

□ File No.: EXP202105770

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 3, 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:

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Procedure no.: EXP202105770

AGREEMENT TO START A SANCTION PROCEDURE

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

FACTS

FIRST: Dated December 13, 2021, entered this Agency

Spanish Data Protection a written complaint filed by GUARDIA

CIVIL - POSITION ***LOCALIDAD.1 (hereinafter, the claimant), through which
files complaint against A.A.A. with NIF ***NIF.1 (hereinafter, the claimed one). the minutes
complaint, dated November 30, 2021, shows that the defendant

It has an installation of a video surveillance system installed in

***ADDRESS.1, with the cameras directed towards the public thoroughfare and not being
duly signposted the mandatory informative posters of the video-monitored area.

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The documents provided by the claimant are the following:

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Report made by the FFCCSE in which it is shown that these same non-compliances were previously detected, denounced before this Agency, and that they have a written document from the AEPD in which communicated to the Civil Guard that the defendant had been informed of his obligations regarding the protection of personal data without the now reported has proceeded to correct said breaches.

- Photo report

SECOND: Likewise, it should be stated that on September 30, 2020, received in this Agency complaint filed by CIVIL GUARD - POSITION *** LOCATION.1 for these same facts that gave rise to the processing of the reference file E/08321/2020. Within the framework of said file, it was sent written to the defendant, duly notified on October 16, 2020, in the that he was informed of the reception of the complaint at the Agency for some facts that would violate the data protection regulations, with regard to the treatment of images and where you could find out about the requirements to carry out carry out personal data processing through this type of device.

FOUNDATIONS OF LAW

Yo

By virtue of the powers that article 58.2 of Regulation (EU) 2016/679 (General Data Protection Regulation, hereinafter RGPD), recognizes each Control Authority, and according to the provisions of 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), the Director of the Agency Spanish Data Protection is competent to initiate and resolve this process.

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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 the 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

The physical image of a person, in accordance with article 4.1 of the RGPD, is a personnel and their protection, therefore, is the subject of said Regulation. In article 4.2 of the RGPD defines the concept of "treatment" of personal data.

It is, therefore, pertinent to analyze whether the processing of personal data (image of the natural persons) carried out through the reported video surveillance system is in accordance with the provisions of the RGPD.

III

Article 6.1 of the RGPD establishes the assumptions that allow the legalization of the treatment of personal data.

For its part, article 5.1.c) of the RGPD, regarding the principles of treatment, provides that personal data will be "adequate, relevant and limited to what is

necessary in relation to the purposes for which they are processed ("minimization of data")." This article enshrines the principle of data minimization in the treatment of personal data. It assumes that said treatment is adjusted and proportional to the purpose to which it is directed, and the processing of data must be restricted excessive or proceed to suppress them.

The relevance in the processing of the data must occur both in the field of collection of the data as well as in the subsequent treatment that is carried out on them.

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Article 13, sections 1 and 2, of the RGPD, establishes the information that must be provided to the interested party at the time of collecting their data. In the case of treatments of personal data for surveillance purposes through camera systems or video cameras, the duty of information can be fulfilled by placing, in the video-monitored areas, an informative badge located in a sufficiently visible, both in open and closed spaces, and using forms in the that the planned information is detailed, which the person in charge must make available of those interested.

The content and design of the informative label must comply with the provisions of the Article 22.4 of the LOPDGDD.

On the other hand, in accordance with the provisions of article 22 of the LOPDGDD, referred to specifically to "Processing for video surveillance purposes", the processing of images in public places can only be made -if applicable and prior to the compliance with the legally enforceable requirements-, by the Forces and Bodies of

Security, unless the exception established in the aforementioned article 22 of the LOPDGDD for individuals or legal entities, public or private, respecting the conditions required in said article.

On some occasions, the protection of private spaces is only possible if the cameras are located in spaces such as facades. Sometimes it is also necessary capture the accesses, doors or entrances, so that, even if the camera is inside the building, it is impossible not to record a minimum and essential of the public road, which is inevitably captured.

For this exception on the protection of private spaces to be applicable,

There must be an alternative installation possibility. In these cases, the responsible of the treatment carried out through cameras will adapt the use of the installation, so that the impact on the rights of third parties (passers-by) is the minimum possible.

In no case will the use of surveillance practices beyond the environment be allowed.

object of the installation, not being able to affect the surrounding public spaces, adjoining buildings and vehicles other than those accessing the guarded space.

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In accordance with the foregoing, the processing of images through a system of video surveillance, to be in accordance with current regulations, must comply with the following requirements:

- Respect the principle of proportionality.
- When the system is connected to an alarm center, it can only be

installed by a private security company that meets the requirements

contemplated in article 5 of Law 5/2014 on Private Security, of April 4.

- The video cameras will not be able to capture images of people who are outside the private space where the video surveillance system is installed, since the treatment of images in public places can only be carried out, unless Government authorization concurs, by the Security Forces and Bodies. Either spaces owned by third parties may be captured or recorded without the consent of their owners, or, where appropriate, of the people who are in them.

This rule admits some exceptions since, on some occasions, for the protection of private spaces, where cameras have been installed on facades or inside, it may be necessary to guarantee the security purpose the recording of a portion of public road. That is, cameras and video cameras installed for the purpose of security will not be able to obtain images of public roads unless it is essential for said purpose, or it is impossible to avoid it due to the location of those and, extraordinarily, the minimum space for said purpose. Therefore, the cameras could exceptionally capture the portion minimally necessary for the intended security purpose.

- The duty to inform those affected provided for in articles 12 and 13 of the RGPD and 22.4 of the LOPDGDD.

Specifically, at least one badge must be placed in video-monitored areas. informative located in a sufficiently visible place, both in open spaces and closed, which will identify, at least, the existence of a treatment, the identity of the person in charge and the possibility of exercising the rights foreseen in said precepts. Likewise, the information must be kept available to those affected. to which the aforementioned RGPD refers.

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- The person in charge must keep a record of treatment activities

carried out under its responsibility, including the information to which it makes reference article 30.1 of the RGPD.

- Installed cameras cannot get images from third-party proprietary space

and/or public space without duly accredited justified cause, nor can they affect

the privacy of passers-by who move freely through the area. not allowed, for

Therefore, the placement of cameras towards the private property of neighbors with the purpose to intimidate them or affect their privacy without just cause.

- In no case will the use of surveillance practices beyond the environment be admitted.

object of the installation and in particular, not being able to affect public spaces

surrounding buildings, adjoining buildings and vehicles other than those accessing the space guarded.

In relation to the above, to facilitate the consultation of interested parties, the Agency

Spanish Data Protection offers through its website

[<https://www.aepd.es>] access to data protection legislation

including the RGPD and the LOPDGDD (section “Reports and resolutions” /

“normative”), as well as the Guide on the use of video cameras for security and other

purposes, as well as the Guide for compliance with the duty to inform (both

available in the “Guides and tools” section).

It is also of interest, in the event of carrying out low-risk data processing, the

free tool It facilitates (in the “Guides and tools” section) that, through

specific questions, allows to assess the situation of the person in charge with respect to the

treatment of personal data that it carries out, and where appropriate, generate various documents, informative and contractual clauses, as well as an annex with measures guidelines considered minimum.

v

The complaint is based on the presumed illegality of the installation by the defendant of a video surveillance system, made up of 2 cameras located on the fence of

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entrance and on the roof of the building located at ***ADDRESS.1, which could capture images of public areas disproportionately.

In addition, the claimant warns that the reviewed property does not have a sign in the that the presence of the cameras and the identity of the person responsible be reported of the processing of the data, so that the interested persons can exercise the rights provided for in arts. 15 to 22 of the GDPR.

As proof of these statements, the claimant provided the evidence indicated in the “Facts” section, first point, of this agreement.

Thus, the evidence available at this stage of the procedure sanctioning party, without prejudice to what results from the investigation of the file, constitute solid indications that the defendant, through the cameras of video surveillance installed in ***ADDRESS.1, captures images of transit areas public. Likewise, it is evident that there is no poster with all the information that, mandatory, must appear in it.

The conduct of the defendant violates a series of obligations imposed by the

GDPR.

In particular, those established in articles 5.1 c) and 13 of the aforementioned regulation.

Failure to comply with the obligation imposed by article 13 of the RGPD means that

such conduct could constitute an infraction typified in article 83.5 b) of the

RGPD, precept that establishes: "Infringements of the following provisions are

will be sanctioned, in accordance with section 2, with administrative fines of 20,000,000

EUR maximum or, in the case of a company, an amount equivalent to 4%

of the total global annual turnover of the previous financial year, choosing

for the largest amount:

a)

(...)

a) The rights of the interested parties according to articles 12 to 22;

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(...)

For the mere purposes of prescription, article 72.1.h) of the LOPDGDD qualifies as

very serious "The omission of the duty to inform the affected party 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". The limitation period for offenses

very serious cases provided for in Organic Law 3/2018 is three years.

For its part, the violation of the provisions of article 5.1 c) of the RGPD, gives rise to

understand that such conduct could constitute an infraction typified in the

article 83.5 a) of the RGPD, a precept that establishes: "Infringements of the

following provisions will be sanctioned, in accordance with section 2, with fines administrative fees of EUR 20,000,000 maximum or, in the case of a company, of an amount equivalent to 4% of the total annual global turnover for the year previous financial statement, opting for the highest amount:

a) The basic principles for the treatment, including the conditions for the consent under articles 5, 6, 7 and 9;

(...)"

For the mere purposes of prescription, article 72.1 of the LOPDGDD qualifies as very serious:

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

(...)

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The corrective powers available to the Spanish Agency for the Protection of Data, as a control authority, is established in article 58.2 of the RGPD. Among they have the power to sanction with a warning -article 58.2 b)-, the power to impose an administrative fine in accordance with article 83 of the RGPD - article 58.2 i)-, or the power to order the controller or processor that the treatment operations comply with the provisions of the RGPD, when appropriate, in a certain way and within a specified period -article 58. 2 d)-.

According to the provisions of article 83.2 of the RGPD, the measure provided for in article 58.2

d) of the aforementioned Regulation is compatible with the sanction consisting of a fine administrative.

7th

According to the exposed facts, without prejudice to what results from the investigation of the procedure, it is considered that it corresponds to charge the defendant for the violation of the provisions of articles 5.1 c) and 13 of the RGPD, both typified in article 83 of the RGPD. The sanction that should be imposed is an administrative fine.

The fine imposed must be, in each individual case, effective, proportionate and dissuasive, in accordance with the provisions of article 83.1 of the RGPD. So,

It is appropriate to graduate the sanction to be imposed in accordance with the criteria established by the article 83.2 of the RGPD, and with the provisions of article 76 of the LOPDGDD, regarding to section k) of the aforementioned article 83.2 RGPD:

viii

If the infraction is confirmed, it could be agreed to impose on the person responsible the adoption of appropriate measures to adjust their actions to the regulations mentioned in this act, in accordance with the provisions of the aforementioned article 58.2 d) of the RGPD, according to the which each control authority may “order the person in charge or in charge of the

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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 proceeded to remove the camera from the current location, or to

reorientation of it towards its particular area.

-certify having proceeded to the placement of the informative device in the areas

video surveillance or to complete the information offered therein (you must identify yourself,

at least, the existence of a treatment, the identity of the person in charge and the possibility

to exercise the rights provided for in said precepts), locating this device in

sufficiently visible place, both in open and closed spaces.

-certifies that the information to which it refers is kept available to those affected

the aforementioned GDPR.

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, in accordance with the foregoing, By the Director of the Spanish Agency for

Data Protection,

HE REMEMBERS:

FIRST: START SANCTION PROCEDURE against A.A.A., with NIF ***NIF.1,

for the alleged infringement of articles 5.1 and 13 of the RGPD, both typified in the

article 83.5 of the RGPD.

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SECOND: APPOINT B.B.B. as instructor, and secretary, if applicable, C.C.C.

indicating that any of them may be challenged, as the case may be, in accordance with established in articles 23 and 24 of Law 40/2015, of October 1, on the Regime Legal Department of the Public Sector (LRJSP).

THIRD: INCORPORATE to the disciplinary file, for evidentiary purposes, the complaint filed by the claimant and his documentation, as well as the documents obtained and generated by the General Subdirectorate for Data Inspection.

FOURTH: THAT for the purposes provided in art. 64.2 b) of Law 39/2015, of 1 October, of the Common Administrative Procedure of the Public Administrations (LPACAP, hereinafter), the sanction that could correspond would be €300 (THREE HUNDRED EUROS) for each of the two infractions indicated, which amounts to a total amount of €600 (SIX HUNDRED EUROS), without prejudice to what may result of instruction.

Likewise, the imputed infraction, if confirmed, may lead to the imposition of measures in accordance with the provisions of the aforementioned article 58.2 d) of the RGPD.

FIFTH: NOTIFY this agreement to A.A.A., granting it a term of hearing of ten business days to formulate the allegations and present the tests you deem appropriate. In your statement of arguments, you must provide your NIF and the procedure number that appears in the heading of this document.

If within the stipulated period it does not make allegations, this initial agreement may be considered resolution proposal, according to what is established in article 64.2.f) of the LPACAP.

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

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In accordance with the provisions of article 85 of the LPACAP, in the event that the sanction to be imposed was a fine, it may recognize its responsibility within the term granted for the formulation of allegations to this initial agreement; it which will entail a reduction of 20% of the sanction to be imposed in this procedure, equivalent in this case to €120 (ONE HUNDRED AND TWENTY EUROS). With the application of this reduction, the sanction would be established at 480 € (FOUR HUNDRED AND EIGHTY EUROS), resolving the procedure with the imposition of this sanction.

Similarly, you 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 penalty would be established at €480 (FOUR HUNDRED AND EIGHTY EUROS) and its payment will imply the termination of the procedure.

The reduction for the voluntary payment of the penalty is cumulative with the corresponding apply for the acknowledgment of responsibility, provided that this acknowledgment of the responsibility is revealed within the period granted to formulate arguments at the opening of the procedure. If it were appropriate to apply both reductions, the amount of the penalty would be established at €360 (THREE HUNDRED AND SIXTY EUROS).

In any case, the effectiveness of any of the two reductions mentioned will be

conditioned to the abandonment or renunciation of any action or resource in via administrative against the sanction.

In case you chose to proceed to the voluntary payment of any of the amounts indicated above, you must make it effective by depositing it in account no. ES00 0000 0000 0000 0000 0000 opened on behalf of the Spanish Agency for Data Protection at Banco CAIXABANK, 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 it is accepted. Also, you must send proof of entry to the General Subdirectorate of Inspection for continue with the procedure in accordance with the amount entered.

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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

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SECOND: On March 30, 2022, the claimed party has proceeded to pay of the sanction in the amount of 360 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 and 48.1 of the Law

Organic 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 Data Protection Agency.

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."

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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 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 EXP202105770, 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.

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