

□ File No.: EXP202200924

RESOLUTION OF SANCTIONING PROCEDURE

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

BACKGROUND

FIRST: D.A.A.A. (hereinafter, the claimant) dated 12/02/2021

filed a claim with the Spanish Data Protection Agency. The

claim is directed against COMILLAS TOWN HALL with NIF P3902400E

(hereinafter, the claimed party). The reasons on which the claim is based are the following:

following: the claimant declares that before a complaint for an alleged infringement in

a traffic light, on 10/18/21 he filed a letter with the defendant requesting the

resolution ordering the installation and use of a fixed collection device

intended for traffic control on the traffic light located on Paseo de Gaudí, copy

or link to the processing activity registration document on said system, if

the system captures and processes images outside the red phase of the traffic light and if it is done

transfer of data to third parties.

As stated, the claimed entity offers the images associated with the

disciplinary file both in the complaint bulletin and at its headquarters and on the website

<https://www.mimulta.es/Comillas>. The aforementioned request has not been answered, preventing

the claimant to verify if the implemented system meets the established criteria

in the report made by the legal office of the AEPD about the installation of

traffic control cameras ([https://www.aepd.es/sites/default/files/2019-09/informe-](https://www.aepd.es/sites/default/files/2019-09/informe-legal-rgpd-traffic-semaforos.pdf)

[legal-rgpd-traffic-semaforos.pdf](https://www.aepd.es/sites/default/files/2019-09/informe-legal-rgpd-traffic-semaforos.pdf)), and if the transfer of the data of the infractions to the

The company that manages the fines respects the current legislation.

Along with the claim, provide the application submitted to the claimed entity,

the photograph captured to impute an infraction to the claimant screenshot of the disciplinary file initiated against the claimant, notified notice of complaint and Photographs showing that the claimed entity informs of the installation of video surveillance cameras and red light control.

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), on 02/04/2022 said claim was transferred to the party claimed, so that it proceeds to its analysis and informs this Agency within the term of one month, of the actions carried out to adapt to the foreseen requirements in the data protection regulations.

On 02/18/2022, the defendant stated that after a report from the Delegate of Data Protection, the interested party is notified of the Mayor's Resolution with the requested information; that prior report from the Data Protection Delegate, gives transfer to the interested party of the Mayor's Resolution with the approval of the measures for the installation of a video camera to control infractions in traffic light; that the documents sent to the interested party are transferred to the AEPD,

C / Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

2/8

as well as the accreditation of sending them; that the causes that have given rise to the incident that gave rise to the claim before the AEPD are the delay in the response by the defendant to the information requested by the interested party, delay caused by the accumulation of tasks and the lack of personnel, which temporarily suffers the registry office of the entity.

In the letter transferred to the defendant on 02/04/2022, it was pointed out that the claimant had not been able to access the record of data processing activities entity claimed despite having requested it and the respondent was informed that had to publish said record in accordance with the provisions of article 77 of the LOPDGDD.

THIRD: On 03/02/2022, in accordance with article 65 of the LOPDGDD, The claim presented by the complaining party was admitted for processing.

FOURTH: On 06/30/2022, the Director of the Spanish Protection Agency of Data agreed to initiate a sanctioning procedure against the defendant, for the alleged violation of article 30 of the GDPR, typified in articles 83.3.a) of the GDPR, in accordance with the provisions of article 77 of the LOPDGDD.

FIFTH: Notified the start agreement, the claimant on 07/18/2022 presented pleadings stating the following: their rejection that the the infringement charged, having complied with all legal obligations regarding data protection; that by means of notification to the interested party, transfer of the resolution of the mayor of 02/16/2022 and in it a link to the portal was provided of transparency, indicating that in the "regulations" section of said portal, you could Access the record of previously published processing activities.

SIXTH: On 11/23/2022 a test practice period began, remembering the following

Deem reproduced for evidentiary purposes the claim filed by the claimant and its documentation, the documents obtained and generated during the phase of admission to processing of the claim, which are part of the procedure AT/00388/2022.

Consider reproduced for evidentiary purposes, the allegations to the agreement to start the referenced sanctioning procedure, presented by the defendant and the

accompanying documentation.

Ask the claimant for the path to follow to access the link that leads to the

Record of Treatment Activities published in the electronic headquarters of the

City Council, since it has not been possible to verify that it appears on the website of the

City hall.

On 12/02/2022, the defendant responded to the requested evidence whose

content works in the file.

SEVENTH: On 01/20/2023, a Resolution Proposal was issued in the sense of

that by the Director of the Spanish Agency for Data Protection be archived at the

C / Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

3/8

claimed for violation of article 30 of the GDPR, typified in article 83.5 of the

aforementioned Regulation. An Annex was attached with the documents that make up the

Administrative file.

After the indicated period, the defendant did not present any written allegation.

EIGHTH: Of the actions carried out in this procedure, there have been

accredited the following,

PROVEN FACTS

FIRST. On 12/02/2021, the affected party has a written entry in the AEPD claiming

against the defendant before a complaint for an alleged violation at a traffic light

before which I present a letter requesting a copy or link to the resolution where

orders the installation and use of the fixed collection and treatment device; copy or

link to the registration document of treatment activity on said system; if he

system captures and processes images also outside the red phase of the traffic light; whether transfers data to third parties. The aforementioned request was not answered.

SECOND. There is evidence provided by the claimant in writing-application submitted to the reclaimed; the photograph captured to impute the infraction to the claimant; capture of screen of the disciplinary file filed against the claimant, complaint bulletin notified and photographs in which the claimed entity informs of the installation of video surveillance cameras and traffic light control.

THIRD. It is recorded provided by the claimed Resolution of the Mayor regarding the AUTHORIZATION FOR INSTALLATION OF VIDEO CAMERAS FOR CONTROL INFRINGEMENT AT TRAFFIC LIGHT of 07/01/2021 and the Resolution of the Mayor's Office the APPROVAL OF THE AUTHORIZATION SECURITY MEASURES is proceeded FOR THE INSTALLATION OF A VIDEO CAMERA TO CONTROL INFRINGEMENTS IN TRAFFIC LIGHT of 10/22/2021.

ROOM. There is evidence provided by the defendant on 02/17/2022 of the transfer of the resolution of the mayor dated 02/16/2022, which contains:

"First. Transfer to the interested party the Mayor's Resolution with the authorization to Installation of video camera to control violations at traffic lights...

Second. Transfer to the interested party the Mayor's Resolution with the approval of the security measures authorization for the installation of a video camera to control Traffic light violations...

Third. Transfer to the interested party the link to the Record of Treatment Activities of the Comillas City Council, published in the electronic headquarters, <https://comillas.sedelectronica.es>, transparency portal, regulations:

<https://comillas.sedelectronica.es/?>

x=RgdT6y6nwa3fGnk3YRmSTNP*PG*suJtCfXCpuKmqZJzekjn2XapamyG*0-a4rh*R4vnLngaLDcp49y1VULcSRSbliZ-4Gt0L*R*g7pJ4WTEznzMhiCmP4g4.

C / Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

4/8

FIFTH. It appears provided by the claimed DPD Report dated 02/18/2022 in

the one that is collected:

"FIRST. The defendant (...), notifies the interested party of the Mayor's Resolution

with the required information.

SECOND. The defendant (...), notifies the interested party of the Mayor's Resolution

with the approval of security measures for the installation of video cameras

to control traffic light violations.

THIRD. Transfer is made to the Spanish Data Protection Agency of the

documents sent to the interested party, as well as proof of sending the

themselves, ...

ROOM. The causes that have motivated the incident that has originated the claim

before the AEPD are the delay in the response by the Comillas City Council to

the information requested by the interested party, delay caused by the accumulation of

tasks and the lack of personnel, which the registry office of the

entity.

FIFTH. It has been agreed with the municipal secretary the adoption of controls to

that the response to requests for information is resolved on time.

SIXTH. In the probationary period, on 12/02/2022, the defendant has provided the link

correct that leads to the RAT published in its electronic headquarters and DPD report:

<https://comillas.sedelectronica.es/transparency/f6241be5-1b5b-45aa-9605->

e525feedf24f,

FUNDAMENTALS OF LAW

Yo

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 of Regulation (EU) 2016/679, in this organic law, for the regulatory provisions dictated in its development and, as soon as they are not contradict, on a subsidiary basis, by the general rules on the administrative procedures."

Article 30 of the GDPR, Registration of processing activities, establishes

II

that:

"1. Each manager and, where appropriate, their representative shall keep a record of the treatment activities carried out under its responsibility. Said record shall contain all the information indicated below:

C / Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

a) the name and contact details of the person in charge and, where appropriate, the co-responsible, the representative of the responsible, and the delegate of

Data Protection;

b) the purposes of the treatment;

c) a description of the categories of data subjects and the categories of personal information;

d) the categories of recipients to whom the information was communicated or will be communicated; personal data, including recipients in third countries or international organizations;

e) where appropriate, transfers of personal data to a third country or a international organization, including the identification of such third country or international organization and, in the case of transfers indicated in the article 49, paragraph 1, second paragraph, the documentation of guarantees adequate;

f) when possible, the deadlines set for the suppression of the different data categories;

g) where possible, a general description of the technical measures and security organizations referred to in article 32, paragraph 1.

2. Each person in charge and, where appropriate, the representative of the person in charge will carry a registration of all categories of processing activities carried out by account of a person in charge that contains:

a) the name and contact details of the manager(s) and of each responsible on behalf of which the person in charge acts, and, where appropriate, of the representative of the person in charge or of the person in charge, and of the delegate of protection of data;

b) the categories of processing carried out on behalf of each controller;

c) where appropriate, transfers of personal data to a third country or

international organization, including the identification of such third country or

international organization and, in the case of transfers indicated in the

article 49, paragraph 1, second paragraph, the documentation of guarantees

adequate;

d) where possible, a general description of the technical measures and

security organizations referred to in article 30, paragraph 1.

3. The records referred to in sections 1 and 2 shall be in writing,

including in electronic format.

4. The person in charge or in charge of the treatment and, where appropriate, the

representative of the person in charge or of the person in charge will make the record available to the

supervisory authority that requests it.

5. The obligations indicated in sections 1 and 2 will not apply to any

business or organization that employs fewer than 250 people, unless the

treatment that it carries out may entail a risk to the rights and freedoms of the

interested, is not occasional, or includes special categories of personal data

indicated in article 9, paragraph 1, or personal data relating to convictions and

criminal offenses referred to in article 10”.

C / Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

6/8

Also article 31 of the LOPDGDD, Registration of the activities of

treatment, notes that:

"1. Those responsible and in charge of the treatment or, where appropriate, their representatives must maintain the record of treatment activities to which referred to in article 30 of Regulation (EU) 2016/679, unless the exception provided for in section 5.

The registry, which may be organized around structured data sets, must specify, according to its purposes, the processing activities carried out out and the other circumstances established in the aforementioned regulation.

When the controller or processor has designated a data protection officer must notify you of any additions, modifications or exclusion in the content of the registry.

2. The subjects listed in article 77.1 of this organic law will make public an inventory of its processing activities accessible by means e-mails containing the information established in article 30 of the Regulation (EU) 2016/679 and its legal basis".

With the previous regulations on the protection of personal data, the public administrations and private entities notify the AEPD of the creation of a file of personal data, which was registered in the General Registry of Data Protection.

II

With the entry into force of the GDPR, this obligation disappeared, being replaced by the Record of Treatment Activities.

Those responsible and in charge of the processing of personal data must keep a record of the processing activities carried out under its responsibility. This record must contain the information collected in this regard.

Article 30 of the GDPR, although not all entities or organizations have obligation to do so; thus, they would be exempt from configuring this registry

organizations employing fewer than 250 workers, unless the treatment that they carry out may entail a risk for the rights and freedoms of the interested parties, is not occasional or includes special categories of data or data relating to criminal convictions and offences.

However, it should be noted that these exceptions apply in very limited, since in practice all treatments may pose a risk for the rights and freedoms of the interested parties, even if occasionally, what comes next to imply that, in practice, that the majority of those responsible or in charge of the treatment employing less than 250 workers will be required to carry a record of processing activities.

Therefore, its establishment obliges public administrations and entities private companies to document the flows of personal data that circulate within them, being the first step to comply with current regulations on privacy and Data Protection.

C / Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

7/8

In accordance with the GDPR, the record of processing activities must be available available to the supervisory authority that requests it, so it is important keep it updated.

In the present case, already the claimant in his letter addressed to this center manager indicated that he had requested a copy or link to the activity record of treatment and had not obtained a response.

In his allegations to the initiation agreement, he expressed his rejection of the infringement

accused and indicated that the link to the RAT had been transferred to the interested party, published in the electronic headquarters.

However, the defendant was required during the probationary period so that indicate the way to access said Registry in the face of the impossibility of achieving it with the information provided and, as stated in the proven facts, on 12/02/2022 it was provided the correct link, verifying that the RAT has been prepared by the City hall.

Therefore, in accordance with the applicable legislation and assessed the criteria of graduation of sanctions whose existence has been accredited,

The Director of the Spanish Data Protection Agency RESOLVES:

FIRST: FILE to the COMILLAS CITY COUNCIL, with NIF P3902400E, for a violation of article 30 of the GDPR, typified in article 83.5 of the GDPR.

SECOND: NOTIFY this resolution to COMILLAS CITY COUNCIL.

In accordance with the provisions of article 50 of the LOPDGDD, the

This Resolution will be made public once the interested parties have been notified.

Against this resolution, which puts an end to the administrative process in accordance with art.

48.6 of the LOPDGDD, and in accordance with the provisions of article 123 of the

LPACAP, interested parties may optionally file an appeal for reversal

before the Director of the Spanish Data Protection Agency within a period of one

month from the day following the notification of this resolution or directly

contentious-administrative appeal 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 for in article 46.1 of the

referred Law.

Finally, it is noted that in accordance with the provisions of art. 90.3 a) of the LPACAP, the firm resolution may be temporarily suspended in administrative proceedings

If the interested party expresses his intention to file a contentious appeal-administrative. If this is the case, the interested party must formally communicate this made by writing to the Spanish Agency for Data Protection,

presenting it to

the agency

[<https://sedeagpd.gob.es/sede-electronica-web/>], or through any of the other records provided for in art. 16.4 of the aforementioned Law 39/2015, of October 1. Also

Electronic record of

through the

C / Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

8/8

must transfer to the Agency the documentation that proves the effective filing of the contentious-administrative appeal. If the Agency were not aware of the filing of the contentious-administrative appeal within a period of two months from the day following the notification of this resolution, would terminate the injunction suspension

Mar Spain Marti

Director of the Spanish Data Protection Agency

C / Jorge Juan, 6

28001 – Madrid

www.aepd.es

