

□ File No.:

RESOLUTION OF TERMINATION OF THE PROCEDURE FOR PAYMENT

VOLUNTEER

Of the procedure instructed by the Spanish Agency for Data Protection and based on
to the following

BACKGROUND

FIRST: On September 26, 2022, the Director of the Spanish Agency
of Data Protection agreed to start a sanctioning procedure against A.A.A. (in
forward the claimed party). Once the initiation agreement has been notified and after analyzing the
allegations presented, on December 12, 2022, the proposal was issued
resolution that is transcribed below:

<<

File No.: EXP202203117

PROPOSED RESOLUTION OF SANCTION PROCEDURE

Of the procedure instructed by the Spanish Agency for Data Protection and based on
to the following:

BACKGROUND

FIRST: Mrs. B.B.B. (hereinafter, the claiming party) dated March 10,
2022 filed a claim with the Spanish Data Protection Agency against
D.A.A.A. with NIF ***NIF.1 (hereinafter, the claimed party), for the installation of a
video surveillance system located at ***ADDRESS.1, with indications of a
possible non-compliance with the provisions of article 5.1.c) of Regulation (EU)
2016/679 (General Data Protection Regulation, hereinafter GDPR).

The claiming party states that she was married to the claimed party and that for
court ruling proceeded to attribute to it the ground floor of the family home, and the

first floor of the same to the claimant, leaving the basement and the attic of said address, as common areas. It indicates that on the 23rd of February 2022 the claimed party has installed, in the exterior window of the plant first of the building where the house of both is located, a chamber of video surveillance that is oriented to common areas of the house, as well as to areas proprietary data belonging to the complaining party, without authorization to do so.

Provide divorce decree and images of the location of the camera.

SECOND: In accordance with article 65.4 of Organic Law 3/2018, of 5 December, Protection of Personal Data and guarantee of digital rights (in forward LOPDGDD), said claim was transferred to the claimed party, for

C / Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

2/10

to proceed with its analysis and inform this Agency within a month of the actions carried out to adapt to the requirements established in the regulations of Data Protection.

The transfer, which was carried out in accordance with the regulations established in Law 39/2015, of October 1, of the Common Administrative Procedure of the Administrations Public (hereinafter, LPACAP), was collected on March 28, 2022 as appears in the acknowledgment of receipt issued by the postal service that works in the proceedings.

Notwithstanding the foregoing, since no response has been received from the defendant, it is proceeded to reiterate the transfer of the claim, being returned to this Agency by the postal service dated June 7, 2022 with the annotation "Returned to origin

for surplus (Not withdrawn in office)".

THIRD: On June 10, 2022, in accordance with article 65 of the

LOPDGDD, the complaint filed by the complaining party was admitted for processing.

FOURTH: On September 26, 2022, the Director of the Spanish Agency

of Data Protection agreed to initiate disciplinary proceedings against the claimed party,

pursuant to the provisions of articles 63 and 64 of the LPACAP, for the alleged

violation of article 5.1.c) of the GDPR, typified in article 83.5 of the GDPR.

FIFTH: Notified of the aforementioned start-up agreement in accordance with the rules established in

the LPACAP, the claimed party submitted a pleading in which, in summary,

stated that "(...) the installation of a video surveillance camera with

the sole purpose of preserving the security of a property of my property, located in the

vicinity of the house."

"(...) the camera only offers images of the aforementioned farm, trying to make the

plan includes only the entrance, the bottom and the lateral limits (...)

The lands located to the left and right are in an evident state of lack of

use, the area immediately closest to the camera is also the property of the

saying and is closed, and the road located at the bottom is privately owned

(having a legal character of service or service road) (...). For all this, no

is affected by the taking of images neither the public highway, nor land

owned by third parties in which some type of particular activity is carried out. (...)

(...) point out that the system only transmits images and does not keep them.

(...) the deponent understands that there is no violation of the principle of minimization

of data, since it is easy to verify that the images are only taken from a good

exclusive ownership and with null affectation of rights of third parties or of the public highway".

After examining the photographs provided by the claimant, the camera captures

images of areas that are not owned by you (road located in the background and land

located to the left and right), so it is considered to be excessive and does not comply with the provisions of the data protection regulations.

C / Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

3/10

SIXTH: On November 22, 2022, the instructor of the procedure agreed the opening of a test practice period, being considered as incorporated into the file, as well as the documents provided by the claimed party.

SEVENTH: A list of documents in the file is attached as an annex.
procedure.

Of the actions carried out in this procedure and of the documentation in the file, the following have been accredited:

PROVEN FACTS

FIRST: Existence of a video surveillance system installed *** ADDRESS.1, with the camera capable of capturing land that is not owned by the party claimed.

SECOND: The person in charge of the video surveillance system is D.A.A.A. with NIF ***NIF.1.

THIRD: The claimant provides photographs of what the installed camera captures, noting that it could capture areas owned by third parties, beyond the proportionality to the purpose of monitoring the security of your property.

FUNDAMENTALS OF LAW

Yo

In accordance with the powers that article 58.2 of the GDPR grants to each authority of

control and as established in articles 47, 48.1, 64.2 and 68.1 of the LOPDGDD,

The Director of the Agency is competent to initiate and resolve this procedure

Spanish Data Protection.

Likewise, article 63.2 of the LOPDGDD determines that "Procedures

processed by the Spanish Data Protection Agency will be governed by the provisions

in Regulation (EU) 2016/679, in this organic law, by the provisions

regulations dictated in its development and, insofar as they do not contradict them, with character

subsidiary, by the general rules on administrative procedures."

II

In this case, it is appropriate to examine the claim filed with this Agency, according to

for which the claimed party is responsible, in which it is stated that the Chamber of

video surveillance installed in ***ADDRESS.1, due to its positioning and characteristics

it seems that it could cover a part of third-party properties, beyond the strict

access that due to the surveillance of the property could be considered adequate.

Article 5.1.c) of the GDPR provides that personal data shall be "adequate,

pertinent and limited to what is necessary in relation to the purposes for which they are

treated ("data minimization")."

C / Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

4/10

This infringement is typified in article 83.5 of the GDPR:

Violations of the following provisions will be penalized, according to

with paragraph 2, with administrative fines of maximum EUR 20,000,000 or,

in the case of a company, an amount equivalent to a maximum of 4% of the

total annual global business volume of the previous financial year, opting for

the highest amount:

to)

the basic principles for the treatment, including the conditions for the

consent under articles 5, 6, 7 and 9; [...].”

For the purposes of the limitation period of the infringement, it is considered very serious

and prescribes after three years, in accordance with article 72.1 of the LOPDGDD, which establishes

that:

According to what is established in article 83.5 of Regulation (EU) 2016/679

are considered very serious and will prescribe after three years the infractions that suppose

a substantial violation of the articles mentioned therein and, in particular, the

following:

a) The processing of personal data in violation of the principles and guarantees

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

(...)”

II

In accordance with the evidence available in this

sanctioning procedure, it is considered that the claimed party has ordered a

video surveillance camera that captures images not only of your property, but also

appear, in the images provided by the defendant himself, the public thoroughfare and areas

adjoining

Regarding the allegations presented, it is appropriate to make the following

considerations:

Regarding the fact that "The lands located to the left and right are

□

are in an obvious state of disuse" cannot be accepted as

Justification of the alleged lack of use for the claimed party to capture images of third-party properties without authorization.

Regarding the fact that "(...) the road located in the background is of

□

private ownership (having in legal character of serventia or path of service) (...). For all this, it is not affected by the taking of images or public roads, nor land owned by third parties in which develop some type of particular activity", it is necessary to take into account what provided in article 22.2 of the LOPDGDD, which establishes that "2. Images of public roads may only be captured to the extent that It is essential for the purpose mentioned in the previous section.

C / Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

5/10

However, it will be possible to capture the public road in an extension superior when necessary to guarantee the safety of goods or strategic facilities or infrastructures linked to transport, without, in any case, implying the capture of images of inside a private home.

□

Regarding the possibility, protected by article 22 of the LOPDGDD that, in order to guarantee the safety of persons and property, that authorizes the collection of public roads to the extent that it is essential, point out that, indeed, this possibility is collected

for, in accordance with section 1 of the aforementioned article "natural persons or legal, public or private.

Now, what is decisive at this point, for there to be a conjunction with the principle of data minimization stated in the Article 5.1.c) of the GDPR, which provides that personal data will be "adequate, relevant and limited to what is necessary in relation to the purposes for which they are processed ("data minimization").", is that it must be "to the extent that it is essential", which means that, if for security reasons it was necessary to capture a public thoroughfare —faculty which is generally attributed to the Forces and Corps of Security in accordance with the provisions of Organic Law 4/1997 by which regulates the use of video cameras by the Armed Forces and Bodies Safety in public places and its development regulations—for be the space adjacent to the property (access area or perimeter) this it will have to be reduced to the minimum; in the case of a sidewalk you can capture a portion of it in the part adjacent to that access or perimeter, but not It will not be proportionate to capture the entire width of the same or reach cars parked so that passers-by and motorists who park their vehicles are not unduly affected by their right to the protection of the physical image.

The possibility of expanding the collection of public roads established by the article 22.2, refers to strategic goods or entities (must understand these to those defined as such in the National Catalog of Strategic Infrastructures) or transport infrastructures, category in which the claimed part is not found.

Therefore, in accordance with the foregoing, the defendant is empowered to

have a video surveillance system facing the outside (and even located outside) whose purpose is to guarantee the safety of the well, but taking into account that, in the event of needing capture public roads, this collection must be limited to the minimum essential that it is adjacent to the access and perimeter.

IV.

The corrective powers available to the Spanish Agency for the Protection of Data, as a control authority, are established in article 58.2 of the GDPR. Between

C / Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

6/10

they have the power to impose an administrative fine in accordance with the article 83 of the GDPR -article 58.2 i)-, or the power to order the person responsible or processor that the processing operations comply with the provisions of the GDPR, where applicable, in a certain way and within a certain specified term -article 58. 2 d)-.

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

Based on the foregoing, it is appropriate to propose imposing the sanction of €300 (three hundred euros) for the alleged violation of article 5.1.c) of the GDPR.

That, under the provisions of article 58.2.d) of the GDPR, the claimed party that, within ONE MONTH from the date on which the resolution in so agrees to be notified, proceed to remove the camera that records via

public, to the reorientation of the same reducing the angle of capture, or accredit

that this camera does not capture the public road excessively.

It is noted that not meeting the requirements of this body may be

considered as an administrative offense in accordance with the provisions of the GDPR,

classified as an infraction in its article 83.5 and 83.6, being able to motivate such conduct the

opening of a subsequent administrative sanctioning procedure.

By virtue of this, you are notified of the foregoing, and the procedure is revealed.

so that within TEN DAYS you can allege whatever you consider in your defense and

present the documents and information that it deems pertinent, in accordance with

Article 89.2 of the LPACAP.

In view of the foregoing, the following is issued

PROPOSED RESOLUTION

That by the Director of the Spanish Data Protection Agency D.

A.A.A. with NIF ***NIF.1, for a violation of article 5.1.c) of the GDPR, classified as

Article 83.5 of the GDPR, with a penalty of €300 (three hundred Euros).

Likewise, in accordance with the provisions of article 85.2 of the LPACAP, you will be

informs that it may, at any time prior to the resolution of this

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

It will mean a reduction of 20% of the amount of the same. With the application of this

reduction, the sanction would be established at 240.00 euros and its payment will imply the

completion of the procedure. The effectiveness of this reduction will be conditioned by the

withdrawal or waiver of any administrative action or appeal against the

sanction.

In case you choose to proceed to the voluntary payment of the specified amount

above, in accordance with the provisions of the aforementioned article 85.2, you must do it

effective by entering the restricted account number IBAN: ES00-0000-0000-0000-

0000-0000 (...) open in the name of the Spanish Agency for Data Protection in the

C / Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

7/10

banking entity CAIXABANK, S.A., indicating the reference number in the concept of the procedure that appears in the heading of this document and the cause, for voluntary payment, reduction of the amount of the sanction. You must also send the Proof of admission to the Sub-Directorate General of Inspection to proceed to close The file.

By virtue of this, you are notified of the foregoing, and the procedure is revealed.

so that within TEN DAYS you can allege whatever you consider in your defense and present the documents and information that it deems pertinent, in accordance with Article 89.2 of the LPACAP.

R.R.R.

INSTRUCTOR

926-181022

C / Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

8/10

EXHIBIT

File index EXP202203117

03/10/2022 Claim by B.B.B.

03/18/2022 Transfer of claim to A.A.A.

05/19/2022 Reiteration to A.A.A.

06/10/2022 Communication to B.B.B.

09/26/2022 A. opening to A.A.A.

10/17/2022 Info. Complainant to B.B.B.

10/21/2022 Response to A.A.A.

11/22/2022 Notification p. tests A.A.A.

>>

SECOND: On January 18, 2023, the claimed party has proceeded to pay of the penalty in the amount of 240 euros making use of the reduction provided for in the motion for a resolution transcribed above.

THIRD: The payment made entails the waiver of any action or resource in the against the sanction, in relation to the facts referred to in the resolution proposal.

FOURTH: In the previously transcribed resolution proposal, the acts constituting an infringement, and it was proposed that, by the Director, the responsible for adopting adequate measures to adjust its performance to the regulations, in accordance with the provisions of the aforementioned article 58.2 d) of the GDPR, according to which each control authority may "order the person responsible or in charge of the processing that the processing operations comply with the provisions of the this Regulation, where appropriate, in a certain way and within a certain specified term...".

FUNDAMENTALS OF LAW

Yo

Competence

In accordance with the powers that article 58.2 of Regulation (EU) 2016/679

(General Data Protection Regulation, hereinafter GDPR), grants each control authority and as established in articles 47, 48.1, 64.2 and 68.1 of the Organic Law 3/2018, of December 5, on the Protection of Personal Data and guarantee of digital rights (hereinafter, LOPDGDD), is competent to initiate and resolve this procedure the Director of the Spanish Protection Agency of data.

Likewise, article 63.2 of the LOPDGDD determines that: "The procedures processed by the Spanish Data Protection Agency will be governed by the provisions in Regulation (EU) 2016/679, in this organic law, by the provisions

C / Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

9/10

regulations dictated in its development and, insofar as they do not contradict them, with character subsidiary, by the general rules on administrative procedures."

II

Termination of the procedure

Article 85 of Law 39/2015, of October 1, on Administrative Procedure

Common for Public Administrations (hereinafter, LPACAP), under the heading

"Termination in disciplinary proceedings" provides the following:

"1. Initiated a disciplinary procedure, if the offender acknowledges his responsibility,

The procedure may be resolved with the imposition of the appropriate sanction.

2. When the sanction has only a pecuniary nature or it is possible to impose a

pecuniary sanction and another of a non-pecuniary nature but the

inadmissibility of the second, the voluntary payment by the presumed perpetrator, in

any moment 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 offence.

3. In both cases, when the sanction is solely pecuniary in nature, the

The competent body to resolve the procedure will apply reductions of at least 20% of the amount of the proposed penalty, these being cumulative among themselves.

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 resource against the sanction.

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

According to what has been indicated, the Director of the Spanish Agency for the Protection of Data RESOLVES:

FIRST: DECLARE the termination of the procedure in accordance with the established in article 85 of the LPACAP.

SECOND: TO ORDER A.A.A. so that within one month notify the Agency adopting the measures described in the fundamentals of law of the proposed resolution transcribed in this resolution.

THIRD: 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 the interested parties have been notified.

C / Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

Against this resolution, which puts an end to the administrative process as prescribed by the art. 114.1.c) of Law 39/2015, of October 1, on Administrative Procedure Common of Public Administrations, interested parties may file an appeal administrative litigation before the Administrative Litigation 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 for in article 46.1 of the referred Law.

Mar Spain Marti

Director of the Spanish Data Protection Agency

1331-121222

C / Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es