

□ File No.: PS/00460/2021

RESOLUTION OF TERMINATION OF THE PROCEDURE FOR PAYMENT

VOLUNTEER

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

BACKGROUND

FIRST: On December 9, 2021, the Director of the Spanish Agency for
Data Protection agreed to initiate a sanctioning procedure against A.A.A. (onwards,
the claimed party), through the Agreement that is transcribed:

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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: B.B.B. (*hereinafter, the complaining party) dated June 11, 2021
filed a claim with the Spanish Data Protection Agency. The
claim is directed against A.A.A. with NIF ***NIF.1 (hereinafter, the part
claimed). The grounds on which the claim is based are as follows:

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"He has a camera in the Community of neighbors without having the proper

authorization" (folio nº 1).

Documentary evidence is provided (photographs No. 1-4) in which a camera is observed installed on the outside of the façade with clear orientation towards the public transit, without just cause.

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), said claim was transferred to the claimed party in fe-dated 07/04/21, to proceed with its analysis and inform this Agency on the period of one month, of the actions carried out to adapt to the foreseen requirements cough in the data protection regulations.

No response has been received to this letter, nor has any clarification been given to the regarding the subject in question.

THIRD: On September 14, 2021, the Director of the Spanish Agency of Data Protection agreed to admit for processing the claim presented by the party claimant.

FOUNDATIONS OF LAW

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By virtue of the powers that article 58.2 of the RGPD recognizes to each authority of control, and according to the provisions of articles 47 and 48 of the LOPDGDD, the Director of the Spanish Agency for Data Protection is competent to initiate and to re-solve this procedure.

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In the present case, the claim dated 06/11/21 is examined by me-

dio from which the presence of a recording device is transferred without “relying on the mandatory authorization” according to the claimant.

Documentary evidence is provided (photographs No. 1-4) in which a camera is observed installed on the outside of the façade with clear orientation towards the public transit, without just cause.

Regardless of the existence or not of community authorization, the same is oriented towards a public transit area, without just cause and affecting busy area and vehicle parking.

The facts denounced could imply an affectation to the content of art. 5.1 c)

RGPD (regulation currently in force) that provides: “personal data will be:

c) adequate, pertinent and limited to what is necessary in relation to the purposes for which they are processed (“data minimization”) (...)”.

Individuals are responsible for the installed video-surveillance systems to be comply with current legislation, and must be able to prove such extremes.

We report to the competent authority.

Cameras installed by individuals must be oriented towards their private space.

vative avoiding the capture of private area of third parties without just cause.

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

of the installation and in particular, not being able to affect the surrounding public spaces.

contiguous buildings and vehicles other than those accessing the guarded space.

Security cameras installed in private spaces will not be able to obtain images

public spaces, the security function of public spaces corresponding to

exclusively to the State Security Forces and Bodies, not to the Companies

Private Security companies, nor to individuals.

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Likewise, in the case of false cameras, they must be oriented to a private area, avoiding intimidation of neighboring neighbors who are unaware know whether or not they process personal data.

III

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 claimed party has proceeded to the installation of a video-surveillance camera in a "disproportionate" manner with a clear purpose of acquisition of public space.

The known facts could constitute an infraction, attributable to the claimed party, for violation of the content of art. 5.1 c) GDPR.

IV

Article 83.5 RGPD provides the following:

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

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

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-the nature of the infraction by having a video-surveillance system that is

oriented towards public transit area without just cause, presumably trying

data of identifiable natural persons (art. 83.5 a) RGPD).

-the intentionality or negligence of the infringement, (art. 83.2 b) RGPD), since with the

video-surveillance system performs excessive control of public area without just cause

ficada any, highlighting the poor orientation of the installation of the device (s).

For all this, a sanction is agreed in the amount of €1,500 (one thousand five hundred

euros), by having a camera system that excessively records areas of nature.

public safety, a sanction located on the lower scale of this type of infraction and according to

the nature of the events described.

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Among the corrective powers contemplated in article 58 of the RGPD, in its section 2

d) it is established that each control authority may “order the person in charge or

of the treatment that the treatment operations comply with the provisions

of this Regulation, where appropriate, in a certain way and within

a specified period...”. The imposition of this measure is compatible with the sanction

consisting of an administrative fine, as provided in art. 83.2 of the GDPR.

The claimed party must prove the nature of the device in question

making all the allegations that it deems necessary in relation to the facts object

complaint focused on the legality of the installed system, or proceed in its

case to the withdrawal of the device proving such extreme before this organism (vgr. fotography date and time).

Therefore, in accordance with the foregoing, by the Director of the Spanish Agency data protection law,

HE REMEMBERS:

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FIRST: START SANCTION PROCEDURE against A.A.A., with NIF ***NIF.1, for the alleged violation of art. 5.1 c) RGPD, infringement typified in art. 83.5 being punishable in accordance with article 58.2 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 provisions ed in articles 23 and 24 of Law 40/2015, of October 1, on the Legal Regime of the Public Sector (LRJSP).

THIRD: INCORPORATE to the disciplinary file, for evidentiary purposes, the claim filing filed by the claimant and its documentation, as well as the documents documents obtained and generated by the General Subdirectorate for Data Inspection in actions prior to the start of this sanctioning procedure.

FOURTH: THAT for the purposes provided in art. 64.2 b) of Law 39/2015, of October 1-tubre, of the Common Administrative Procedure of the Public Administrations, the sanction that could correspond would be €1,500, without prejudice to what results from the instruction.

FIFTH: NOTIFY this agreement to A.A.A., with NIF ***NIF.1, granting it a

hearing period of ten business days to formulate the allegations and present tests you deem appropriate. In your statement of arguments, you must provide your NIF and the procedure number that appears at the top of this document.

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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, you may recognize your responsibility within the term granted for the formulation of allegations to the feel start agreement; which will entail a 20% reduction in blood tion to be imposed in this proceeding. With the application of this re-

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reduction, the sanction would be established at €1,200, 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 supposes will give a reduction of 20% of its amount. With the application of this reduction, the

The payment would be established at €1,200 and its payment will imply the termination of the procedure.

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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 €900 (Nine hundred euros).

In any case, the effectiveness of any of the two reductions mentioned will be conditioned to the withdrawal or waiver of any action or resource in the administrative process. deal against the sanction.

In case you chose to proceed to the voluntary payment of any of the amounts indicated above €1,200 or €900, you must make it effective through your deposit in account number ES00 0000 0000 0000 0000 0000 opened in the name of the Agencia Es-Data Protection Office at the banking entity CAIXABANK, S.A., indicating in the concept the reference number of the procedure that appears in the heading processing of this document and the reason for the reduction of the amount to which it is accepted. Likewise, you must send proof of income to the General Subdirectorato of Ins-request to continue with the procedure in accordance with the amount entered. gives.

The procedure will have a maximum duration of nine months from the date of page of the start-up agreement or, where appropriate, of the draft start-up agreement. elapse-do this period will produce its expiration and, consequently, the filing of actions; in accordance with the provisions of article 64 of the LOPDGDD.

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Finally, it is pointed out that in accordance with the provisions of article 112.1 of the LPA-CAP, against this act there is no administrative appeal.

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Director of the Spanish Data Protection Agency

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SECOND: On January 12, 2022, the claimed party has proceeded to pay of the sanction in the amount of 900 euros making use of the two reductions provided for in the Start Agreement transcribed above, which implies the acknowledgment of 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

Yo

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

43.1 of said Law.

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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."

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

RESOLVES:

FIRST: TO DECLARE the termination of procedure PS/00460/2021, of
in accordance with the provisions of article 85 of the LPACAP.

SECOND: NOTIFY this resolution to A.A.A.

In accordance with the provisions of article 50 of the LOPDGDD, this
Resolution will be made public once it has been notified to the interested parties.

Against this resolution, which puts an end to the administrative procedure as prescribed by
the art. 114.1.c) of Law 39/2015, of October 1, on Administrative Procedure
Common of the Public Administrations, the interested parties may file an appeal
contentious-administrative before the Contentious-administrative Chamber of the
National Court, in accordance with the provisions of article 25 and section 5 of
the fourth additional provision of Law 29/1998, of July 13, regulating the
Contentious-Administrative Jurisdiction, within a period of two months from the
day following the notification of this act, as provided in article 46.1 of the
aforementioned Law.

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