

□ File No.: EXP202105700

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 25, 2022, the Director of the Spanish Agency for
Data Protection agreed to start a sanctioning procedure against A.A.A. (hereinafter the
claimed party). Notified of the initiation agreement and after analyzing the allegations
presented, on September 28, 2022, the proposed resolution was issued
which is transcribed below:

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File No.: EXP202105700

PROPOSED RESOLUTION OF SANCTION PROCEDURE

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

BACKGROUND

FIRST: D.B.B.B. (hereinafter, the complaining party), dated December 12
of 2021, filed a claim with the Spanish Agency for Data Protection. The
claim is directed against Ms. A.A.A. with NIF ***NIF.1 (hereinafter, the part
claimed), for the installation of a video surveillance system located in
*** ADDRESS.1, there being indications of a possible breach of the provisions of
Article 13 of Regulation (EU) 2016/679 (General Regulation for the Protection of
Data, hereinafter GDPR).

The reasons for the claim are the following:

The claimant party states that in the property owned by the party claimed and where the mother of the claimant is domiciled, is located installed a video surveillance system that is marked by signs informative information on the video-surveilled area, but lacks information on the person in charge of the treatment and before whom and how to exercise the corresponding rights regarding of data protection. Provide images of the cameras and installed posters in the property.

The documents provided are:

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- Photo report

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, to 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 12/17/2021, as stated in the acknowledgment of receipt that appears in the file.

On 02/02/2022, this Agency received a written response, indicating that

The video surveillance system that is the subject of this claim is installed in a

building of your property, which is not captured by public roads or private elements of third parties. It consists of four cameras that capture the entrance to the building, the elevator, the stairs, the counter room and the entrance door to the house of the claimed party. Images are recorded and stored for the space of one week. It has exposed posters that warn of the existence of a video area monitored, but in the images that he provides of them it is not appreciated that they include the Other information required to comply with the information obligation imposed by the GDPR and the LOPDGDD.

THIRD: On March 12, 2022, in accordance with article 65 of the LOPDGDD, the claim presented by the claimant party was admitted for processing.

FOURTH: On May 25, 2022, the Director of the Spanish Agency for Data Protection agreed to initiate disciplinary proceedings against the claimed party, pursuant to the provisions of articles 63 and 64 of the LPACAP, for the alleged violation of Article 13 of the GDPR, typified in Article 83.5 of the GDPR.

FIFTH: Notified of the aforementioned start-up agreement in accordance with the rules established in the LPACAP, the claimed party submitted a pleading in which, in summary, stated that:

We understand that the signs indicate perfectly that the areas are video guarded and being a privately owned building, specifically of the undersigned, the owner herself is understood to be responsible for the building.

Even so, said posters have been rectified by adding the following information required:

- Responsible to Ms. A.A.A., with address at ***ADDRESS.1.
- You can exercise your data protection rights at the postal address indicated or by mail: ***EMAIL.1.

More information about the processing of your personal data: Sending an email to

***EMAIL.1 where they will be answered or at the indicated postal address they will be provided

more information.

We attach as document number 1, images of the posters with all the information

updated.

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SIXTH: A list of documents in the file is attached as an annex.

procedure.

Of the actions carried out in this procedure and of the documentation

in the file, the following have been accredited:

PROVEN FACTS

FIRST: The claimant states that in the property owned by the

claimed party, a video surveillance system is installed that is

It is marked by informative posters of a video-monitored area, but which

lacks information on the data controller and before whom and how to exercise

the corresponding rights in terms of data protection.

SECOND: The posters have been rectified by adding the following information

required: - Responsible to Ms. A.A.A., with address at ***ADDRESS.1. - Can

exercise your data protection rights at the indicated postal address or at

email: ***EMAIL.1. - More information about the processing of your personal data:

Sending an email to ***EMAIL.1 where they will be answered or at the postal address

indicated, more information will be provided.

FUNDAMENTALS OF LAW

Yo

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 and 48.1 of the Law

Organic 3/2018, of December 5, 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 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

Response Allegations

In response to the allegations presented by the claimed party, it should be noted that

following:

Examined the allegations of the claimed party, and assessed the images

provided by both parties to the procedure, the allegations and the

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evidence in which it can be seen that the posters have been rectified,

now containing all the required information.

It can be concluded that the information included in the posters at this time of the procedure is correct.

It should be remembered that "the data that is processed through the video surveillance will be processed for the purpose that motivated the installation of the itself and which is linked to guaranteeing the safety of people, goods and facilities".

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.

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.

IV.

alleged infringement

Article 6.1 of the GDPR establishes the assumptions that allow the use of processing of personal data.

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.

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

The relevance in the treatment of data must occur both in the field of collection of the data as well as in the subsequent treatment that is carried out of the same.

Article 13 of the GDPR, sections 1 and 2, establishes the information that must be provided to the interested party at the time of data collection. In the case of treatments of personal data for surveillance purposes through camera systems or video-cameras, the duty of information can be fulfilled by placing, in the zones video surveillance, of an informative badge located in a sufficiently visible place able, both in open and closed spaces, and making use of forms in which

the information provided is detailed, which the person in charge must make available to the interested.

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 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.

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.

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, where appropriate, of the people who

find.

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

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Video surveillance obligations

V

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:

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 duty to inform those affected provided for in articles 12 and 13 of the GDPR, and 22 of the LOPDGDD.

In this sense, article 22 of the LOPDGDD provides in relation to video surveillance a “layered information” system.

The first layer must refer, at least, to the existence of the treatment

(video surveillance), the identity of the person responsible, the possibility of exercising the rights provided for in articles 15 to 22 of the GDPR and where to obtain more information about the processing of personal data.

This information will be contained in a device placed in a sufficiently visible and must be provided in advance.

Second layer information should be easily available in one place accessible to the affected person, 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 other elements of article 13 of the GDPR.

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 the principle 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, 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.

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6.- 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.

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 security measures. 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 to be the destruction, loss or accidental alteration or unlawful transfer of personal data, stored or otherwise processed, or the communication or unauthorized access to said data.

9.- When the system is connected to an alarm center, it can only be installed by a qualified private security company contemplated in article 5 of Law 5/2014 on Private Security, of April 4.

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.

SAW

Possible administrative offense

In accordance with the evidence available at the present time of the disciplinary procedure, it is considered that the facts exposed have violated the established in article 13 of the GDPR, for which reason they could imply the commission of a infringement typified in article 83.5 of the GDPR, which provides the following:

Violations of the following provisions will be sanctioned, in accordance with the paragraph 2, with administrative fines of maximum 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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total annual global business volume of the previous financial year, opting for the highest amount:

b) the rights of the interested parties in accordance with articles 12 to 22; (...)"

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

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 Regulation (EU)

2016/679 and 12 of this Organic Law.”

VII

Sanction proposal

Article 58.2 of the GDPR establishes:

"Each control authority will have all the following corrective powers

indicated below:

(...)

d) order the person in charge or person 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 in accordance with article 83, in addition to or instead of

the measures mentioned in this paragraph, according to the circumstances of each

particular case".

According to the provisions of article 83.2 of the GDPR, the measure provided for in article

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

administrative.

Regarding the infringement of article 13 of the GDPR, based on the facts

proven, it is considered that the sanction that would correspond to be imposed is a fine

administrative.

The fine imposed must be, in each individual case, effective, proportionate and dissuasive, in accordance with article 83.1 of the GDPR.

In order to determine the administrative fine to be imposed, the provisions of article 83.2 of the GDPR, which indicates:

"2. Administrative fines will be imposed, depending on the circumstances of each individual case, in addition to or in lieu of the measures contemplated in

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Article 58, paragraph 2, letters a) to h) and j). When deciding to impose a fine administration and its amount in each individual case shall 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 as such as the number of interested parties affected and the level of damages that have suffered;

b) intentionality or negligence in the infraction;

c) any measure taken by the controller or processor to alleviate the damages and losses suffered by the interested parties;

d) the degree of responsibility of the controller or processor, 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 controller or processor;

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 extent;
- i) when the measures indicated in article 58, paragraph 2, have been ordered previously against the person in charge or the person in charge in relation to the same matter, compliance with said measures;
- j) adherence to codes of conduct under article 40 or to 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 GDPR, the LOPDGDD, in its article 76, "Sanctions and corrective measures", provides:

"1. The sanctions provided for in sections 4, 5 and 6 of article 83 of the Regulation (UE) 2016/679 will be applied taking into account the graduation criteria established in section 2 of said 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 data processing. personal information.
- c) The benefits obtained as a consequence of the commission of the infraction.
- 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 it is not mandatory, a data protection delegate.

h) Submission by the person responsible or in charge, on a voluntary basis, to

alternative conflict resolution mechanisms, in those cases in which

there are controversies between those and any interested party”.

The balance of the circumstances contemplated, with respect to the infringement of article

13 of the GDPR, allows setting a fine of €150 (one hundred and fifty euros).

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VIII

Conclusion

In accordance with the foregoing, it has been proven that a

rectify the posters, including the required information, mitigating circumstance due to the

that it is appropriate to propose a fine of €150 (one hundred and fifty euros) in the present

procedure.

The parties are reminded that this Agency should not be instrumentalized in

issues outside its jurisdictional framework, owing the rest of the issues, in its

case, be transferred to the pertinent judicial instances, where they may

present the questions they deem necessary.

In view of the foregoing, the following is issued

PROPOSED RESOLUTION

That the Director of the Spanish Data Protection Agency sanction Ms.

A.A.A., with NIF ***NIF.1, for the infringement of article 13 of the GDPR, typified in the

Article 83.5.b) of the GDPR, with a fine of €150 (one hundred and fifty euros).

Likewise, in accordance with the provisions of article 85.2 of the LPACAP, you will be

informs that it may, at any time prior to the resolution of this

procedure, carry out the voluntary payment of the proposed sanction, which

It will mean a reduction of 20% of the amount of the same. With the application of this

reduction, the sanction would be established at €120 (one hundred and twenty euros) and its payment

will imply the termination of the procedure. The effectiveness of this reduction will be

conditioned to the withdrawal or resignation of any action or appeal via

administrative against the sanction.

In case you choose to proceed to the voluntary payment of the specified amount

above, in accordance with the provisions of the aforementioned article 85.2, you must do it

effective by depositing it in the restricted account no. ES00 0000 0000 0000 0000

0000 open in the name of the Spanish Data Protection Agency in the entity

bank 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, reduction of the amount of the sanction. You must also send the

Proof of admission to the Sub-Directorate General of Inspection to proceed to close

The file.

By virtue of this, you are notified of the foregoing, and the procedure is revealed.

so that within TEN DAYS you can allege whatever you consider in your defense and

present the documents and information that it deems pertinent, in accordance with

Article 89.2 of the LPACAP.

C.C.C.

INSTRUCTOR

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EXHIBIT

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12/12/2021 Claim by B.B.B.

12/17/2021 Transfer of claim to A.A.A.

02/02/2022 Response to A.A.A.

03/12/2022 Communication to B.B.B.

05/26/2022 A. opening to A.A.A.

06/11/2022 Info. Complainant to B.B.B.

06/12/2022 Written by B.B.B.

06/16/2022 Allegations by A.A.A.

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SECOND: On October 15, 2022, the claimed party has proceeded to pay

of the penalty in the amount of 120 euros making use of the reduction provided for in the motion for a resolution transcribed above.

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

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

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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."

According to what has been stated,

the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: DECLARE the termination of procedure EXP202105700, 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 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.

Mar Spain Marti

Director of the Spanish Data Protection Agency

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