

□ File No.: EXP202210476

## 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 March 1, 2023, the Director of the Spanish Agency for

Data Protection agreed to start a sanctioning procedure against A.A.A. (onwards,  
the claimed party), through the Transcribed Agreement:

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### 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: B.B.B. (\*hereinafter, the claiming party) dated September 28,

2022 filed a claim with the Spanish Data Protection Agency. The re-

outcry is directed against A.A.A. with NIF \*\*\*NIF.1 (hereinafter, the claimed party).

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

"(...) who is a neighbor of a house adjacent to the house of the claimed party and

that he has installed a video surveillance camera on the facade of his home that,

Due to its location and orientation, it is likely to capture images of both the home

of the claimant, such as the public road that runs next to the home of the

claimed party"—folio no. 1--.

Together with the notification, images of the presence of the camera that could

affect you (Annex I).

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

hereafter LOPDGDD), said claim was transferred to the party claimed on fe-

date 10/06/22, to proceed with its analysis and inform this Agency on the plan

within one month, of the actions carried out to adapt to the foreseen requirements.

cough 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 Public Administrations

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cases (hereinafter, LPACAP), has not been collected by the claimant, nor has he given an explanation.

any provision to that effect in relation to the facts described.

THIRD: On December 14, 2022, in accordance with article 65 of

the LOPDGDD, the claim presented by the complaining party was admitted for processing.

## FUNDAMENTALS OF LAW

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

General Data Protection Regulation, hereinafter GDPR), grants each authori-

quality of control and as established in articles 47, 48.1, 64.2 and 68.1 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: "The procedures processed by the Spanish Data Protection Agency will be governed by the provisions of Regulation (EU) 2016/679, in this organic law, by the regulations comments dictated in its development and, insofar as they do not contradict them, with a sub-sidario, by the general rules on administrative procedures."

## II

In the present case, we proceed to examine the claim presented in this Agency.

reporting the presence of a video-surveillance system that it considers affects their personal privacy and even in the public sphere without just cause.

The content of article 5.1 letter c) of the GDPR is considered affected, which provides: "The personal data will be:

c) adequate, pertinent and limited to what is necessary in relation to the purposes for those who are processed ("data minimization");

It should be remembered that individuals are responsible for ensuring that the systems more installed comply with current legislation, certifying that it complies with all the requirements demanded by the regulations in force.

The installation of this type of device must have the mandatory sign informative, indicating the purposes and data controller, where appropriate of a personal nature.

The installed cameras must be oriented towards the particular property, avoiding intimidation with this type of device from nearby homes and/or public space.

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In no case will the cameras be able to record images of the public highway, nor homes adjoining (with the exception of access to the property), since it would be the responsibility of the State Security Forces and Bodies.

The cameras installed must be suitable for the intended purpose, that is, protection of the main access to the housing area, avoiding affectation of privacy of the neighbors or of the nearby houses, which are affected by the gravitation of the images.

## II

In accordance with the initial evidence available to the present meeting, agreement to start the disciplinary procedure, and without prejudice to what is

As a result of the instruction, it is considered that the claimed party has a system of video surveillance that could affect the public and/or private sphere of a third party without cause justified.

The images provided confirm the presence of a dome-type camera installed on the exterior façade, being able to be viewed with the same space private and/or public space adjacent to it.

The known facts could constitute an infringement, attributable to the party claimed, typified in article 5.1 c) GDPR, previously cited.

Article 72 paragraph 1 letter a) establishes a limitation period of three years "the infractions that suppose a substantial infringement of the articles mentioned in that and, in particular, the following:

"a) The processing of personal data in violation of the principles and guarantees established established in article 5 of Regulation (EU) 2016/679.

## IV.

The art. 83.5 GDPR provides the following: "Violations of the following provisions

These will be penalized, in accordance with section 2, with administrative fines of 20 000 000 EUR maximum or, in the case of a company, an equivalent amount to a maximum of 4% of the overall annual total turnover of the financial year previous 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, it is taken into account that it is an individual, who does not has initially responded to the transfers made by this Agency, in the case of a dome-type camera with a bad orientation towards the outside area according to documents contribution, which denotes at least a negligent conduct, proposing a initial penalty of 300 euros, a penalty located on the lower scale for this type of behaviors based on the criteria of this body.

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If the infringement is confirmed, it could be agreed to impose on the person responsible the adoption of adequate measures to adjust its performance to the regulations mentioned in this act, in accordance with the provisions of the aforementioned article 58.2 d) of the GDPR, according to the which each control authority may "order the controller or processor that the processing operations comply with the provisions of this Regulation, where appropriate, in a certain way and within a specified period. cified...". The imposition of this measure is compatible with the sanction consisting of Administrative fine, according to the provisions of art. 83.2 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 an infraction administrative action in accordance with the provisions of the GDPR, classified as an infringement in its article 83.5 and 83.6, being able to motivate such conduct the opening of a subsequent proceeding. sanctioning administrative procedure.

The claimed party must provide a photograph (eg date and time) that accredit what is captured with it, without prejudice to the allegations that in law deems appropriate to carry out in relation to the facts described, which must be descriptions of the situation for its understanding by this Agency.

Therefore, in accordance with the foregoing, by the Director of the Spanish Agency Data Protection tab,

HE REMEMBERS:

FIRST: INITIATE SANCTION PROCEDURE against A.A.A., with NIF \*\*\*NIF.1, for the alleged infringement of article 5.1 c) GDPR, typified in article 83.5 a) GDPR.

SECOND: APPOINT as instructor R.R.R. and, as secretary, to S.S.S., indicating stating that any of them may be challenged, if applicable, in accordance with the provisions referred to in articles 23 and 24 of Law 40/2015, of October 1, on the Legal Regime of the Public Sector (LRJSP).

THIRD: INCORPORATING into the disciplinary file, for evidentiary purposes, the claim petition filed by the claimant and its documentation, as well as the documents ments obtained and generated by the General Sub-directorate of Data Inspection in the actions prior to the start of this disciplinary procedure.

FOURTH: THAT for the purposes provided for in art. 64.2 b) of Law 39/2015, of October 1, tube, of the Common Administrative Procedure of Public Administrations, the sanction that could correspond would be €300, without prejudice to what results from the

truction.

FIFTH: NOTIFY this agreement to A.A.A., with NIF \*\*\*NIF.1, granting it a hearing period of ten business days to formulate the allegations and present the tests it deems appropriate. In your pleadings you must provide

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

mint.

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, you may recognize your

responsibility within the period granted for the formulation of allegations to the pre-

set start agreement; which will entail a 20% reduction in blood

tion that should be imposed in this proceeding. With the application of this

reduction, the sanction would be established at 240 euros, resolving the procedure

with the imposition of this sanction.

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 supposes

will give a reduction of 20% of its amount. With the application of this reduction, the

tion would be established at 240 euros and its payment will imply the termination of the procedure.

without prejudice to the imposition of the corresponding measures.

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 this case, if both reductions were to be applied, the amount of the penalty would remain set at 180 euros.

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

In the event that you choose to proceed with the voluntary payment of any of the amounts previously indicated €800 or €600, you must make it effective by depositing it in the account number IBAN: ES00-0000-0000-0000-0000 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 compliance with this document and the reason for the reduction of the amount to which it is entitled.

Likewise, you must send proof of income to the Sub-directorate General of Inspection to continue with the procedure in accordance with the amount entered. gives.

The procedure will have a maximum duration of nine months from the date of date of the initiation agreement or, where applicable, of the draft initiation agreement. Elapsed- After this period, its expiration will take place and, consequently, the file of actions; in accordance with the provisions of article 64 of the LOPDGDD.

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

Mar Spain Marti

Director of the Spanish Data Protection Agency

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SECOND: On March 28, 2023, the claimed party has proceeded to pay of the penalty in the amount of 180 euros making use of the two reductions provided for in the initiation Agreement transcribed above, which implies the recognition of responsibility.

THIRD: The payment made, within the period granted to formulate allegations to the opening of the procedure, entails the waiver of any action or appeal via against the sanction and acknowledgment of responsibility in relation to the facts referred to in the Commencement Agreement.

## FUNDAMENTALS OF LAW

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Competence

In accordance with the powers that article 58.2 of Regulation (EU) 2016/679 (General Data Protection Regulation, hereinafter GDPR), grants each control authority and as established in articles 47, 48.1, 64.2 and 68.1 of the Organic Law 3/2018, of December 5, on the Protection of Personal Data and guarantee of digital rights (hereinafter, LOPDGDD), is competent to initiate and resolve this procedure the Director of the Spanish Protection Agency of data.

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

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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 EXP202210476, 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.

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