

□ File No.: EXP202105325

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 June 30, 2022, the Director of the Spanish Agency for
Data Protection agreed to initiate a sanctioning procedure against COLEGIO
VILLAEUROPA, S.C.L. (hereinafter, the claimed party), through the Agreement that is
transcribe:

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File No.: EXP202105325

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: On October 29, 2021, A.A.A. (hereinafter the part
claimant) filed a claim with the Spanish Data Protection Agency.

The claim is directed against COLEGIO VILLAEUROPA, S.C.L. with NIF
F78195831 (hereinafter the claimed part).

The reasons on which the claim is based is the recording of images of your child by the
claimed center.

Attached image of an informative poster of a video-monitored area, at the entrance of the Center,
where information on the person responsible for treatment is not included and how to contact the
same.

It is claimed that the school does not have the consent of the parents for the treatment of the images of the claimant's child, that the parents are not informed of students of the treatment of personal data according to the protection regulations of data and that the informative posters of the video-surveillance area are not completed.

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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 December 23, 2021, said information was transferred 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 December 24, 2021 as

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

No response has been received to this transfer letter.

THIRD: On January 29, 2022, in accordance with article 65 of the LOPDGDD, the claim filed by the claimant was admitted for processing.

FOURTH: The General Subdirectorate for Data Inspection proceeded to carry out of previous investigative actions to clarify the facts in question, by virtue of the functions assigned to the control authorities in the

article 57.1 and the powers granted in article 58.1 of the Regulation (EU)

2016/679 (General Data Protection Regulation, hereinafter RGPD), and

in accordance with the provisions of Title VII, Chapter I, Second Section, of the

LOPDGDD, having knowledge of the following extremes:

The representatives of the college state that they have two chambers located in

the schoolyard whose recordings are automatically deleted every week.

They also state that there are several chambers (they do not specify the number) that

they are just a shell and are used to deter them from entering the yard.

Finally they have a video intercom that is used to see to whom the door is opened.

gate.

Provides a copy of a video surveillance information poster in which the person is not identified.

responsible for the file or the procedure to exercise their rights.

This photograph has been sent in the request for information to the school and

They have not made any claims.

FOUNDATIONS OF LAW

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By virtue of the powers that article 58.2 of Regulation (EU) 2016/679 of the

European Parliament and of the Council of April 27, 2016, regarding the protection of

individuals with regard to the processing of personal data and the free

circulation of these data (General Data Protection Regulation, hereinafter

RGPD) recognizes each control authority, and according to what is established in the articles

47, 64.2 and 68.1 of Organic Law 3/2018, of December 5, on Data Protection

Personal and guarantee of digital rights (hereinafter LOPDGDD), the

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Director of the Spanish Data Protection Agency is competent to initiate this procedure.

II

Article 4 of Regulation (EU) 2016/679 of the European Parliament and of the Council of April 27, 2016, regarding the protection of natural persons in what regarding the processing of personal data and the free circulation of these data (General Data Protection Regulation, hereinafter RGPD), under the rubric "Definitions", provides that:

"For the purposes of this Regulation, the following shall be understood as:

- 1) "personal data": any information about an identified natural person or identifiable ("the interested party"); An identifiable natural person shall be deemed to be any person whose identity can be determined, directly or indirectly, in particular by an identifier, such as a name, an identification number, location, an online identifier or one or more elements of the identity physical, physiological, genetic, psychic, economic, cultural or social of said person;
- 2) "processing": any operation or set of operations carried out on personal data or sets of personal data, whether by procedures automated or not, such as the collection, registration, organization, structuring, conservation, adaptation or modification, extraction, consultation, use, communication by transmission, broadcast or any other form of enabling of access, collation or interconnection, limitation, suppression or destruction;"

III

In relation to the information that must be provided when the personal data is obtained from the interested party, article 13 of the RGPD establishes the following:

"1. When personal data relating to him is obtained from an interested party, the

responsible for the treatment, at the time these are obtained, will provide

all the information indicated below:

a) the identity and contact details of the person in charge and, where appropriate, of their representative;

b) the contact details of the data protection delegate, if applicable;

c) the purposes of the treatment to which the personal data is destined and the legal basis of the treatment;

d) when the treatment is based on article 6, paragraph 1, letter f), the interests legitimate of the person in charge or of a third party;

e) the recipients or the categories of recipients of the personal data, in their case;

f) where appropriate, the intention of the controller to transfer personal data to a third party country or international organization and the existence or absence of a decision to adequacy of the Commission, or, in the case of transfers indicated in the

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Articles 46 or 47 or Article 49, paragraph 1, second paragraph, reference to the adequate or appropriate warranties and the means to obtain a copy of these or to the fact that they have been borrowed.

2. In addition to the information mentioned in section 1, the person responsible for the treatment will facilitate the interested party, at the moment in which the data is obtained personal, the following information necessary to guarantee data processing

fair and transparent

- a) the period during which the personal data will be kept or, when it is not possible, the criteria used to determine this period;
- b) the existence of the right to request from the data controller access to the personal data relating to the interested party, and its rectification or deletion, or the limitation of its treatment, or to oppose the treatment, as well as the right to portability of the data;
- c) when the treatment is based on article 6, paragraph 1, letter a), or article 9, paragraph 2, letter a), the existence of the right to withdraw consent in any time, without affecting the legality of the treatment based on the consent prior to its withdrawal;
- d) the right to file a claim with a supervisory authority;
- e) if the communication of personal data is a legal or contractual requirement, or a necessary requirement to sign a contract, and if the interested party is obliged to provide personal data and is informed of the possible consequences of not provide such data;
- f) the existence of automated decisions, including profiling, to which referred to in article 22, sections 1 and 4, and, at least in such cases, information about applied logic, as well as the importance and consequences provisions of said treatment for the interested party.

3. When the data controller plans further data processing personal data for a purpose other than that for which they were collected, you will provide the interested party, prior to such further processing, information on that other purpose and any additional information relevant under paragraph 2.

4. The provisions of sections 1, 2 and 3 shall not apply when and in the to the extent that the interested party already has the information.”

In this sense, reporting on video surveillance according to the RGPD is an obligation.

included in this legislative framework.

An informative device must be available in a visible area (eg access door)

indicating that it is a video-monitored area, it must indicate the

existence of the treatment, the identity of the person in charge, as well as the possibility of

exercise the rights provided for in articles 15 to 22 of the Regulation (EU)

2016/679.

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The image of a person to the extent that it identifies or can identify the person

constitutes personal data, which may be processed to di-

various purposes.

Article 22 of Organic Law 3/2018 (December 5)-LOPDGDD- provides:

"1. Natural or legal persons, public or private, may carry out the

processing of images through camera systems or video cameras with the purpose of

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

nes.

The AEPD, in a related report, stipulates that it is not necessary for cartels to be

stand right below the cameras. It is enough to do it in a visible place and that it includes

open and closed spaces where the video camera circuit is operational.

This badge will be displayed in a visible place, and at least, at the entrances to the areas

guarded whether indoors or outdoors. In the event that the video-monitored space

has several entrances, you must have said zone badge

video surveillance in each of them.

IV

By virtue of the provisions of article 58.2 of the RGD, the Spanish Agency for Data Protection, as a control authority, has a set of corrective powers in the event of an infraction of the precepts of the GDPR.

Article 58.2 of the RGD provides the following:

“2 Each supervisory authority shall have all of the following corrective powers listed below:

(...)

b) send a warning to any person responsible or in charge of the treatment when the treatment operations have violated the provisions of this Regulation;”

(...)

“d) order the person responsible or in charge of the treatment that the operations of treatment comply with the provisions of this Regulation, where appropriate, in a specified manner 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;”

v

Article 83.5.b) of the RGD establishes that:

“The infractions of the following dispositions will be sanctioned, in accordance with the paragraph 2, with administrative fines of a maximum of EUR 20,000,000 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 largest amount:

a) the rights of the interested parties pursuant to articles 12 to 22;"

In turn, article 72.1 h) of the LOPDGDD, under the heading "Infringements considered very serious provides:

"Based on the provisions of article 83.5 of Regulation (EU) 2016/679,

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:

h) The omission of the duty to inform the affected party about the processing of their data personal in accordance with the provisions of articles 13 and 14 of the Regulation (EU) 2016/679 and 12 of this organic law."

SAW

In this case, the use of photographs and images has been denounced, to which

The school responded that at the time of enrollment the school delivers to the students parents of the students a document requesting authorization for the taking of pictures of their children. If said authorization is not granted, no any kind of images to those children.

Specifically, the claimant's son has provided the authorization signed by his mother.

The copy of the authorization signed by the mother that is provided by the school to the request for information from this agency is dated May 11, 2016.

Every year photographs of the students are taken at Christmas, taken by the company ORLOCOLOR, however, the claimant's son did not have this

Photography.

The school provides a copy of the contract for the provision of services signed with the entity

ORLOCOLOR dated September 1, 2021.

In addition, the use of a video surveillance system that is not in accordance with the

data protection regulations, in this sense, this Agency, in its actions

investigation has confirmed the existence of a video surveillance system,

composed of two cameras that record images and an undetermined number of

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fake cameras, without signs that identify the person responsible or indicate

How to exercise your rights.

Thus, it is considered that the respondent is in breach of article 13 of the

RGPD, in relation to art. 22 LOPDGDD for not providing the required information

regarding the video surveillance processing operation.

This is so because the claimed party must inform the owner of the personal data that

takes on the aspects indicated in said precept such as the identity and data of

contact of the person in charge of the treatment, the purposes of the treatment to which they are destined

the personal data and the legal basis of the treatment, as indicated in the

foundation of law III.

Likewise, it is considered that in relation to article 13 of the RGPD, there has been a breach

Article 22 of Organic Law 3/2018 (December 5)-LOPDGDD, indicated in the

foundation of law IV, which requires the existence of an informative device in

visible area indicating that it is a video-monitored area, the identity of the

responsible, as well as the possibility of exercising the rights provided for in articles

15 to 22 of Regulation (EU) 2016/679.

7th

In order to determine the administrative fines to be imposed, the

provisions of articles 83.1 and 83.2 of the RGPD, precepts that indicate:

“Each control authority will guarantee that the imposition of administrative fines

under this Article for infringements of this Regulation

indicated in sections 4, 9 and 6 are in each individual case effective,

proportionate and dissuasive.”

“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

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

number of interested parties affected and the level of damages they have suffered;

b) intentionality or negligence in the infringement;

c) any measure taken by the controller or processor to pa-

allocate 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,

gives an account of the technical or organizational measures that have been applied by virtue of the

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;

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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, to what extent. gives;

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 to certification mechanisms fication approved in accordance with article 42, and

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. mind, through infraction.”

Regarding section k) of article 83.2 of the RGPD, the LOPDGDD, article 76,

“Sanctions and corrective measures”, provides:

“two. 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.
- 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.”

In accordance with the transcribed precepts, and without prejudice to what results from the instruction of the procedure, in order to set the amount of the sanction of fine to impose on COLEGIO VILLAEUROPA, S.C.L. responsible for violations indicated are considered concurrent in the present case, as aggravating circumstances, the following factors:

The link between the activity of the offender and the performance of

□

personal data processing.

Therefore, in accordance with the foregoing, by the Director of the Agency

Spanish Data Protection,

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HE REMEMBERS:

START SANCTION PROCEDURE

COLLEGE

FIRST:

VILLAEUROPA, S.C.L. with NIF F78195831, in accordance with the provisions of the article 58.2.i) of the RGPD, for the alleged infringement of article 13 of the RGPD in relation to article 22 LOPDGDD for not providing the required information regarding the operation of video surveillance treatment, typified in article 83.5.b) of the GDPR.

SECOND: APPOINT as Instructor A.A.A. and as Secretary to B.B.B., 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 claim filed by the claimant and the documents obtained and generated by the General Subdirectorate of Data Inspection in relation to said claim; all of them are part of the file.

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 sanction that could correspond by article 13 of the RGPD would be 5000 Euros (five euros), without prejudice to what results from the instruction.

FIFTH: NOTIFY this agreement to COLEGIO VILLAEUROPA, S.C.L. with NIF F78195831, granting a hearing period of ten business days for formulate the allegations and present the evidence that it deems appropriate. In its Allegation brief must provide your NIF and the procedure number that appears at the top 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 the present procedure. With the application of this reduction, the sanction would be established at 4000 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 sanction would be established at 4000 euros and its payment will imply the termination of the process.

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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 3000 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 previously indicated 4000 or 3000 euros, you must make it effective through your Deposit in account number ES00 0000 0000 0000 0000 0000 opened in the name of the Spanish Data Protection Agency 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 welcomes

Likewise, you must send proof of payment to the General Subdirectorate of Inspection to proceed with the procedure in accordance with the quantity 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 Data Protection Agency

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SECOND: On July 9, 2022, the claimed party has proceeded to pay the sanction in the amount of 3000 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.

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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 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 EXP202105325, of in accordance with the provisions of article 85 of the LPACAP.

SECOND: NOTIFY this resolution to COLEGIO VILLAEUROPA, S.C.L.

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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