

□ File No.: EXP202101886

## 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 February 1, 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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File No.: EXP202101886

### 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: C.P. RESIDENTIAL \*\*\* COMMUNITY.1 (\*hereinafter, the complaining party)

On August 18, 2021, he filed a claim with the Spanish Agency for  
Data Protection. The claim is directed against A.A.A. with NIF \*\*\*NIF.1 (hereinafter  
lante, the claimed party). The grounds on which the claim is based are as follows:

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“The Bar \*\*\*BAR.1 has two cameras installed on the rear that point

directly towards public space, recording the people who pass through the access to the public domain, including minors (...)”—folio nº 1--.

The claimant Community of Owners states that the claimed party is responsible of an establishment that has a video surveillance system outside, that would capture the public thoroughfare, without having the mandatory authorization to do so. They contribute images of the location of the video surveillance camera oriented to public roads installed outside the establishment (Annex I).

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 in fe-date 09/13/21, to proceed with its analysis and inform this Agency on the period of one month, of the actions carried out to adapt to the foreseen requirements enough in the data protection regulations.

THIRD: On 10/13/21 a reply is received from the respondent alleging succinctly the following:

- Confirms the presence of 5 video-surveillance cameras which are operating.

- The terrace is private and community records with Municipal License. Provides screen printing of what is captured with it (s), being complete the Report with additional writing dated 10/20/21.

FOURTH: On December 2, 2021, in accordance with article 65 of the LOPDGDD, the claim filed by the claimant was admitted for processing.

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Yo

In accordance with the powers that article 58.2 of Regulation (EU) 2016/679 (Regulation (EU) 2016/679, hereinafter RGPD), grants each authority control and as established in articles 47, 48.1, 64.2 and 68.1 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 formal procedures regulated 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 dictated in its development and, as long as they do not contradict them, with a subsidiary, by the general rules on administrative procedures."

II

In the present case, the claim dated 08/18/21 is examined by me—gave from which the following is transferred as fact:

"The Bar \*\*\*BAR.1 has two cameras installed on the rear that point directly towards public space, recording the people who pass through the public domain, including minors (...)"—folio nº 1--.

The facts denounced could imply an affectation to the content of art. 5.1 c) RGPD (regulation currently in force) that provides: "personal data will be: c) adequate, pertinent and limited to what is necessary in relation to the purposes for which they are processed ("data minimization") (...)"

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Individuals are responsible for the installed video-surveillance systems to be comply with current legislation, and must be able to prove such extremes.

We report to the competent authority.

Cameras installed by individuals must be oriented towards their private space.

vative avoiding the capture of private area of third parties without just cause.

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

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

contiguous buildings and vehicles other than those accessing the guarded space.

Security cameras installed in private spaces will not be able to obtain images

public spaces, the security function of public spaces corresponding to

It is exclusively for the State Security Forces and Bodies.

Likewise, in the case of false cameras, they must be oriented

to a private area, avoiding intimidation of neighboring neighbors who are unaware

know whether or not they process personal data.

Fake cameras can also affect personal privacy.

of the claimed, in such a way that it is a criterion maintained by this Agency that

they limit their radius of action (orientation) towards a private area, respecting the

tranquility of the private life of the affected, who does not have to know the nature

ity of the system, but neither bear being intimidated by it in its field

personal and/or domestic.

III

In accordance with the evidence available at the present time of

agreement to initiate the sanctioning procedure, and without prejudice to what results from the

investigation, it is considered that the defendant has a camera system of video-surveillance "oriented towards public transit area" without just cause, not providing a copy of the necessary authorizations to record said area.

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The object of a municipal authorization is the installation of a terrace (as area annexed to the main establishment) that is allowed on land for public use, allowing the installation of furniture on a non-permanent basis for development of an accessory activity to the main one, being the same delimited and conditioned to the realization of an activity, in this case we understand hospitality.

The known facts could constitute an infringement, attributable to the party claimed, for violation of the content of article 5.1 c) RGPD, when capturing with a device public transit area excessively.

IV

The art. 83.5 RGPD provides the following: "Infringements of the following provisions will be sanctioned, in accordance with section 2, with administrative fines of 20 EUR 000,000 maximum or, in the case of a company, an equivalent amount. to a maximum of 4% of the total global annual turnover of the financial year above, 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;

When motivating the sanction, the following is taken into account:

- the nature, seriousness and duration of the offence, taking into account the nature

nature, scope or purpose of the treatment operation in question, as well as

the number of interested parties affected and the level of damages suffered

fired; (art. 83.2 a) RGPD), as the exterior camera(s) are oriented towards the

public nature, controlling the terrace area of the establishment it runs, affecting

taking an undetermined number of people.

- the intent or negligence in the infringement; (art. 83.2 b) RGPD), when controlling in

excess area of a public nature, and the conduct described may be considered a

gross negligence for the above reasons.

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According to the above, it is considered correct to propose an initial sanction

encrypted in the amount of €1,000 (one thousand euros), by having a camera system whose

recording is excessive for the purpose pursued, as some neighbors were intimidated

(as) by the same ones whose orientation they consider excessive since it affects the transit area

public, valuing the initial collaboration with this Agency, to place it on the scale

lower for this type of behavior.

v

Among the corrective powers contemplated in article 58 of the RGPD, in its section 2

d) it is established that each control authority may “order the person in charge or

of the treatment that the treatment operations comply with the provisions

of this Regulation, where appropriate, in a certain way and within

a specified period...”. The imposition of this measure is compatible with the sanction

consisting of an administrative fine, as provided in art. 83.2 of the GDPR.

The claimed party must clarify everything necessary about the installed system, again providing the precise documentation, as well as screen printing (vgr. date and time) of what is captured with them, without prejudice to the allegations that deems necessary in order to prove the full legality of the entire system.

Therefore, in accordance with the foregoing, by the Director of the Spanish Agency data protection law,

HE REMEMBERS:

FIRST: START SANCTION PROCEDURE against A.A.A., with NIF \*\*\*NIF.1, for the alleged infringement of article 5.1 c) RGPD, typified in article 83.5 RGPD, being punishable in accordance with article 58.2 RGPD.

SECOND: APPOINT B.B.B. as instructor, C.C.C. as secretary, indicating- do that any of them may be challenged, where appropriate, in accordance with the provisions in articles 23 and 24 of Law 40/2015, of October 1, on the Legal Regime of the Public Sector (LRJSP).

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THIRD: INCORPORATE to the disciplinary file, for evidentiary purposes, the claim filing filed by the claimant and its documentation, as well as the documents documents obtained and generated by the General Subdirectorate for Data Inspection in actions prior to the start of this sanctioning procedure.

FOURTH: THAT for the purposes provided in art. 64.2 b) of Law 39/2015, of October 1- tube, of the Common Administrative Procedure of the Public Administrations, the

sanction that could correspond would be €1,000 (one thousand euros), without prejudice to what result of the instruction.

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 tests you deem appropriate. In your statement of arguments, you must provide your NIF and the procedure number that appears at the top of this document.

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If within the stipulated period it 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, of 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 term granted for the formulation of allegations to the feel start agreement; which will entail a 20% reduction in blood tion to be imposed in this proceeding. With the application of this reduction, the sanction would be established at €800, 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 supposes will give a reduction of 20% of its amount. With the application of this reduction, the The payment would be established at €800 and its payment will imply the completion of the procedure. unto

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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. The voluntary payment of the referred amount in the previous paragraph may be done at any time prior to the resolution. In this case, if it were appropriate to apply both reductions, the amount of the penalty would be set at €600.

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

In case you chose to proceed to the voluntary payment of any of the amounts indicated above €800 or €600, you must make it effective by paying into account number ES00 0000 0000 0000 0000 0000 opened in the name of the Spanish Agency Data Protection Label at the banking entity 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.

Likewise, you must send proof of income to the General Subdirectorate of Ins-request 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 page of the start-up agreement or, where appropriate, of the draft start-up agreement. elapse-do this period will produce its expiration and, consequently, the filing of actions; 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 LPA-CAP, against this act there is no administrative appeal.

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Director of the Spanish Data Protection Agency

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SECOND: On February 24, 2022, the claimed party has proceeded to pay of the sanction in the amount of 600 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.

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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.”

## 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

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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 EXP202101886, 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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