

□ File No.: EXP202212654

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 17, 2023, the Director of the Spanish Agency for
Data Protection agreed to start a sanctioning procedure against the CONGREGATION
OF THE MOST HOLY REDEEMER PROVINCIAL CURIA
(hereinafter, the part
claimed), through the Agreement that is transcribed:

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File No.: EXP202212654

AGREEMENT TO START THE SANCTION PROCEDURE

Of the actions carried out by the Spanish Data Protection Agency, and in
based on the following

FACTS

FIRST: A.A.A. (hereinafter, the claimant) on 11/22/2022, filed
claim before the Spanish Data Protection Agency. The claim is
directed against CONGREGATION OF THE HOLY REDEEMER PROVINCIAL CURIA
with NIF R2800158D (hereinafter, the claimed party), for the installation of a
video surveillance system located at COLEGIO ***COLEGIO.1, CALLE DE
*** DIRECTION.1, MADRID, there being indications of a possible breach of the
provided in Article 5.1.c) of the GDPR.

The reasons for the claim are the following:

The claimant states that the requested Educational Center has a video surveillance system with cameras that are capable of capturing public roads, without prior administrative authorization for it.

It provides images of the location of cameras on the façade of the Center.

The documents provided are:

- Photo report

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SECOND: In accordance with article 65.4 of Organic Law 3/2018, of 5 December, Protection of Personal Data and guarantee of digital rights (in forward LOPDGDD), said claim was transferred to the claimed party, for to proceed with its analysis and inform this Agency within a month of the actions carried out to adapt to the requirements established in the regulations of Data Protection.

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 11/28/2022, as stated in the acknowledgment of receipt in the file.

On 12/26/2022, this Agency received a written response, providing complete information on its video surveillance system, made up of 23 security cameras which are all interior except one that is oriented towards the exterior and that captures public road. They provide an image of the field of vision of this camera, confirming that includes in his field of vision the buildings in front and the cars parked there, so

in such a way that the collection of public roads is not proportional.

THIRD: On February 22, 2023, in accordance with article 65 of the

LOPDGDD, the claim presented by the claimant party was admitted for processing.

FUNDAMENTALS OF LAW

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Competence

In accordance with the powers that article 58.2 of Regulation (EU) 2016/679

(General Data Protection Regulation, hereinafter GDPR), 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 Data Protection Agency will be governed by the provisions

in Regulation (EU) 2016/679, in this organic law, by the provisions

regulations dictated in its development and, insofar as they do not contradict them, with character

subsidiary, by the general rules on administrative procedures."

II

The image is a personal data

The physical image of a person, according to article 4.1 of the GDPR, is data

personnel and their protection, therefore, is the subject of said Regulation. In article 4.2

of the GDPR defines the concept of "processing" of personal data.

""treatment"": any operation or set of operations carried out on

about personal data or sets of personal data, either by means of

automated or not, such as the collection, registration, organization, structure-

tion, conservation, adaptation or modification, extraction, consultation, use,

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communication by transmission, diffusion or any other form of authorization of access, collation or interconnection, limitation, deletion or destruction;"

The images generated by a system of cameras or camcorders are data of 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 denounced video surveillance system is in accordance with the provisions of the GDPR.

II

alleged infringement

The art. 5.1 c) GDPR provides the following: Personal data will be:

"adequate, relevant and limited to what is necessary in relation to the purposes for those who are processed ("data minimization")."

Regarding 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 treatment of images through systems of cameras or video cameras in order to preserve the safety of people and property, as well as their facilities.

The processing of personal data is subject to the rest of the principles of the treatment contained in article 5 of the GDPR. We will highlight the principle of

minimization of data contained in article 5.1.c) of the GDPR which provides that personal data will be "adequate, relevant and limited to what is necessary in relation to for the purposes for which they are processed".

This means that in a specific treatment only the data can be processed timely personal, that come to the case and that are strictly necessary to fulfill the purpose for which they are processed. Treatment must be adjusted and proportional to the purpose to which it is directed. The relevance in the treatment of data must occur both at the time of data collection and at the time of subsequent treatment carried out on them.

In accordance with the above, the processing of excessive data must be restricted or proceed to their deletion.

The application of the principle of data minimization in the field of video surveillance means that images of the public thoroughfare cannot be captured, since the treatment of images in public places, unless authorized government, can only be carried out by the Security Forces and Corps.

On some occasions, for the protection of private spaces, where cameras installed on facades or inside, may be necessary to ensure the security purpose the recording of a portion of the public thoroughfare.

That is, cameras and camcorders installed for security purposes may not be obtain images of public roads unless it is essential for said purpose, or

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it is impossible to avoid it due to their location. And in such a 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.

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

object of the installation and, in particular, not being able to affect public spaces surroundings, adjoining buildings and vehicles other than those that access the space guarded.

In the present case, it is observed that one of the cameras installed captures images of public roads, cars parked or passing through it, as well as the buildings opposite, which means excessive data processing.

Video surveillance obligations

In accordance with the foregoing, the processing of images through a system video surveillance, to comply with current regulations, must comply with the following requirements:

IV.

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 cannot reasonably be achieved by other means, recital 39 of the GDPR.

2.- The images obtained cannot be used for a subsequent purpose incompatible with the one that motivated the installation of the video surveillance system.

3.- The treatment of images through the installation of camera systems or video cameras must be lawful and comply with the principle of proportionality and the principle of minimization of data, in the terms already indicated.

4.- 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, property or facilities.

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

5.- The controller must keep a record of processing activities carried out under his responsibility in which the information to which he makes reference article 30.1 of the GDPR.

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6.- 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 security measures. appropriate security.

The Spanish Data Protection Agency 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 at the section "Guides and tools").

It is also of interest, in case of carrying out low-risk data processing, the free tool Facilitates (in the "Guides and tools" section) that, through specific questions, allows to assess the situation of the person in charge with respect to the processing of personal data that it carries out, and where appropriate, generate various documents, informative and contractual clauses, as well as an annex with measures indicative security considered minimum.

Possible administrative offense

V

In accordance with the evidence available at the present time of agreement to start the disciplinary procedure, and without prejudice to what results from the instruction, it is considered that the facts exposed violate the provisions of the Article 5.1.c) of the GDPR, so they could imply the commission of an infringement typified in article 83.5 of the GDPR, which provides the following:

Violations of the following provisions will be penalized, according to with paragraph 2, with administrative fines of EUR 20,000,000 as maximum or, in the case of a company, an amount equivalent to 4% maximum of the overall annual total turnover of the financial year above, opting for the one with the highest amount:

a) the basic principles for the treatment, including the conditions for the consent under articles 5, 6, 7 and 9; (...)"

For the purposes of the limitation period for infringements, the infringement indicated in the

previous paragraph is considered very serious in accordance with article 72.1 of the LOPDGDD,

which states that:

"Based on what is established in 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 in violation of the principles and guarantees

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

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(...)"

SAW

Sanction proposal

The fine imposed must be, in each individual case, effective, proportionate

and dissuasive, in accordance with the provisions of article 83.1 of the GDPR. Therefore,

it is appropriate to graduate the sanction to be imposed in accordance with the criteria established by the

Article 83.2 of the GDPR, and with the provisions of Article 76 of the LOPDGDD, regarding

to section k) of the aforementioned article 83.2 GDPR.

For all these reasons, it is considered that the corresponding sanction is a fine.

administrative. It must be remembered that the voluntary payment of the proposed amounts does not

exempts from accrediting the regularization of the video surveillance system in accordance with

the regulations in force.

VII

possible measures

If the infringement is confirmed, it could be agreed to impose on the person responsible the adoption of adequate measures to adjust its performance to the regulations mentioned in this act, in accordance with the provisions of the aforementioned article 58.2 d) of the GDPR, according to the which each control authority may "order the person responsible or in charge of the processing that the processing operations comply with the provisions of the this Regulation, where appropriate, in a certain way and within a certain specified term...".

In such a case, in the resolution adopted, this Agency may require the responsible so that within the period to be determined:

Evidence of having removed the camera system or

- camcorders from the current location or to their reorientation, in such a way that the viewing of the images that are observed shows that it is not captured
- public roads.

It is noted that not meeting the requirements of this body may be considered as an administrative offense in accordance with the provisions of the GDPR, classified as an infraction in its article 83.5 and 83.6, being able to motivate such conduct the opening of a subsequent administrative sanctioning procedure.

VIII

Conclusion

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

HE REMEMBERS:

FIRST: INITIATE SANCTION PROCEDURE a CONGREGATION OF THE

HOLY REDEEMER PROVINCIAL CURIA, with NIF R2800158D, for the alleged infringement of Article 5.1.c) of the GDPR, typified in Article 83.5 of the GDPR.

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SECOND: APPOINT as instructor B.B.B. and, as secretary, to C.C.C., indicating that they may be challenged, if applicable, in accordance with the provisions of the Articles 23 and 24 of Law 40/2015, of October 1, on the Legal Regime of the Sector Public (LRJSP).

THIRD: INCORPORATE into the disciplinary file, for evidentiary purposes, the claim filed by the claimant and its documentation, as well as the documents obtained and generated by the Sub-directorate General of Inspection of Data on actions carried out prior to the start of this sanctioning procedure.

FOURTH: THAT for the purposes provided for in art. 64.2 b) of Law 39/2015, of 1 October, of the Common Administrative Procedure of Public Administrations (LPACAP, hereinafter), the corresponding sanction would be, for the alleged violation of article 5.1.c) of the GDPR, typified in article 83.5 of said regulation, administrative fine amounting to 500.00 euros

FIFTH: NOTIFY this agreement to CONGREGATION OF THE HOLY PROVINCIAL CURIA REDENTER, with NIF R2800158D, granting him a period of audience of ten business days to formulate the allegations and present the tests you deem appropriate. In your pleadings you must provide your NIF and the procedure number that appears in the heading of this document

If, within the stipulated period, he 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, on the Common Administrative Procedure of Public Administrations (hereinafter, LPACAP).

In accordance with the provisions of article 85 of the LPACAP, you may recognize your responsibility within the period granted for the formulation of allegations to the present initiation agreement, which will entail a reduction of 20% of the sanction that should be imposed in this proceeding. With the application of this reduction, the sanction would be established at 400.00 euros, resolving the procedure with the imposition of this sanction.

In the same way, it 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 400.00 euros and its payment will imply the termination of the procedure, without prejudice to the imposition of the corresponding measures.

The reduction for the voluntary payment of the penalty is cumulative to the corresponding apply for acknowledgment of responsibility, provided that this acknowledgment of the responsibility is revealed within the period granted to formulate allegations at the opening of the procedure. Voluntary payment of the referred amount in the previous paragraph may be done at any time prior to the resolution. In this case, if both reductions were to be applied, the amount of the penalty would remain set at 300.00 euros.

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In any case, the effectiveness of any of the two aforementioned reductions will be conditioned to the withdrawal or resignation of any action or appeal via administrative against the sanction.

In the event that you choose to proceed with the voluntary payment of any of the amounts indicated above (400.00 euros or 300.00 euros), you must make it effective by entering the account IBAN number: ES00 0000 0000 0000 0000 0000 (BIC/SWIFT Code: XXXXXXXXXXXX) opened in the name of the Spanish Agency for Protection of Data 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 reason for the reduction of the amount to which it accepts. Likewise, you must send proof of income to the General Subdirectorato of Inspection to continue with the procedure in accordance with the quantity entered.

The disciplinary procedure will have a maximum duration of nine months from from the date of the start agreement or, where appropriate, the start agreement project.

After this period, its expiration will occur and, consequently, the file of performances; in accordance with the provisions of article 64 of the LOPDGDD.

Finally, it is noted that in accordance with the provisions of article 112.1 of the LPACAP, there is no administrative appeal against this act.

Mar Spain Marti

Director of the Spanish Data Protection Agency

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SECOND: On April 26, 2023, the claimed party has proceeded to pay the penalty in the amount of 300 euros making use of the two reductions provided

in the Commencement Agreement transcribed above, which implies 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 appeal via against the sanction and acknowledgment of responsibility in relation to the facts referred to in the Commencement Agreement.

FOURTH: In the previously transcribed initiation agreement, it was indicated that, if Once the infringement is confirmed, it could be agreed to impose on the controller the adoption of adequate measures to adjust its performance to the regulations mentioned in this act, in accordance with the provisions of the aforementioned article 58.2 d) of the GDPR, according to the which each control authority may "order the person responsible or in charge of the processing that the processing operations comply with the provisions of the this Regulation, where appropriate, in a certain way and within a certain specified term...".

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Having recognized the responsibility for the infringement, the imposition of the measures included in the Initiation Agreement.

FUNDAMENTALS OF LAW

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Competence

In accordance with the powers that article 58.2 of Regulation (EU) 2016/679

(General Data Protection Regulation, hereinafter GDPR), 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 Data Protection Agency will be governed by the provisions in Regulation (EU) 2016/679, in this organic law, by the provisions regulations dictated in its development and, insofar as they do not contradict them, with character subsidiary, by the general rules on administrative procedures."

II

Termination of the procedure

Article 85 of Law 39/2015, of October 1, on Administrative Procedure

Common for Public Administrations (hereinafter, LPACAP), under the heading

"Termination in disciplinary proceedings" provides the following:

"1. Initiated a disciplinary procedure, if the offender acknowledges his responsibility,

The procedure may be resolved with the imposition of the appropriate sanction.

2. When the sanction has only a pecuniary 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 presumed perpetrator, in

any moment 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 offence.

3. In both cases, when the sanction is solely pecuniary in nature, the

The competent body to resolve the procedure will apply reductions of at least

20% of the amount of the proposed penalty, these being cumulative among themselves.

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 resource against the sanction.

The percentage reduction provided for in this section may be increased according to regulations."

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According to what has been stated,

the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: DECLARE the termination of procedure EXP202212654, in

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

SECOND: TO ORDER THE CONGREGATION OF THE HOLY REDEEMER CURIA

PROVINCIAL so that within a month it notifies the Agency of the adoption of the

measures described in the foundations of law of the Initiation Agreement

transcribed in this resolution.

THIRD: NOTIFY this resolution to CONGREGATION OF THE HOLY

PROVINCIAL CURIA REDEEMER.

In accordance with the provisions of article 50 of the LOPDGDD, this

Resolution will be made public once the interested parties have been notified.

Against this resolution, which puts an end to the administrative process as prescribed by

the art. 114.1.c) of Law 39/2015, of October 1, on Administrative Procedure

Common of Public Administrations, interested parties may file an appeal

administrative litigation before the Administrative Litigation 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 for in article 46.1 of the referred Law.

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