

□ File No.: EXP202101604

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 5, 2022, the Director of the Spanish Agency
of Data Protection agreed to start a sanctioning procedure against A.A.A. (in
hereinafter, the claimed party), through the Transcribed Agreement:

<<

File No.: EXP202101604

AGREEMENT TO START THE SANCTION PROCEDURE

Of the actions carried out by the Spanish Data Protection Agency and in
based on the following

FACTS

FIRST: dated June 26, 2021 B.B.B. and C.C.C. (hereinafter, the part
claimant) filed a claim with the Spanish Agency for the Protection of
Data.

The claim is directed against A.A.A. with NIF ***NIF.1 (hereinafter, the part
claimed), notary of the city of *** LOCATION.

The reasons on which the claim is based are the following:

The claimants state that the notary of ***ADDRESS.1, has consulted in the
cadastre of the assets owned by the claimants, without them having
carried out any professional assignment that requires the consultation of such data.

The notary consulted the data on November 17, 2020.

Along with the claim, they provide the consultations made to the cadastre by the notary.

C / Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

2/11

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 June 1, 2022, said claim was transferred to the claimed party, to proceed with its analysis and inform this Agency in the period of one month, of the actions carried out to adapt to the requirements provided for in the data protection regulations.

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) by electronic notification, was not collected by the person in charge, within the period of availability, understood as rejected in accordance with the provisions of art. 43.2 of the LPACAP, after ten calendar days since it is made available without accessing its content.

THIRD: On November 16, 2021, in accordance with article 65 of the LOPDGDD, the claim presented by the complaining party was admitted for processing.

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 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

Article 6.1 of the LOPDGDD establishes that "in accordance with the provisions of the Article 4.11 of Regulation (EU) 2016/679, it is understood by consent of the affected any manifestation of free, specific, informed and unequivocal will by the that he accepts, either by means of a declaration or a clear affirmative action, the treatment processing of personal data concerning you".

For its part, article 6 of the GDPR establishes the following:

"1. Processing will only be lawful if at least one of the following conditions is met:

nes:

a) the interested party gave his consent for the processing of his personal data for one or more specific purposes;

C / Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

3/11

b) the treatment is necessary for the execution of a contract in which the interested party is part of or for the application at the request of the latter of pre-contractual measures;

c) the processing is necessary for compliance with a legal obligation applicable to the responsible for the treatment;

d) the processing is necessary to protect vital interests of the data subject or of another Physical person;

e) the treatment is necessary for the fulfillment of a mission carried out in the interest public or in the exercise of public powers conferred on the data controller;

f) the treatment is necessary for the satisfaction of legitimate interests pursued by the person in charge of the treatment or by a third party, provided that on said interests the interests or the fundamental rights and freedoms of the interested party do not prevail. that require the protection of personal data, particularly when the interest sado be a child

The provisions of letter f) of the first paragraph shall not apply to the treatment carried out by public authorities in the exercise of their functions.”

II

Royal Legislative Decree 1/2004, of March 5, which approves the text of the Real Estate Cadastre Law, in its article 53 it establishes the following:

"Access to protected cadastral data can only be done through the express, specific and written consent of the affected party, or when a law exclude said consent or the information is collected in any of the following cases of legitimate and direct interest:

a) For the execution of research projects of a historical, scientific or sponsored by universities or research centers, provided that they qualify as relevant by the Ministry of Finance.

b) For the identification and description of the farms, as well as for the knowledge of the cadastral alterations related to the documents that authorize or the rights that register or for which their granting or registration is requested, for which

notaries and property registrars, in accordance with the provisions of this Law and mortgage legislation. Likewise, notaries will be able to access the Cadastral agreements derived from said alterations for their delivery, where appropriate, to the interested.

c) For the identification of adjoining parcels, with the exception of the cadastral value of each of the properties, by those who appear in the Real Estate Cadastre as Headlines.

d) By the owners or co-owners of rights of real importance or lease or sharecropping that fall on the real estate registered in the Cadastre Real estate, with respect to said real estate.

C / Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

4/11

e) By the heirs and successors, with respect to the real estate of the deceased or transferor that appears registered in the Real Estate Cadastre.

2. However, they will be able to access the protected cadastral information, without the need to consent of the affected:

a) The bodies of the General State Administration and other Territorial public administrations, the State Tax Administration Agency and the managing entities and common services of the Social Security, with the limitations derived from the principles of competence, suitability and proportionality.

b) The parliamentary committees of inquiry, the Ombudsman and the Court of Accounts, as well as the autonomous institutions with similar functions.

c) Judges and courts and the Public Prosecutor's Office.

d) Organisms, corporations and public entities, for the exercise of their public functions, through the Administration on which they depend and whenever the conditions required in paragraph a) are present.”

IV.

In this case, the claimants state that on November 17, 2020, the claimed party, has consulted in the electronic headquarters of the cadastre, the assets of the that are owners despite the fact that the claimants have not carried out a professional assignment any that require the consultation of such data.

Such facts are accredited by providing the claimants, a document on access to information that has been produced in relation to the cadastral reference of a property of its ownership. This service provides a list of all certifications cadastral and protected data queries requested through the electronic office of the cadastre, relating to the property associated with the indicated cadastral reference, carried out by the co-owners of said property, or by the entities legally authorized in accordance with article 53 of the Consolidated Text of the Cadastre Law Real estate, indicated in the legal basis III.

The claimants state that on November 17, 2020, there have been several consultations by the claimed party despite not having requested their services, for which reason consider that they have been carried out illegally as they lack legitimacy to do so, since that in the list of information accesses through the electronic headquarters of the cadastre, it is indicated that on November 17, 2020, they were requested on the property with cadastral reference ***REFERENCE.1, two consultations and certification of property property and then a third consultation and certification by the cadastral owner (by NIF), all of them carried out by the notary of ***ADDRESS.1, despite not having been required by the owners of said property none of these three inquiries.

This Agency has formulated a requirement in this regard to the claimed party, but this has not answered, so in accordance with the evidence available,

C / Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

5/11

and without prejudice to what results from the instruction, it is considered that the claimed party, when making a query in the cadastre lacking legitimacy to do so, by not having requested their services by the owners of the property, and thus justify the object of your consultation in the electronic headquarters of the cadastre, it is considered that the part claimed would have violated article 6 of the GDPR, as indicated in the foundation of law II.

V

Article 72.1 b) of the LOPDGDD states that "according to what is established in the 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:

b) The processing of personal data without the fulfillment of any of the conditions of legality of treatment in article 6 of Regulation (EU) 2016/679."

SAW

Article 58.2 of the GDPR provides the following: "Each control authority shall have of all of the following corrective powers listed below:

b) send a warning to any person in charge or person in charge of the treatment when the processing operations have infringed the provisions of this Regulation;

d) order the person in charge or person in charge of the treatment that the operations of

treatment comply with the provisions of this Regulation, where appropriate,

in a certain way and within a specified period;

i) impose an administrative fine in accordance with article 83, in addition to or instead of the

measures mentioned in this section, according to the circumstances of each case

particular;

Thus, in attention to what results from the instruction, it will be possible to order the

claimed party that within the designated period proceeds to carry out the actions

necessary for the processing of the personal data used to comply with the

provisions of the GDPR.

VII

This infraction can be sanctioned with a fine of a maximum of €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

of greater amount, in accordance with article 83.5 of the GDPR.

The fine imposed must be, in each individual case, effective, proportionate

and dissuasive, in accordance with the provisions of article 83.1 of the GDPR.

C / Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

11/6

Therefore, it is appropriate to graduate the sanction to be imposed according to the criteria that

establishes article 83.2 of the GDPR, and with the provisions of article 76 of the

LOPDGDD, with respect to section k) of the aforementioned article 83.2 GDPR.

Article 83.2 of the GDPR establishes that:

"Administrative fines will be imposed, depending on the circumstances of each

individual case, as an addition to or substitute for the measures contemplated in article

Article 58, section 2, letters a) to h) and j).

When deciding to impose an administrative fine and its amount in each individual case

dual will be duly taken into account:

a) the nature, seriousness and duration of the offence, taking into account the

nature, scope or purpose of the processing operation in question

such as the number of interested parties affected and the level of damages that

have suffered;

b) intentionality or negligence in the infringement;

c) any measure taken by the controller or processor to

alleviate the damages and losses suffered by the interested parties;

d) the degree of responsibility of the controller or processor,

taking into account the technical or organizational measures that they have applied under

of articles 25 and 32;

e) any previous infringement committed by the controller or processor;

f) the degree of cooperation with the supervisory authority in order to remedy the

infringement and mitigate the possible adverse effects of the infringement;

g) the categories of personal data affected by the infringement;

C / Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

7/11

h) the way in which the supervisory authority became aware of the infringement, in

particular whether the person in charge or the person in charge notified the infringement and, if so, in what

extent;

i) when the measures indicated in article 58, paragraph 2, have been ordered previously against the person in charge or the person in charge in relation to the same matter, compliance with said measures;

j) adherence to codes of conduct under article 40 or to mechanisms of certification approved in accordance with article 42, and

k) any other aggravating or mitigating factor applicable to the circumstances of the case, such as financial benefits obtained or losses avoided, directly or indirectly, through the infringement.”

In the present case, without prejudice to what results from the instruction, it has been taken into account account, as an aggravating circumstance, the clear intention of the defendant to consult the data of the claimants despite lacking legitimacy to do so, according to article 83.2 b) of the GDPR.

For all these reasons, it is considered that the sanction that would correspond to be imposed would be 10,000 euro.

Therefore, based on the foregoing,

By the Director of the Spanish Data Protection Agency, IT IS AGREED:

FIRST: INITIATE SANCTION PROCEDURE against A.A.A. with NIF

***NIF.1, in accordance with the provisions of article 58.2.i) of the GDPR, by the alleged violation of article 6 of the GDPR, typified in article 83.5 of the GDPR and prescription effects, by article 72.1 b) of the LOPDGDD.

SECOND: APPOINT instructor to D.D.D. and, as secretary, to E.E.E., indicating that any of them may be challenged, where appropriate, in accordance with the provisions of Articles 23 and 24 of Law 40/2015, of October 1, on the Legal Regime of the Sec-public tor (LRJSP).

THIRD: INCORPORATE into the disciplinary file, for evidentiary purposes, the claim filed by the claimants and their documentation, the documents

C / Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

8/11

obtained and generated by the General Sub-directorate of Data Inspection during the investigation phase, as well as the report of previous inspection actions.

FOURTH: THAT for the purposes provided for in art. 64.2 b) of Law 39/2015, of 1

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

sanction that could correspond would be 10,000 euros (TEN thousand euros) for the

violation of article 6 of the GDPR, without prejudice to what results from the instruction.

FIFTH: NOTIFY this agreement to A.A.A. with NIF ***NIF.1, granting him a

hearing period of ten business days to formulate the allegations and present

the tests it deems appropriate. In your pleadings you must provide

your NIF and the number of the procedure that appears in the heading of this

document.

If, within the stipulated period, he does not make allegations to this initial agreement, the same

may be considered a resolution proposal, as established in article

64.2.f) of Law 39/2015, of October 1, on the Common Administrative Procedure of

Public Administrations (hereinafter, LPACAP).

In accordance with the provisions of article 85 of the LPACAP, in the event that the

sanction to be imposed other than a fine, may recognize its responsibility within the

term granted for the formulation of allegations to the present initiation agreement; it

which will entail a reduction of 20% of the sanction that should be imposed in

the present procedure. With the application of this reduction, the sanction would be

established at €8,000 (eight thousand euros), resolving the procedure with the

imposition of these sanctions.

In the same way, it may, at any time prior to the resolution of this 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 €8,000 (eight thousand euros), and its payment will imply the completion of the procedure.

The reduction for the voluntary payment of the penalty is cumulative to the corresponding apply for acknowledgment of responsibility, provided that this acknowledgment of the responsibility is revealed within the period granted to formulate allegations at the opening of the procedure. Voluntary payment of the referred amount in the previous paragraph may be done at any time prior to the resolution. In

In this case, if both reductions were to be applied, the amount of the penalty would remain established at €6,000 (six thousand euros)

In any case, the effectiveness of any of the two aforementioned reductions will be conditioned to the withdrawal or resignation of any action or appeal via administrative against the sanction.

In the event that you choose to proceed with the voluntary payment of any of the amounts previously indicated €8,000 or €6,000, you must pay it through your deposit in the restricted account number ES00 0000 0000 0000 0000 0000 opened in the name of the Spanish Data Protection Agency at Banco CAIXABANK, S.A., indicating in the concept the reference number of the procedure that appears in the

C / Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

heading of this document and the reason for reducing the amount to which welcomes.

Likewise, you must send proof of income to the General Subdirectorate of Inspection to continue with the procedure in accordance with the quantity entered.

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

After this period, its expiration will occur and, consequently, the file of performances; in accordance with the provisions of article 64 of the LOPDGDD.

Finally, it is noted that in accordance with the provisions of article 112.1 of the LPACAP, there is no administrative appeal against this act.

Mar Spain Marti

Director of the Spanish Data Protection Agency

935-110422

>>

SECOND: On September 23, 2022, the claimed party has proceeded to the payment of the penalty in the amount of 8000 euros using one of the two reductions provided for in the Commencement Agreement transcribed above. Therefore, there has not The acknowledgment of responsibility has been accredited.

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 Commencement Agreement.

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 and 48.1 of the Law

Organic 3/2018, of December 5, Protection of Personal Data and guarantee of

digital rights (hereinafter, LOPDGDD), is competent to initiate and resolve

this procedure the Director of the Spanish Data Protection Agency.

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."

C / Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

10/11

II

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 stated,

the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: DECLARE the termination of procedure EXP202101604, in

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 the interested parties have been notified.

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.

C / Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

11/11

937-240122

Mar Spain Marti

Director of the Spanish Data Protection Agency

C / Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es