

□ File No.: EXP202207799

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 August 8, 2022, the Director of the Spanish Agency for
Data Protection agreed to initiate a sanctioning procedure against A.A.A. (onwards,
the claimed party), through the Agreement that is transcribed:

<<

File No.: EXP202207799

AGREEMENT TO START A SANCTION PROCEDURE

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

FACTS

FIRST: D.B.B.B. (hereinafter the claimant) on 03/14/2022 filed
claim before the Spanish Data Protection Agency. The claim is
directed against Ms. A.A.A. with NIF ***NIF.1 (hereinafter claimed). The reasons in
that bases the claim are the following: the claimant states that the claimed
manages the common expenses and supplies of the pavilions where the residents reside
agents of the Civil Guard, having been hired by their superiors; what has
paid the expenses corresponding to said community, despite not being
legally constituted, nor know the destination of the amounts deposited in the account
facilitated, also not knowing who or who are the owners of the same;
indicates violation of the principle of confidentiality by having sent the claimed

emails without hiding the email addresses of other recipients,
attaching the table of supply expenses relative to each neighbor and being
identified as a debtor before others; In addition, dated 12/21/2021, it has sent
email to both the D.G. of the Civil Guard as well as the one claimed requesting
information on whether there is a signed contract between the two, who has authorized the use of
your personal data and the ownership of the current account where you make your income.

SECOND: In accordance with article 65.4 of Organic Law 3/2018, of 5
December, of Protection of Personal Data and guarantee of digital rights (in
hereinafter LOPDGDD), said claim was transferred to the claimed party, to
to proceed with its analysis and inform this Agency within a month of the
actions carried out to adapt to the requirements set forth in the regulations of
Data Protection.

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

2/12

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), was collected on 03/29/2022 as recorded in the
acknowledgment of receipt that works in the file.

On 04/29/2022, a response was received from the respondent in which she stated

In short, the following: that the respondent has limited herself to following the instructions
taught by the head of the barracks; that in relation to the principle of
transparency and publicity the funds collected are managed by the residents of
the community in terms that guarantee its transparency and effectiveness; that in everything

moment it was transferred to the G.C. of the claimant's complaint by keeping the instructions received in that regard; that the respondent acts as the person in charge of the treatment following the instructions of the head of the barracks; in the exercise of right raised by the claimant should have addressed the data controller.

THIRD: On 06/14/2022, in accordance with article 65 of the LOPDGDD, the claim filed by the claimant was admitted for processing.

FOUNDATIONS OF LAW

Yo

In accordance with the powers that article 58.2 of Regulation (EU) 2016/679 (General Data Protection Regulation, hereinafter RGPD), 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 Agency for Data Protection will be governed by the provisions of Regulation (EU) 2016/679, in this organic law, by the regulatory provisions issued in its development and, insofar as they are not contradict, in the alternative, by the general rules on the administrative procedures."

Article 58 of the RGPD, Powers, states:

II

"two. Each supervisory authority will have all of the following powers corrections listed below:

(...)

i) impose an administrative fine under article 83, in addition to or in

instead of the measures mentioned in this paragraph, depending on the circumstances

of each particular case;

(...)"

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

3/12

In the first place, article 5 of the RGPD establishes the principles that must be

govern the processing of personal data and mentions among them that of "integrity and

confidentiality".

The cited article states that:

"1. The personal data will be:

(...)

f) treated in such a way as to ensure adequate security of the

personal data, including protection against unauthorized processing or

against its loss, destruction or accidental damage, through the application

of appropriate technical or organizational measures ("integrity and

confidentiality")".

(...)

III

The documentation in the file offers indications that the

claimed violated article 5 of the RGPD, principles related to treatment, by sending

email without using the blind copy option violating confidentiality

in the processing of personal data. Thus, the claimant had access to the email addresses of the rest of the recipients, as well as to community documents relating to individualized supply costs, and identifying him as a debtor.

This duty of confidentiality must be understood to have the purpose of prevent leaks of data not consented to by the holders of the data. themselves.

Therefore, this duty of confidentiality is an obligation that falls not only to the person in charge and in charge of the treatment but to everyone who intervenes in any phase of treatment.

IV

Article 83.5 a) of the RGPD, considers that the infringement of "the principles basic for the treatment, including the conditions for the consent in accordance with of articles 5, 6, 7 and 9" is punishable, in accordance with section 5 of the mentioned article 83 of the aforementioned Regulation, "with administrative fines of €20,000,000 maximum or, in the case of a company, an equivalent amount at a maximum of 4% of the total global annual turnover of the financial year above, opting for the highest amount.

The LOPDGDD in its article 71, Violations, states that: "They constitute infractions the acts and behaviors referred to in sections 4, 5 and 6 of the Article 83 of Regulation (EU) 2016/679, as well as those that are contrary to the present organic law".

And in its article 72, it considers for prescription purposes, which are: "Infringements considered very serious:

C/ Jorge Juan, 6

28001 – Madrid

1. Based on the provisions of article 83.5 of the Regulation (EU)

2016/679 are considered very serious and the infractions that

suppose a substantial violation of the articles mentioned in that and, in

particularly the following:

a) The processing of personal data violating the principles and guarantees

established in article 5 of Regulation (EU) 2016/679.

(...)"

Second, article 32 of the RGPD "Security of treatment",

v

establishes that:

"1. Taking into account the state of the art, the application costs, and the

nature, scope, context and purposes of the treatment, as well as risks of

variable probability and severity for the rights and freedoms of individuals

physical, the person in charge and the person in charge of the treatment will apply technical measures and

appropriate organizational measures to guarantee a level of security appropriate to the risk,

which in your case includes, among others:

a) pseudonymization and encryption of personal data;

b) the ability to ensure the confidentiality, integrity, availability and

permanent resilience of treatment systems and services;

c) the ability to restore availability and access to data

quickly in the event of a physical or technical incident;

d) a process of regular verification, evaluation and evaluation of the effectiveness

technical and organizational measures to guarantee the security of the

treatment.

2. When evaluating the adequacy of the security level, particular consideration shall be given to taking into account the risks presented by the processing of data, in particular as consequence of the accidental or unlawful destruction, loss or alteration of data data transmitted, stored or otherwise processed, or the communication or unauthorized access to said data.

3. Adherence to an approved code of conduct under article 40 or to a certification mechanism approved under article 42 may serve as an element to demonstrate compliance with the requirements established in section 1 of the present article.

4. The person in charge and the person in charge of the treatment will take measures to guarantee that any person acting under the authority of the controller or the manager and has access to personal data can only process said data following the instructions of the person in charge, unless it is obliged to do so by virtue of the Law of the Union or of the Member States”.

The violation of article 32 of the RGPD is typified in the article 83.4.a) of the aforementioned RGPD in the following terms:

SAW

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

5/12

"4. Violations of the following provisions will be sanctioned, in accordance with paragraph 2, with administrative fines of a maximum of EUR 10,000,000 or, in the case of a company, an amount equivalent to a maximum of 2% of the

global total annual turnover of the previous financial year, opting for

the largest amount:

a) the obligations of the person in charge and the person in charge pursuant to articles 8,

11, 25 to 39, 42 and 43.

(...)"

For its part, the LOPDGDD in its article 73, for prescription purposes, qualifies

of "Infringements considered serious":

"Based on the provisions of article 83.4 of Regulation (EU) 2016/679

are considered serious and will prescribe after two years the infractions that suppose a

substantial violation of the articles mentioned therein and, in particular, the

following:

(...)

f) The lack of adoption of those technical and organizational measures that

are appropriate to guarantee a level of security appropriate to the risk

of the treatment, in the terms required by article 32.1 of the Regulation

(EU) 2016/679.

(...)"

The GDPR defines personal data security breaches as

"all those violations of security that cause the destruction, loss or

accidental or unlawful alteration of personal data transmitted, stored or processed

otherwise, or unauthorized communication or access to such data".

7th

From the documentation in the file, there are clear indications of

that the claimed party has violated article 32 of the RGPD, when an incident of

security when sending email without the blind copy function violating the

appropriate technical and organizational measures allowing access to data of

personal nature of the other recipients.

It should be noted that the RGPD in the aforementioned provision does not establish a list of the security measures that are applicable according to the data that is object of treatment, but it establishes that the person in charge and the person in charge of the treatment will apply technical and organizational measures that are appropriate to the risk that the treatment entails, taking into account the state of the art, the costs of application, the nature, scope, context and purposes of the treatment, the risks of probability and seriousness for the rights and freedoms of the persons concerned.

Likewise, the security measures must be adequate and proportionate to the detected risk, pointing out that the determination of the measures technical and organizational information must be carried out taking into account: pseudonymization and encryption, the ability to ensure the confidentiality, integrity, availability and

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

6/12

resiliency, the ability to restore availability and access to data after a incident, verification process (not audit), evaluation and assessment of the effectiveness of the measures.

In any case, when evaluating the adequacy of the level of security, particularly taking into account the risks presented by the processing of data, such as consequence of the accidental or unlawful destruction, loss or alteration of data data transmitted, stored or otherwise processed, or the communication or unauthorized access to said data and that could cause damages physical, material or immaterial.

In this same sense, recital 83 of the RGPD states that:

“(83) In order to maintain security and prevent the treatment from violating the provided in this Regulation, the person in charge or the person in charge must evaluate the risks inherent to the treatment and apply measures to mitigate them, such as encryption. These measures must guarantee an adequate level of security, including confidentiality, taking into account the state of the art and the cost of its application regarding the risks and the nature of the personal data that must be protect yourself. When assessing the risk in relation to data security, take into account the risks arising from the processing of personal data, such as the accidental or unlawful destruction, loss or alteration of personal data transmitted, stored or otherwise processed, or the communication or access is not authorized to said data, susceptible in particular to cause damages physical, material or immaterial.

The responsibility of the claimed party is determined by the bankruptcy of security revealed by the claimant, since it is responsible for taking decisions aimed at effectively implementing technical measures and appropriate organizational measures to guarantee a level of security appropriate to the risk to ensure the confidentiality of the data, restoring its availability and preventing access to them in the event of a physical or technical incident.

In this scenario, email was sent without the use of the functionality hidden copy. and also attaching documentation with data from other people, accessible to other recipients.

In accordance with the foregoing, it is estimated that the respondent would be allegedly responsible for the violation of article 32 of the RGPD, violation typified in article 83.4.a).

In order to establish the administrative fine to be imposed,

observe the provisions contained in articles 83.1 and 83.2 of the RGPD, which

point out:

viii

"1. Each control authority will guarantee that the imposition of fines

administrative actions under this article for violations of this

Regulation indicated in sections 4, 5 and 6 are in each individual case

effective, proportionate and dissuasive.

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

7/12

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

of each individual case, in addition to or as a substitute for 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 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

as well as the number of stakeholders affected and the level of damage and

damages they have suffered;

b) intentionality or negligence in the infringement;

c) any measure taken by the controller or processor

to alleviate the damages suffered by the interested parties;

d) the degree of responsibility of the person in charge or of the person in charge of the

treatment, taking into account the technical or organizational measures that have

applied under articles 25 and 32;

- e) any previous infraction committed by the person in charge or the person in charge of the treatment;
- f) the degree of cooperation with the supervisory authority in order to put remedying the breach and mitigating the possible adverse effects of the breach;
- 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 if the person in charge or the person in charge notified the infringement and, in such case, what extent;
- i) when the measures indicated in article 58, paragraph 2, have been previously ordered against the person in charge or the person in charge in question in relation to the same matter, compliance with said measures;
- j) adherence to codes of conduct under article 40 or mechanisms certificates 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 realized or losses avoided, direct or indirectly, through infringement.

In relation to letter k) of article 83.2 of the RGPD, the LOPDGDD, in its

Article 76, "Sanctions and corrective measures", establishes that:

"two. In accordance with the provisions of article 83.2.k) of the 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 treatments of personal data.
- c) The profits obtained as a result of committing the offence.
- d) The possibility that the conduct of the affected party could have induced the commission of the offence.

- e) The existence of a merger by absorption process after the commission of the infringement, which cannot be attributed to the absorbing entity.
- f) Affectation of the rights of minors.
- g) Have, when it is not mandatory, a delegate for the protection of data.

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

8/12

- h) The submission by the person in charge or person in charge, with voluntary, to alternative conflict resolution mechanisms, in those assumptions in which there are controversies between those and any interested."

- In accordance with the transcribed precepts, and without prejudice to what results from the instruction of the procedure, in order to set the amount of the sanction of fine to impose in the present case for the infraction typified in article 83.5.a) and article 5.1.f) of the RGPD for which the claimed party is responsible, in an initial assessment, considers it appropriate to establish a penalty of 1,000 euros.

- Secondly, in accordance with the precepts transcribed, and without prejudice to what results from the instruction of the procedure, in order to set the amount of the sanction of a fine to be imposed in the present case for the infraction typified in the article 83.4.a) and article 32.1 of the RGPD for which the claimed party is responsible, in an initial assessment, it is considered appropriate to establish a penalty of 500 euros.

IX

The corrective powers that the RGPD attributes to the AEPD as the authority of

control are listed in article 58.2, sections a) to j). Among others, he mentions section i), impose an administrative fine in accordance with article 83 of the RGPD; in the section d), order the person in charge or in charge of the treatment that the operations of treatment comply with the provisions of the RGPD, where appropriate, of a certain way and within a specified period and in section g), order the deletion of personal data in accordance with articles 16, 17 and 18.

Article 83.5. of the RGPD establishes a sanction of an administrative fine (article 58.2.i) for the behaviors that are typified in it, without prejudice to the fact that, as provided in the article 83.2. of the RGPD, administrative fines may be imposed together with other corrective measures provided for in article 58.2 of the RGPD.

If the infraction is confirmed, it could be agreed to impose the person in charge the adoption of appropriate measures to adjust its actions to the aforementioned regulations in this act, in accordance with the provisions of the aforementioned article 58.2 d) of the RGPD, according to which each control authority may "order the person in charge or in charge of the treatment that the treatment operations comply with the provisions of the this Regulation, where appropriate, in a certain way and within a specified period...".

In such a case, in the resolution adopted, this Agency may require the responsible so that within the period determined:

- Prove that you have proceeded to adopt adequate measures to prevent the incidents such as those that have caused the opening of the procedure ensuring the confidentiality of the data and avoiding: sending emails without using the blind copy function, the dissemination of documents

Comprehensive community expenses related to neighbors/community members and the identification of possible debtors

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

9/12

It is warned that not meeting the requirements of this organization may be considered as an administrative offense in accordance with the provisions of the RGPD, typified as an infraction in its article 83.5 and 83.6, being able to motivate such conduct the opening of a subsequent sanctioning administrative proceeding.

Therefore, as stated,

By the Director of the Spanish Data Protection Agency,

HE REMEMBERS:

1. START PUNISHMENT PROCEDURE against Ms. A.A.A. with NIF ***NIF.1, for the alleged infringement of 5.1.f) of the RGPD, typified in article 83.5.a) of the aforementioned GDPR.
2. START A PUNISHMENT PROCEDURE against Ms. A.A.A. with NIF ***NIF.1, for the alleged infringement of 32.1 of the RGPD, typified in article 83.4.a) of the aforementioned GDPR.
3. APPOINT R.R.R. Instructor and Secretary to S.S.S., 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 Public Sector (LRJSP).
4. INCORPORATE to the disciplinary file, for evidentiary purposes, the claim filed by the claimant and his documentation, the documents obtained and generated by the Inspection Services; all documents that make up the proceedings.
5. THAT for the purposes provided in art. 64.2 b) of Law 39/2015, of October 1 and

article 58.2.b) of the RGPD, the sanctions that may correspond to the violation of articles 5.1.f) and 32.1 3 of the RGPD would be €1,000 (one thousand euros) and €500 (five hundred euros) respectively, without prejudice to what results from the instruction.

6. NOTIFY this Agreement to Ms. A.A.A. with NIF ***NIF.1, indicating expressly his right to a hearing in the procedure and granting him a term of TEN WORKING DAYS to formulate the allegations and propose the evidence that consider appropriate. In your statement of allegations you must provide your NIF and the procedure number at the top of this document.

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

The same may be considered a resolution proposal, as established in the Article 64.2.f) of Law 39/2015, of October 1, on Administrative Procedure Common to Public Administrations (hereinafter, LPACAP).

In accordance with the provisions of article 85 of the LPACAP, in the event of that the sanction to be imposed was a fine, it may recognize its responsibility within of the term granted for the formulation of allegations to this initial agreement; it which will entail a reduction of 20% of the appropriate penalties

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

10/12

impose in this proceeding. With the application of this reduction, the sanction total for the infractions would be established at 1,200 euros, resolving the procedure with the imposition of this sanction.

Similarly, you may, at any time prior to the resolution of the present procedure, carry out the voluntary payment of the proposed sanctions,

which will mean a reduction of 20% of its amount. With the application of this reduction, the total penalty for said infractions would be established at 1,200 euros and its payment will imply the termination of the procedure.

The reduction for the voluntary payment of the sanction is cumulative to the one It is appropriate to apply for the acknowledgment of responsibility, provided that this acknowledgment of responsibility is revealed within the period granted to formulate arguments at the opening of the procedure. The pay volunteer of the amount referred to in the preceding paragraph may be made at any time prior to resolution. In this case, if it were appropriate to apply both reductions, the amount of the total sanction would be established at 900 euros.

In any case, the effectiveness of any of the two reductions mentioned will be conditioned to the withdrawal or renunciation of any action or resource in via administrative against the sanction.

In the event that you choose to proceed with the voluntary payment of any of the amounts indicated above (1,200 or 900 euros), you must make it effective by depositing it in account number ES00 0000 0000 0000 0000 open to name of the Spanish Data Protection Agency at CAIXABANK Bank, S.A., indicating in the concept the reference number of the procedure that appears in the heading of this document and the reason for the reduction of the amount to which welcomes

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

The procedure will have a maximum duration of nine months from the the date of the start-up agreement or, where applicable, of the draft start-up agreement.

Once this period has elapsed, it will expire and, consequently, the file of

performances; in accordance with the provisions of article 64 of the LOPDGDD.

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

Sea Spain Marti

Director of the Spanish Data Protection Agency

>>

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

11/12

SECOND: On August 17, 2022, the claimed party has proceeded to pay of the sanction in the amount of 900 euros making use of the two reductions provided for in the Start Agreement transcribed above, which implies the acknowledgment 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 resource in via administrative action against the sanction and acknowledgment of responsibility in relation to the facts referred to in the Initiation Agreement.

FOUNDATIONS OF LAW

Yo

In accordance with the powers that article 58.2 of Regulation (EU) 2016/679 (General Data Protection Regulation, hereinafter RGPD), 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 Agency for Data Protection will be governed by the provisions in Regulation (EU) 2016/679, in this organic law, by the provisions regulations issued in its development and, as long as they do not contradict them, with a subsidiary, by the general rules on administrative procedures."

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

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

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."

According to what was stated,

the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: TO DECLARE the termination of procedure EXP202207799, of 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 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 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

936-040822

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es