

□ File No.: PS/00097/2021

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 May 5, 2021, the Director of the Spanish Agency for
Data Protection agreed to initiate a sanctioning procedure against A.A.A. (hereinafter the
claimed party). Notified of the initial agreement and after analyzing the allegations
presented, on June 7, 2021, the resolution proposal was issued that
is transcribed below:

<<

Procedure no.: PS/00097/2021

Of the procedure instructed by the Spanish Agency for Data Protection and based on
to the following:

FACTS

FIRST: Mrs. B.B.B. (hereinafter, the claimant) dated January 21, 2021
filed a claim with the Spanish Data Protection Agency. The
claim is directed against the neighbor of the property A.A.A. with NIF ***NIF.1 (in
later, the claimed one). The grounds on which the claim is based are
succinctly the following:

“existence of a dome-type camera recording a community street, affecting
do to my home and adjoining homes and part of the public road” (folio nº 1).

Together with the claim, it provides documentary evidence that proves the presence of
the camera (Attached Annex I).

SECOND: On 02/11/21, the claim is TRANSFERRED to the party

demanding so that it manifests in law what it deems appropriate.

THIRD: On 01/21/21, a reply is received from the respondent stating the

following in the exercise of his right to defense:

“The camera is a complement to the private security system installed in

my home and it does NOT belong to the Community of Owners, therefore, the use of the

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

2/8

itself is NOT for the safety of the community space nor does it collect images of it.

mo.

That the camera is duly signposted, on the poster it is indicated

clearly the existence of the treatment, the identity of the person in charge, the possibility of

exercise the rights of article 15 to 22 of the RGPD and a reference to where to obtain

More information on the processing of personal data. (Doc 2)”

“So in the legitimate interest of protecting my assets, I installed a camera

dissuasive focusing my facade and private access. Meetings have been called

after the installation of the camera and the legal validity of the minutes is in doubt

of the same and are in the process of appeal. (Doc. 3)”.

FOURTH: On May 5, 2021, the Director of the Spanish Agency for Pro-

Data Protection agreed to initiate a sanctioning procedure against the defendant, in accordance with

the provisions of articles 63 and 64 of Law 39/2015, of October 1, on the Procedure

Common Administrative Procedure of Public Administrations (hereinafter, LPA-

CAP), for the alleged infringement of Article 5.1.c) of the RGPD, typified in Article

83.5 of the GDPR.

FIFTH: Having been notified of the aforementioned initiation agreement, the respondent submitted a written allegations on 05/31/21 in which, in summary, it stated the following:

"I hereby state that on ***DATE.1 at 10 a.m. has been pro-agreed to remove the dissuasive camera installed on my facade, which I credit with the contribution of photographs.

Likewise, I reiterate the FACTS previously set forth in the request for information.

training file number ***FILE.1, in relation to the FUNDAMENTALS

OF LAW:

Epigraph II - In no case, the cameras may record images of public roads, or adjoining homes (except for access to the property) (...) In order to install This type of device must be counted if it affects ``common`` areas with the authorization tion of the rest of the community members in legal form

SECOND.- That images of public or community roads are NOT captured, unless it is- strictly necessary. The camera only captures the facade, recording is not feasible. tion of images of public roads, except for a minimum strip of accesses to the property. (Doc. 1) They DO NOT capture images of third parties and adjoining homes or of any other foreign space. NO more than one meter of sidewalk, since the door of access to the property, it has 3 access steps and the garage door (...)"

FOURTH.- That I am a security systems technician and, for this reason, I have installed the camera, whose visualization is instantaneous, DOES NOT record on the hard disk.

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

I REQUEST: That this document be considered as submitted, that it be admitted and be filed in due time and form (...)."

SIXTH: Attached as an annex is a list of documents in the procedure, remembering the full accessibility in your case to the File administrative.

Of the actions carried out in this procedure and the documentation in the file, the following have been accredited:

PROVEN FACTS

First. The reasons on which the claim dated 01/21/21 is based are succinctly the following:

"existence of a dome-type camera recording a community street, affecting do to my home and adjoining homes and part of the public road" (folio nº 1).

Together with the claim, it provides documentary evidence that proves the presence of the camera (Attached Annex I).

Second. It is accredited as the main responsible A.A.A., who does not deny being the responsible for installing the camera.

Third. It is proven that the defendant proceeded to install a dome-type camera operational on the facade of the property controlling the entrances/exits of the same, recording the images of neighbors of the same.

Fourth. It is proven that the defendant did not have the authorization of the rest of owners to install the video-surveillance camera.

Fifth. It is proven that the defendant proceeded to place an informative poster on the facade, although at a considerable height that made it difficult to know who was responsible and purpose of data processing where appropriate.

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

In the present case, the claim dated 01/21/21 is examined by me-
gave from which the following is transferred as fact:

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

4/8

“existence of a dome-type camera recording a community street, affecting
do to my home and adjoining homes and part of the public road” (folio nº 1).

According to the Horizontal Property Law (LPH), it is possible to install or remove
porter services, concierge, surveillance or other common services of general interest
ral, as long as the necessary quorum is achieved. In this case, they would be
necessary 3/5 parts of the total owners who, in turn, represent 3/5 of quarter
participation rates.

It should be noted that according to the claimant's statement, the community of pro-
owners “has expressly denied the installation of the camera in question” (folio no.
claim).

The fact that the minutes of the Community are in the process of being challenged,
it only reinforces that as long as the installation does not have legal support,
is not legitimated to capture the images (personal data).

It should be remembered that the image is personal data, so the treatment

without the consent of the same affects the regulations on data protection,
the legal procedure established for the installation of this type of device must be followed.
sites, whose requirements are clear in art. 17 LPH.

The reasons argued must initially be rejected, since a hypothetical
tic occupation of the dwelling, does not legitimize per se the installation of a video-
surveillance affecting without just cause other fundamental rights, such as
of data protection.

The absence of accredited authorization from the Community of owners,
It takes either obtaining it or looking for an alternative solution to the interests
parties in conflict, which must be exposed to this Agency.

In no case may the cameras record images of public roads, or homes
adjoining (with the exception of access to the property), since it would be the responsibility of the
State Security Forces and Bodies.

In order to install this type of device, it must be considered whether it affects “community” areas.
nes” with the authorization of the rest of the community members in legal form, if not, you should choose
for a system of protection that is less harmful to the fundamental rights of third parties
(eg interior camera or an audible alarm, etc).

The exposed facts suppose an alleged violation of the content of art. 5.1 le-
tra a) GDPR. “Personal data will be:

a)
processed in a lawful, loyal and transparent manner in relation to the interested party
("legality, loyalty and transparency");

III

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

In accordance with the evidence available in this proceeding
punisher, it is considered that the defendant proceeded to install a video system
surveillance without legal support, affecting with it the data of third parties without counting
with the consent of the property owners.

The known facts constitute an infraction, attributable to the defendant, for
violation of art. 5.1 a) GDPR.

Article 83.5 letter a) RGD provides the following:

IV

“The infractions of the following dispositions will be sanctioned, in accordance with
paragraph 2, with administrative fines of a maximum of EUR 20,000,000 or,
from a company, of an amount equivalent to a maximum of 4% of the volume
of total annual global business of the previous financial year, opting for the ma-
higher amount:

a)

basic principles for treatment, including conditions for con-
sentiment under articles 5, 6, 7 and 9;

For the purposes of the limitation period for infractions, the infraction indicated on the
previous paragraph is considered very serious and prescribes after three years, in accordance with article
72.1 of the LOPDGDD, which establishes that:

“Based on the provisions of 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:

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

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

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

- the nature of the infraction by having a video-surveillance system that has the recording modality, dealing with data of natural persons identified cables (art. 83.5 a) RGPD).
- the intentionality or negligence of the infraction, the cameras were not due-authorized by the Board of Owners, which makes considering the conduct as "negligent" for the reasons stated.

The party complained against has proceeded after notification of the Initial Agreement decision to withdraw the camera in question, although he considers that he was "legitimized to install larla".

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

6/8

In accordance with the foregoing, it can be concluded that the described infringement is verified, although the subsequent withdrawal of the same, is considered a mitigating circumstance for propose a sanction encrypted in the amount of €750, a sanction located on the lower scale higher for this type of offence.

In view of the foregoing, the following is issued

MOTION FOR A RESOLUTION

That the Director of the Spanish Data Protection Agency sanction

A.A.A., with NIF ***NIF.1, for an infringement of Article 5.1.c) of the RGPD, typified in Article 83.5 of the RGPD, a fine of €750 (Seven hundred and fifty Euros).

Likewise, in accordance with the provisions of article 85.2 of the LPACAP,

informs that you may, at any time prior to the resolution of this proceeding, carry out the voluntary payment of the proposed sanction, which will entail a reduction of 20% of the amount of the same. With the application of this reduction, the sanction would be established at €600 and its payment will imply the termination of the process. The effectiveness of this reduction will be conditioned to the withdrawal or Waiver of any administrative action or recourse against the sanction.

In the event that you choose to proceed with the voluntary payment of the amount specified above, subsequently, in accordance with the provisions of article 85.2 cited, it must be carried out by depositing it in restricted account number ES00 0000 0000 0000 0000 0000 opened in the name of the Spanish Agency for Data Protection in 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 cause, for voluntary payment voluntary, reduction of the amount of the penalty. You must also send proof admission to the Subdirector General for Inspection to proceed to close the tooth.

By virtue of this, you are notified of the foregoing, and the procedure is made clear to you. so that within TEN DAYS you can allege whatever you consider in your defense and present the documents and information that it considers pertinent, in accordance with article 89.2 of the LPACAP).

RRR

INSPECTOR/INSTRUCTOR

>>

926-300320

SECOND: On July 6, 2021, the claimed party has proceeded to pay the sanction in the amount of 600 euros making use of the reduction foreseen in the motion for a resolution transcribed above.

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

7/8

THIRD: The payment made entails the waiver of any action or resource in via against the sanction, in relation to the facts referred to in the resolution proposal.

FOUNDATIONS OF LAW

FIRST: By virtue of the powers that article 58.2 of the RGPD recognizes to each control authority, and as established in art. 47 of the Organic Law 3/2018, of December 5, Protection of Personal Data and guarantee of rights (hereinafter LOPDGDD), the Director of the Spanish Agency for Data Protection is competent to sanction the infractions that are committed against said Regulation; violations of article 48 of Law 9/2014, of 9 May, General de Telecomunicaciones (hereinafter LGT), in accordance with the provided in article 84.3 of the LGT, and the infractions typified in articles 38.3 c), d) and i) and 38.4 d), g) and h) of Law 34/2002, of July 11, on services of the information society and electronic commerce (hereinafter LSSI), according to Article 43.1 of said Law provides.

SECOND: Article 85 of Law 39/2015, of October 1, on the Procedure Common Administrative of Public Administrations (hereinafter LPACAP), under the heading "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."

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

8/8

In accordance with the above, the Director of the Spanish Agency for the Protection of Data

RESOLVES:

FIRST: TO DECLARE the termination of procedure PS/00097/2021, 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

968-280621

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es