

□ File No.: EXP202209441

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 26, 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.: EXP202209441

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: The CIVIL GUARD - TARREGA POST (hereinafter, the part
complainant) on April 30, 2021 filed a complaint with the Agency
Spanish Protection of Data against A.A.A. with NIF ***NIF.1 (hereinafter, the
denounced party), 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 complaining party provides the Complaint Act dated April 28, 2021 in which the
indicates that the denounced party is responsible for an establishment that has in its
interior with a video surveillance system lacking informative zone signs

video surveillance inside.

SECOND: These facts were the object of a complaint before this Agency, processing file E/05532/2021. This Agency communicated to the party denounced the requirements demanded to carry out processing of personal data through this type of device, indicating that, in the event of not adopting the necessary measures to comply with those requirements, would incur in a violation of the provided in the data protection regulations, which could lead to the initiation of the investigative and sanctioning actions. Said communication was notified with date May 26, 2021.

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THIRD: On August 11, 2022, the complaining party has submitted to this Agency a new complaint against the denounced party stating that the latter It still has not installed informative posters of the video-monitored area.

FUNDAMENTALS OF LAW

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Competence

In accordance with the powers that article 58.2 of the GDPR grants to each authority of control and as established in articles 47, 48.1, 64.2 and 68.1 of the Organic Law 3/2018, of December 5, Protection of Personal Data and guarantee of the 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 "Procedures

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

II

The image is a personal data

The physical image of a person, according to article 4.1 of the GDPR, is data personnel and their protection, therefore, is the subject of said Regulation. In article 4.2 of the GDPR defines the concept of "processing" of personal data.

The images generated by a system of cameras or camcorders are data of personal nature, so its treatment is subject to the protection regulations of data.

It is, therefore, pertinent to analyze whether the processing of personal data (image of the natural persons) carried out through the denounced video surveillance system is in accordance with the provisions of the GDPR.

II

alleged infringement

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.

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Article 12.1 of the GDPR indicates that whoever carries out data processing personal, such as the capture of images through a system of video surveillance, must provide the interested parties with the information indicated in the Articles 13 and 14 of the GDPR.

In order that the duty of information provided for in article 12 of the GDPR is complies in a concise and understandable manner for the affected party, the aforementioned article 22 of the LOPDGDD foresees in relation to video surveillance a system of "information by layers".

In this sense, 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 on the processing of personal data.

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.

It is not necessary to specify the precise location of the video surveillance equipment.

This duty of information will be understood fulfilled by placing a Information device in a sufficiently visible place, and at least, at the entrances to monitored areas, whether interior or exterior. In case the space video surveillance has several accesses must have said hallmark of video surveillance area in each of them.

This information must be provided in advance -recital 39 of the GDPR-. He

The aim is to make the context of surveillance clear.

IV.

Video surveillance obligations

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

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.

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3.- The duty to inform those affected provided for in articles 12 must be fulfilled and 13 of the GDPR, and 22 of the LOPDGDD, in the terms already indicated.

4.- Images of the public thoroughfare cannot be captured, since the treatment of images in public places, unless there is government authorization, only

It can be carried out by the Security Forces and Bodies.

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.

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.

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.

Images cannot be captured or recorded in spaces owned by third parties without the consent of their owners, or, where appropriate, of the people who are in them find.

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

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.

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.

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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.

V

Possible administrative offense

The complaint is based on the fact that the denounced party has installed a system of video surveillance inside an establishment for which it is responsible without having informative posters of the existence of said video surveillance system.

As proof of these statements, the complainant provided a police report informing of said circumstance.

In accordance with the evidence available at the present time of agreement to start the disciplinary procedure, and without prejudice to what results from the instruction, it is considered that the facts exposed violate the provisions of the Article 13 of the GDPR, so they could imply the commission of an infringement typified in article 83.5 of the GDPR, which provides the following:

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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 total annual global business volume of the previous financial year, opting for the highest amount:

to) (...)

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:

to) (...)

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.

SAW

Sanction proposal

Article 58.2 of the GDPR establishes:

"Each control authority will have all the following corrective powers

indicated below:

to) (...)

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 letter d)

above is compatible with the sanction consisting of an administrative fine.

In the present case, taking into account the facts exposed and without prejudice to what

results from the instruction of the procedure, it is considered that the sanction that

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It would be appropriate to impose an administrative fine. The fine imposed shall

be, in each individual case, effective, proportionate and dissuasive, in accordance with the

Article 83.1 of the GDPR. In order to determine the administrative fine to be imposed,

to observe 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

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:

to)

the nature, seriousness and duration of the infringement, taking into account the

nature, scope or purpose of the processing operation in question

as well as the number of stakeholders affected and the level of damage and

damages they have suffered;

to)

the intent or negligence in the infraction;

b) any measure taken by the controller or processor to

alleviate the damages and losses suffered by the interested parties;

c) the degree of responsibility of the controller or processor,

taking into account the technical or organizational measures that they have applied in

virtue of articles 25 and 32;

d)

any previous infringement committed by the person in charge or in charge of the

treatment;

e) the degree of cooperation with the supervisory authority in order to remedy

to the breach and mitigate the possible adverse effects of the breach;

F)

g)

the categories of personal data affected by the infringement;

the way in which the supervisory authority became aware of the infringement, in

particularly if the person in charge or the person in charge notified the infringement and, in such a case,

what extent;

h) when the measures indicated in article 58, paragraph 2, have been

previously ordered against the person in charge or in charge in question

in relation to the same matter, compliance with said measures;

Yo)

j)

adherence to codes of conduct under article 40 or to mechanisms of

certification approved in accordance with article 42,

any other aggravating or mitigating factor applicable to the circumstances of the

case, such as the financial benefits obtained or the losses avoided, direct

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:

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"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.

a) The link between the activity of the offender and the performance of data processing personal information.

b) The benefits obtained as a consequence of the commission of the infraction.

c) The possibility that the conduct of the affected party could have led to the commission of the offence.

- d) The existence of a merger by absorption process subsequent to the commission of the infringement, which cannot be attributed to the absorbing entity.
- e) The affectation of the rights of minors.
- f) Have, when it is not mandatory, a data protection delegate.
- g) The submission by the person in charge or in charge, with character voluntary, alternative conflict resolution mechanisms, in those cases in which there are controversies between those and any interested".

The balance of the circumstances contemplated, with respect to the infraction committed by violating what is established in its article 13 of the GDPR, allows to set as valuation initial fine of €300 (three hundred euros).

VII

possible measures

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

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In such a case, in the resolution adopted, this Agency may require the

responsible so that within the period to be determined:

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Accredit having proceeded to the placement of the information device in the video-surveilled areas or to complete the information offered therein (must identify, at least, the existence of a treatment, the identity of the person responsible and the possibility of exercising the rights provided for in said precepts), locating this device in a sufficiently visible place, both in open and closed spaces.

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referred to in articles 13 and 14 of the GDPR.

Evidence that you keep the information available to those affected

It is noted that not meeting the requirements of this body may be

considered as an administrative offense in accordance with the provisions of the GDPR,

classified as an infraction in its article 83.5 and 83.6, being able to motivate such conduct the opening of a subsequent administrative sanctioning procedure.

VIII

Conclusion

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

Spanish Data Protection,

HE REMEMBERS:

FIRST: INITIATE SANCTION PROCEDURE against A.A.A., with NIF ***NIF.1, for the alleged infringement of article 13 of the GDPR, typified in article 83.5 of the GDPR.

SECOND: THAT for the purposes provided for in art. 64.2 b) of Law 39/2015, of 1 October, of the Common Administrative Procedure of Public Administrations (in hereinafter, LPACAP), the sanction that could correspond would be, for the alleged

violation of article 13 of the GDPR, typified in article 83.5 of said regulation, fine administrative amount of 300.00 euros, without prejudice to what results from the instruction.

Likewise, the imputed infringement, if confirmed, may lead to the imposition of measures in accordance with the provisions of article 58.2 d) of the GDPR.

THIRD: APPOINT as instructor R.R.R. and, as secretary, to S.S.S., indicating that any of them may be challenged, if applicable, 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).

FOURTH: INCORPORATE into the disciplinary file, for evidentiary purposes, the complaint filed by the complainant and its documentation, as well as the documents obtained and generated by the Sub-directorate General of Inspection of Data in the actions prior to the start of this sanctioning procedure.

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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 the tests it deems appropriate. In your pleadings you must provide your NIF and the number of the procedure that appears in the heading of this document

If, within the stipulated period, he does not make allegations to this initial agreement, the same may be considered a resolution proposal, as established in article 64.2.f) of the LPACAP.

In the same way, it may, at any time prior to the resolution of this

procedure, carry out the voluntary payment of the proposed sanction, which will mean a reduction of 20% of its amount. With the application of this reduction, the sanction would be established at 240.00 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 180.00 euros.

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

In the event that you choose to proceed with the voluntary payment of any of the amounts indicated above (240.00 euros or 180.00 euros), you must make it effective by depositing it in the account number ES00 0000 0000 0000 0000 0000 opened to name of the Spanish Data Protection Agency in 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 cause of reduction of the amount to which it receives.

Likewise, you must send proof of income to the General Subdirectorate of Inspection to continue with the procedure in accordance with the quantity entered.

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

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

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

Mar Spain Marti

Director of the Spanish Data Protection Agency

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SECOND: On November 28, 2022, the claimed party has proceeded to the payment of the penalty in the amount of 180 euros making use of the two reductions provided for in the initiation Agreement transcribed above, which implies the recognition 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 appeal via against the sanction and acknowledgment of responsibility in relation to the facts referred to in the Commencement Agreement.

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

processing that the processing operations comply with the provisions of the this Regulation, where appropriate, in a certain way and within a certain specified term...".

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

FUNDAMENTALS OF LAW

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Competence

In accordance with the powers that article 58.2 of Regulation (EU) 2016/679 (General Data Protection Regulation, hereinafter GDPR), grants each control authority and as established in articles 47, 48.1, 64.2 and 68.1 of the Organic Law 3/2018, of December 5, on the Protection of Personal Data and guarantee of digital rights (hereinafter, LOPDGDD), is competent to initiate and resolve this procedure the Director of the Spanish Protection Agency of data.

Likewise, article 63.2 of the LOPDGDD determines that: "The procedures processed by the Spanish Data Protection Agency will be governed by the provisions in Regulation (EU) 2016/679, in this organic law, by the provisions regulations dictated in its development and, insofar as they do not contradict them, with character subsidiary, by the general rules on administrative procedures."

II

Termination of the procedure

Article 85 of Law 39/2015, of October 1, on Administrative Procedure Common for Public Administrations (hereinafter, LPACAP), under the heading "Termination in disciplinary proceedings" provides the following:

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"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 EXP202209441, in

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

SECOND: REQUEST A.A.A. so that within a month notify the

Agency adopting the measures described in the fundamentals of law

of the Initiation Agreement transcribed in this resolution.

THIRD: 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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