

□ File No.: EXP202201056

## 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 22, 2022, the Director of the Spanish Agency for  
Data Protection agreed to start a sanctioning procedure against A.A.A. (hereinafter the  
claimed party). Notified of the initiation agreement and after analyzing the allegations  
presented, on March 22, 2023, the proposed resolution was issued that  
it is transcribed below:

<<

File No.: EXP202201056

## PROPOSED RESOLUTION OF SANCTION PROCEDURE

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

### BACKGROUND

FIRST: On 01/21/2022, a document submitted to this Agency was entered  
by B.B.B. (hereinafter, the claiming party), through which the claim is made  
against 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 breach of personal data protection regulations.

The reasons for the claim are the following:

“What a D.A.A.A. and DOÑA. C.C.C. have two cameras installed in their home that  
They focus on the public highway and my house, which is adjacent to theirs. In addition,

It does not have an information poster on the processing of personal data. The model of the cameras is the following (...). Among other functions, it includes: detection of people and vehicles, pan, tilt and 3X optical zoom; color Night Vision, automatic tracking (...)"

It provides a photographic report of the location of the video surveillance cameras.

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

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forward LOPDGDD), on 01/28/2022 the 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.

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Administrations Public (hereinafter, LPACAP) by certified postal mail, it was "Returned to origin due to excess (not withdrawn at the office), according to the Notice issued by Correos on 02/22/2022; reiterating on 03/01/2022 and being delivered on 03/10/2022.

On 03/01/2022, this Agency received a written response indicating that "My security camera only records the interior of my land, although the security system tracking seems to be recording outside, it's just the led focus". attached photograph of the location of 2 cameras and an image of the field of view of one of the badges.

Likewise, on 03/16/2022 he presented a new letter in which he indicated "I present the form filled out that you sent me and photographs showing that I only record my terrain and that only a few led spotlights are the ones that illuminate outside and monitor, but it doesn't record." Together with this, present the documentation listed above and the signed responsible declaration.

On 04/19/2022, this Agency sends the claimed party a "Request for additional documentation", which was delivered on 04/27/2022, according to the Notice issued by Mail. For his part, the defendant answered on 05/03/2022 and stated the following:

"The file that I sent you where you can see part of the street, is to show the area where it is recorded only when there is movement and it is within my territory. The Recordings are recorded to an SD card and remain there until the card fills up and then it formats itself when it fills up, to keep working. I send you a photo where you can see what appears on the mobile, but I repeat, that it only records within my terrain, although the led light follows the movements outside of it. I also send you the image from the second camera, but you only see my land and some scrub of outside that it is an inaccessible area."

THIRD: On 04/21/2022, in accordance with article 65 of the LOPDGDD, The claim presented by the complaining party was admitted for processing.

FOURTH: On 07/22/2022, the Director of the Spanish Protection Agency of Data agreed to initiate disciplinary proceedings against the claimed party, for the alleged violation of article 5.1.c) of the GDPR and article 13 of the GDPR, typified in Article 83.5.a) and b) of the GDPR.

FIFTH: There was an attempt to notify through postal mail that resulted in "Returned to origin due to excess (not withdrawn in the office)" on 08/18/2022. Thus, the notification was produced by means of an announcement published in the Official Gazette of the State on 08/24/2022 and a hearing period of TEN BUSINESS DAYS is granted

to formulate allegations and present the evidence it deems appropriate, in  
in accordance with the provisions of articles 73 and 76 of Law 39/2015, of 1

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October, of the Common Administrative Procedure of Public Administrations (in  
later, LPACAP).

SIXTH: Once the period granted for the formulation of allegations has elapsed, this  
Agency has not received any allegation from 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: Installation of 2 video surveillance cameras on top of a mast in the  
inside the fence of the land of the claimed party, located at \*\*\*ADDRESS.1,  
facing the public road.

SECOND: He is identified as the main person in charge of the A.A.A.  
with NIF \*\*\*NIF.1, who states that the devices are limited to recording their land.

THIRD: In the viewing of the video surveillance cameras on 05/02/2022, there are  
tested the following extremes:

- "Door" camera: captures the road and the sidewalk in its entirety. Make a  
Excessive intake from the public road.

- "Entrance" camera: captures the external stairs on one of the sides of the

residence of the claimed party and a minimum portion of public space, but

that is within the legal limits established in the regulations

in force with respect to the recording of areas of public transit.

FOURTH: In the photographic report provided by the claimant, there is no notice

the presence of informative posters of a video-surveilled area nowhere to be found. The part

The defendant has not ruled on the lack of informative badges.

FIFTH: This Agency has notified the claimed party of the agreement to open the

this disciplinary proceeding, but has not presented allegations or evidence

that contradict the facts denounced.

## FUNDAMENTALS OF LAW

Competition and applicable regulations

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

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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

data minimization

Article 5.1.c) of the GDPR states the following:

"1. Personal data will be:

(...)

c) adequate, pertinent and limited to what is necessary in relation to the purposes for which

those who are processed ("data minimization")"

In the present case, the claimed party has two video surveillance cameras in

the top of a mast located inside his farm in the direction of the public road. In the

viewing images, dated 05/02/2022, it is noted that only one of them was

exceeds the essential minimum that current regulations allow to capture from the

Public spaces. Specifically, the camera called "Door" not only captures the courtyard

entrance to the home of the claimed party, but also shows the road

and sidewalk in its entirety.

Although it is true that the party claimed in the response to the request for information

stated that both devices are limited to recording their land, as already indicated in

the agreement to start this disciplinary procedure, in the first image that

contributes from the camera "Door", the space of the public thoroughfare appears covered. No

However, it seems that it has been painted by himself on his mobile, since in the photo of the

05/02/2022 the areas mentioned above are perfectly visible (road and sidewalk).

Consequently, in accordance with the evidence available in this

moment of the proposed resolution of the disciplinary procedure, and without prejudice to

what results from the instruction, it is considered that the known facts could be

constituting an infringement, attributable to the claimed party, for violation of the

Article 5.1.c) of the GDPR.

Transparency of personal data processing

II

Article 5 of the GDPR "Principles relating to treatment" indicates that:

"1. Personal data will be:

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to)

treated in a lawful, loyal and transparent manner in relation to the interested party

("lawfulness, loyalty and transparency")".

This principle is developed in article 12 of the GDPR and, depending on whether the data

personal data are obtained from the interested party or not, the information that must be provided

it is listed in articles 13 or 14 of the GDPR.

Regarding treatment for video surveillance purposes, article 22.4 of the LOPDGDD

provides that:

"The duty of information provided for in article 12 of Regulation (EU) 2016/679 is

shall be deemed fulfilled by the placement of an informative device in place

sufficiently visible identifying, at least, the existence of the treatment, the

identity of the person responsible and the possibility of exercising the rights provided for in the

Articles 15 to 22 of Regulation (EU) 2016/679. It may also be included in the

information device a connection code or internet address to this

information."

In the present case, the complaining party warns in its claim that the party claimed does not have the mandatory informative poster of video-surveilled area in which the presence of the cameras and the identity of the person responsible for the treatment of the data, so that the interested persons can exercise the rights provided for in articles 15 to 22 of the GDPR. In this sense, the party claimed has not been pronounced at any time.

Therefore, according to the evidence available at this time of the proposed resolution of the disciplinary procedure, and without prejudice to what results from the investigation, it is considered that the known facts could be constituting an infringement, attributable to the claimed party, for violation of the article 13 of the GDPR.

Classification and classification of infractions of article 5.1.c) and 13 of the GDPR

IV.

If confirmed, the aforementioned violations of article 5.1.c) and 13 of the GDPR could suppose the commission of the offenses typified in article 83.5 of the GDPR that, under the heading "General conditions for the imposition of administrative fines" has:

Violations of the following provisions will be sanctioned, in accordance with the 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;

to)



the rights of the interested parties in accordance with articles 12 to 22; (...)”

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For the purposes of the limitation period for infringements, the infringements indicated in the previous paragraph are considered very serious in accordance with article 72.1 of the LOPDGDD, which establishes that: "Based on what is established in article 83.5 of the Regulation (EU) 2016/679 are considered very serious and will prescribe after three years the infractions that suppose a substantial infringement 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; (...)

h) The omission of the duty to inform the data subject about the treatment of their

personal data in accordance with the provisions of articles 13 and 14 of the

Regulation (EU) 2016/679 and 12 of this Organic Law.”

Penalty for violations of article 5.1.c) and 13 of the GDPR

V

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 them 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.

In the present case, based on the facts, it is considered that the sanction imposed

It would be appropriate to impose an administrative fine. The fine imposed shall

be, in each individual case, effective, proportionate and dissuasive, in accordance with the

Article 83.1 of the GDPR. In order to determine the administrative fine to be imposed,

to observe the provisions of article 83.2 of the GDPR, which indicates:

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

individual case, in addition to or in lieu of the measures contemplated in

Article 58, paragraph 2, letters a) to h) and j). When deciding to impose a fine

administration and its amount in each individual case shall 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, as well as

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

have suffered;

b) intentionality or negligence in the infraction;

c) any measure taken by the controller or processor to

alleviate the damages and losses suffered by the interested parties;

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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;

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,

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”.

For its part, in relation to letter k) of article 83.2 of the GDPR, the LOPDGDD, in its article 76, "Sanctions and corrective measures", provides:

"1. The sanctions provided for in sections 4, 5 and 6 of article 83 of the Regulation (UE) 2016/679 will be applied taking into account the graduation criteria established in section 2 of said article.

2. In accordance with the provisions of article 83.2.k) of Regulation (EU) 2016/679 may also be taken into account:

a) The continuing nature of the offence.

b) The link between the activity of the offender and the performance of data processing. personal information.

- c) The benefits obtained as a consequence of the commission of the infraction.
- d) The possibility that the conduct of the affected party could have included the commission of the offence.
- e) The existence of a merger by absorption process subsequent to the commission of the infringement, which cannot be attributed to the absorbing entity

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- f) Affectation of the rights of minors
- g) Have, when it is not mandatory, a data protection delegate.
- h) Submission by the person responsible or in charge, on a voluntary basis, to alternative conflict resolution mechanisms, in those cases in which there are controversies between those and any interested party”.

Therefore, if the aforementioned violations of articles 5.1.c) and 13 of the GDPR, it would correspond to set a fine of €300 (three hundred euros) and another €300 (three hundred euros), respectively.

SAW

imposition of measures

If the infringements are confirmed, under the provisions of article 58.2 d) of the GDPR, the respondent may be ordered to, within ten business days from the date on which the resolution that agrees so is notified, accredits the next:

- Having proceeded to remove the camera from the current location or accredit the regularization of the same in accordance with current regulations.

- To have proceeded to place the information device in the areas

video surveillance (at least the existence of a treatment must be identified,

the identity of the person responsible and the possibility of exercising the rights provided

in said precepts), locating this device in a place sufficiently

visible, both in open and closed spaces. Also, which keeps

available to those affected the information referred to in articles 13

and 14 of the GDPR.

It is noted that not attending to the possible order to adopt measures imposed by

this body in the sanctioning resolution may be considered as a

administrative offense in accordance with the provisions of the GDPR, classified as

infraction in its article 83.5 and 83.6, being able to motivate such conduct the opening of a

subsequent administrative sanctioning procedure.

In view of the foregoing, the following is issued

#### PROPOSED RESOLUTION

That the Director of the Spanish Agency for Data Protection sanctions

A.A.A., with NIF \*\*\*NIF.1, for a violation of article 5.1.c) of the GDPR and article 13

of the GDPR, typified in article 83.5.a) and b) of the GDPR, with a fine of €300 and

€300, respectively.

That the Director of the Spanish Agency for Data Protection order the

A.A.A., with NIF \*\*\*NIF.1, which by virtue of article 58.2.d) of the GDPR, within the period of

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ten business days from the date on which the resolution in which so agreed is

notified, certify the following:

- Having proceeded to remove the camera from the current location or accredit the regularization of the same in accordance with current regulations.

- To have proceeded to place the information device in the areas video surveillance (at least the existence of a treatment must be identified, the identity of the person responsible and the possibility of exercising the rights provided in said precepts), locating this device in a place sufficiently visible, both in open and closed spaces. Also, which keeps available to those affected the information referred to in articles 13 and 14 of the GDPR.

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 sanctions, which It will mean a reduction of 20% of the amount of the same. With the application of this reduction, the sanctions would be established at €480 (four hundred and eighty euros) and its payment will imply the termination of the procedure, without prejudice to the imposition of the corresponding measures. The effectiveness of this reduction will be conditioned to the withdrawal or resignation of any action or appeal via administrative 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 (BIC/SWIFT Code: CAIXESBBXXX) opened in the name of the Agency Spanish Data Protection Agency at the bank 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, of reduction of the

amount of the penalty. Likewise, you must send proof of income 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.

D.D.D.

INSPECTOR/INSTRUCTOR

926-170223

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EXHIBIT

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01/21/2022 Claim by B.B.B.

02/04/2022 Transfer of claim to A.A.A.

03/01/2022 Reiteration to A.A.A.

03/01/2022 Response to A.A.A.

03/16/2022 Response to A.A.A.

04/19/2022 Request. information to A.A.A.

04/21/2022 Communication to E.E.E.

05/02/2022 Response to A.A.A.

07/22/2022 A. opening to A.A.A.

08/24/2022 A. opening to STATE AGENCY OFFICIAL STATE GAZETTE TA-

## UNIQUE EDICTAL BLOON

08/25/2022 Info. Complainant to E.E.E.

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SECOND: On April 1, 2023, the claimed party has proceeded to pay the penalty in the amount of 480 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

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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

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 procedure EXP202201056, in accordance with the provisions of 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.

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

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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

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