

□ File No.: PS/00298/2021

## 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 July 19, 2021, the Director of the Spanish Agency for  
Data Protection agreed to initiate a sanctioning procedure against \*\*\*COMMUNIDAD.1 (in  
forward the respondent). Once the start agreement was notified and after analyzing the  
arguments presented, on November 15, 2021 the proposal was issued  
of resolution that is transcribed below:

<<

File number: PS/00298/2021

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

### FACTS

FIRST: A.A.A. (\*hereinafter, the claimant) dated March 18, 2021  
filed a claim with the Spanish Data Protection Agency. The  
claim is directed both against the \*\*\*COMMUNITY.1 and against the company  
DIGITAL ELECTRONIC INSTALATIONS, S.L. (hereinafter, the claimed). The  
The reasons on which the claim is based are succinctly the following:  
“he denounced in the San Blas Police Station the events that occurred in the por-  
such of the property reviewed, on November 23, 2019 at 9:30 p.m.  
The recordings of the cameras were requested both from the Administrator of La  
Community, Mrs. B.B.B.-by email dated December 4, 2019 and by telephone

on several occasions- such as the company Digital Instalaciones Electrónicas, S.L., through-  
official letter agreed by the Investigating Court No. 43 of Madrid, in the judicial proceedings  
cio on minor crimes XXXX/2019, followed against D. C.C.C. for a crime of threatening  
wham

In their response to the aforementioned letter, they stated that their company "does not provide  
nor did it provide services for the storage and conservation of video surveillance images ()  
being responsible in its case for the storage of images the aforementioned Community of  
Owners" and that the images had been deleted because the system was

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2/12

«programmed so that the recordings that are made of video, are overwritten when  
after a month of his generation. For this reason and since this is the only proof of  
what happened there, this party had to withdraw the complaint, producing the file of  
the cause by Order of March 3, 2020 "

Relevant documentation provided by the claimant:

-Copy of both burofaxes sent to the administrator of the community and to  
the company DIGITAL INSTALACIONES ELECTRÓNICAS, S.L.

SECOND: On 08/03/20, a Resolution was issued by the Director of the AEPD proceeding  
giving the Inadmissibility of the claim in the framework of the file with numbering  
E/06462/2020, by not considering the facts subject to transfer as constituting  
administrative offense in the matter at hand.

THIRD: On 08/21/20, a written document is submitted, qualified as an Appeal

Replenishment that ends with the ESTIMATION of the same by means of Date Resolution

08/10/2020.

FOURTH: The General Subdirectorate for Data Inspection proceeded to carry out of previous investigative actions to clarify the facts in matter, by virtue of the investigative powers granted to the authorities of control in article 57.1 of the RGPD, and in accordance with the provisions of Title VII, Chapter I, Second Section, of the aforementioned LOPDGDD.

For this reason, a Report of Previous Actions is started with a reference number E/08159/2020

On 04/30/2021 DIGITAL INSTALACIONES ELECTRÓNICAS, S.L. refer to this Agency the following information and statements:

"1. The images were not delivered, since the application procedure for the same, was not carried out by the interested parties through the correspondence pending request for the exercise of your access rights in accordance with the regulations, but it was made through an email dated 02/28/2018 by the administrator of the community of owners.

2. In no situation do we have access to the recording device, since we follow We always follow the instructions of the data controller, who is the only that can give us access to the place where the recorder of the images is. nes. In the case at hand, we were not given the corresponding indications. tions about it and nobody gave us the entrance.

3. The images are not delivered since we have not received the corresponding one request of the images by court order or at the request of the forces and

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state security forces within a maximum period of 30 days from the date of

I produced the fact for which you request them.”

Provide a copy of the undated "Maintenance Contract", signed by the administrator

of the Community of owners and associated budget "Maintenance Budget"

Advanced Training Only CCTV 4 Cameras” dated 06/08/2018 where it is included

“LOPD procedures” as well as “Unlimited image extractions”, among others.

FIFTH: On July 19, 2021, the Director of the Spanish Agency for Pro-

Data Protection agreed to initiate a sanctioning procedure against the defendant, in accordance with

the provisions of articles 63 and 64 of Law 39/2015, of October 1, on the Procedure

Common Administrative Procedure of Public Administrations (hereinafter, LPA-

CAP), for the alleged infringement of Article 32 of the RGPD, typified in Article 83.5

of the GDPR.

SIXTH: Once the Start Agreement has been notified, a written statement is received dated

08/02/21 by means of which the following is alleged in law:

“That this pleadings brief is presented in a precautionary manner, in order to save

var the administrative period of ten days granted in this regard. This is because,

this party has not had access to the content of the file that has given rise to the

Agreement to Start the Sanctioning Procedure already mentioned.

The sanctioning procedure is the succession of acts through which the

Administration exercises sanctioning power. It is regulated in Law 39/2015, of 1

October, of the Common Administrative Procedure of the Public Administrations,

as a specialty of the common administrative procedure, without prejudice to the regulations

legally specialties of the procedure can be established, being the Law

40/2015, of October 1, of the Legal Regime of the Public Sector, which sets forth the

principles that inform the exercise of sanctioning power.

In summary, the infringement allegedly committed by the \*\*\*COMMUNITY.1 of Madrid, is of a mild nature. For everything previously developed, we understand that the Agreement to initiate the sanctioning procedure, is null and void in accordance with me to art 47.1 a) of Law 39/2015 of October 1, on Administrative Procedure Common of the Public Administrations, insofar as the rights have been violated. fundamental facts of legality and typicity contained in art. 25 of the Constitution Spanish. However, article 47.1 e) of the first legal text would also apply. gal above, since the Agreement to Start the Sanctioning Procedure, is has dictated "totally and absolutely disregarding the legally established procedure or of the norms that contain the essential rules for the formation of the vo- will of the collegiate bodies"

This request was made by the administrator of that Community of Owners, Mrs. B.B.B., by email addressed to that company, on fecha on November 28, 2019 at 11:16 p.m. Doc. No. Y. It is clear that the men- C/ Jorge Juan, 6

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4/12

mentioned company in charge of the recordings and their corresponding custody gave, to the deletion of the same despite the request made by the administrator of the \*\*\* COMMUNITY.1 of Madrid.

It is absolutely unlikely that due to events that occurred on November 23 of 2019, the company in charge of making and guarding the recordings is required, no less than in February 2018. On the contrary, we do prove that, effectively- mind, they were required by the CP today claimed before the AEPD, in a timely manner.

requirement that they ignored. On the other hand, it is true that he admits expressly that said images were deleted when they state that: "3. I don't know deliver the images since we have not received the corresponding request from the images by court order or at the request of the security forces and bodies of the status within a maximum period of 30 days from the occurrence of the event for which the request was made. are the same."

SEVENTH: Attached as an annex is a list of documents in the procedure, remembering their full accessibility for legal purposes opportune.

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

#### PROVEN FACTS

First. The facts bring cause of the initial claim dated 07/14/20 of the reclamante through which he narrates the events that occurred in the lobby of the Building in which she owns a property "The recordings of the cameras are requested- both to the Administrator of the Community, Ms. B.B.B.-by email on 4 December 2019 and by phone on several occasions - as the company Digital Instalaciones Electrónicas, S.L., by means of an official letter agreed by the Court of Instruction No. 43 of Madrid, in the trial records on minor crimes XXXX/2019 (...)" .-Invoice No. 1--.

Second. It is identified as the main responsible \*\*\*COMMUNITY.1.

Third. It is accredited that an email dated 12/04/19 was sent by the Administration farm manager to Doña \*\*\*C.C.C. where the following request is stated "that the aforementioned recording is not erased and is kept at the disposal of the Court and for that purpose The DIGITAL company, in charge of the security of the property, is required".

Fourth. It is accredited that the entity in charge of the treatment was the company

Digital Instalaciones S.L—which argues that it did not deliver the images

genes by “considering that the interested parties did not exercise the right of access in legal form” but through an email by the Administrator of the co-community of owners.

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5/12

Fifth. There is evidence that the Administrator of the farm was (is) Doña B.B.B., the which has not provided the contract signed with the company Digital Instalaciones Eléctrica S.L, limiting its action to sending an email to it, the receipt of which is confirmed by this last.

Sixth. It is proven that the video-surveillance system was operational at the time. moment of the occurrence of the events, carrying out a "processing of the data" as well as what happened in the portal of the property.

## FOUNDATIONS OF LAW

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Before going into the substance of the matter, it is convenient to answer the “Complaint” of lack of remission sion of the Administrative File, noting that the request of the same of the same does not was attended to, it should be noted that the database of this Agency was consulted on the same was referred to the appropriate legal effects.

Furthermore, the legal representative of the Community of owners does not provide an email address for the purpose of sending the required documentation under the terms of article 14.2 letter d) Law 39/2015 (October 1).

In relation to the facts described, they were made clear in the Agreement

of Home object of challenge, being considered the same as "serious" stand-  
subject to a statute of limitations of two years, from the occurrence of the same  
mos.

The initial events occurred on 11/23/2019, the affected party exercising its

Right to block security camera images on 12/04/19

before the Property Administrator-Doña B.B.B..

The claim is filed with this body on 07/14/20 interrupted.

I expect the statute of limitations, which does not reach the year claimed by the claimant,

being Estimated the Appeal for reversal filed by the appellant by means of

Resolution dated 10/08/20, notified in a timely manner.

Finally, it is recalled the reading among others of article 70 LOPDGDD (LO

3/2018, December 5) which provides: "They are subject to the sanctioning regime established

in Regulation (EU) 2016/679 and in this organic law: a) Those responsible

of the treatments".

So that the procedures processed by this body will be governed

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

regulatory provisions issued in its development and, as long as it does not contradict them

gan, on a subsidiary basis, by the general rules on procedures ad-

ministerial (art. 63.2 LOPDGDD).

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6/12

Since May 25, 2018, with the beginning of the application of the General Regulation

General Data Protection (hereinafter RGPD), a single set of



rules directly applicable in all Member States, which are currently complete with the Spanish state regulations, with the entry into force on December 7 of 2018 of the new Organic Law 3/2018, of December 5, on Data Protection Personal and Guarantee of Digital Rights (LOPDGDD).

## II

By virtue of the powers that article 58.2 of the RGPD recognizes to each authority of 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 re-solve this procedure.

## III

In the present case, we proceed to examine the claim dated 03/18/21 of entered in this AEPD by means of which it is transferred as the main fact "the erasure of images of the video-surveillance system by the company Digital Instalaciones Electrónicas S.L" (folio nº 1).

On 11/23/19 some undetermined events occurred on the portal of the estate located at \*\*\*ADDRESS.1, Madrid, which affect the claimant and her husband.

For this reason, the Administration of the Community denounced with copy of the images by email and by phone on several occasions, for the sake of the contribution of the same to the Court of instruction closest to the place of the guys.

The complaining party provides documentary evidence (Annex I) consisting of an email addressed to the Administrator of the estate—Doña B.B.B.—sent in the name and representant's statement "requesting a copy of the video" of the events that occurred in date 11/24/2019 on the property portal.

Neither party has questioned the validity of mail as a valid medium to certify communications between them, accrediting the transfer of the company

application to the designated Administrator of the \*\*\*COMMUNITY.1.

On the part of the Administrator of the estate, it was expressly requested via mail that a copy of the recording of what happened in the portal of the farm, in order to its contribution to the Security Forces and Bodies or, failing that, a Judge of Instruction of the place closest to the place of commission of the facts.

The \*\*\*COMMUNITY.1 is responsible for the installation of the cameras, having the condition of being responsible for the images that are “treated in areas with munes” (art. 4 point 7º RGPD), regardless of the relationship it maintains with the

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7/12

installation company of the system or of the contractual relation that maintains with the Administrator (a) of the farm in question.

Individuals can also request access to certain recorded images

by the video surveillance cameras, to know the identity of a third party, for the purposes right to exercise certain legal and/or contractual actions.

The art. 5.1 f) RGPD provides: “Personal data will be:

“processed in such a way as to ensure adequate security of the data

including protection against unauthorized or unlawful processing and against

its loss, destruction or accidental damage, through the application of technical measures

or appropriate organizational (“integrity and confidentiality”).

Article 22 section 3 of the LOPDGDD (LO 3/2018, December 5) provides:

“The data will be deleted within a maximum period of one month from its collection.

tion, except when they had to be kept to prove the commission of acts

that threaten the integrity of persons, goods or facilities”

The reported company—Digital Instalaciones S.L—alleges the following

“they were not delivered, since the procedure for requesting them was not real-

lized by the interested parties through the corresponding request for the exercise

decrement of their access rights in accordance with the regulations, but rather that it was carried out

through (...) dated 02/28/2018 by the administrator of the community of

owners”.

The contract provided by the Administrator is dated 06/01/20 with the company

sa—Heypo Solutions S.L—which is not the company referenced at the time of the

Facts: Digital Electronic Installations S.L.

The Community of owners holds the status of responsible for the treatment

(art. 4 section 7 GDPR): “the natural or legal person, public authority, service

office or other body that, alone or jointly with others, determines the purposes and means of the treatment.

I lie; if the Law of the Union or of the Member States determines the ends and

god of the treatment, the person in charge of the treatment or the specific criteria for its

Appointment may be established by the Law of the Union or of the Member States.

brothers”.

IV

In accordance with the evidence available in this proceeding,

sanctioning, it is considered that the accused (a) — \*\*\*COMMUNITY.1 — does not pro-

This caused the temporary blocking of the data required from the video-surveillance camera system.

lance, nor proceeded to the mandatory transfer to the competent authority despite the transfer

relationship of a situation presumably constituting a criminal act by the claim

maintenance, by one of the governing bodies of the Community of owners.

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8/12

The entity in charge of conservation, if applicable, of the images in the moment of the occurrence of the events according to the documentation provided is the entity Digital Instalaciones Electronicas S.L

The Administrator of the farm (acting on behalf of and representing the Community of owners) did not act with due diligence in these cases, since limited to a mere transfer of "facts" to the company in charge of the installation of the cameras.

There is no record of subsequent action in this regard since the first communication given the seriousness of the facts, which presented a criminal nature in a confrontation between neighbors of the property, in order to preserve the content of the images obtained taken from the video-surveillance system, responsibility of the accused.

The Administrator of the farm should have informed the President of the Community of owners the events that occurred, and must be documented mind established the *modus operandi* in situations such as those that occurred.

The foregoing does not exempt, however, the Community of owners as "responsible responsible for the treatment" of having had the minimum diligence required so that in the contract clearly stipulated how to proceed, contract on the other hand that

Both parties have been careful not to contribute to this body.

The provision of a "poor" service that led to the lack of conservation (blocking) of the images is the result of a chain reaction, but it has its genesis in the initial passivity of the Community of owners; with independence of that the damages (as an administrative sanction) can be discharged subsequently in an alleged malpractice of the Administrator or in the company in-

charged with the treatment, whose allegations needless to say are masked in a manifest lack of truth.

If what is asserted by the entity-Digital Instalaciones Electrónicas S.L. is true —that the request, the reception of which he does not question, did not comply with the data protection, did not make any correction or request clarification to the res- with respect to the person responsible for the treatment, that is, the Community of owners in the visible head of the President (a) of the same or in his absence in the Administrator (a) of is.

The known facts constitute an infraction, attributable to the claimant.

mado (a), for violation of the content of art. 5.1f) GDPR.

The harmful result in this case does not admit any discussion, since the images requested from the video-surveillance system, were not temporarily blocked for making them available to the competent authority (Forces and Bodies of Security or closest competent judicial authority).

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9/12

The main person responsible, except for objective evidence to the contrary of the one claimed, is the Community of Owners, beyond the fact that its responsibility is mitigated by the negligent way of acting of the two collateral protagonists (Administrator / En- charged with the treatment) but this does not eliminate their share of responsibility in the he- accredited events that occurred in the portal of the property of the \*\*\*COMMUNITY.1.

v

The behavior described is subsumable in the offending type of art. 83.5 a) GDPR, which

prescribes the following:

“The infractions of the following dispositions will be sanctioned, in accordance with the section 2, with administrative fines of a maximum of EUR 20,000,000 or, treating- of a company, of an amount equivalent to a maximum of 4% of the volume of Total annual global business of the previous financial year, opting for the one with 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, the following is taken into account:

-the nature, seriousness and duration of the offence, taking into account the nature nature, scope or purpose of the treatment operation in question as well as the number of affected parties and the level of damages they have suffered (art. 83.5 a) RGPD).

- the intentionality or negligence in the infringement; (art. 83. 5 b) RGPD), by not having have adopted the necessary measures so that the personnel and/or companies contracted act with due diligence in a case such as the one exposed.

According to the above, it is considered correct to propose an initial sanction encrypted in the amount of €2,000 (two thousand euros) to the entity responsible for the conservation tion of the images obtained with the video-surveillance system —\*\*\*COMMUNITY.1 — for the destruction of the same, without attending to the requirements of the claimant, offense located on the lower scale for this type of conduct.

In view of the foregoing, the following is issued

#### MOTION FOR A RESOLUTION

That the Director of the Spanish Data Protection Agency sanction

\*\*\* COMMUNITY.1, for an infringement of Article 5.1 f) of the RGPD, typified in the Ar- Article 83.5 of the RGPD, a fine of €2,000 (Two thousand euros).

Likewise, in accordance with the provisions of article 85.2 of the LPACAP,  
informs that you may, at any time prior to the resolution of this pro-  
ceeding, carry out the voluntary payment of the proposed sanction, which will entail

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10/12

a reduction of 20% of the amount of the same. With the application of this reduction  
tion, the sanction would be established at 1800 euros and its payment will imply the termination  
tion of the procedure. The effectiveness of this reduction will be conditional on the withdrawal  
waiver of any administrative action or recourse against the sanction  
tion.

In the event that you choose to proceed with the voluntary payment of the amount specified above,  
subsequently, in accordance with the provisions of article 85.2 cited, it must be carried out  
tive by depositing it in restricted account number ES00 0000 0000 0000 0000 0000  
opened in the name of the Spanish Agency for 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 cause, for voluntary payment  
voluntary, reduction of the amount of the penalty. You must also send proof  
admission to the Subdirector General for Inspection to proceed to close the  
tooth.

By virtue of this, you are notified of the foregoing, and the procedure is made clear to you.  
so that within TEN DAYS you can allege whatever you consider in your defense and  
present the documents and information that it considers pertinent, in accordance with  
article 89.2 of the LPACAP).

DDD

INSPECTOR/INSTRUCTOR

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SECOND: On November 30, 2021, the claimed party has proceeded to payment of the sanction in the amount of 1600 euros making use of the planned reduction in the motion for a resolution transcribed above.

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

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 [www.aepd.es](http://www.aepd.es)

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11/12



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

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/00298/2021, of

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

SECOND: NOTIFY this resolution to \*\*\*COMMUNITY.1.

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

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12/12

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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