

□ Procedure No.: PS/00215/2020

## RESOLUTION R/00589/2020 TERMINATION OF THE PROCEDURE FOR PAYMENT VOLUNTEER

In sanctioning procedure PS/00215/2020, instructed by the Spanish Agency for Data Protection to B.B.B., in view of the complaint filed by A.A.A., 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 B.B.B. (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

FIRST: Don A.A.A. (\*hereinafter, the claimant) dated April 30, 2020 filed a claim with the Spanish Data Protection Agency. The claim is directed against B.B.B. with NIF \*\*\*NIF.1 (hereinafter, the claimed one). The reasons on which the claim is based are "presence of video-surveillance cameras public space, not oriented towards their private property" (folio nº 1).

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Together with the claim, it provides documentary evidence (Annex I) that proves the presence of the camera(s) on the outside of the facade oriented towards space public.

SECOND. On 06/24/20, this Agency received a written statement of allegations from the defendant alleging the following:

"The guarded area is informed by means of an informative poster where informs of the email address where you can request information on the images. Although it should be noted that the images are not stored or displayed. In fact, a monitor had to be installed to capture the image and be able to reported.

The cameras have been installed to cover the access area to the house and industrial warehouse where all the material and tools of my activity are housed business.

They have been installed avoiding exceeding the limits set by law and preventing the infrared cameras make the images null by saturating the whites.

As stated above, images are not stored visualize and the installation of the cameras in addition to eluding the robberies is used as Company test lab to check equipment. (Attached image of the facility)".

## 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.

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II

In the present case, the claim dated 04/30/20 is examined by me-

from which the “presence of video-surveillance cameras” is transferred as the main fact.

lancia towards public space” (folio nº 1).

The art. 5.1 c) RGPD 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").

It should be remembered that individuals are responsible for ensuring that the systems installed

felled 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.

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

In any case, the cameras should preferably be oriented towards the space

particular, avoiding intimidating neighboring neighbors with this type of device, as well

how to control their transit areas 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 intimidated by it in the belief of being the subject of permanent recording.

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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.

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 a video system surveillance oriented towards public space, affecting the rights of third parties without just cause.

In the frames provided by the defendant (Annex I), it is confirmed that

tion of images of the width of the public sidewalk, so that it is observed even cars parked on public roads, without any kind of masking.

The known facts could constitute an infraction, attributable to the claimed, for violation of the content of article 5.1 c) RGPD, previously transcribed.

The installation of video cameras in public places, both fixed and mobile,

is the exclusive responsibility of the Security Forces and Bodies, governing the

treatment of said images by its specific legislation, contained in the Organic Law

ca 4/1997, of August 4, and its Development Regulation, without prejudice to the fact that it is

applicable, where appropriate, the provisions of the RGPD, in aspects such as the adoption of the security measures resulting from the analysis of risks as well as the record of treatment activities.

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.

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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;

When motivating the sanction to be imposed, the following is taken into account:

- the nature, seriousness and duration of the infringement, as it is a system that allows to obtain images of public space, without just cause, proceeding to “process data of third parties” (art. 83.2 a) RGPD).
- The intention or negligence in the infringement (art. 83.2 b) RGPD).

For all these reasons, it is considered correct to propose an initial sanction encrypted in the amount of €2,000 (Two Thousand Euros), a sanction located on the lowest scale for this type of in-

administrative fractions, given the seriousness of the facts described.

All this without prejudice to proving the legality of the system once it has adopted taken the corrective measures it deems pertinent, to avoid the capture of space public dece.

Therefore, based on the foregoing,

By the Director of the Spanish Data Protection Agency,

HE REMEMBERS:

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FIRST: START A PUNISHMENT PROCEDURE against the investigated B.B.B., with NIF \*\*\*NIF.1, for the alleged infringement of art. 5.1 c) RGPD, infringement typified in the art. 83.5 a) RGPD, being punishable in accordance with article 58.2 RGPD.

SECOND: APPOINT C.C.C. and, as secretary, to D.D.D., indi- stating that any of them may be challenged, where appropriate, in accordance with the provisions ed 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 €2,000 (Two Thousand Euros), notwithstanding the

resulting from the instruction.

SIXTH: NOTIFY this agreement to B.B.B., with NIF \*\*\*NIF.1, granting it a hearing period of ten business days to formulate the allegations and present tests you deem appropriate. In your statement of arguments, you must provide your NIF and the procedure number that appears at the top of this document. ment.

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 €1,600, 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 1,600 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 1,200 euros (one thousand two 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 €1,600 or €1,200, you must make it effective by depositing it in the account nº ES00 0000 0000 0000 0000 0000 opened in the name of the Spanish Agency for Pro-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 is accepted.

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 November 7, 2020, the claimant has proceeded to pay the

SECOND

the sanction in the amount of 1,200 euros making use of the two reductions provided for in the Start Agreement transcribed above, which implies the acknowledgment of 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/00215/2020, 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, 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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