

□ File No.: EXP202201639

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 April 12, 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.: EXP202201639

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: The CIVIL GUARD - *** POSITION 1 (hereinafter, the complaining party)
dated 02/04/2022, submitted a triple Report-Complaint for a possible breach of the
provided in the personal data protection regulations by A.A.A. with
NIF ***NIF.1 (hereinafter, the denounced party).

The reasons underlying the Records-Complaints are as follows:

“At 10:00 a.m. on February 1, 2022, the Patrol of the COMPAÑÍA DE

***MUNICIPALITY.1

performs Fiscal/Administrative inspection in establishment

CALL SHOP (...), located in the town of ***LOCALIDAD.1 capital. extends a

Complaint Act for:

- Not having at least one badge or sign in the video surveillance area

informative in a sufficiently visible place.

- Not having at the disposal of the interested parties printed in which the information provided for in articles 15 to 22 of the RGPD.

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Having a video surveillance device in use, and not accrediting the obligation to have the Record of Processing Activities.

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FOUNDATIONS OF LAW

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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, 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.”

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.

II

The images generated by a camera or video camera system are data from personal nature, so its treatment is subject to the protection regulations of 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.

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

III

Regarding the treatment for video surveillance purposes, article 22 of the LOPDGDD establishes that natural or legal persons, public or private, may carry out carry out the processing of images through camera systems or video cameras in order to preserve the safety of people and property, as well as their installations.

Article 12.1 of the RGPD indicates that whoever carries out data processing personal, such as capturing images through a system of video surveillance, you must provide the interested parties with the information indicated in the articles 13 and 14 of the RGPD.

In order for the duty of information provided for in article 12 of the RGPD to be complies in a concise and understandable manner for the affected party, the aforementioned article 22 of the LOPDGDD foresees in relation to video surveillance a system of "information by layers".

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In this sense, the first layer must refer, at least, to the existence of the treatment (video surveillance), the identity of the person in charge, the possibility of exercising the rights provided for in articles 15 to 22 of the RGPD and where to obtain more information on the processing of personal data.

Second layer information should be readily available in one place accessible to the affected party, whether it is an information sheet at a reception, cashier, etc..., placed in a visible public space or in a web address, and must refer to the rest of the elements of article 13 of the RGPD.

It is not necessary to specify the precise location of the video surveillance equipment.

This duty of information shall be understood to be fulfilled by placing a informative device in a sufficiently visible place, and at least, in the accesses to the monitored areas, whether indoors or outdoors. In case the space video-surveillance has several accesses, it must have said identification badge video-monitored area in each of them.

This information must be provided in advance -considering 39 of the RGPD-. The

The goal is to make the context of the surveillance clear.

IV

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:

1.- Individuals or legal entities, public or private, can establish a system

video surveillance in order to preserve the safety of people and property,

as well as its facilities.

It must be assessed whether the intended purpose can be achieved in another less

intrusive to the rights and freedoms of citizens. personal data only

should be processed if the purpose of the processing could not reasonably be achieved by

other means, considering 39 of the RGPD.

2.- The images obtained cannot be used for a later purpose

incompatible with the one that motivated the installation of the video surveillance system.

3.- The duty to inform those affected provided for in articles 12 must be complied with

and 13 of the RGPD, and 22 of the LOPDGDD, in the terms already indicated.

4.- Images of public roads cannot be captured, since the treatment of

images in public places, unless there is government authorization, only

It can be carried out by the Security Forces and Bodies.

On some occasions, for the protection of private spaces, where

installed cameras on facades or inside, it may be necessary to ensure the

security purpose the recording of a portion of the public highway.

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That is, cameras and video cameras installed for security purposes may not

obtain images of public roads unless it is essential for that purpose, or

it is impossible to avoid it due to their location. And in that case

extraordinary, the cameras will only be able to capture the minimum portion necessary to

preserve the safety of people and property, as well as its facilities.

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.

It is not allowed, therefore, the placement of cameras towards the private property of neighbors with the purpose of intimidating them or affecting their private sphere without cause justified.

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

Images cannot be captured or recorded in spaces owned by third parties without the consent of their owners, or, as the case may be, of the people who find.

It is disproportionate to capture images in private spaces, such as changing rooms, lockers or worker rest areas.

5.- The images may be kept for a maximum period of one month, except in those cases in which they must be kept to prove the commission of acts that threaten the integrity of people, goods or facilities.

In this second case, they must be made available to the authority competent within a maximum period of 72 hours from the knowledge of the existence of the recording.

6.- 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.

7.- The person in charge must carry out a risk analysis or, where appropriate, an evaluation of impact on data protection, to detect those derived from the implementation

of the video surveillance system, assess them and, where appropriate, adopt the measures of appropriate security.

8.- When a security breach occurs that affects the processing of cameras for security purposes, whenever there is a risk to the rights and freedoms of natural persons, you must notify the AEPD within a maximum period of 72 hours.

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A security breach is understood as the accidental or intentional destruction, loss or alteration of illicit of personal data transmitted, conserved or treated in another way, or the unauthorized communication or access to said data.

9.- 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 Spanish Agency for Data Protection offers through its website

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

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the legislation on the protection of personal data, including the

RGPD and the LOPDGDD (section “Reports and resolutions” / “regulations”),

the Guide on the use of video cameras for security and other purposes,

the Guide for compliance with the duty to inform (both available in the

section “Guides and tools”).

It is also of interest, in the event of carrying out low-risk data processing, the facilitates free tool (in the “Guides and tools” section), which, 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 of guideline security considered minimum.

v

The triple Act-Complaint is based on the lack of an informative poster of the video-surveillance area in the establishment of the accused party, located in ***LOCALIDAD.1 capital, and in that it also does not have a Record of Treatment Activities. No ob-

However, in the latter case, in accordance with article 30.5 of the RGPD, the part of-announced is exempt from this obligation by providing that “they shall not apply to any company or organization that employs less than 250 people” and, in addition, its activity does not “involve a risk to the rights and freedoms of the interested parties, unless it is an occasional, or includes special categories of personal data (...)”.

Thus, the evidence available at this stage of the procedure sanctioning party, without prejudice to what results from the investigation of the file, constituting There are solid indications that the accused party, having video cameras installed, surveillance in the establishment, lacks a poster with all the information that, mandatory, must appear in it.

The conduct of the accused party violates the obligation imposed by article 13 of the RGPD, so this could constitute an infringement typified in the art.

Article 83.5 b) of the RGPD, a provision that establishes: “Infringements of the provisions The following will be sanctioned, in accordance with section 2, with administrative fines. amounts to a maximum of EUR 20,000,000 or, in the case of a company, an amount

equivalent to 4% of the total global annual turnover of the previous financial year.

terior, opting for the highest amount:

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a) (...)

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

(...)"

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.

Article 58.2 of the RGPD establishes:

SAW

"Each supervisory authority shall have all of the following corrective powers

listed below:

a) (...)

(...)

d) order the person responsible or in charge of treatment that the operations of

treatment comply with the provisions of this Regulation, where appropriate,

in a certain way and within a specified period;

(...)

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

the measures mentioned in this section, according to the circumstances of each particular case".

According to the provisions of article 83.2 of the RGPD, the measure provided for in letter d) above is compatible with the sanction consisting of an administrative fine.

In the present case, taking into account the exposed facts and without prejudice to what results from the instruction of the procedure, it is considered that 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 article 83.1 of the RGPD. In order to determine the administrative fine to be imposed, to observe the provisions of article 83.2 of the RGPD, which indicates:

"two. 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 the 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

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such as the number of interested parties affected and the level of damages that 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 they have applied under of articles 25 and 32;
- e) any previous infringement 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 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 measure;
- i) when the measures indicated in article 58, section 2, have been ordered previously 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 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 RGPD, the LOPDGDD, in its article 76, "Sanctions and corrective measures", provides:

"1. The penalties provided for in sections 4, 5 and 6 of article 83 of the Regulation (EU) 2016/679 will be applied taking into account the graduation criteria established in section 2 of the aforementioned 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 treatment of personal information.

c) The profits obtained as a result of committing the offence.

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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 subsequent to the commission of the infringement, which cannot be attributed to the absorbing entity.

f) Affectation of the rights of minors.

g) Have, when not mandatory, a data protection delegate.

h) Submission by the person in charge or person in charge, on a voluntary basis, to alternative conflict resolution mechanisms, in those cases in which there are controversies between them and any interested party”.

The balance of the circumstances contemplated, with respect to the infraction committed by violating the provisions of article 13, it allows setting as an initial assessment a fine of 300 euros (three hundred euros).

7th

If the infringement of article 13 of the RGPD is confirmed, it could also be agreed, 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 which each control authority may “order the responsible or in charge of the treatment that the treatment operations are

comply with the provisions of this Regulation, where appropriate, in a certain manner 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 these extremes:

- Prove that you have proceeded to place the appropriate information device in video-monitored areas (at least the existence of a treatment, the identity of the person in charge and the possibility of exercising the rights provided for in articles 15 to 22 of the RGPD), locating this device in a sufficiently visible place.
 - Prove that you keep the information to which it refers available to those affected.
- refers to the aforementioned RGPD.

The accused party is warned that not meeting the requirements of this organism can be considered as an administrative infraction according to the provided in the RGPD, being able to motivate such conduct the opening of a subsequent sanctioning administrative procedure.

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

HE REMEMBERS:

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FIRST: START SANCTION PROCEDURE against A.A.A., with NIF ***NIF.1, for the alleged infringement of article 13 of the RGPD, typified in article 83.5 b) of the GDPR.

SECOND: THAT for the purposes provided in article 64.2 b) of Law 39/2015, of 1 of October, of the Common Administrative Procedure of the Public Administrations (LPACAP), the sanction that could correspond would be an ADMINISTRATIVE FINE of 300 euros (three hundred euros), without prejudice to what results from the instruction.

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

THIRD: APPOINT B.B.B. and, as secretary, to 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).

FOURTH: INCORPORATE in the disciplinary file, for evidentiary purposes, the triple Act-Complaint filed by the complaining party and its documentation, as well as the documents obtained and generated by the Subdirectorate General for Inspection of Data on actions carried out prior to the start of this penalty procedure.

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 in the heading of this document

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, 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 to €60 (sixty euros). With the application of this reduction, the penalty would be established at €240 (two hundred and forty 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, equivalent to €60 (sixty euros). With the application of this reduction, the penalty would be established at €240 (two hundred and forty euros) and its payment will imply the termination of the procedure.

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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. If it were appropriate to apply both reductions, the amount of the penalty would be established at €180 (one hundred and eighty euros).

In any case, the effectiveness of any of the two mentioned reductions (240 euros or 180 euros) will be conditioned to the withdrawal or resignation of any action or administrative appeal 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.

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.

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

948-290322

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SECOND: On April 27, 2022, the claimed party has proceeded to pay the sanction in the amount of 180 euros making use of the two planned reductions in the Startup Agreement transcribed above, which implies the recognition of the 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

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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

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 EXP202201639, of in accordance with the provisions of article 85 of the LPACAP.

SECOND: NOTIFY this resolution to A.A.A.

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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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