

□ File No.: EXP202101449

## 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 4, 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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### 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: The CITY COUNCIL OF MÓSTOLES, (hereinafter, the claimant party),

On July 29, 2021, he filed a claim with the Spanish Agency for  
Data Protection after receiving a claim in the consumer area presented by  
B.B.B.

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The claim is directed against the ACADEMIA \*\*\*ACADEMIA.1 and acting in

representation thereof, A.A.A. with NIF \*\*\*NIF.1 (hereinafter, the part claimed).

The grounds on which the claim is based are as follows:

The ACADEMY \*\*\*ACADEMIA.1 carries out a summer activity aimed at minors organized and taught by the aforementioned academy.

The documentation provided includes the contract whose content has been predisposed by the academy and that includes, among others, a clause (eighth) where indicated:

“Authorization for the taking and use of photographs and recordings of students who could be used for...

- a) Uploads to our website, blogs and video channels or any other support official online of the center so that families and anyone interested in what is done in the activities can see or download them if they wish.
- b) Publish and present them in educational research papers by the center and/or teachers who are responsible for the activity.
- c) Publish them in different communication media by the different official bodies that carry out a specific activity to certify that has developed in our center.”

Said clause is linked to the general consent of the Contract of Activities, so it does not comply with the provisions of the protection regulations of data, since each consent should be given separately.

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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), on September 20, 2021, said communication was

claim to the claimed party, so that it proceeded to its analysis and inform the

this Agency within a month, of the actions carried out to adapt to

the requirements set forth in the data protection regulations.

The transfer, which was carried out in accordance with the regulations established in Law 39/2015, of

October 1, of the Common Administrative Procedure of the Administrations

Public (hereinafter, LPACAP), was collected on October 6, 2021 as

It is stated in the acknowledgment of receipt that is in the file.

On December 2, 2021, this Agency received a response letter

indicating the following:

The city council exposes a possible breach of the regulations for the protection of

data basing this on the eighth clause of the contract that B.B.B. made it easy for them.

Clause from which the authorization for the taking and use of photographs and

student recordings and their use.

It is stated by the respondent that the contracting parties at all times are

empowered to approve or decline the use of the aforementioned images without

be conditioned to contracting the service, and that the aforementioned images

They will only be published on the academy's sites and social networks and not by any

other way.

THIRD: 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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## FOUNDATIONS OF LAW

Yo

By virtue of the powers that article 58.2 of the RGPD recognizes to each authority of control, and according to the provisions of articles 47 and 48 of the LOPDGDD, the Director of the Spanish Agency for Data Protection is competent to initiate and to resolve this procedure.

II

Organic Law 3/2018, of December 5, on the Protection of Personal Data and guarantee of digital rights, in its article 4.11 defines the consent of the interested party as "any manifestation of free will, specific, informed and unequivocal by which the interested party accepts, either by means of a declaration or a clear affirmative action, the treatment of personal data that concerns you".

In this sense, article 6.1 of the LOPDGDD, establishes that "in accordance with the provided in article 4.11 of Regulation (EU) 2016/679, consent is understood affected person, any manifestation of free, specific, informed and inappropriate will. unequivocal by which he accepts, either through a statement or a clear action affirmative, the treatment of personal data that concerns you".

For its part, article 6 of the GDPR establishes the following:

"1. The processing will only be lawful if at least one of the following conditions is met:  
nes:

a) the interested party gave their consent for the processing of their personal data for one or more specific purposes;

b) the treatment is necessary for the execution of a contract in which the interested party is part of or for the application at the request of the latter of pre-contractual measures;

c) the treatment is necessary for the fulfillment of a legal obligation applicable to the

data controller;

d) the treatment is necessary to protect the vital interests of the interested party or another

Physical person;

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e) the treatment is necessary for the fulfillment of a mission carried out in the interest

public or in the exercise of public powers vested in the data controller;

f) the treatment is necessary for the satisfaction of legitimate interests pursued

by the data controller or by a third party, provided that said interests

interests do not prevail or the fundamental rights and freedoms of the interest

cases that require the protection of personal data, in particular when the interested

sado be a child.

The provisions of letter f) of the first paragraph shall not apply to the processing

carried out by public authorities in the exercise of their functions.”

On the other hand, article 7 of the RGPD, in relation to the conditions for the

consent, states the following:

"1. When the treatment is based on the consent of the interested party, the person in charge

You must be able to demonstrate that you consented to the processing of your data

personal.

2. If the data subject's consent is given in the context of a written statement

that also refers to other matters, the request for consent will be presented in

in such a way that it is clearly distinguishable from other matters, in an intelligible and

easy access and using clear and simple language. No part will be binding

of the statement that constitutes an infringement of this Regulation.

3. The interested party shall have the right to withdraw their consent at any time. The

Withdrawal of consent will not affect the legality of the treatment based on the

consent prior to withdrawal. Before giving their consent, the interested party

will be informed of it. It will be as easy to withdraw consent as it is to give it.

4. When assessing whether the consent has been freely given, it will be taken into account in the

greatest extent possible whether, among other things, the performance of a contract,

including the provision of a service, is subject to consent to the processing of

personal data that is not necessary for the execution of said contract.”

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In the present case, the complaining party denounces the claimed party because in the

contract for summer activities for minors carried out by the latter, the parents

of said minors must sign a contract that does not dissociate the consent to

the realization of said summer activities object of the contract, of the consent or

not for taking photographs of minors and using them as advertising.

Therefore, according to the available evidence, it is considered

that we are facing an illicit treatment of personal data, since the collection and

publication of images of minors requires a differentiated consent,

of both taking pictures and possible publicity, therefore, of the

facts stated there should be at least three requests for consent

clearly differentiated throughout the contract to comply with the regulations of protection of personal data: first for the formalization of the contract, second for taking pictures, and third on the advertising purpose of the themselves.

Its non-compliance supposes the infringement of article 7 of the RGPD indicated in the foundation of law II.

IV

Article 72.1 c) of the LOPDGDD states that “according to what is established in the article 83.5 of Regulation (EU) 2016/679, are considered very serious and will prescribe after three years the infractions that suppose a substantial violation of the articles mentioned therein and, in particular, the following:

b) Failure to comply with the requirements of article 7 of the Regulation (EU) 2016/679.”

v

This infraction can be sanctioned with a fine of €20,000,000 maximum or, in the case of a company, an amount equivalent to a maximum of 4% of the  
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global total annual turnover of the previous financial year, opting for the of greater amount, in accordance with article 83.5 of the RGPD.

Pursuant to these criteria, it is considered appropriate to impose on the defendant entity a penalty of 500 euros (five hundred euros), for the infringement of article 7 of the RGPD, regarding the processing of personal data, without the consent of the affected party. A

In accordance with the foregoing, by the Director of the Spanish Agency for

Data Protection

Therefore, based on the foregoing,

By the Director of the Spanish Data Protection Agency,

HE REMEMBERS:

FIRST: START SANCTION PROCEDURE against A.A.A. with NIF

\*\*\*NIF.1, in accordance with the provisions of article 58.2.b) of the RGPD, by the alleged infringement of article 7 of the RGPD, typified in article 83.5.a) of the RGPD and for prescription purposes, by article 72.1 c) of the LOPDGDD.

SECOND: APPOINT instructor to C.C.C. and, as secretary, to D.D.D., 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 Sec-Public Tor (LRJSP).

THIRD: INCORPORATE to the disciplinary file, for evidentiary purposes, the claim filed by the claimants and their documentation, the documents obtained and generated by the General Subdirectorate for Data Inspection during the investigation phase, as well as the report of previous Inspection actions.

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, the

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sanction that could correspond would be 500 euros (five hundred euros) without prejudice of what results from the instruction.



FIFTH: NOTIFY this 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 in this case to 100 euros. With the application of this reduction, the sanction would be established at 400 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 the amount of the same, equivalent in this case at 100 euros. With the application of this reduction, the sanction would be established in 400 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. The voluntary payment of the referred amount in the previous paragraph may be done at any time prior to the resolution. In

In this case, if it were appropriate to apply both reductions, the amount of the penalty would be set at 300 euros (three hundred euros).

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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.

If you choose to proceed to the voluntary payment of any of the amounts indicated previously, 400 or 300 euros, you must make it effective by paying it into the account number ES00 0000 0000 0000 0000 0000 opened in the name of the Spanish Agency of 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 procedure will have a maximum duration of nine months from the date of the start-up agreement or, where appropriate, 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 Agency for Data Protection.

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SECOND: On March 29, 2022, the claimed party has proceeded to pay of the sanction in the amount of 300 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

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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.”

## 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."

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According to what was stated,

the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: TO DECLARE the termination of procedure EXP202101449, 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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