in accordance with article 83 of the
RGPD -article 58.2 i)-, or the power to order the person in charge or in charge of the

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treatment that the treatment operations comply with the provisions of the
GDPR, when applicable, in a certain way and within a certain period
specified -article 58. 2 d)-.

According to the provisions of article 83.2 of the RGPD, the measure provided for in the
Article 58.2 d) of the aforementioned Regulation is compatible with the sanction consisting of
administrative fine.

Without prejudice to the provisions of article 83 of the RGPD, the aforementioned Regulation
has in its art. 58.2 b) the possibility of sanctioning with a warning, in relation
with what is stated in Considering 148:

“In the event of a minor offence, or if the fine likely to be imposed
would constitute a disproportionate burden for a natural person, rather than
sanction by means of a fine, a warning may be imposed. must however
Special attention should be paid to the nature, seriousness and duration of the infringement, its
intentional nature, to the measures taken to alleviate the damages suffered,
the degree of liability or any relevant prior violation, the manner in which
that the control authority has been aware of the infraction, compliance
of measures ordered against the person responsible or in charge, adherence to codes of
conduct and any other aggravating or mitigating circumstance.”

In accordance with the evidence available in this moment of agreement to initiate the sanctioning procedure, and without prejudice to what result of the investigation, it is considered that the exposed facts do not comply with the established in art. 5.1 b) RGPD, by having an interior camera system that does not comply with current regulations.

The art. 83.5 a) RGPD provides the following: "Infringements of the following provisions will be sanctioned, in accordance with section 2, with fines administrative fees of EUR 20,000,000 maximum or, in the case of a company, of an amount equivalent to a maximum of 4% of the total annual turnover of the previous financial year, 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 data affected when obtaining images of the interior of the establishment and access to it, treating employee and customer data, without the due information in this regard (art. 83.2 a) RGPD).

-The degree of intentionality, at least negligent, for not informing the employees of the establishment and not collaborating with this Agency at the time timely procedural (art. 83.2 b GDPR).

However, the absence of previous infractions in the matter, as well as that the level of income of the same is unknown, to propose

initially an economic sanction of €6,000 (Six Thousand Euros), being the same

“proportionate” to the nature of the facts transcribed.

Therefore, according to the above,

By the Director of the Spanish Data Protection Agency,

HE REMEMBERS:

FIRST: START A PUNISHMENT PROCEDURE against Ms. A.A.A., with NIF

***NIF.1, for the alleged infringement of article 5.1 b) RGPD, by having a system

of video-surveillance cameras, without it having been explained to this Agency that the

It conforms to the current legality, an infraction typified in art. 83.5 a) GDPR,

being punishable in accordance with art. 58.2 GDPR.

SECOND: APPOINT A.A.A. as instructor, and secretary, if applicable, B.B.B.

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).

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THIRD: INCORPORATE to the disciplinary file, for evidentiary purposes, the

claim filed by the claimant and its documentation, as well as the

documents obtained and generated by the Subdirector General for Inspection of

Data, all of them part of the administrative file.

FOURTH: 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, hereinafter), the sanction that could correspond would be €6,000 (Six Thousand

Euros), without prejudice to what results from the instruction.

Likewise, the imputed infraction, if confirmed, may lead to the imposition of measures in accordance with the provisions of the aforementioned article 58.2 d) of the RGPD.

FIFTH: NOTIFY this agreement to Ms. A.A.A., granting her a term of hearing of ten business days to formulate the allegations and present the tests 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, this initial agreement may be considered a resolution proposal, as established in article 64.2.f) of the LPACAP.

The sanctioning procedure will have a maximum duration of nine months, counting from the date of the start agreement or, where appropriate, of the draft agreement of beginning. 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.

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 4,800 (Four Thousand Eight Hundred Euros), resolving the procedure with the imposition of this sanction.

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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 4,800 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. if it proceeds apply both reductions, the amount of the penalty would be established at €3,600 (€6,000-€1,200+€1,200).

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, you must make it effective by entering the account number ES00 0000 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 entry to the General Subdirectorate of Inspection for continue with the procedure in accordance with the amount entered.

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 November 22, 2019, the respondent has proceeded to pay the

SECOND

the sanction in the amount of 3,600 euros making use of the two planned reductions

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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

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/00271/2019, 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.

Sea Spain Marti

Director of the Spanish Data Protection Agency

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