

□ File No.: EXP202103989

## 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 20, 2022, the Director of the Spanish Agency for  
Data Protection agreed to initiate a sanctioning procedure against B.B.B. (onwards,  
the claimed party), through the Agreement that is transcribed:

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File No.: EXP202103989

### 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: D.A.A.A. (hereinafter, the complaining party) dated October 25,  
2021, filed a claim with the Spanish Data Protection Agency. The  
claim is directed against D. B.B.B., with NIF \*\*\*NIF.1 (hereinafter, the part  
claimed), for the installation of a video surveillance system located in CALLE  
\*\*\*ADDRESS.1, CAMARIÑAS, A CORUÑA, with indications of a possible  
Failure to comply with the provisions of article 5.1.c) of the General Regulations of  
Data Protection (hereinafter, RGPD).

The reasons underlying the claim are as follows:

The complaining party states that the complaining party is responsible for two  
video surveillance cameras, installed on the facade of the house on the

claimed, which are oriented to public roads, without authorization

prior administration for it. It provides images of the location of the cameras.

The documents provided are:

- Photo report

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

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hereinafter, LOPDGDD), said claim was transferred to the claimed party, to

to proceed with its analysis and inform this Agency within a month of the

actions carried out to adapt to the requirements set forth 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 11/17/2021, as recorded in

the acknowledgment of receipt that works in the file.

On December 22, 2021, this Agency received a written response,

in which it provides information from its video surveillance system, but the images of the

poster and the field of vision of the camera are not clear and do not allow to appreciate what is

captures and the identity of the person in charge; The time is not specified either.

image storage.

On January 5, 2022, the correction is requested.

On February 1, 2022, the respondent corrects his previous brief, providing

photograph of the poster, which is in accordance with our regulations, informs that the time of storage of the images is 15 days and provides sharper photographs of the cameras field of view. From the analysis of these images it is concluded that captures an excessive portion of the public thoroughfare, since it includes the sidewalk and all the roadway of the street in which the residence of the claimed party is located. The captured public road space is understood to be disproportionate, since it exceeds the minimum essential to carry out the function of surveillance and control of the security, purpose of the camera.

THIRD: On January 25, 2022, in accordance with article 65 of the LOPDGDD, the claim filed by the claimant was admitted for processing.

## FOUNDATIONS OF LAW

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### Competition

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."

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## II

The image is a personal data

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.

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

alleged infringement

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.

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

minimization of data contained in article 5.1.c) of the RGPD that provides that the 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. The 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 in the subsequent treatment of the same.

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

The application of the principle of data minimization in the field of video surveillance entails that images cannot be captured from public roads, since the treatment of images in public places, unless authorized governmental, can only 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.

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.

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.

Nor can images 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.

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

Video surveillance obligations

#### 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 and 13 of the RGPD, and 22 of the LOPDGDD.

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In this sense, article 22 of the LOPDGDD provides in relation to video surveillance

a system of “layered information”.

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 about the

treatment of personal data.

This information will be contained in a device placed in a sufficiently

visible and must be supplied in advance.

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.

4.- The treatment of images through the installation of camera systems or

video cameras must be lawful and comply with the principle of proportionality and that of

minimization of data, in the terms already indicated.

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.

A security breach is understood as the accidental or accidental 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.

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The Spanish Agency for Data Protection offers through its website

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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

guidelines considered minimum.

Possible administrative infraction

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In accordance with the evidence available at the present time of

agreement to initiate the sanctioning procedure, and without prejudice to what results from the

instruction, it is considered that the exposed facts violate what is established in the

article 5.1.c) of the RGPD, which could lead to the commission of an infringement

typified in article 83.5.a) of the RGPD, which provides the following:

“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 global total annual turnover of the previous financial year, opting for the largest 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 infractions, the infraction indicated in the previous paragraph is considered very serious in accordance with article 72.1 of the LOPDGDD, which states that:

“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:

a) The processing of personal data violating the principles and guarantees established in article 5 of Regulation (EU) 2016/679.

SAW

sanction proposal

Article 58.2 of the RGPD establishes:

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

(...)

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 article 58.2

d) of the aforementioned Regulation is compatible with the sanction consisting of a fine administrative.

With respect to the infringement of article 5.1.c) of the RGPD, based on the facts exposed and without prejudice to what results from the instruction of the procedure, considers 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 provisions of article 83.1 of the RGPD.

In order to determine the administrative fine to be imposed, 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 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;

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- 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.

d) The possibility that the conduct of the affected party could have included 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 officer.

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 infractions

committed by violating the provisions of article 5.1 c) of the RGPD, allows setting as

initial assessment a fine of 300 euros (three hundred euros).

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

prove the regularization of the video surveillance system, in accordance with the

regulations in force.

7th

#### Possible measures

If the infraction is confirmed, it could be agreed to 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 the which each control authority may “order the person in charge or in charge of the treatment that the treatment operations comply with the provisions of the this Regulation, where appropriate, in a certain way 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:

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Prove that you proceeded to remove the camera or video camera system from the current place or to its reorientation, in such a way that the viewing of the images that are observed show that it is not captured:

common areas of the house.

the adjoining house.

public roads.

It is warned that not meeting the requirements of this organization may be considered as an administrative offense in accordance with the provisions of the RGPD, typified as an infraction in its article 83.5 and 83.6, being able to motivate such conduct the opening of a subsequent sanctioning administrative proceeding.

conclusion

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

Data Protection,

AGREE:

FIRST: START SANCTION PROCEDURE against D. B.B.B., with NIF

\*\*\*NIF.1, for the alleged infringement of article 5.1.c) of the RGPD, typified in article 83.5.a) of the aforementioned RGPD.

SECOND: APPOINT C.C.C. and, as secretary, to D.D.D.,

indicating that any of them may be challenged, where appropriate, in accordance with the 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 its documentation, as well as the documents obtained and generated by the Subdirector General for Inspection of Data on actions carried out prior to the start of this penalty procedure.

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 (in hereinafter, LPACAP), the sanction that could correspond would be €300 (three hundred euros), without prejudice to what results from the instruction.

FIFTH: NOTIFY this agreement to D. B.B.B., with NIF \*\*\*NIF.1, granting a hearing period of ten business days to formulate the allegations and Submit whatever evidence you deem appropriate. In his pleadings You must provide your NIF and the procedure number that appears in the header 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 the LPACAP.

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In accordance with the provisions of article 85 of the LPACAP, you may recognize your responsibility within the term granted for the formulation of allegations to the present initial agreement, which will entail a reduction of 20% of the sanction to be imposed in this proceeding. 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. With the application of this reduction, the sanction would be established at €240 (two hundred and forty 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 this case, if it were appropriate to apply both reductions, the amount of the penalty would be set at €180 (one hundred and eighty 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 indicated above, €240 or €180, you must make it effective through your deposit in account number ES00 0000 0000 0000 0000 0000 opened in the name of the Agency Spanish Department of 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 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 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.

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Director of the Spanish Data Protection Agency

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SECOND: On June 6, 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,

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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 EXP202103989, of

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

SECOND: NOTIFY this resolution to B.B.B..

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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Director of the Spanish Data Protection Agency

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