

□ File No.: EXP202103443

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 October 24, 2022, the Director of the Spanish Agency for
Data Protection agreed to start a sanctioning procedure against A.A.A. (onwards,
the claimed party), through the Transcribed Agreement:

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File No.: EXP202103443

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: B.B.B. (*hereinafter, the claiming party) dated October 11,
2021 filed a claim with the Spanish Data Protection Agency. The re-
The claim is initially directed against whoever identifies C.C.C. and A.A.A. with NIF

***NIF.1. The reasons on which the claim is based are briefly the following:
you:

"(...) they have installed, in the common property in which they reside and that each one of
They have their residence, a video surveillance system oriented at the entrance to the house.
home of the claimant, without having authorized said installation and without having installed
aside the mandatory informative posters of the video-surveilled area".

Together with the notification, documentary evidence is provided confirming the presence

of the cameras installed (Annex I).

SECOND: On 12/14/21 the transfer of the claim to the party (s) occurs initially claimed, requesting precise clarification on the legality of the system within the framework of E/01149/2021.

THIRD: On January 11, 2022, in accordance with article 65 of the LOPDGDD, the claim presented by the claimant party was admitted for processing.

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FOURTH: The General Subdirectorate of Data Inspection proceeded to carry out of previous investigative actions to clarify the facts in matter, by virtue of the functions assigned to the control authorities in article 57.1 and the powers granted in article 58.1 of Regulation (EU) 2016/679 (General Data Protection Regulation, hereinafter GDPR), and in accordance with the provisions of Title VII, Chapter I, Second Section, of the LOPDGDD, subject having knowledge of the following extremes:

The actions carried out by this body are embodied in

EXP202103443.

REPORT OF PREVIOUS INVESTIGATION ACTIONS

In what was provided by the claimant, there is abundant documentation containing several complaints made before the Civil Guard for various events and an open proceeding in the Court of First Instance No. 2 of ***LOCATION.1 on matters that exceed the limits of competence of this Agency, for which reason will be taken into account during these proceedings, nor will any reference be made to them

in this report.

The farm, of a rustic nature, has the following areas: 2 houses (the one on the claimant and that of the claimed party/s), a warehouse, a dining area with a toilet annex, a common parking area for the two houses, swimming pool and tennis court. tennis.

Requested from the claimed party information on the installation of the video surveillance, dated March 31, 2022, is received by this Agency, with registration number 22e0001054XXXX writing sent by the claimed party stating that the owner of the farm where the cameras have been installed, and the Responsible for the installation of the video surveillance system. Regarding the requirement to report on different aspects of the system, the defendant states that the images are never recorded due to a malfunction of the device and the cameras.

FUNDAMENTALS OF LAW

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In accordance with the powers that article 58.2 of Regulation (EU) 2016/679 (Regulation General Data Protection Regulation, hereinafter GDPR), grants each authority quality of control and as established in articles 47, 48.1, 64.2 and 68.1 of the Law Organic 3/2018, of December 5, Protection of Personal Data and guarantee of

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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 of Regulation (EU) 2016/679, in this organic law, by the regulations comments dictated in its development and, insofar as they do not contradict them, with a subsidiary, by the general rules on administrative procedures."

II

In the present case, the claim dated 10/11/21 is examined by means of gave from which the following is transferred:

"...they have proceeded to install security cameras at various common points of the farm in question. Being the situation of one of them on the facade of my home da, affecting the entrance and exit doors of my home" (folio no. 1).

Given that one of the parties acknowledges being the main person responsible for the installation of the Likewise, these actions will be directed against the main <responsible>.

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").

It should be remembered that individuals are responsible for ensuring that the systems installed felled comply with current legislation, certifying that it complies with all the requirements demanded by the regulations in force.

The installation of this type of device must have the mandatory informative poster tive, indicating the purposes and person responsible for the treatment, where appropriate, of the data of each personal character.

In any case, the cameras must be oriented towards the particular space, avoiding intimidate neighboring neighbors with this type of device, as well as control areas transit thereof without just cause.

Neither with this type of device can you obtain an image(s) of public space.

since this is the exclusive competence of the Security Forces and Bodies of the State
tado.

It should be remembered that even if it is a "simulated" camera, the same
should preferably be oriented towards private space, since it is considered
that this type of device can affect the privacy of third parties, who are intimate
measured by it in the belief of being the object of permanent recording.

On the part of individuals, it is not possible to install devices for obtaining
images of public space and/or traffic of third parties, outside the cases allowed in
the normative.

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The purpose of this type of device must be the security of the property and
its inhabitants, avoiding the affectation of the rights of third parties who are intimidated
two with the same

The cameras must adhere to the protection of the property of their ownership in such
so that they do not affect the area of third parties who are intimidated by them.
affect your free transit zone.

II

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 claimed party has a video-
surveillance that could affect the rights of third parties without just cause.

The initial arguments are insufficient to prove the legality of the system installed, there being probative indications of an affectation to a third-party area without just cause, being able to verify at a glance the catchment of the entire area of parking shared with the claimant, without counting on their due authorization.

The known facts could constitute an infringement, attributable to the party claimed, for violation of the content of article 5.1 c) GDPR, previously cited do.

Article 72, paragraph 1, letter a) establishes a limitation period of three years "infractions that involve 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 established in article 5 of Regulation (EU) 2016/679.

IV.

The brief presented exposes the lack of informative poster(s) indicating that It is a video-surveilled area, in such a way that rights cannot be exercised. known in articles 12-22 GDPR.

Article 22 section 4 of the LOPDGDD (Lo 3/2018) provides: "The duty to information provided for in article 12 of Regulation (EU) 2016/679 shall be understood accomplished by placing an informative device in a sufficient place-visible mind identifying, at least, the existence of the treatment, the identity of the person responsible and the possibility of exercising the rights provided for in articles 15 to 22 of Regulation (EU) 2016/679. It may also be included in the informative device a connection code or internet address to this information".

The facts described above may affect the content of the

Article 13 GDPR, as the property described does not have the mandatory informative signs.

you, indicating that it is a video-surveilled area.

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Article 13 GDPR "Information that must be provided when the data personal data are obtained from the interested party"

1. When personal data relating to him or her is obtained from an interested party, the person responsible of the treatment, at the moment in which these are obtained, it will provide you with all the information information indicated below: a) the identity and contact details of the person in charge and, where appropriate, his representative; b) the contact details of the protection delegation of data, if applicable; c) the purposes of the processing for which the personal data is intended; personal data and the legal basis of the treatment (...).

Article 72 section 1 of the LOPDGDD (LO 3/2018, December 5) in relation to tion to the limitation period of very serious infractions "will prescribe three years" and in particular the following:

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

V

The art. 83.5 GDPR provides the following: "Violations of the following provisions These will be penalized, in accordance with section 2, with administrative fines of 20 000 000 EUR maximum or, in the case of a company, an equivalent amount to a maximum of 4% of the overall annual total turnover of the financial year previous year, opting for the one with the highest amount:

a) The basic principles for the treatment including the conditions for the consent in accordance with articles 5,6,7 and 9 (...).

the rights of the interested parties in accordance with articles 12 to 22;

b)

In accordance with the foregoing, it is considered correct to propose a penalty of €600, (€300 +€300), having a device(s) whose nature has not been clarified, being the same operation in the visualization of images, affecting the complaining party in shared areas, lacking the mandatory information sign, considering the conduct described at least gross negligence, sanction located in the lower scale for this type of behavior.

SAW

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 controller or processor that the processing operations comply with the provisions of this Regulation, where appropriate, in a certain way and within a specified period. cified...". The imposition of this measure is compatible with the sanction consisting of Administrative fine, according to the provisions of art. 83.2 of the GDPR.

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It is noted that not meeting the requirements of this body may be considered classified as an administrative offense in accordance with the provisions of the GDPR, typified

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.

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

Data Protection tab,

HE REMEMBERS:

FIRST: INITIATE SANCTION PROCEDURE against A.A.A., with NIF ***NIF.1,

for the alleged infringement of article 5.1 c) GDPR, typified in article 83.5 a)

GDPR.

SECOND: INITIATE SANCTIONING PROCEDURE against A.A.A., with NIF ***NIF.1,

for the alleged violation of article 13 GDPR, typified in article 83.5 b) GDPR.

THIRD: APPOINT as instructor D.D.D. and, as secretary, to E.E.E., indicate-

meaning that any of them may be challenged, if applicable, in accordance with the provisions

in articles 23 and 24 of Law 40/2015, of October 1, on the Legal Regime of

Public Sector (LRJSP).

FOURTH: INCORPORATING into the disciplinary file, for evidentiary purposes, the claim

petition filed by the claimant and its documentation, as well as the documents

ments obtained and generated by the General Sub-directorate of Data Inspection in

the actions prior to the start of this disciplinary procedure.

FIFTH: THAT for the purposes provided for in art. 64.2 b) of Law 39/2015, of October 1,

Namely, of the Common Administrative Procedure of Public Administrations the san-

tion that could correspond would be €600 (€300+€300), without prejudice to what is

determine in the instruction of the procedure.

SIXTH: 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

the tests it deems appropriate. In your pleadings you must provide

your NIF and the procedure number that appears in the heading of this document.

mint.

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 pre-set start agreement; which will entail a 20% reduction in blood
tion that should be imposed in this proceeding. With the application of this reduction, the sanction would be established at 480 euros, resolving the procedure with the imposition of this sanction.

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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 supposes will give a reduction of 20% of its amount. With the application of this reduction, the
tion would be established at [Enter the text corresponding to 480 euros and its payment will imply the termination of the procedure.

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

In this case, if both reductions were to be applied, the amount of the penalty would remain set at €360.

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

In the event that you choose to proceed with the voluntary payment of any of the amounts previously indicated €480 or €360, you must make it effective by depositing it in account number ES00 0000 0000 0000 0000 0000 opened in the name of the Spanish Agency Data Protection tab at the bank 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 Sub-directorate General of Inspection 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 date of the initiation agreement or, where applicable, of the draft initiation agreement. Elapsed- After this period, its expiration will take place and, consequently, the file of actions; 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 LPA-CAP, there is no administrative appeal against this act.

Mar Spain Marti

Director of the Spanish Data Protection Agency

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SECOND: On December 20, 2022, the claimed party has proceeded to the payment of the penalty in the amount of 480 euros using one of the two

reductions provided for in the Commencement Agreement transcribed above. Therefore, there has not

The acknowledgment of responsibility has been accredited.

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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
Commencement 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."

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 EXP202103443, in

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

937-181022

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